

Chapter 13

state and local laws. contents, we're gonna talk about the application of state and local procurement laws. State laws specifically, local laws specifically, and guidance on state and local procurement laws. Introduction. You must abide by all federal laws and regulations that apply to your program. We know that. You are also governed by some state and local requirements. You must comply with the state and local laws unless requirements conflict with 2 CFR 200 procurement rules. In general, the most stringent law or rule applies. Most stringent, in general, but there are some exceptions. The two exceptions are application of state and local procurement laws, where federal rules must apply, as compared with state and local laws, where they may conflict are geographic preferences. This is 13.2.A of the handbook. Some states have preferences that must be implemented by local government agencies, but you are specifically told "no." Why do they tell us no, why do we not implement geographic preferences? Because the money that we are spending was donated by everybody in the country, so everybody in the country gets a chance to compete equally. For instance, Michigan has a buy Michigan statute. No matter who else bids in Michigan, if a Michigan-based firm bids, the lowest bid from the Michigan firm is the awarded contractor. That don't work, not for federal law. In Nevada, there is a 5% preference for local firms.

My people cannot apply it in Nevada. You cannot do that because the money came from everywhere. I'll give you an example of that. When the ARDA money came out the Obama administration sent out a letter and reminded everybody, no state and local preferences. This was along with all the other stuff they said. However, there's a state in the deep South, Where they, the governor said, "No way, we don't follow that. "We're gonna make sure that all this money that we spend "goes to our local vendors." That's what the governor said. However, Attorney General Holder wrote a letter and said, "No," it read, "I listened with interest "to your news conference. "This is, I am reminding you of what I said, "what we said, what the government said." And they said, they did it again on TV and said, "That's our money, we can spend it how we want." So Attorney General Holder told them, I remember this, going back and forth, said, "Then we're freezing all your federal money "till this is resolved in the courts." Guess what, everybody got to bid Because that's the power the federal government has. That's the power HUD has over us. They don't run our authority, they just give us our money so we have to follow their rules. That's the way all funding sources are. You borrow money from a bank, you have to follow their rules, right? It's as simple as that. So geographic preferences are out the door. By the way, let me give you one more thought.

Geographic preferences usually end up hurting people and not helping them. In Nevada, I was part of a group, the Purchasing Manager Group, and we testified against the local preferences, even though we were very involved in supplier diversity and getting more people involved in government contracts. But what happened was, because to qualify as a, minority-owned businesses, women-owned businesses, especially those locally. And they established a local business as somebody who has paid taxes for five consecutive years in Nevada. A lot of those small, emerging businesses didn't qualify and it ended up hurting them. And the chambers that testified against what we said later came back and said, "Should've listened to you. "We're getting hammered on this issue." Preferences usually end up hurting people and not helping. So that's just a thought for you, if you ever wanna get involved in supporting legislation for that. State prevailing wage rates. In construction, if there's any HUD money in the contract at all, or in the bid, Davis-Bacon applies, whether the local prevailing wage rates, state prevailing wage rates, are higher or lower. You see, in Oregon and Michigan, state prevailing wage rates are higher than Davis-Bacon. It's not that way in most of the country, but it is up there in the

northwest. And they do that on purpose. And you know, it's their state, they can do what they want.

Those unions with my clients in those areas are always trying to get, intimidate housing authorities into using their wage rates. But I always have to keep reminding them, no, HUD states specifically that if there's any federal money in the project, that Davis-Bacon will apply. Now, if there's no federal money in the contract, You do whatever your local laws state. They tried to use the most stringent, saying, "Ours are much more strict." And I go, "But it still doesn't matter." 1990, HUD, there was some law passed that said, Davis-Bacon will apply. And they did this for consistency. Also, be aware, in case you ever move to another jurisdiction, that some states do not have state prevailing rates. They use Davis-Bacon as their state prevailing. They're called mini Davis-Bacon states. Georgia, I know, is one of them. I'm not sure about the other states that are in here. But check your states and see what is accurate in that situation. Housing authorities are typically governed by two sets of laws. One will be state enabling legislation, and then states have statutes set governing the housing authority. Now, every state has that state enabling legislation that allows you to form a housing authority. My advice is, you print that because it many times makes reference to procurement issues.

In Nevada, that law states specifically that since public housing authorities have 24 CFR 8536, which was then the law to follow, we are exempt from the state procurement regulations. However, we're not exempt from the state public works statutes or any of the other statutes, just the state and local government procurement statutes Whenever state enabling legislation is silent on procurement check your state procurement code to determine if it applies. Because many states have state procurement codes that are separate than the statutes and that kind of explain those statutes in a little bit more friendly language. You're gonna follow, except for that local preference and the state labor laws, you're gonna follow the most stringent law when comparing all of these laws together. So remember, you're gonna follow the most stringent, but not if it comes to local preferences, geographic preferences, or when it comes to wage rates. You will not follow the stricter, you will follow the federal law in that case. Some jurisdictions have local laws down to the county or the city level Guidance on state and local procurement laws. I would create a little resource center in your authority, which is a three-ring binder, And all of the state laws that apply to your procurement activity, all of the federal, you put in that binder, table of contents, with tabs. You're gonna have to make sure, again, HUD, we're repeating ourselves here, that everything you review regularly after the legislature has been in session. Because those laws, state and local, tend to change. You've gotta have your staff trained. you might want to send it to HUD, Just to say "this is just an FYI" We have revised our procurement policy But tell them or highlight what was revised.