

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** June 5, 2023

**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 2 – Purchasing Policy
2. Tab 4 – Program Income
3. Tab 8 – Property Management
4. Tab 9 – Uniform Guidance Policy for Conflicts of Interest

#### **SUMMARY OF REQUEST:**

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

Attached are required policies that have been drafted, and reviewed by Finance and the County Attorney. The Property Management Policy was originally adopted in September, 2022, and is being renumbered as Tab 8 as some previously anticipated policies do not appear to be required at this time based on the Board's allocations.

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

#### **BOARD ACTION REQUESTED:**

The Board is requested to review the draft policies and procedures, and adopt them as presented.

#### **Suggested Motion:**

*I move the Board adopt the Federal Awards Purchasing Policy, Program Income, Property Management and Uniform Guidance Policy for Conflicts of Interest as presented.*



# Federal Awards Purchasing Policy



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## PURCHASING POLICY

### **Purpose**

This section shall establish guidelines that meet or exceed the procurement requirements for the purchase of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

### **Policy**

#### **A. Application of Policy**

This policy applies to contracts for purchases, services, and construction or repair work in whole or in part with federal funds. The requirements of this Policy also apply to any subrecipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. §200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

#### **B. Compliance with Federal Law**

All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. §200.317 through §200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. Henderson County will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should Henderson County have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

#### **C. Contract Award**

Federal Contracts shall be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (See Appendix A – Bid Selection Justification Form) Purchase Contracts and Construction Contracts that exceed the Micro-Purchase Threshold will be awarded to the lowest responsive, responsible bidder.

#### **D. Fixed Price**

Fixed Price. Solicitations must state that the bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and Materials (Cost-Plus) contracts will not be used unless no other



form of contract is suitable and the contract includes a “Not to Exceed” amount. A Time and Materials contract shall **not** be awarded without the express written permission of the federal agency or state pass-through agency that awarded the funds.

**E. No Evasion**

No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or state and federal law.

**F. Contract Requirements**

All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include the provisions required under 2 C.F.R Section § 200.326 and as provided for under 2 C.F.R. §200, Appendix II.

**G. Debarment**

No contract shall be awarded to a contractor that is federally debarred, suspended, or ineligible from participation in Federal assistance programs or activities. Prior to preparing the contract, the Purchasing Department or the Requesting Department must verify that the contractor is not on the federally debarred bidder’s list.

**H. Contractor Oversight**

The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that the contractor is performing in accordance with the contract terms, conditions, and specifications. See Appendix B for contractor oversight documentation specifics.

**I. Approval and Modification**

The Administrative Procedures contained in the Policy are administrative and may be changed as necessary by management to comply with state and federal law. Any substantive changes, as determined by the County Manager or County Attorney, shall be approved by the Board of Commissioners.

**Procedures**

The Administrative Procedures contained within this policy are administrative and may be changed as necessary by management to comply with the Federal Procurement Standards within this Policy. However, any policy changes must be approved by the governing body prior to becoming effective. Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

**A. General Procurement Standards and Procedures:**

**1. Necessity**

Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items (Stockpiling is strictly prohibited). The Purchasing



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Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

### **2. Cost Reduction**

County departments are encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. County departments are further encouraged to use value engineering clauses in Federal Contracts for construction or repair that are of sufficient size to offer reasonable opportunities for cost reductions.

### **3. Clear Specifications**

All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

### **4. Notice of Federal Funding**

All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

### **5. Compliance by Contractors**

All solicitations should inform prospective contractors that they will need to comply with all applicable federal laws, regulations, executive orders, FEMA requirements, and terms and conditions of the funding award.

### **6. Use of Brand Names**

When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.

### **7. Lease versus Purchase**

Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach. Note: This comparison is necessary for most FEMA financial assistance programs following an emergency or major disaster declaration.



## **8. MWSBE Participation**

For all Federal Contract procurements that equal or exceed the Micro-Purchase Threshold the County department responsible for the solicitation must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on soliciting lists.
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce, and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (vi) of this Section.

## **9. Documentation**

Documentation must be maintained by the Purchasing Agent(s) in the Finance Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the rationale for procurement, contract type, basis for contractor selection or rejection, price, sources solicited, public notices, cost analysis if applicable, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request. Please see Appendix C for procurement documentation forms.

## **10. Cost Estimate**

For all Federal Contract procurements that are expected to equal or exceed the Simplified Acquisition Threshold (currently \$250,000), the County department responsible for the procurement shall develop an estimate of the cost of the procurement prior to soliciting bids. See Appendix D – Independent Cost Estimate Determination. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or





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other means by which a good faith cost estimate may be obtained. Cost estimates for construction or repair contracts may be developed by the project designer.

Profit must be negotiated as a separate element of the price for each Federal Contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

### **11. Open Competition**

Solicitations shall be prepared in a way to be fair and provide open competition. The County shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding; specifying a brand name without allowing for "or equal" products, or other unnecessary requirement that have the effect of the restricting competition. See Appendix E – Vendors Solicited.

### **12. Geographic Preference**

No geographic preferences may be imposed in awarding Federal Contracts except to the extent permitted by federal law.

### **13. Contractors Conflict of Interest**

Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such procurements.

### **14. Adequate Number of Suppliers**

As defined by Henderson County, an adequate number of suppliers is 3, unless state or federal policies are more restrictive.

### **15. Prequalification**

All lists of prequalified bidders must be kept current and must include enough qualified sources to ensure maximum open and free competition. Potential bidders shall not be precluded from qualifying during the solicitation period.

### **Specific Procurement Procedures**

Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

When determining the applicable dollar amount for a given project the aggregate dollar amount of the procurement of goods or services to be provided within the fiscal year should be considered.



[https://www.hendersoncountync.gov/sites/default/files/fileattachments/budget/page/126161/signed\\_budget\\_ordinance\\_with\\_appendices.pdf](https://www.hendersoncountync.gov/sites/default/files/fileattachments/budget/page/126161/signed_budget_ordinance_with_appendices.pdf)

**A. Procurement & Services**

**1. Micro Purchase**

- a. Thresholds
  - a. Procurement \$0.00 - \$29,999.99
  - b. Services \$0.00 - \$49,999.99
- b. No bidding is required.
- c. Quotes Required: \$0.00 - \$4,999.99 (1)  
\$5,000 - \$29,999.99 (2)
- d. To the extent practicable, purchases must be distributed among qualified suppliers.
- e. Price must be considered fair and reasonable.
- f. Contract must be in writing (Purchase Order)

**2. Small Purchase & North Carolina General Statutes Informal Bid**

- a. Threshold
  - a. Procurement \$30,000-\$89,999.99
- b. Obtain written price quotes from an adequate number of suppliers or sources. Adequate as defined by Henderson County is three quotes. Specific grant documents should be checked for more restrictive language regarding the definition of adequate.
- c. If less than three bids are received, readvertisement is necessary. If upon Readvertisement only one bid is received, the bid can be accepted and opened.
- d. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR SS200.321 by posting on the North Carolina Department of Administration HUB site.
- e. Award contract as a fixed price. A not to exceed basis is permissible for Service Contract only where obtaining a fixed price is not feasible.
- f. Award to lowest responsive, responsible bidder
- g. Contract must be in writing. Purchase contract may be in the form of a purchase order. A contract with the appropriate contracting provisions shall be required for service and construction repair contracts.
- h. Purchasing cooperative cannot be used unless authorized by the granting agency in writing.

**3. Small Purchase & North Carolina Statutes Formal Bid**

- a. Threshold
  - a. Procurement \$90,000-\$250,000
  - b. Service \$50,000-\$250,000
- b. Complete specifications or purchase description must be available to all bidders.
- c. Public Advertisement



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- a. Must appear in a newspaper of general circulation at least 7 full days before bid opening.
- b. Legal notice must reserve to the governing board the right to reject any or all bids only for sound documented reasons.
- d. Solicit from an adequate number of known suppliers.
- e. Bids must be submitted sealed.
- f. Public Bid Opening
- g. If less than three bids are received, readvertisement is necessary. If upon Readvertisement only one bid is received, the bid can be accepted and opened.
- h. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR SS200.321 by posting on the North Carolina Department of Administration HUB site.
- i. Bids may only be rejected for "sound documented reasons."
- j. Award contract as a fixed price. A not to exceed basis is permissible for Service Contracts only where obtaining a fixed price is not feasible.
- k. Award to lowest responsive, responsible bidder
- l. Governing board approval is required.
- m. Contract must be in writing. Purchase contract may be in the form of a purchase order. A contract with the appropriate contracting provisions shall be required for service and construction repair contracts.
- n. Purchasing cooperative cannot be used unless authorized by the granting agency in writing.

#### **4. Sealed Bid**

- a. Threshold
  - a. Procurement and Service contracts exceeding \$250,000.00.
- b. Cost or price analysis is required prior to soliciting bids.
- c. Complete specifications or purchase description must be available to all bidders.
- d. Public Advertisement
  - a. Must appear in a newspaper of general circulation at least 7 full days before bid opening.
  - b. Advertisement must state the date, time, and location of the public bid opening and indicate where specifications may be obtained.
  - c. Legal notice must reserve to the governing board the right to reject any or all bids only for sound documented reasons.
- e. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR SS200.321 by posting on the North Carolina Department of Administration HUB site.
- f. Solicit from an adequate number of known suppliers.
- g. Bids must be submitted sealed.
- h. Public Bid Opening



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- i. If less than three bids are received, readvertisement is necessary. If upon Readvertisement only one bid is received, the bid can be accepted and opened.
- j. Bids may only be rejected for “sound documented reasons.”
- k. Award contract as a fixed price. A not to exceed basis is permissible for Service Contracts only where obtaining a fixed price is not feasible.
- l. Award to lowest responsive, responsible bidder
- m. Governing board approval is required.
- n. Contract must be in writing. Purchase contract may be in the form of a purchase order. A contract with the appropriate contracting provisions shall be required for service and construction repair contracts.
- o. Purchasing cooperative cannot be used unless authorized by the granting agency in writing.

### 5. Alternate Methods

- a. Competitive Proposal Method (2 CFR 200.320(d))
  - a. Can only be utilized when conditions are not appropriate for the use of sealed bids.
  - b. This can be used for specific types of contracts \$50,000 and over.
  - c. Procedures
  - d. Public Advertisement
    - i. Must appear in a newspaper of general circulation at least 7 full days before bid opening.
    - ii. Legal notice must reserve to the governing board the right to reject any or all bids only for sound documented reasons.
  - e. Solicit from adequate number of qualified firms.
  - f. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR SS200.321 by posting on the North Carolina Department of Administration HUB site.
  - g. Identify evaluation criteria and relative importance of each criteria (critical weight) in the RFP.
  - h. Evaluation must consider price.
  - i. All responses must be considered to the maximum extent practical
  - j. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
  - k. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP.
  - l. Governing board approval is required.
  - m. Award the contract on a fixed price or cost reimbursement basis.
  - n. Must have written contract with federal contract provisions included.



## B. Construction

### 1. Micro-Purchase

- a. Threshold      \$0.00 - \$30,000
- b. No bidding is required.
- c. Quotes Required:      \$0.00 - \$4,999.99 (1)  
   \$5,000 - \$29,999.99 (2)
- d. To the extent practicable, purchases must be distributed among qualified suppliers.
- e. Price must be considered fair and reasonable.
- f. Contract must be in writing (Purchase Order).

### 2. Small Purchase

- a. Threshold      \$30,000 - \$250,000
- b. Obtain written price quotes from an **adequate** number of suppliers or sources. Adequate as defined by Henderson County is three quotes. Specific grant documents should be checked for more restrictive language regarding the definition of adequate.
- c. If less than three bids are received, readvertisement is necessary. If upon Readvertisement only one bid is received, the bid can be accepted and opened.
- d. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR §200.321 by posting on the North Carolina Department of Administration HUB site.
- e. Award contract as a fixed price. A not to exceed basis is permissible for Service Contract only where obtaining a fixed price is not feasible.
- f. Award to lowest responsive, responsible bidder
- g. Contract must be in writing. A contract with the appropriate contracting provisions shall be required for service and construction repair contracts.
- h. Purchasing cooperative cannot be used unless authorized by the granting agency in writing.

### 3. Sealed Bid & North Carolina General Statutes Informal Bidding

- a. Threshold      \$250,001-\$500,000
- b. Cost or price analysis is required prior to soliciting bids.
- c. Complete Specifications must be made available to all bidders.
- d. Public Advertisement
  1. Must appear in a newspaper of general circulation at least 7 full days before bid opening.
  2. Advertisement must state the date, time, and location of the public bid opening and indicate where specifications may be obtained.
  3. Legal notice must reserve to the governing board the right to reject any or all bids only for sound documented reasons.
- e. Solicit from adequate number of known suppliers.



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- f. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR §200.321 by posting on the North Carolina Department of Administration HUB site.
- g. Bids must be submitted sealed.
- h. Public Bid Opening
  - 1. If less than three bids are received, readvertisement is necessary. If upon Readvertisement only one bid is received, the bid can be accepted and opened.
- i. 5% bid bond. Note a bid that does not contain a bid bond cannot be counted toward the three-bid requirement.
- j. Performance and Payment bonds for 100% of contract price
- k. Bids may only be rejected for sound documented reasons.
- l. Award contract as a fixed price.
- m. Award to lowest responsive, responsible bidder
- n. Contract must be in writing. Purchase contract may be in the form of a purchase order. A contract with the appropriate contracting provisions shall be required for service and construction repair contracts.
- o. Purchasing cooperative cannot be used unless authorized by the granting agency in writing.

### **4. Building Projects Greater than \$300,000**

- a. Architectural and Engineering Formal HUB (historically underutilized business) participation required under G.S. §143-128.2 including local government outreach efforts and bidder good faith efforts shall apply.
- b. Separate specification shall be drawn for the HVAC, electrical, plumbing, and general construction works as required under G.S. §143-128(a).
- c. The project shall be bid using a statutorily authorized bidding method (separate-prime, Single prime, dual bidding) as required under G.S. §143-129(a1)

### **5. Sealed Bid & North Carolina General Statutes Formal Bidding**

- a. Threshold: Greater than \$500,000
- b. Cost or price analysis is required prior to soliciting bids.
- c. Complete specifications or purchase description must be available to all bidders.
- d. Separate specification shall be drawn for the HVAC, electrical, plumbing, and general construction works as required under G.S. §143-128(a).
- e. The project shall be bid using a statutorily authorized bidding method (separate-prime, Single prime, dual bidding) as required under G.S. §143-129(a1)
- f. Public Advertisement
  - 1. Must appear in a newspaper of general circulation at least 7 full days before bid opening.
  - 2. Advertisement must state the date, time, and location of the public bid opening and indicate where specifications may be obtained.



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3. Legal notice must reserve to the governing board the right to reject any or all bids only for sound documented reasons.
- g. Solicit from adequate number of know suppliers.
- h. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR §200.321 by posting on the North Carolina Department of Administration HUB site.
- i. Good Faith MBE requirements/Affidavits must be submitted.
- j. Bids must be submitted sealed and in paper form.
- k. Public Bid Opening
- l. Must have 3 sealed bids submitted before opening.
- m. 5% bid bond. Note a bid that does not contain a bid bond cannot be counted toward the three-bid requirement.
- n. Performance and Payment bonds for 100% of contract price
- o. Bids may only be rejected for "sound documented reasons."
- p. Award contract as a fixed price.
- q. Award to lowest responsive, responsible bidder
- r. Governing board approval is required.
- s. Contract must be in writing. A contract with the appropriate contracting provisions is required.
- t. Governing board may reject all bids only for "sound documented reasons."
- u. Purchasing cooperative cannot be used unless authorized by the granting agency in writing.

### 6. Alternative Construction Methods under State Law

- a. Construction Management at Risk and Design Build alternative construction methods are **NOT** able to be utilized for construction projects involving the use of Federal funds, except as allowed by 2CFR §200 and North Carolina General Statutes.

## C. Architectural and Engineering Services

Only professional services with fees under \$50,000 may be exempt using the exemption process as authorized under North Carolina General Statute §143-64.32

### 1. \$50,000-\$250,000

- a. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms.
- b. Advertisement: Solicit only - Newspaper is not specifically required but encouraged.
- c. Price (other than unit cost) shall not be solicited in the RFQ.
- d. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR §200.321 by posting on the North Carolina Department of Administration HUB site.



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- e. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
- f. State licensure requirements apply.
- g. Rank respondents based on qualifications and select the best qualified firm.
- h. Price cannot be a factor in the evaluation.
- i. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
- j. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
- k. Must be a fixed price or not to exceed contract type for services.
- l. Governing board approval is required.
- m. Must have written contract with federal contract provisions included.

### **2. Greater than \$250,000**

- a. Cost or price analysis is required prior to soliciting bids.
- b. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms.
- c. Advertisement: Solicit only - Newspaper is not required)
- d. Price (other than unit cost) shall not be solicited in the RFQ.
- e. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. §200.321 by posting on the State's IPS site and HUB site.
- f. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
- g. Proposals must be solicited from an "adequate number of qualified sources" (an individual federal grantor agency may issue guidance interpreting "adequate number").
- h. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
- i. Consider all responses to the publicized RFQ to the maximum extent practical.
- j. Evaluate qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department
- k. Rank respondents based on qualifications and select the most qualified firm.
- l. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
- m. Price cannot be a factor in the initial selection of the most qualified firm.
- n. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
- o. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
- p. State licensure requirements apply.
- q. Must be a fixed price or not to exceed contract type for services.





- r. Governing board approval is not required.
- s. Must have written contract with federal contract provisions included.

#### **D. Non-Competitive Procurement**

Non-competitive contracts are allowed only under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

**1. Sole Source**

A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board and receive express approval from the granting agency.

**2. Public Exigency**

A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding. A cost analysis is still required.

**3. Inadequate Competition**

A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.

**4. Federal Contract**

A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

**5. Awarding Agency Approval**

A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.



**APPENDIX A – BID SELECTION JUSTIFICATION**

<b>Henderson County Bid Selection Justification</b>	
Project Description	
Department	
Federal Funding Source	
CFDA Number	
Project Code	
Date	
Bid Award or Rejection	

**Responsible Contractor Determination**

**Instructions: Please provide a brief description for the following topics regarding the contractor's ability to perform**

Company Name					
Contractor Integrity					
Compliance with Policies and Procedures					
Past Performance Record					
Financial and Technical Resources to Perform					
Did the contractor aid in the development of specifications, requirements, statements of work, and/or invitations for bids/proposals					

**Explanation of Award or Rejection of Solicited Bids**

**Instructions: Please provide a brief description on the basis of award (Examples include lowest responsive**

\_\_\_\_\_

Full Name of Individual Preparing Form

\_\_\_\_\_

Signature

\_\_\_\_\_

Date



**APPENDIX B – METHOD OF SOLICITATION - PURCHASES**

<b>Henderson County Method of Solicitation Matrix for Federally Funded Projects (Purchases)</b>	
Instructions	Please provide project information and select the method of solicitation based on the monetary threshold and the applicable qualitative criteria
Item Being Procured	
Project Description	
Department	
Federal Funding Source	
CFDA Number	
Project Code	
Date	

Monetary Threshold	Applicable State Threshold	Applicable Federal Threshold	Qualitative Criteria	Select
0-\$29,999.99	N/A	MicroPurchase	Multiple Sources	<input type="checkbox"/>
\$30,000-\$89,999.99	Informal	Small Purchase	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price	
\$90,000.00-\$250,000	Formal	Small Purchase	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price	
Greater than \$250,000	Formal	Sealed Bid	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price	
No discussion with bidders needed after receipt of offers				

<b>Exceptions to Method of Solicitation Matrix</b>					
Name	Legal Reference		Written Granting Agency	Description	Select
State/Federal Contracts	State	G.S. 143-129 (e)(9)	Yes	Confirmation of procedures followed in accordance with uniform guidance certified by the contract	<input type="checkbox"/>
	Federal	2 CFR 200.318-326			
Noncompetitive Contract	State	G.S. 143-129 (e)(6)	Yes	Sole Source-Item available from only one source Public exigency or emergency will not permit a delay that would result from competitive process Competition deemed inadequate after soliciting from a number of sources	<input type="checkbox"/>
		G.S. 143-129 (e)(2)			
	Federal	2 CFR 200.320(f)			



**APPENDIX C – METHOD OF SOLICITATION - CONSTRUCTION**

<b>Henderson County Method of Solicitation Matrix for Federally Funded Projects (Construction)</b>	
Instructions	Please provide project information and select the method of solicitation based on the monetary threshold and the applicable qualitative criteria
Item Being Procured	
Project Description	
Department	
Federal Funding Source	
CFDA Number	
Project Code	
Date	

Monetary Threshold	Applicable State Threshold	Applicable Federal Threshold	Qualitative Criteria	Select
0-\$29,999.99	N/A	MicroPurchase	Multiple Sources	<input type="checkbox"/>
\$30,000-\$249,999.99	Informal	Small Purchase	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price	
\$250,000-\$499,999.99	Informal	Small Purchase	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price	
Greater than \$500,000	Formal	Sealed Bid	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price	
No discussion with bidders needed after receipt of offers				

<b>Exceptions to Method of Solicitation Matrix</b>					
Name	Legal Reference		Written Granting Agency	Description	Select
State/Federal Contracts	State	G.S. 143-129 (e)(9)	Yes	Confirmation of procedures followed in accordance with uniform guidance certified by the contract	<input type="checkbox"/>
	Federal	2 CFR 200.318-326			
Noncompetitive Contract	State	G.S. 143-129 (e)(6)	Yes	Sole Source-Item available from only one source Public exigency or emergency will not permit a delay that would result from competitive process Competition deemed inadequate after soliciting from a number of sources	<input type="checkbox"/>
		G.S. 143-129 (e)(2)			
	Federal	2 CFR 200.320(f)			



**APPENDIX D – METHOD OF SOLICITATION - SERVICES**

<b>Henderson County Method of Solicitation Matrix for Federally Funded Projects (Services)</b>				
Instructions	Please provide project information and select the method of solicitation based on the monetary threshold and the applicable qualitative criteria			
Services Being Procured				
Project Description				
Department				
Federal Funding Source				
CFDA Number				
Project Code				
Date				
<b>General Methods: Micro Purchase, Small Purchase, Sealed Bid</b>				
Monetary Threshold	Applicable State Threshold	Applicable Federal Threshold	Qualitative Criteria	Select
\$0-\$49,999.99	N/A	MicroPurchase	Multiple Sources	<input type="checkbox"/>
\$50,000-250,000	N/A	Small Purchase	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price No discussion with bidders needed after receipt of offers	
Greater than \$250,000	N/A	Sealed Bid	Complete and adequate specifications and/or purchase description	<input type="checkbox"/>
			More than one bidder to obtain requested items from	
			Selection based solely on basis of price (Lowest Responsive Responsible Bidder Standard)	
			Procurement suitable for firm, fixed price No discussion with bidders needed after receipt of offers	
<b>Alternative Method: Competitive Proposal Method</b>				
Monetary Threshold	Applicable State Threshold	Applicable Federal Threshold	Qualitative Criteria	Select
Greater than \$50,000	N/A	Alternative Method	Conditions not appropriate for sealed bids	<input type="checkbox"/>
<b>Explanation (Please described the condition which prohibit the use of the sealed bid method)</b>				



Alternative Method: Mini-Brooks Act Services					
Monetary Threshold	Applicable State Threshold	Applicable Federal Threshold	Qualitative Criteria	Select	
\$0-\$50,000	\$0-\$50,000	\$0-\$50,000	Architectural and Engineering Services. Includes a Mini Brooks Act Exemption	<input type="checkbox"/>	
Greater than \$50,000	Greater than \$50,000	Greater than \$50,000	Architectural and Engineering Services	<input type="checkbox"/>	
Explanation (Please describe the scope of work where an architect or engineer will have to be utilized)					
Exceptions to Method of Solicitation Matrix					
Name	Legal Reference		Written Granting Agency Approval Required	Description	Select
State/Federal Contracts	State	G.S. 143-129(e)(9)	Yes	Confirmation of procedures followed in accordance with uniform guidance certified by the contract administrator in writing.	<input type="checkbox"/>
	Federal	2 CFR 200.318-326			
Noncompetitive Contract	State	G.S. 143-129(e)(6) G.S. 143-129(e)(2)	Yes	Sole Source-Item available from only one source Public exigency or emergency will not permit a delay that would result from competitive process Competition deemed inadequate after soliciting from a number of sources	<input type="checkbox"/>
	Federal	2 CFR 200.320(f)			



**APPENDIX E – VENDORS SOLICITED**

<b>Vendors Solicited</b>						
Project Description						Instructions: Please complete the matrix below in reference to whom bids were sent to.
Department						
Federal Funding Source						
CFDA Number						
Project Code						
Date						
	Solicitor 1	Solicitor 2	Solicitor 3	Solicitor 4	Solicitor 5	Solicitor 6
Company/Firm Name						
Point of Contact						
Solicitation Method (email, mail, etc)						
Email Address						
Date Sent						



**APPENDIX F – VENDOR INFORMATION FORM**

Vendor Information Form			
Company/Firm Name			
Mailing Address			
Contact Name		Contact Title	
Phone Number	Fax	Email	Website
Federal Tax ID Number		Unique Entity Identification Number (SAM.gov)	
Required Documentation		Internal Routing	
Completed IRS W-9 form dated within calendar year and signed by authorized personnel.		W9 Received	<input type="checkbox"/> YES
Minority and Women Owned Business (MWBE) certification, if applicable.		MWBE Certification Received	<input type="checkbox"/> YES <input type="checkbox"/> N/A
		Unique Entity Identification Number confirmed in SAM.gov	<input type="checkbox"/> YES

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**APPENDIX G – PRICE REASONABLENESS DETERMINATION FORM**

**Price Reasonableness Determination Form**

Purpose: Federal regulations require documentation of cost analysis or price analysis for procurement actions. The Price Reasonableness Determination Form is used to document the analysis showing that the offered price is fair and reasonable. The form is kept as part of the procurement file to demonstrate that the procurement process was conducted in an open and fair manner, and that Henderson County received the most advantageous price.

**I. This expenditure is being made under the following condition(s):**

- Purchases of goods (less than \$30,000) and services (less than \$50,000) in the Micro-Purchase threshold.
- Request for quotations for small purchase and sealed bid federal thresholds where only one (1) quote or bid was received.
- Proposal submitted under the Competitive Proposal Method where only one (1) quote or bid was received.

**II. Cost or price offered, or fee negotiated is considered fair and reasonable for the following reason(s) and if applicable, is supported by attached documentation:**

- Comparison of previous Henderson County purchase order and contract prices with current proposed price, for the same or similar goods or services. Both the validity of the comparison and the reasonableness of the previous price(s) have been established (include the referenced Henderson County purchase orders/contracts, amounts, issuance dates, and how they are similar to the current purchase).
- Comparison with Vendor’s published price lists, market prices, pricing indexes, and discount or rebate arrangements. Attach published price list or other published pricing information used (a vendor’s quotation or correspondence does not qualify as a published price list).
- Comparison of proposed price to an independent estimate that describes the cost of the components (e.g., labor, materials). Attach documentation of the data used to prepare the estimate.
- Comparison of proposed price with prices obtained through market research for the same or similar goods or services. Attach documentation of research conducted.
- The order is priced in accordance with existing Henderson County Purchase Order No. \_\_\_\_\_ which was competitively established.
- Other reason (specify): \_\_\_\_\_

**III. CERTIFICATION:**

I certify that the information provided above is true and correct to the best of my knowledge.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**APPENDIX H – BID TABULATION**

<b>Bid Tabulation</b>					
Project Description				Instructions: Please complete the matrix below in reference to the bids submitted for the project description.	
Date Bid Opened					
Department					
Federal Funding Source					
CFDA Number					
Project Code					
Date					
Vendor Name	Description of Product/Service	Bid Price Unit Cost	Quantity	Extended Cost	Notes
				\$ -	
				\$ -	
				\$ -	
				\$ -	
				\$ -	





APPENDIX I – INDEPENDENT ESTIMATE FORM

Complete before soliciting or advertising for Proposals / Quotes

Henderson County INDEPENDENT ESTIMATE DETERMINATION

Purpose: Federal regulations require documentation of cost analysis or price analysis for every procurement action at or above \$250,000. As part of the analysis, the regulations require documentation of an independent estimate reached before receiving bids or proposals (see 2 C.F.R. § 200.323) or before receiving quotes or proposals from other governmental entities through an interlocal contract or a purchasing cooperative (see 2 C.F.R. § 200.318 (e)). The Independent Estimate Determination is a form used to document Henderson County's estimated range of fair and reasonable costs for the goods and/or services to be acquired and to document the analysis PRIOR to seeking bids, proposals, or quotes. The form is kept as part of the procurement file along with the cost or price analysis, which is conducted after receiving proposals but before awarding a contract, to demonstrate that the procurement process was conducted in an open and fair manner and that Henderson County received the most advantageous price.

Instructions:

- 1. Complete one (1) Independent Estimate Determination Form PRIOR to either (1) advertising and receiving bids or proposals or (2) seeking quotes or proposals from other governmental entities through an interlocal contract or a purchasing cooperative and complete all sections.
2. Provide a detailed discussion of your independent estimate and attach the required supporting information.
3. Sign in blue ink and date the form.
4. Maintain a copy in the procurement/contract file along with the cost or price analysis (as completed before contract award), subject to retention schedules.

Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Department: \_\_\_\_\_

Subject: Independent Estimate Determination

PART I SCOPE AND/OR SPECIFICATIONS

Please attach documentation reflecting the Scope or Proposal/Work and/or Specifications. The attached Scope of Proposal/Work and/or Specifications contains the following (check all that apply):

Table with 2 columns: For Goods/Equipment and For Services. Rows include checkboxes for: Estimated quantity of items and/or goods required; Detailed description of each item required; Specifications and/or drawings for materials required; Date items and/or goods are required; Delivery address and point of contact; List of services/responsibilities to be performed; Detailed list of deliverables/tasks required; Anticipated contract term and start date; Location of project; Specifications, drawings, and/or pictures of job site or projected results.



## PART II INDEPENDENT ESTIMATE GUIDE

*Below is a guide for the completion of the Independent Estimate Determination. Please attach the documents requested under "items to include with independent estimate" to this Determination.*

Estimate Type	Items to Include with Independent Estimate	Where to Find Supporting Information
<b>Goods/Equipment</b>	<ol style="list-style-type: none"> <li>1. Product needed</li> <li>2. Estimated quantity</li> <li>3. Unit price</li> <li>4. Markups – overheads – profit</li> <li>5. Desired delivery schedule</li> <li>6. Warranty</li> </ol>	<ol style="list-style-type: none"> <li>1. Vendor survey/market survey</li> <li>2. Current or past contracts for the same or similar product</li> <li>3. Historical price and costs data</li> </ol>
<b>Services</b>	<ol style="list-style-type: none"> <li>1. Tasks you want done</li> <li>2. Types of people needed</li> <li>3. Positions required</li> <li>4. Estimated hours by position</li> <li>5. Salary/billing rates applied</li> <li>6. Prevailing wage rate category applied (if applicable)</li> <li>7. Profit/applied fee</li> <li>8. Direct expenses</li> <li>9. Completion schedule</li> </ol>	<ol style="list-style-type: none"> <li>1. Current or past contracts for similar services</li> <li>2. Other departments doing similar work</li> <li>3. Historical price and cost data</li> </ol>

## PART III INDEPENDENT ESTIMATE

*Please complete the following form.*

**This Independent Estimate is for:**       Goods/Equipment       Services

**Discussion of independent estimate before receiving bids or proposals including Henderson County's estimated reasonable price range for the goods and/or services (attach additional explanation if necessary):**

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**Goods/Equipment**

**Source Used to Develop Independent Estimate of Goods/Equipment (check all that apply and attach supporting documentation):**

- Vendor survey/market survey
  - Current or past contracts for the same or similar product
  - Historical price and costs data
  - Other (please specify source and attach supporting documentation): \_\_\_\_\_
- 
- 

**Services**

**Source Used to Develop Independent Estimate of Services (check all that apply and attach supporting documentation):**

- Current or past contracts for similar services
  - Other departments doing similar work
  - Historical price and costs data
  - Other (please specify source and attach supporting documentation): \_\_\_\_\_
- 
- 

**PART IV  
ATTACHMENT CHECKLIST**

*The following required documentation is included as attachments to this Independent Estimate Determination (please check boxes to certify compliance with required documentation):*

- Scope of Proposal/Work and/or Specifications (as required by Part I).**
- For goods/equipment, documentation reflecting the following (as required by Part II):**
  - Product needed
  - Estimated quantity
  - Markups-overhead-profits
  - Unit price
  - Desired delivery schedule
  - Warranty
- For services, documentation reflecting the following (as required by Part II):**
  - Tasks you want done
  - Types of people needed
  - Positions required
  - Estimated hours by position
  - Salary/billing rates applied
  - Prevailing wage rate category applied
  - Profit/applied fee
  - Direct expenses
  - Completion schedule
- Documentation reflecting the source used to develop the independent estimate (as required by Part III).**
- If applicable, additional supporting documentation (e.g., explanation of the process and/or sources used or explanation of the estimate reached). Please provide a brief explanation of the additional documents:**

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**PART V  
CERTIFICATIONS**

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*I certify that I developed this independent estimate prior to receiving bids or proposals as required by 2 C.F.R. § 200.323. I further certify that, to the best of my knowledge and belief, the information provided above and attached hereto is true and correct and that the independent estimate reflects a necessary, fair, and reasonable range of costs or prices for the future procurement.*

\_\_\_\_\_  
Full Name of Individual Preparing Form

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date





# Federal Awards Program Income



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## PROGRAM INCOME

When spending federal award funds, local governments are required to adopt written policies governing program income 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), details requirements related to program income earned 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).

Henderson County, hereinafter the County, shall account for program income per the requirements set forth in the Uniform Guidance, including, but not limited to, 2 C.F.R. § 200.307, and as stipulated in Compliance and Reporting Guidance for the State and Local Recovery Funds, which provides: "Recipients of CSLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records."<sup>1</sup>

Henderson County hereby adopts and enacts the following policies and procedures for the use of program income earned from the expenditure of CSLFRF funds pursuant to the ARP/CSLFRF award.

### **Purpose**

Henderson County enacts the following procedures for its use of program income earned from the expenditure of CSLFRF funds to ensure compliance with the Uniform Guidance, including, but not limited to, 2 C.F.R. § 200.307, the ARP/CSLFRF award, and all applicable Federal regulations governing the use of program income. Henderson County agrees to administer program income according to the requirements set forth in this policy and as required by the Federal regulations and State law.

The responsibility for following this policy lies with the Henderson County Finance Department who are charged with the administration and financial oversight of the ARP/CSLFRF award. Questions on the use and/or reporting of program income should be directed to the Finance Director.

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<sup>1</sup> <https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf> Page 10, #9



**Definitions<sup>2</sup>**

- ARP/CLSFRR Award* - the Federal program governing the use of Coronavirus State and Local Fiscal Recovery Funds as provided in the Assistance Listing and as administered by the U.S. Department of Treasury pursuant to the American Rescue Plan Act of 2021 (“ARPA”), Pub. L. No. 117-2 (Mar. 11, 2021).
- CSLFRF Funds* - the portion of Federal financial assistance from the Coronavirus State Fiscal Recovery Funds and Coronavirus Local Fiscal Recovery Funds (collectively “CSLFRF”) awarded to Henderson County pursuant ARPA.
- Federal Award* - the Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101. The Federal award is the instrument setting forth the terms and conditions of the grant agreement, cooperative agreement, or other agreement for assistance.
- Federal Awarding Agency* - the Federal agency that provides a Federal award directly to a non-Federal entity.
- Federal Financial Assistance* - the assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions, direct appropriations, food commodities, or other financial assistance, including loans.
- Federal Program* - all Federal awards which are assigned a single Assistance Listings Number.
- Non-Federal Entity* - a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.
- Period of Performance* - the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. The period of performance for the ARP/CSLFRF award ends December 31, 2026.
- Program Income* - gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in § 200.307(f).

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<sup>2</sup> Excluding the first two, the definitions in this section are found in 2 C.F.R. 200.1.



## **Program Income Overview**

For purposes of this policy, program income is the gross income earned by Henderson County that is directly generated by a supported activity or earned as a result of the ARP/CSLFRF award during the period of performance, which closes December 31, 2026. 2 CFR 200.1.

Program income includes, but is not limited to, the following sources of income:

- The collection of fees for services performed.
- Payments for the use or rental of real or personal property.
- The sale of commodities or items fabricated under the Federal award.
- The payment of principal and interest on loans made under the Federal award.

Program income does not include fees or revenue from the following:

- The use of rebates, credits, discounts, and interest earned on any of them.
- Governmental revenues, such as taxes, special assessments, levies, or fines.
- Proceeds from the sale of real property, equipment, or supplies.<sup>3</sup>

## **Use of Program Income**

2 C.F.R. § 200.307(e) sets forth three methods for how program income may be used: the deduction method, the addition method, and the cost sharing/matching method. Treasury guidance update April 27, 2022 clarifies that program income earned pursuant to expenditures of CSLFRF shall be accounted for pursuant to the addition method. "With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award."<sup>4</sup>

Henderson County agrees to add program income to the total award amount and expend it on eligible projects during the period of performance.<sup>5</sup>

## **Repayment of Principal and Interest on Loans made with CSLFRF Funds**

Treasury has imposed different requirements on loans of CSLFRF funds under the revenue loss category and loans of CSLFRF under other expenditure categories. Henderson County agrees to appropriately account for the repayment of loaned CSLFRF funds according to the ARP/CSLFRF award terms, as follows:

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<sup>3</sup> 2 C.F.R. 200.1 and 2 C.F.R. 200.307 each define and limit the sources of program income.

<sup>4</sup> <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/section-200.307> (e)(2)

<sup>5</sup> The addition method allows units to spend program income on any other ARP-eligible project. See [FAQ 13.11](#).



- (1) Loans made under the revenue loss eligibility category. Loans of CSLFRF funds under the revenue loss eligibility category may be considered to be expended at the point of disbursement to the borrower, and repayments on such loans are not subject to program income requirements.<sup>6</sup> Accordingly, Henderson County shall not separately account for the repayment of principal and interest on loans of CSLFRF under the revenue loss eligibility category.
- (2) Non-revenue loss loans (i.e., loans made under the public health emergency/negative economic impacts category and/or the necessary water, sewer, and broadband infrastructure category)
  - a. Loans that mature or are forgiven on or before December 31, 2026: Henderson County shall add the repayment of principal and interest (program income) to the ARP/CSLFRF award pursuant to 2 C.F.R. 200.317(e)(2). When the loan is made, Henderson County shall report the principal of the loan as an expense. Henderson County shall expend the repayment of principal only on eligible uses and is subject to restrictions on the timing of the use of ARP/CSLFRF funds pursuant to the ARP/CSLFRF award.
  - b. Loans with maturities longer than December 31, 2026: Henderson County is not required to separately account for the repayment of principal and interest on loans of CSLFRF with maturities after the ARP/CSLFRF award's period of performance. Henderson County shall expend ARP/CSLFRF funds for only the projected cost of the loan. Henderson County shall project the cost of the loan by estimating the subsidy cost according to one of the calculation methods outlined in Treasury's Final Rule FAQs, question 4.9 (updated 4/27/22).
- (3) Contributions to revolving loan funds: Henderson County may contribute funds to a revolving loan fund<sup>7</sup> if the loaned SLFRF funds are restricted to financing eligible uses. The amount of CSLFRF funds contributed to a revolving loan fund must be limited to the projected cost of loans made over the life of the revolving loan fund, following the approach described above for loans with maturities longer than December 31, 2026.
  - a. Any contribution of CSLFRF revenue loss funds to a revolving loan fund shall follow the approach of loans funded under the revenue loss eligible use category outlined in Section V, paragraph 1.

### **Allocation of Program Income**

Henderson County shall only expend program income on costs that are reasonable, allocable, and allowable under the terms of the ARP/CSLFRF award.<sup>8</sup> To adhere to these requirements, Henderson County shall comply with the cost principles included in 2 C.F.R. § 200, as outlined in Henderson County's Allowable Cost Policy – Tab 1. Henderson County shall allocate program income to the ARP/CSLFRF award in proportion to the pro rata share of the total funding (e.g., if CSLFRF funds cover half of a project's cost, with general revenue covering the other half, the unit shall allocate 50% of any program income earned to the ARP/CSLFRF award and account for its use pursuant to § 200.307).

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<sup>6</sup> [Final Rule FAQ 4.9.](#)

<sup>7</sup> [7 CFR § 4280.23](#)

<sup>8</sup> 2 C.F.R. § § 200.404, 408.



### **Additional Program Income Requirements**

- (a) Identifying, Documenting, Reporting, and Tracking. To ensure compliance with the requirements of program income as outlined by the Federal regulations, the terms and conditions of the ASP/CSLFRF award, and the requirements set forth herein, each department shall identify potential sources of program income and properly report the program income for the period in which it was earned and dispersed.

Program income shall be accounted for separately. Henderson County shall not commingle program income earned from programs supported by ARP/CSLFRF funds with the general award of ARP/CSLFRF funds Henderson County received from Treasury. Any costs associated with generating program income revenue shall be charged as expenditures to the ARP/CSLFRF award.

- (b) Program Income Earned After the Period of Performance. Henderson County shall have no obligation to report program income earned after the period of performance (December 31, 2026). However, Henderson County shall report program income expended after the period of performance if that program income was earned on or before December 31, 2026.<sup>9</sup>
- (c) Subawards. Henderson County agrees to ensure that any subrecipient of ARP/CSLFRF funds abides by the award of the terms and conditions of this policy and is aware that the subrecipient is responsible for accounting for and reporting program income to Henderson County on a quarterly basis.
- (d) Compliance with State law. Program income shall not be expended for purposes prohibited under State law.
- (e) Subject to Audit. Henderson County recognizes that its use of program income may be audited and reviewed for compliance with Federal laws and regulations, State law, and the terms of the ARP/CSLFRF award.

### **Implementation of Policy**

The Henderson County Finance Department will adopt procedures to identify potential program income during the project eligibility and allowable cost review, document actual program income, and follow the requirements in this policy related to the treatment of program income.

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<sup>9</sup> [2 C.F.R. § 200.334\(e\)](#) – Retention requirement for records



Federal Awards  
Uniform Guidance Policy for  
Conflicts of Interest



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## UNIFORM GUIDANCE POLICY FOR CONFLICTS OF INTEREST

### Purpose

The purpose of this policy is to clarify that the conflicts of interest guidelines for the Henderson County Board of Commissioners meet or exceed the requirements under federal law, state law and local policy when voting on the procurement of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects paid for in part or whole by federal funds and required under 2 C.F.R. § 200.318(c) (1-2) (the "Uniform Guidance").

### Background for Policy

When spending federal award funds, local governments are required by the Uniform Guidance to adopt written policies governing conflicts of interest and gifts. This policy harmonizes otherwise inconsistent language found in the relevant sections of the Uniform Guidance North Carolina General Statutes §153A-44 as it relates to the Henderson County Board of Commissioners.

Pursuant to §153A-44, the Board of Commissioners may excuse a member from voting only on matters

1. Involving the consideration of the member's own official conduct or financial or
2. on which the member is prohibited from voting under the following statutes:
  - (a) exemptions to the prohibition against directly benefiting under a public contract (G.S. 14-234),
  - (b) zoning matters (G.S. 153A-340(g); G.S. 160A-381(d)), and
  - (c) quasi-judicial decisions (G.S. 153A-345.1; G.S. 160A-388(e2)).

Under the Uniform Guidance, in addition to the foregoing, members may not participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest as defined below:

Under the Uniform Guidance, a real or apparent conflict exists and must be disclosed to the Federal awarding agency when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

1. the employee, officer, or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family;
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties.
5. In which the person has an "Interest" as that term is defined in the Ethics Code.

### Policy

When any Request for Board Action requests a vote of the Board on a matter involving the expenditure of federal award funds, County staff shall so indicate on the face of the Request. In such matters, each Commissioner, when voting on federally funded projects, also affirms that they have complied with both §153A-44 and the Uniform Guidance, and to the extent they are unable to do so, they have already disclosed any conflict under the Uniform Guidance to the Board and, if appropriate under §153A-44, asked the Board to be recused from voting. Appropriate County personnel will disclose the existence of such conflict to the granting agency.





# 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/CLSFRRF 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.



## HENDERSON COUNTY, NORTH CAROLINA

- 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/CLSFRRF 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