

Village of Newcomerstown

Resolution No. 10-2022

Passed: _____

A Resolution establishing a Procurement Policy for the American Rescue Plan Act Funds.

WHEREAS, Council has deemed it necessary to establish a policy to establish guidelines that meet or exceed the procurement requirements for the 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 ORDAINED by the council of the Village of Newcomerstown, Tuscarawas County, Ohio as follows:

Section 1: That the policy attached hereto as Exhibit "A" and incorporated herein shall be the Procurement Policy to be followed by village Departments.

Section 2: All provisions of Ordinances and Resolutions in conflict with the provisions and terms of this ordinance shall be and is herewith amended in accordance with this ordinance.

First Reading:

Second Reading:

Third Reading:

ADOPTED THIS DAY OF 2022

Vote of Council: Ayes Nays

Roll Call Vote:

Jan McCune _____

Phillip Lambes _____

Michael Wise _____

Allen Collins _____

David Shepherd _____

Susan Little _____

Attest:

Approved:

Lisa M. Stiteler, Fiscal Officer

Patrick M. Cadle, Mayor

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Uniform Guidance Procurement Policy American Rescue Plan Act Funds

I. 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.

II. Policy

- A. Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with ARPA funds.

The requirements of this Policy also apply to any subrecipient of the funds.

All ARPA-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 or "UG") 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.

- 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. All applicable local, state, and federal procurement requirements will be followed when expending federal funds. Should the state of Ohio have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

- C. 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 in compliance with state and federal law.

- D. 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.

- E. Contract Requirements.** All contracts paid for in whole or in part with ARPA funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. Part 200, Appendix II. (See Article VII).

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F. 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.

G. Settlement of Issues Arising Out of Purchase. Township is responsible for the settlement of all contractual and administrative issues arising out of procurements and shall use good administrative practices and sound business judgment.

III. General Procurement Standards and Procedures

A. Necessity – Avoid Duplicative Items. Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items.

B. Use of Federal Excess and Surplus Property. Best practice is to consider use of federal excess and surplus property prior to buying new items when feasible and less expensive.

C. Use of Intergovernmental Agreements and Cooperative Purchasing. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

D. 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.

E. 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.

F. 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.

G. 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.

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A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.

- H. 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.
- I. 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.
- J. Minority Businesses, Women’s Business.** Steps to be taken to comply with federal requirements to ensure that minority and women owned businesses and enterprises (M/WBE) are used, when possible, include, but are not limited to:
- a. Placing qualified M/WBE on solicitation lists.
 - b. Assuring M/WBE are solicited whenever they are potential sources.
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses and M/WBE;
 - d. Establishing delivery schedules, when feasible, to encourage M/WBE participation.
 - e. 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.
- K. Documentation.** Documentation detailing history of procurement must be maintained, including 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.
- L. Cost and Price Analysis.** A cost or price analysis is required all procurements exceeding \$250,000. A cost analysis requires evaluating the separate cost elements, including profit, and a price analysis requires evaluation of total price. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

Profit is to be negotiated as a separate element in the cost analysis. 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

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M. Contract Requirements. All contracts must be written and incorporating the provisions referenced in Section II.E of this Policy.

N. Contractor Oversight. Oversight of the contractor is required to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.

O. 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.

P. Geographic Preference. No contract shall be awarded based on a geographic preference unless permitted by the UG.

Q. Property. 2 C.F.R. 200.311-316 will be followed for the acquisition and disposition of real property and equipment purchased with ARPA funds.

R. Domestic Preference. Will, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

IV. Specific Procurement Procedures: Purchase Contracts and Service Contracts (except for Architect/Engineer professional Services)

A. Micro-purchase: Less than \$10,000 (or up to \$50,000 if Village self-certified a higher threshold pursuant to pursuant 2 C.F.R. 320(a)(1)(iv) with the exception of maintenance or road repair contracts, which have a threshold of \$45,000) shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)(1)) or comparable Ohio law, whichever is more restrictive:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is fair and reasonable.
2. To the extent practicable, purchases must be distributed among qualified suppliers.

B. Small Purchases: \$10,000 (unless self-certified to higher micro purchase threshold but **less than \$250,000**; shall be procured using the UG “small purchase” procedure (2 C.F.R. § 200.320(a)(2)) as follows:

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1. Obtain price or rate quotes from an “adequate number” of qualified sources.
2. Cost or price analysis is not required.
3. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible);
4. Award the contract to the lowest responsive qualified source.

C. Large Contracts – Sealed Bid: exceeds \$250,000 shall be procured using a “sealed bid” procedure or competitive proposal method. Sealed bid (2 C.F.R. § 200.320(b)(1)) will be used for publicly solicited for a firm fixed-price contract; preferred method for procuring construction.

Conditions for Sealed Bid:

1. Cost or price analysis conducted prior to bidding.
2. A complete, adequate, and realistic specification or purchase description is available.
3. Two or more responsible bidders are willing and able to compete effectively for the business; and
4. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

Procedures:

1. Complete specifications must be made available to all bidders.
2. Publicly advertise the bid solicitation for a period sufficient to give bidders notice of opportunity to submit bids.
 - a. The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
3. All bids will be opened at the time and place prescribed in the invitation for bids and must be opened publicly.
4. Awarded in writing to lowest responsive and responsible bidder.
 - a. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
 - b. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
5. Any or all bids may be rejected if there is a sound documented reason.

D. Large Contracts – Competitive Proposal: exceeds \$250,000 “competitive proposal” procedure (2 C.F.R. § 200.320(b)(2)) will be used for a fixed-price or cost-reimbursement

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type contract is awarded. Generally used when conditions for sealed bid are not appropriate.

1. Request for proposal (RFP) will be publicized.
2. RFP will identify all evaluation factors and their relative importance.
3. RFP will be solicited from an adequate number of qualified offerors.
4. Any response to RFP will be considered to the maximum extent practical.
5. Will evaluate RFPs based upon written method for conducting technical evaluations of RFP's received; and
6. Contract will be awarded to most responsible bidder whose RFP is most advantageous, which price and other factors identified in RFP.

V. Specific Procurement Procedures: Contracts for Architectural and Engineering Services

A. Micro-threshold: Contracts less \$50,000 may be selected through the “direct selection” process available in R.C. 153.71:

1. Select a most qualified single design professional or firm from those who have submitted statement of qualifications in the preceding year; and
2. Negotiate contract to include fair and reasonable fee agreement.

B. Small Contracts: Contracts more than \$50,000 and less than \$250,000 shall follow Ohio's Qualifications-Based Selection (QBS) policy, as set forth in R.C. 153.65-153.73:

1. Publicize Requests for Qualifications (RFQ) which is to include:
 - a. Description of project sufficiently detailed to allow for adequate RFQ;
 - b. Project budget and anticipated funding.
 - c. Anticipated project schedule.
 - d. Specific services to be provided by the architect or engineer.
 - e. Deadline; and
 - f. Cannot require RFQ to include fee or estimate.
2. Evaluate the statements of qualifications submitted by interested engineers and architects and – using a specific set of scoring criteria – rank them in order of their qualifications for the project at hand; and
3. Negotiate a contract, including scope of services and fee, with the most highly ranked professional:
 - a. If unable to negotiate a contract with the most highly ranked, notify said firm in writing of termination and begin negotiations with the next most highly ranked.

C. Large contracts: Contracts more than \$250,000 shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(b)(2)(iv)) as follows:

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1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms.
 - a. Price (other than unit cost) shall not be solicited in the RFQ.
 - b. Geographical location may be selection criteria (2 C.F.R. 200.319(c)).
2. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ;
3. Proposals must be solicited from an “adequate number of qualified sources”.
4. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
5. Consider all responses to the publicized RFQ to the maximum extent practical.
6. Evaluate qualifications of respondents and select the most qualified firm.
7. Once a firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
8. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

Limitations:

1. Competitive proposal method for selecting A/E services can only be used for architectural and engineering professional services
2. Cannot be used for other services even if those services can be performed by architectural and engineering firms (such as general consulting services)

VI. Noncompetitive Proposals

Procurement by noncompetitive proposals for purchases over the micro-purchase threshold are permitted only when one or more of the following apply:

- A. Sole Source.** Item is available from only one source. The justification for and lack of available competition for the item shall be documented.
- B. Emergency.** Sole source procurement permitted when there is a public emergency, which exists when the time required to act in accordance with regular procurement procedures would endanger life or property.
- C. Inadequate Competition.** When competition is determined to be inadequate after attempts to solicit bids from several sources as required under this Policy does not result in a qualified winning bidder.

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D. 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.

E. 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.

VII. Conflicts of Interest

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

The employee or body responsible for managing the ARPA funds shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, and agents, including subrecipients, of the requirements of this policy and any additional prohibitions or requirements.

A. Agency Conflicts of Interest. In addition to the prohibition against self-benefiting from a public contract under R.C. 2921.42 and 2921.43, no officer, employee, or agent of the Township may 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. A real or apparent conflict exists 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.

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate supervisor. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

B. Agency Gifts. In addition to the prohibition against accepting gifts and favors from vendors and contractors prohibited by Ohio Ethics Law, officers, employees, and

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agents of the Township are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value, valued at less than \$25, which fall into one of the following categories may be accepted:

1. promotional items.
2. honorariums for participation in meetings; or
3. meals furnished at banquets.

Any officer, employee or agent who knowingly accepts an item of nominal value allowed under this policy shall report the item to his or her immediate supervisor.

C. 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.

D. Violations. Employees violating this policy will be subject to discipline up to and including termination. Contractors violating this policy will result in termination of the contract and may not be eligible for future contract awards.

VIII. Contract Requirements Pursuant to Part 200, Appx II

A. Remedy provisions – *applies to all contracts exceeding \$250,000.* Contract must address administrative, legal, and legal remedies in the event a contractor breaches the terms of the contract.

B. Termination Clause – *applies to all contracts exceeding \$10,000.* Contract must contain termination clause, including the manner in which it will be affected.

C. Equal Employment Opportunity – *applies to all construction contracts.* Contractor must agree to comply with all provisions set forth in 41 C.F.R. Part 60-1.4(b), including, but not limited to:

Prohibiting discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

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D. Contract Work Hours and Safety Standards Act - *applies to contracts in excess of \$100,000 that involve the employment of mechanics or laborers.* Contractor must comply with the Act (40 USC 3702 and 3704), as supplemented by Department of Labor regulations (29 CFR Part 5). The Act requires, in part:

1. Computation of the wages of every mechanic and laborer on the basis of a standard work week of 40 hours.
2. Work in excess of the 40-hour work week for compensation at rate of not less than one and a half times the basic rate.
3. Prohibition of work in conditions which are unsanitary, hazardous or dangerous.

Note: Act not applicable to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

E. Rights to Inventions Made Under a Contract or Agreement - *applies to contracts with small businesses or nonprofits for the performance of experimental, developmental or research work.* Contract must incorporate patent rights clause at 37 CFR 401.14 by reference.

F. Clean Air Act and the Federal Water Pollution Control Act - *applies to contracts exceeding \$150,000.* Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

G. Debarment – *applies to all contracts.* No contract shall be awarded to a contractor included on the Ohio or Federal debarred bidder's list.

H. Byrd Anti-Lobbying Amendment - *applies to contracts exceeding \$100,000.* Contractors must file the required certification:

1. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352.
2. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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3. In this context, “tier” references the awarding agency, as well as contractors and any subcontractors.

I. Recovered Materials – *applies to purchases of items which cost \$10,000 or more during the course of a fiscal year.* Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, specifically the guidelines set forth in 40 CFR part 247.¹

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - a. Competitively within a timeframe providing for compliance with the contract performance schedule.
 - b. Meeting contract performance requirements; or
 - c. At a reasonable price.
2. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

J. Domestic Preference – *applies to all contracts.* As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

K. Prohibition on Contracting for Covered Telecommunications Equipment or Services – *applies to all contracts.* Consistent with [Public Law 115-232](#), Section 889, Contractors are prohibited from obligating or expending funds to:

1. Procure or obtain.
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Covered Telecommunications Equipment and Service Under this Provision:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
2. For the purposes of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by:
3. Telecommunications or video surveillance services provided by such entities or using such equipment.

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- a. Hytera Communications Corporation.
 - b. Hangzhou Hikvision Digital Technology Company; or
 - c. Dahua Technology Company (or any subsidiary or affiliate of such entities).
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense . . . reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.