

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 21, 2022

SUBJECT: American Rescue Plan – Adoption of Policies and Procedures

PRESENTER: Amy Brantley, Assistant County Manager
Russ Burrell, County Attorney
Samantha Reynolds, Finance Director

ATTACHMENTS: Yes
1. Tab 12 – Property Management

SUMMARY OF REQUEST:

The Final Rule for the American Rescue Plan was issued on January 6, 2022. That final rule contained a number of regulations that local governments must follow when expending Federal Funds, including a variety of policies and procedures. Staff continues the process of developing those policies and procedures, and will bring those to the Board for adoption once finalized.

With the recent allocation of ARP funding to purchase Stryker Power Stretchers, the County is now in the process of obtaining property with these funds, and therefore a Property Management Policy is required. The attached policy has been reviewed by Finance, the County Attorney, and the NCACC Strategic Project Coordinator.

The Board is requested to review the policy drafted by Staff, and adopt it as presented.

BOARD ACTION REQUESTED:

The Board is requested to review the Property Management Policy and adopt it as presented.

Suggested Motion:

I move the Board adopt the Federal Award Policy on Property Management.



Federal Awards Property Management



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PROPERTY MANAGEMENT

When spending federal award funds, local governments are required to adopt written policies governing property management when applicable. Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, commonly called Uniform Guidance (UG), specifically Subpart D, details post award requirements related to property management of property acquired or updated, in whole or in part, with funds from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (ARP/CSLFRF).

2 CFR 200.311 through 2 CFR 200.316 detail property standards related to the expenditure of ARP/CLSFRF funds. Henderson County, hereinafter the County, shall adhere to all applicable property standards, as detailed below.

Purpose

With regard to Equipment and Real Property Management, the “Compliance and Reporting Guidance for the State and Local Fiscal Recovery Funds” (v 4.2 August 15, 2022) provides, in relevant part:

“Any purchase of real or personal property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D, unless stated otherwise by Treasury. For example, as outlined in Final Rule FAQ 13.15, only a subset of the Uniform Guidance requirements at 2 CFR Part 200 Subpart D (Post Federal Award Requirements) applies to recipients’ use of funds in the revenue loss eligible use category. Furthermore, as outlined in Final Rule FAQ 13.16, Treasury has clarified the use and disposition requirements for real and personal property, supplies, and equipment purchased with SLFRF funds.”

Subpart D of the UG dictates title, use, management, and disposal of real property, equipment, and supplies acquired in whole or in part with ARP/CSLFRF funds

Definitions

- Computing devices are machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or “peripherals”) for printing, transmitting and receiving, or storing electronic information. See also the definitions of supplies and information technology systems in this section.
- Equipment is tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the County for financial statement purposes, or \$5,000. See also the definitions of *capital assets*, *computing devices*, *general purpose equipment*, *information technology systems*, *special purpose equipment*, and *supplies* in this section.



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- Information technology systems include computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of computing devices and equipment in this section.
- Intangible property is property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).
- Personal property is property other than real property. It may be tangible, having physical existence, or intangible.
- Property is real property or personal property.
- Real property is land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.
- Supplies are all tangible personal property other than those described in the definition of equipment in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the local government for financial statement purposes or \$5,000, regardless of the length of its useful life. See also the definitions of computing devices and equipment in this section.

Policy

This policy applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal financial assistance (direct or reimbursed). This policy also applies to any subrecipient of the funds.

I. Real Property

- Title to Real Property: Title to real property acquired or improved with ARP/CSLFRF funds vests with the County. 2 CFR 200.311(a).
- Use of Real Property: Real property acquired or improved with ARP/CSLFRF funds must be used for the originally authorized purpose as long as needed for that purpose, during which time the County must not dispose of or encumber its title or other interests. 2 CFR 200.311(b).
- Insurance of Real Property: The County must provide the equivalent insurance coverage for real property acquired or improved with ARP/CSLFRF funds as provided to property owned by the County. 2 CFR 200.310.
- Disposition of Real Property: When the County no longer needs real property purchased with ARP/CSLFRF for ARP/CSLFRF purposes, the County must obtain disposition instructions from US Treasury. The instructions must provide for one of the following alternatives:



1. The County retains title after compensating US Treasury. The amount paid to US Treasury will be computed by applying US Treasury's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the County is disposing of real property acquired or improved with ARP/CSLFRF funds and acquiring replacement real property under the ARP/CSLFRF, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
2. The County sells the property and compensates US Treasury. The amount due to US Treasury will be calculated by applying US Treasury's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the ARP/CSLFRF award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the County is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.
3. The County transfers title to US Treasury or to a third party designated/approved by US Treasury. The County is entitled to be paid an amount calculated by applying the County's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property. 2 CFR 200.311(c).

II. Equipment

- Title to Equipment: Title to equipment acquired or improved with ARP/CSLFRF funds vests with the County. 2 CFR 200.313(a).
- Use of Equipment: The County must use equipment acquired with ARP/CSLFRF funds for the project for which it was acquired as long as needed, whether or not the project continues to be supported by the ARP/CSLFRF award, and the County must not encumber the property without prior approval of US Treasury. 2 CFR 200.313(a)(1)-(2).

When no longer needed for the original project, the equipment may be used in other activities supported by a Federal awarding agency, in the following order of priority:

1. Activities under a Federal award from the Federal awarding agency which funded the original project; then
2. Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems. 2 CFR 200.313(c)(1).

During the time that equipment is used on the project for which it was acquired, the County must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the project for which it was originally acquired. First preference for other use must be given to other programs or projects supported by US Treasury and second preference must



be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate. 2 CFR 200.313(c)(2).

- **Noncompetition:** The County must not use equipment acquired with the ARP/CSLFRF funds to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment. 2 CFR 200.313(c)(3).
- **Replacement Equipment:** When acquiring replacement equipment, the County may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. 2 CFR 200.313(c)(4).
- **Management of Equipment:** The County will manage equipment (including replacement equipment) acquired in whole or in part with ARP/CSLFRF funds according to the following requirements. 2 CFR 200.313(d)(1)-(5).
 1. The County will maintain sufficient records that include
 - a) a description of the property,
 - b) a serial number or other identification number,
 - c) the source of funding for the property (including the Federal Award Identification Number (FAIN)),
 - d) who holds title,
 - e) the acquisition date,
 - f) cost of the property,
 - g) percentage of Federal participation in the project costs for the Federal award under which the property was acquired,
 - h) the location, use and condition of the property, and
 - i) any ultimate disposition data including the date of disposal and sale price of the property.
 2. The County will conduct a physical inventory of the property and reconcile results with its property records at least once every two years.
 3. The County will develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft will be investigated by the County.
 4. The County will develop and implement adequate maintenance procedures to keep the property in good condition.
 5. If the County is authorized or required to sell the property, it will establish proper sales procedures to ensure the highest possible return, in accordance with state and federal law.
- **Insurance of Equipment:** The County must provide the equivalent insurance coverage for equipment acquired or improved with ARP/CSLFRF funds as provided to property owned by the County. 2 CFR 200.310.



- Disposition of Equipment: When the equipment is no longer needed for its original ARP/CSLFRF purpose, the County may either make the equipment available for use in other activities funded by a Federal agency, with priority given to activities funded by US Treasury, dispose of the equipment according to instructions from US Treasury, or follow the procedures below. 2 CFR 200.313(e).
 1. Equipment with a per-item fair market value of less than \$5,000 may be retained, sold or transferred by the County, in accordance with state law, with no additional responsibility to US Treasury;
 2. If no disposal instructions are received from US Treasury, equipment with a per-item fair market value of greater than \$5,000 may be retained or sold by the County. The County must establish proper sales procedures, in accordance with state law, to ensure the highest possible return. The County must reimburse US Treasury for its federal share. Specifically, US Treasury is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the ARP/CSLFRF funding percentage of participation in the cost of the original purchase. If the equipment is sold, US Treasury may permit the County to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
 3. Equipment may be transferred to US Treasury or to a third-party designated by US Treasury in return for compensation to the County for its attributable compensation for its attributable percentage of the current fair market value of the property.

III. **Supplies**

- Title to Supplies: Title to supplies acquired with ARP/CSLFRF funds vests with the County upon acquisition. 2 CFR 200.314(a).
- Use and Disposition of Supplies: If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the ARP/CSLFRF project and the supplies are not needed for any other Federal award, the County must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. 2 CFR 200.314(a).
- Noncompetition: As long as the Federal Government retains an interest in the supplies, the County must not use supplies acquired under the ARP/CSLFRF to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute. 2 CFR 200.314(b).

IV. **Property Trust Relationship**

Real property, equipment, and intangible property, that are acquired or improved with ARP/CSLFRF funds must be held in trust by the County as trustee for the beneficiaries of the project or program under which the property was acquired or improved. US Treasury may require the County to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. 2 CFR 200.316.



V. Implementation of Policy

The Henderson County Finance Department shall adopt procedures to track all real property, equipment, and supplies (collectively, property) acquired or improved in whole or in part with ARP/CLSRF funds. At a minimum, those procedures must address the following:

- Ensure proper insurance of property
- Document proper use of property
- Working with the Purchasing Agent, record and maintain required data records for equipment
- Conduct periodic inventories of equipment, at least every two years
- Create processes for replacement and disposition of property
- Establish other internal controls to safeguard and properly maintain property