

ARPA Project Name: Seaport facility program

ARPA Funds: \$20,000,000.00

2.13	Other Economic Support	\$20,000,000.00
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Port Authority

Timeline to implementation: 6 months to 18 months

Overview

The public health emergency declaration and resulting mitigation protocols exacerbated difficulties in operations of the lone commercial seaport and airport, which handle 100% of cargo, goods, and passengers entering the Territory. The mitigation protocols to clear incoming commercial and fishing vessels resulted in numerous delays in making basic goods, medicines, building materials and grocery items available to the residents of American Samoa.

Making enhancements to these facilities will reduce the negative economic impact to businesses and promote safe operations for the clearance and inspection of incoming goods.

Project Background

The COVID-19 Public Health Emergency declaration has had a great impact on American Samoa’s local economic and commercial activity. The projects identified in this document are to be funded using American Rescue Plan Act (ARPA) funds from the federal Government in accordance with the requirements of the Act.

American Samoa remains the only part of the United States of America and its Territories that has been blessed with zero cases of locally transmitted COVID-19 virus. While we are grateful for this blessing, it was not accidental that American Samoa has remained COVID-19 free. It required tremendous sacrifice by the people to keep their loved ones safe and protected. We are fortunate to have the support and federal assistance of the various COVID-19 relief and recovery funds to help meet the challenges as a result of the COVID-19 pandemic and the public health emergency declaration.

Our leaders drew upon the lessons of our history, specifically the 1918 Spanish pandemic that decimated our neighbors 80 miles to the West, who lost an estimated 20% of their population as their borders remained open during the critical early stages of the spread. As a result of the first Public Emergency Declaration in March 2020, American Samoa closed its borders as part of its strategy to mitigate the transmission of the Coronavirus that had grown to become a global pandemic. Our borders remain closed to regular commercial travel and all authorized travel by air or sea follow careful protocols to minimize the risk of exposure or transmission of the COVID-19 virus.

The public health emergency declaration has highlighted the dire need to improve our lone seaport facility to ensure the reliable flow of critical goods including medicines, medical supplies, grocery goods, building materials, equipment, vehicles and all manner of basic necessities are able to be imported with minimal interruption.

It is estimated that 90% of all goods used or sold in American Samoa enter through the seaport. The vast majority of medicine, medical supplies, general merchandise, building materials, grocery goods, equipment, vehicles, fuel and raw materials used by the fishing production canneries enters through the single wharf serving all of American Samoa.

Handling global supply chain issues and the increased transportation costs are further exacerbated with interruptions at our lone seaport as it is currently inadequate to allow for safe inspection and clearance of vessels and commercial goods.

The seaport facility may be the single most important facility to keep protect our economy and welfare of our people. Ordering delays and global supply chain disruptions are only worsened by additional delays as a result of the safety protocols to keep the COVID-19 virus out of American Samoa.

American Samoa does not have other options as keeping import and export operations at the seaport is critically important for the very survival of the territory.

(a) KEY STAKEHOLDERS

Engagement and inclusion of all relevant stakeholders will be important for making each project effective in meeting its stated goals. For the New seaport Facility Project, the key stakeholders are:

- Port Authority
- Department of Health
- Marine Wildlife
- Department of Agriculture
- Department of Legal Affairs (Immigration)
- Treasury
- Port users
- Private sector representation
- Other branches of Government (legislative representation)
- ARPA Oversight Office

(b) COMMUNITY ENGAGEMENT

Community engagement is an essential aspect of ARPA funded projects. The intent of the US Treasury in fostering public participation is to maintain transparency and provide opportunities for feedback to ensure that funds are used in the most beneficial manner.

In keeping with the intent of the US Treasury, the American Samoa ARPA Oversight Office has adopted the following notice and comment timeline for proposed projects:

- A Notice of Proposed Project will be published online, in local newspapers, and via television or radio broadcasts. The Notice will specify that there will be thirty (30) days for the public to provide comment either in writing or by attendance at scheduled public hearings.
- Concurrent to the publication of the Notice, a draft proposal and scope of work will be published on the ARPA website for the public to review.
- General meetings with the public will be scheduled and publicized within the thirty (30) day Notice period. Email comments will also be accepted.
- Presentations to the Legislature will be conducted during the Notice period, as needed.
- At the close of the public comment period, the agency will have 20 days to revise the project as appropriate and submit the Final Draft to the ARPA Oversight Office.
- The Final Draft of the Project will be posted for public review once completed and certified by the ARPA Oversight Office.

It is the responsibility of the agencies in charge to publicize notices and adhere to the stated timelines. For the New Medical Facility Project, the anticipated date for the Notice of Proposed Project will be _____, 2021.

(c) TIMELINE ON PROJECT LAUNCH

ARPA Funds are required by federal statute to be encumbered by December 31, 2024 or spent by December 31, 2026. 31 CFR 35.5. This mandate makes the need for a definite timeline for completion of projects of critical importance.

The new Seaport Facility Project must identify the proposed start date, the completion dates of each phase of the project, inclusion of any notice/bid periods for procurement purposes, and an estimated date of completion, along with any other dates relevant to the project progress.

(d) SCOPE of Project (New Seaport Facility)

Project Leads (Department) must provide the following:

1. Project Description and/or Business Plan
2. Completed Eligibility Analysis
3. Scope of Work

4. Implementation Plan & Timeline
5. Proposed itemized budget
6. Project Lead

Each proposed project must be submitted to the ARPA Office with a cover letter addressed to the Executive Director. Submittals must include the proposed plan as detailed above.

ARPA will review of eligibility and compliance to the American Samoa ARPA Spending Plan.

Once approved, an award certified letter will be provided verifying the project description and project lead.

Define scope of project based on response to Covid-19 pandemic and the public health emergency declaration, the new proposed seaport facility must include:

- Ability for normal inspections of all incoming goods
- Ability to safely clear all incoming vessels
- Ability to maintain full Port operations during pandemic scenarios
- Ability to respond to the activation of any COVID-19 medical protocols within the facility
- Ability for importers to provide statutory Declaration of Entry documentation to Customs to clear
- Ability for shipping agents to provide entry and departure vessel information
- Ability to provide more efficient use of the limited Port yard to process containers entering and departing the territory
- Ability to maintain export procedures for our single export of canned and processed tuna products

(e) Adherence to ASG Procurement Process

ARPA funds are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements of Federal Awards (2 CFR Part 200). Specifically, these regulations require ASG to follow local procurement laws in using these funds. 2 CFR 200.317. The lead agency for each project (in the case of the Seaport Project this will be Port) will work in concert within its established Procurement procedures to ensure that all procedures and requirements are followed and documented. All agencies are reminded that ARPA funds will be subject to federal audits.

CLAUSE	REQUIRED BY	APPLIES TO
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	AMERICAN SAMOA ADMINISTRATIVE CODE	
EQUAL OPPORTUNITY	10.0250(d)(3), 10.0260(c)	All Contracts in excess of \$10,000
DAVIS BACON ACT	10.0250(d)(5)	Construction contracts that exceed \$2,000 and when required by federal grant program legislation
CONTRACT WORK HOURS AND SAFETY STANDARDS ACT	10.0250(D)(6); 10.0260(D)	Construction contracts in excess of \$2,000 or contracts in excess of \$2,500 which involve employment of mechanics or laborers
CLEAN AIR AND WATER	10.0250(d)(7); 10.0260(f)	All contracts over \$100,000 (unless requirement has been waived by EPA)
TERMINATION FOR CONVENIENCE	10.0260(a)	Contracts in excess of \$10,000
TERMINATION FOR DEFAULT	10.0260(b)	Contracts in excess of \$10,000
PROHIBITION AGAINST GRATUITIES AND KICKBACKS	10.0260(f)	All contracts
PROHIBITION AGAINST CONTINGENT FEES	10.0260(g)	All contracts
PROHIBITION AGAINST COLLUSION	10.0260(i)	All contracts

In addition to the above required clauses, ASG Procurement Rules give preference to local bidders in construction projects. For contracts valued at \$50,000 or less, only local bidders are allowed to participate. For those greater than \$50,000, local bidders are given specified add-on percentages. This local preference leads to a greater number of local employees and overall income that is much needed in the Territory. This policy has a direct effect on local stimulation of the economy.

(f) Reconsideration Process

In accordance with Executive Order 03-2021, the ARPA Oversight Office reserves the right to determine which projects will receive funding based on a number of factors including but not limited to ensuring compliance with all federal requirements. The Office, however, recognizes that some of these determinations may adversely affect

interested parties. For the purposes of this section, an interested party will be limited to applicants for direct funding opportunities for projects.

A process for reconsideration of denied projects is hereby implemented. For clarity, this process is separate and apart from any procurement disputes subject to the jurisdiction of the Office of the Administrative Law Judge. ASCA 4.0604(f).

Covered Disputes:

The dispute resolution process will be limited to ARPA Oversight Office denials of project awards. As an office of limited purview, the covered disputes identified above shall not be considered final agency decisions for the purpose ASCA 4.0604.

Reconsideration Requests:

Interested parties will have 5 business days from the announcement of awards by the ARPA Oversight Office to file a "Reconsideration Request" with the Director. The announcement of awards will mean each project is "provisionally awarded" the requested ARPA funds.

The request will detail the basis for reconsideration including the project award denial being challenged, how the decision adversely affects the party, how the requested change would benefit the objectives of the American Rescue Plan Act.

A hearing shall be held within 5 days of filing the Reconsideration Request with the Director. The Director shall issue a notice of hearing to the filing party.

The hearing will be conducted by a three-member panel headed by the Director. Panel members will be selected by the ARPA Oversight Office. The panel will have an advisory role, but the ultimate decision-making authority shall be the Director's.

Parties to the dispute may present evidence, materials, and witnesses in support of their claims. The Director will have discretion to limit presentation of evidence, materials, or witnesses.

Upon completion of the hearing, which shall not exceed two hours, the panel will consider arguments and evidence presented in the Reconsideration Request and at the hearing. The Director shall be responsible for rendering a decision on the issues presented within three (3) business days of the conclusion of the hearing. "

(g) Local Certification/Licensing/Permitting

Each project will require adherence to applicable local licensing, certification, and permitting laws. For the Seaport Project, the lead agency will be responsible for obtaining each necessary approval prior to the start date. A list of these documents as well as copies should be submitted to the ARPA Oversight Office.

(h) ARPA Reporting Requirements

ARPA requires both quarterly and annual reports on projects and expenditures. The American Samoa ARPA Oversight Office will, therefore, be requesting information from relevant agencies in order to meet the strict deadlines set forth in the US Treasury's Reporting and Compliance Guide. Each agency must provide the requested information or an explanation as to why information is not available by the time specified by ARPA Oversight Office staff. Failure to do so could jeopardize future funding opportunities.