

## Durham County Board of Commissioners

### Policy of Conflict of Interest: American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds

#### 1.0 PURPOSE AND SCOPE

- a. Purpose of Policy. This Conflict of Interest Policy (“*Policy*”) establishes conflict of interest standards that (1) apply when Durham County (“*Unit*”) enters into a Contract (as defined in Section II hereof) or makes a Subaward (as defined in Section II hereof), and (2) meet or exceed the requirements of North Carolina law and 2 C.F.R. § 200.318(c).
- b. Application of Policy. This Policy shall apply when the Unit (1) enters into a Contract to be funded, in part or in whole, by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies, or (2) makes any Subaward to be funded by Federal Financial Assistance to which 2 C.F.R. § 200.318(c) applies. If a federal statute, regulation, or the terms of a financial assistance agreement applicable to a particular form of Federal Financial Assistance conflicts with any provision of this Policy, such federal statute, regulation, or terms of the financial assistance agreement shall govern.

#### 2.0 DEFINITIONS

Capitalized terms used in this Policy shall have the meanings ascribed thereto in this Section II: Any capitalized term used in this Policy but not defined in this Section II shall have the meaning set forth in 2 C.F.R. § 200.1.

- c. “*COI Point of Contact*” means any individual identified in Section III of this Policy.
- d. “*Contract*” means, for the purpose of Federal Financial Assistance, a legal instrument by which the Unit purchases property or services needed to carry out a program or project under a federal award.
- e. “*Contractor*” means an entity or individual that receives a Contract.
- f. “*Covered Individual*” means a Public Officer, employee, or agent of the Unit.
- g. “*Covered Nonprofit Organization*” means a nonprofit corporation, organization, or association, incorporated or otherwise, that is organized or operating in the State of North Carolina primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes, excluding any board, entity, or other organization created by the State of North Carolina or the Unit.
- h. “*Direct Benefit*” means, with respect to a Public Officer or employee of the Unit, or the spouse of any such Public Officer or employee, (i) having a ten percent (10%) ownership interest or other interest in a Contract or Subaward; (ii) deriving any income or commission directly from a Contract or Subaward; or (iii) acquiring property under a Contract or Subaward.

- i. “*Federal Financial Assistance*” means federal financial assistance that the Unit receives or administers in the form of grants, cooperative agreements, non-cash contributions or donations of property (including donated surplus property), direct appropriations, food commodities, and other federal financial assistance (except that the term does not include loans, loan guarantees, interest subsidies, or insurance).
- j. “*Governing Board*” means the Board of County Commissioners of the Unit.
- k. “*Immediate Family Member*” means, with respect to any Covered Individual, (i) a spouse, and parents thereof, (ii) a child, and parent thereof, (iii) a parent, and spouse thereof, (iv) a sibling, and spouse thereof, (v) a grandparent and grandchild, and spouses thereof, (vi) domestic partners and parents thereof, including domestic partners of any individual in (ii) through (v) of this definition; and (vii) any individual related by blood or affinity whose close association with the Covered Individual is the equivalent of a family relationship.
- l. “*Involved in Making or Administering*” means (i) with respect to a Public Official or employee, (a) overseeing the performance of a Contract or Subaward or having authority to make decisions regarding a Contract or Subaward or to interpret a Contract or Subaward, or (b) participating in the development of specifications or terms or in the preparation or award of a Contract or Subaward, (ii) only with respect to a Public Official, being a member of a board, commission, or other body of which the Public Official is a member, taking action on the Contract or Subaward, whether or not the Public Official actually participates in that action.
- m. “*Pass-Through Entity*” means a non-federal entity that provides a Subaward to a Subrecipient to carry out part of a federal program.
- n. “*Public Officer*” means an individual who is elected or appointed to serve or represent the Unit (including, without limitation, any member of the Governing Board), other than an employee or independent contractor of the Unit.
- o. “*Recipient*” means an entity, usually but not limited to non-federal entities, that receives a federal award directly from a federal awarding agency. The term does not include Subrecipients or individuals that are beneficiaries of the award.
- p. “*Related Party*” means (i) an Immediate Family Member of a Covered Individual, (ii) a partner of a Covered Individual, or (iii) a current or potential employer (other than the Unit) of a Covered Individual, of a partner of a Covered Individual, or of an Immediate Family Member of a Covered Individual.
- q. “*Subaward*” means an award provided by a Pass-Through Entity to carry out part of a federal award received by the Pass-Through Entity. It does not include payments to a contractor or payments to a contractor or payments to an individual that is a beneficiary of a federal program.
- r. “*Subcontract*” means mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of a Contract or a Subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

- s. “*Subcontractor*” means an entity that receives a Subcontract.
- t. “*Subrecipient*” means an entity, usually but not limited to non-Federal entities, that receives a subaward from a Pass-Through Entity to carry out part of a federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a federal awarding agency.
- u. “*Unit*” has the meaning specified in Section I hereof.

### **3.0 COI POINT OF CONTACT**

The county manager may appoint an employee of the Unit to have primary responsibility for managing the disclosure and resolution of potential or actual conflicts of interest arising under this Policy on a grant-by-grant or project basis. The individual with responsibility for managing the disclosure and resolution of potential or actual conflicts of interest under this Section III shall be known as the “*COI Point of Contact*.”

### **4.0 CONFLICT OF INTEREST STANDARDS IN CONTRACTS AND SUBAWARDS**

- v. North Carolina Law. North Carolina law restricts the behavior of Public Officials and employees of the Unit involved in contracting on behalf of the Unit. The Unit shall conduct the selection, award, and administration of Contracts and Subawards in accordance with the prohibitions imposed by the North Carolina General Statutes and restated in this Section IV.
  - i. G.S. § 14-234(a)(1). A Public Officer or employee of the Unit Involved in Making or Administering a Contract or Subaward on behalf of the Unit shall not derive a Direct Benefit from such a Contract or Subaward.
  - ii. G.S. § 14-234(a)(3). No Public Officer or employee of the Unit may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a Contract or Subaward by the Unit.
  - iii. G.S. § 14-234.3. If a member of the Governing Board of the Unit serves as a director, officer, or governing board member of a Covered Nonprofit Organization, such member shall not (1) deliberate or vote on a Contract or Subaward between the Unit and the Covered Nonprofit Corporation, (2) attempt to influence any other person who deliberates or votes on a Contract or Subaward between the Unit and the Covered Nonprofit Corporation, or (3) solicit or receive any gift, favor, reward, service, or promise of future employment, in exchange for recommending or attempting to influence the award of a Contract or Subaward to the Covered Nonprofit Organization.
  - iv. G.S. § 14-234.1. A Public Officer or employee of the Unit shall not, in contemplation of official action by the Public Officer or employee, or in reliance on information which was made known to the public official or employee and which has not been made public, (1) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by

such information or other information, or (2) intentionally aid another in violating the provisions of this section.

w. **FEDERAL STANDARDS**

i. **Prohibited Conflicts of Interest in Contracting.** Without limiting any specific prohibition set forth in Section IV(a), a Covered Individual may not participate in the selection, award, or administration of a Contract or Subaward if such Covered Individual has a real or apparent conflict of interest.

1. **Real Conflict of Interest.** A real conflict of interest shall exist when the Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward. Exhibit A attached hereto provides a non-exhaustive list of examples of (i) financial or other interests in a firm considered for a Contract or Subaward, and (ii) tangible personal benefits from a firm considered for a Contract or Subaward.

2. **Apparent Conflict of Interest.** An apparent conflict of interest shall exist where a real conflict of interest may not exist under Section IV(b)(i)(1), but where a reasonable person with knowledge of the relevant facts would find that an existing situation or relationship creates the appearance that a Covered Individual or any Related Party has a financial or other interest in or a tangible personal benefit from a firm considered for a Contract or Subaward.

ii. **IDENTIFICATION AND MANAGEMENT OF CONFLICTS OF INTEREST**

1. **DUTY OF DISCLOSE**

Each Covered Individual expected to be or actually involved in the selection, award, or administration of a Contract or Subaward has an ongoing duty to disclose to the COI Point of Contact, or the county manager if a COI Point of Contact has not been designated, potential real or apparent conflicts of interest arising under this Policy.

2. **NOTICE OF DISCLOSURE**

Upon the county manager's receipt of notice of a potential conflict of interest under this Section IV, the county manager shall consult with the county attorney to determine the appropriate action to be taken to address it and report such proposed action to the Governing Board.

II. **OVERSIGHT OF SUBRECIPIENT'S CONFLICT OF INTEREST STANDARDS**

a. **Subrecipients of Unit Must Adopt Conflict of Interest Policy.** Prior to the Unit's execution of any Subaward for which the Unit serves as a Pass-Through Entity, the county manager shall ensure that the proposed Subrecipient of Federal Financial Assistance has adopted a conflict of interest policy that satisfies the requirements of 2 C.F.R. § 200.318(c)(1), 2 C.F.R. § 200.318(c)(2), and all other applicable federal regulations.

- b. **Obligation to Disclose Subrecipient Conflicts of Interest.** The county manager shall ensure that the legal agreement under which the Unit makes a Subaward to a Subrecipient shall require such Subrecipient to disclose to the COI Point of Contact designated in the agreement any potential real or apparent conflicts of interest that the Subrecipient identifies. Upon receipt of such disclosure, the county manager shall disclose such information to the federal awarding agency that funded the Subaward in accordance with that agency's disclosure policy.

### **III. GIFTS STANDARDS**

- a. **Federal Standard.** Subject to the exceptions set forth in Section VI(b), a Covered Individual may not solicit or accept gratuities, favors, or anything of monetary value from a Contractor or a Subcontractor.
- b. **Exception.** Notwithstanding Section VI(a), a Covered Individual may accept an unsolicited gift from a Contractor or Subcontractor of one or more types specified below if the gift has an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of all gifts received by the Covered Individual pursuant to this Section VI(b) does not exceed \$50 in a calendar year:
  - i. honorariums for participating in meetings;
  - ii. advertising items or souvenirs of nominal value; or
  - iii. meals furnished at banquets.
- c. **Internal Reporting.** A Covered Individual shall report any gift accepted under Section VI(b) to the COI Point of Contact or the county manager if a COI Point of Contact has not been designated. If required by regulation of a federal awarding agency, the COI Point of Contact or county manager shall report such gifts to the federal awarding agency or a Pass-Through Entity for which the Unit is a Subrecipient.

### **IV. VIOLATION OF POLICY**

- a. **Disciplinary Actions for Covered Individuals.** Any Covered Individual that fails to disclose a real, apparent, or potential real or apparent conflict of interest arising with respect to the Covered Individual or Related Party may be subject to disciplinary action, including, but not limited to, an employee's termination or suspension of employment with or without pay, the consideration or adoption of a resolution of censure of a Public Official by the Governing Board, or termination of an agent's contract with the Unit.
- b. **Disciplinary Actions for Contractors and Subcontractors.** The Unit shall terminate any Contract with a Contractor or Subcontractor that violates any provision of this Policy.
- c. **Protections for Whistleblowers.** In accordance with 41 U.S.C. § 4712, Unit shall not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or

regulation related to a federal contract (including the competition for or negotiation of a contract) or grant: (i) a member of Congress or a representative of a committee of Congress; (ii) an Inspector General; (iii) the Government Accountability Office; (iv) a Treasury or other federal agency employee responsible for grant oversight or management; (v) an authorized official of the Department of Justice or other law enforcement agency; (vi) a court or grand jury; or (vii) a management official or other employee of the Unit, a Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.