

MADISON COUNTY FISCAL COURT
MADISON COUNTY, KY
RESOLUTION 2021-98

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A RESOLUTION OF THE MADISON COUNTY FISCAL COURT, KENTUCKY RELATING
TO THE PROCUREMENT POLICY FOR PURCHASES MADE WITH AMERICAN RESCUE
PLAN ACT STATE AND LOCAL FISCAL RECOVERY FUNDS

WHEREAS, Madison County, Kentucky's policy is to procure equipment, supplies, and services funded by State and Local Fiscal Recovery Funds ("SLFRF Funds") in accordance with all applicable laws and in a method that provides for full and open competition; and

WHEREAS, Kentucky law also requires that all contracts, leases, or other agreements for "materials, supplies; except perishable meat, fish, and vegetables, equipment or for contractual services other than professional" over \$30,000 must be advertised and competitively bid; and

WHEREAS, the purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods, 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;

NOW, THEREFORE, BE IT RESOLVED THAT THE FISCAL COURT DOES HEREBY APPROVE THIS RESOLUTION AND AUTHORIZES THE JUDGE EXECUTIVE TO EXECUTE SAME ON BEHALF OF THE COUNTY.

Motion made by John Tudor, seconded by Tom Botkin.

Vote:	Yes	No
Judge Reagan Taylor	<u>X</u>	<u> </u>
Magistrate Paul Reynolds	<u> </u>	<u> </u>
Magistrate John Tudor	<u>X</u>	<u> </u>
Magistrate Roger Barger	<u>X</u>	<u> </u>
Magistrate Tom Botkin	<u>X</u>	<u> </u>

Signed: R-29
Reagan Taylor
Madison County Judge Executive

Attested: Kenny Barger
Kenny Barger
Madison County Clerk

Madison County, Kentucky

**Procurement Policy for Purchases Made with American Rescue Plan Act
State and Local Fiscal Recovery Fund Monies**

Adopted September 14, 2021

Overview

Madison County, Kentucky’s policy is to procure equipment, supplies, and services funded by State and Local Fiscal Recovery Funds (“SLFRF Funds”) in accordance with all applicable laws and in a method that provides for full and open competition. These practices are governed and controlled by Federal law, Kentucky law, and, of course, ordinances, policies, and practices of the County. The policies and procedures adopted herein are in addition to any existing procurement or purchasing policies in effect for the County. To the extent any existing County policy or procedure conflicts with the terms herein, these terms shall govern for all procurements and purchased funded by SLFRF Funds.

Federal grant regulations require that federally-funded contracts be procured in a manner that promotes full and open competition. Kentucky law also requires that all contracts, leases, or other agreements for “materials, supplies except perishable meat, fish, and vegetables, equipment, or for contractual services other than professional” over \$30,000 must be advertised and competitively bid.

Kentucky Model Procurement Code

A model code has been established by the Commonwealth of Kentucky and is available for adoption by counties throughout the Commonwealth. The County’s policy as set forth herein generally reflects the philosophy of the Kentucky Model Procurement Code; however, the County has not adopted and does not hereby adopt said code.

Purpose

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases 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.

100. General Procurement Policy Terms

1. **Application of Policy.** This Policy applies to contracts for purchases, services, and construction or repair work funded with SLFRF Funds. The requirements of this Policy also apply to any subrecipient of SLFRF Funds. All SLFRF 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. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.
2. **Compliance with Federal Law.** All procurement activities involving the expenditure of SLFRF 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 that awarded the funds. The County will follow all applicable local, state, and federal procurement requirements when expending SLFRF Funds. Should the County have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
3. **Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.
4. **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.
5. **Contract Requirements.** All contracts paid for in whole or in part with SLFRF Funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.
6. **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 requirements.
7. **County Conflict of Interest Policy.** No employee, officer, or agent of the County may participate in the selection, award, or administration of a contract supported by a SLFRF funds if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
8. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

200. Definitions

1. **Advertising** – Placement of a legal notice in accordance with applicable law to inform the public and prospective vendors that the County is requesting bids or proposals for a specific purchase. Bids must be advertised for any purchase in excess of \$30,000. Bid advertising is mandated and detailed by KRS 424.120, 424.130, 424.140 and the Kentucky Constitution. Generally, bid notices must be placed in the largest newspaper in the county and must appear at least seven (7) days prior to the bid opening and not more than twenty-one (21) days.
2. **Bid (also referred to as Formal Bid and Sealed Bid)** An offer to sell goods or services to the County. A bid is an offer to provide services or goods on a competitive basis. Bids are solicited based upon written specifications developed by County staff and included in the solicitation. Appropriate bids (those meeting all of the responsive and responsible specifications) are culled from the total pool of respondents. Selection is then made based upon the best overall qualified and responsive bid, not necessarily on price alone. The public notification process is governed by the dollar amount of the goods or services sought. It is currently the practice of the County to place bid solicitations

on the County's website. As noted elsewhere, professional services are solicited via RFPs and RFQs. Bid advertising is mandated by applicable law. Generally, bid notices must be placed in the largest newspaper in the county and must appear at least seven (7) days prior to the bid opening and not more than twenty-one (21).

3. **Bid Acceptance** – The award of a contract to a bidder.
4. **Bid Security** – A guarantee, in the form of a certified check or bid bond provided by an insurance company, to ensure that the bidder will sign a contract if his/her bid is accepted.
5. **Change Order** – A document used to modify information on an existing Purchase Order or Contract.
6. **Contract** – A legal agreement between two competent parties to perform or not to perform a specific act or acts.
7. **Contractor** – A person or firm who is contracted to perform work or furnish materials in accordance with a contract.
8. **Equipment** – Property of a durable nature which retains its identity through its useful life.
9. **Fiscal Year** – The period for which funds are appropriated for the operation of the County. The County fiscal year begins July 1 and ends the following June 30.
10. **Fixed Price Contract** – An agreement which binds a vendor or a contractor to sell specified goods or services to the County at a specified price.
11. **Lease/Purchase** – A form of rental in which rent payments, or a portion thereof, are applied to ownership of the commodity resulting in ownership of the commodity at the end of the lease period.
12. **Payment Bond** – A form of security which provides a guarantee that the contractor will pay the complete costs of labor, materials, and other services related to the project for which he is responsible under the contract for construction.
13. **Performance Bond** – A guaranty provided by a third party to protect the County from loss due to the inability of a contractor to perform a contract as agreed.
14. **Purchase Order** – A document, issued by a county employee, used to formalize a purchase transaction with a vendor. Acceptance of a Purchase Order by a vendor results in a contract.
15. **Quotation or Proposal** – An informal statement of price, description or goods and services offered for sale.
16. **Request for Proposals (RFP)** – An RFP is a means of obtaining goods and or services on a competitive basis. The RFP process is used when consideration of intangibles such as quality of service, professional recommendations, project knowledge, price and prior experience are factors in the bid process.
17. **Responsible Bidder** – A bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability which will assure good faith performance.
18. **Responsive Bidder** – A bidder who has submitted a bid which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to substance of any resulting contract.
19. **Solicitation** – An invitation to bid or request for proposals, whether conducted informally or formally published and advertised.
20. **Sole Source** – A process used to procure goods and services when there is only one vendor for the product or service, or if there is a substantial reason to choose a vendor.
21. **Specification** – A description of what the County requires and what a bidder must offer.

22. **Subaward** – An award of SLFRF Funds provided by the County to a subrecipient for the subrecipient to carry out a project or program that constitutes a permissible use of the County’s SLFRF Funds.
23. **Subrecipient** – A non-federal entity that receives a subaward from the County comprised of SLFRF Funds to carry out a project or program that constitutes a permissible use of the County’s SLFRF Funds.

300. General Purchasing Procedures

Compliance with the following purchasing procedures is required for all purchases and contracts made with or funded by SLFRF Funds.

1. **Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. 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. **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.
3. **Notice of Federal Funding.** All bid solicitations must acknowledge the use of SLFRF Funds 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 SLFRF funding award.
4. **Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.
5. **Fixed Price.** Solicitations must state that 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 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 express written permission of the United States Treasury.
6. **Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how the 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.
8. **Dividing Contract for M/WBE Participation.** It is the County’s policy to ensure that minority and women-owned business enterprises, commonly referred to as disadvantaged business enterprises (DBEs) have an equal opportunity to receive and participate in County contracts. If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.
9. **Documentation.** Documentation must be maintained by the County detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, 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.

10. **Cost Estimate.** For all procurements in excess of \$250,000, the requesting agency shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.
11. **Contract Requirements.** The requesting agency must prepare a written contract incorporating the provisions required by the 2 CFR Appendix II to Part 200, with the exception of Davis Bacon wage requirements, which are not required in contracts supported by SLFRF Funds.
12. **Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder's list.
13. **Contractor Oversight.** The requesting agency receiving the SLFRF Funds must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
14. **Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process 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 requirements that have the effect of restricting competition.
15. **Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.
16. **Procurement Methodologies** One of the following allowable procurement methodologies must be used by the requesting agency. Purchases will not be artificially divided to stay below limits listed below.
 - A. **Micro-Purchase Method – Purchases less than \$10,000**
 - a. No bid or quote is required if the price of the purchase is \$10,000 or less, so long as the price of the purchase is considered reasonable.
 - b. Each employee engaged in the procurement of goods has a responsibility to purchase supplies from a source known to sell the items to be purchased for a cost effective price at a quality needed to successfully complete the task. An employee may not request that goods be purchased from sources that present a conflict of interest.
 - c. Micropurchases should be distributed equitably among a range of qualified vendors when possible.
 - B. **Small Purchase Method – Purchases over \$10,000, but less than \$250,000**
 - a. The procedures will be the same as outlined in the above except that pricing from at least two known sources will be solicited for the products being purchased. These quotations may be obtained informally, i.e. via telephone or public website, but all quotations must be documented in writing.
 - b. Price need not be the determining factor in awarding a small purchase to a vendor or contractor, but quotes gathered must be maintained in procurement records.
 - C. **Large Purchases – Purchases over \$250,000**
 - a. All purchases over \$250,000 require the requesting agency to conduct a price/cost analysis prior to soliciting bids or proposals. This price analysis requirement also applies to change orders to a contract in excess of \$250,000.
 - b. Large Purchases over \$250,000 may be competitively procured through one of two methods:
 - i. **Sealed bids: \$250,001 and above**
 1. Preferred method for procuring construction
 2. Used when selection of the successful bidder can be made principally on the basis of price
 3. Bids shall be publicly solicited from an adequate number of known suppliers, providing sufficient response time for bidders
 4. The solicitation/invitation for bids shall be publicly advertised
 5. The solicitation/invitation for bids must define the items or services sought in such a manner that permits bidders to properly respond

6. The solicitation/invitation for bids should state a date and time at which bids will be publicly opened.
7. Lowest responsive **and** responsible bidder for the fixed price contract should be awarded the contract
8. Any or all bids may be rejected for sound, documented reasons.
9. Special Requirements for Construction Contracts:
 - a. Bidders must provide bid security equivalent to five percent of the bid price. The bid guarantee may be a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure the bidder will accept award of a contract if the County accepts the bidder's bid.
 - b. Successful bidders must provide a performance bond for 100 percent of the contract price to ensure fulfillment of the contractors' obligations under the contract.
 - c. Successful bidders to provide a payment bond for 100 percent of the contract price. A payment bond ensures payment as required by statute to all persons supplying labor and material under the contract.

ii. Competitive proposals: \$250,001 and above

1. Used for either a fixed price or cost reimbursement/not to exceed contract when sealed bids are not appropriate. Generally used in soliciting services, including architectural and engineering services.
2. Competitive proposals also require public advertising
3. Proposals must be solicited from an adequate number of qualified sources
4. A written policy for conducting technical evaluations of reviewing proposals and selecting the recipient must be prepared and followed in selecting the awarded bidder.
5. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered

D. Special/Noncompetitive Procurements

- a. Procurement exceptions that apply for ANY and ALL purchase dollar amounts may be made in the following circumstances:

- i. In accordance with Kentucky Revised Statute KRS 45A.050, if a state contract has been let by competitive bidding or the contract was negotiated as provided in KRS 45A.045, the County may purchase supplies and materials in accordance with a contract for supplies and materials entered into by the Finance and Administration Cabinet for the Commonwealth, including those contracts negotiated by the cabinet with vendors who maintain a General Services Administration price agreement as provided in KRS 45A.045(8).
- ii. If there exists, under emergency conditions, a threat to public health, welfare or safety then the County Judge/Executive has the authority to approve this exception and award a contract absent competitive procurement. In the event of such an emergency, the County Judge/Executive shall file a certificate certifying that an emergency exists with the chief financial officer of the County.

iii. Sole Source Purchases

1. If the item is available only from a single source, the County should document that fact in writing, and in that instance, no competitive procurement is required. However, every sole source purchase will require a price/cost justification. Examples of necessary steps in preparing a price/cost justification for a sole source purchase include, but are not limited to:
 - a. Documenting cost analysis efforts
 - b. Documenting price and market research
 - c. Saving screenshots, emails, or catalog pricing
 - d. Documenting pricing information obtained from colleagues at other Kentucky counties who have purchased the same or similar items
 - e. Documenting prices of similar items.

2. If initial solicitations from multiple sources are concluded to be inadequate, creating a sole source vendor scenario, the reasoning for determining the initial solicitations inadequate should be documented.
3. The compatibility of equipment, accessories, or replacement parts is a substantial consideration and only a sole source meets the County's reasonable requirements.

400. Cost Accounting and Recordkeeping Procedures

County staff shall maintain records of all purchases and projects funded by SLFRF Funds in accordance with the following terms:

- All accounts and records shall identify the SLFRF Program's Assistance Listing title and number, the federal award identification number and year, and the name of the awarding federal agency as follows:
 - Coronavirus State and Local Fiscal Recovery Funds, CFDA Number 21.027, 2021, Department of the Treasury.
- All financial records shall be accurate, current and complete.
- All costs expended shall be verified as allowable in accordance with 2 CFR 200 Subpart E. To be allowable under Federal awards, costs must be:
 - Necessary, reasonable, and allocable to the SLFRF funded program
 - Conform to cost principles or Federal award as to types or amount of cost items
 - Consistent with policies and procedures that apply uniformly to federal and non-federally funded activities
 - Consistent treatment as direct or indirect cost
 - In accordance with Generally Accepted Accounting Principles (GAAP)
 - Not included as a cost to meet cost sharing or matching requirements of any other federally financed program
 - Adequately documented

Subawards of the County's SLFRF Funds shall require a written agreement with the subrecipient, and such agreement shall require the subrecipient to comply with all aspects of the Uniform Guidance, including but not limited to preparing, supplying, and maintaining a budget for expenditure of SLFRF Funds, an allowable cost policy, a procurement policy that accords with the terms of this Policy, and a policy for tracking expenditures against the subrecipient's budget.

500. Period of Performance

SLFRF Funds may not be expended subsequent to December 31, 2024 except to liquidate allowable obligations that were made on or before that date. All liquidations of prior obligations must be made by no later than December 31, 2026.