

**NC DEQ Division of Water Infrastructure Guidance on
ARPA-Funded Projects and Engineering Services Procurement
February 28, 2022**

North Carolina Session Law 2021-180 authorizes the Division of Water Infrastructure (Division) to award American Rescue Plan Act (ARPA) State Fiscal Recovery Fund grants for drinking water, wastewater, and stormwater infrastructure projects. The guidance herein only refers to the projects funded from the ARPA State Fiscal Recovery Fund administered by the Division of Water Infrastructure.

The Uniform Guidance 2 CFR 200.317 through 2 CFR 200.327 gives minimum requirements for procurement, with 2 CFR 200.319(b) addressing engineering services procurement guidelines.

ARPA-funded projects must also adhere to North Carolina state law, specifically NC General Statute 143-64.31, Article 3D Procurement of Architectural, Engineering, and Surveying (A/E) Services. NCGS 143-64.32 cannot be used to exempt funding recipients from a qualification-based selection for A/E.

The following guidelines will be used by the Division for A/E procurement for ARPA-funded projects:

- (1) This guidance does not exempt recipients of ARPA funds from meeting current or future requirements or guidance provided by the U.S. Treasury.
- (2) Towns/Counties/Authorities (local government units, or LGUs) must select their Engineering Services (A/E) via a competitive qualification-selection-based (QSB) procurement process.
- (3) This QSB process may take place before or after the ARPA Request-for-funding form or funding application is sent to the Division.
- (4) Each LGU must document the QSB selection process for the A/E firm using the attached Certification Form. (See attached Certification form for A/E Firms). The RFQ announcement and selection process documentation must be made available to the Division upon request.
- (5) If an A/E firm assists a LGU in creating the RFQ or in evaluating responses to the RFQ for a LGU, this A/E firm is disqualified from responding to the RFQ itself.
- (6) Preparing a cost estimate to be used in a Division *ARPA Request-for-Funding* Form or an Application for funding does not disqualify an A/E firm from responding to a future RFQ for the project.

Please note that the above interpretation will be followed regardless of whether the A/E Services are funded using ARPA funds or other funds (such as local funds) for an ARPA-funded construction project.

Please also note that the above interpretation will be used for all ARPA-funded projects administered through the Division of Water Infrastructure, including those directly appropriated in S.L. 2021-180.

ARPA-Funded Projects and Design-Build Method of Construction Delivery

The Uniform Guidance 2 CFR 200.317 through 2 CFR 200.327 gives minimum requirements for procurement, with 2 CFR 200.320(b)(2)(iv) establishing that qualification-based selection (without price consideration) can only be used in A/E procurement. By contrast, according to Uniform Guidance, Design-Build procurement must additionally include price in the procurement process.

North Carolina General Statute § 143-128.1A authorizes a local government unit to contract with a single-entity Design-Builder to perform both engineering services and general contracting services. This procurement selection process is qualification-based alone.

SECTION 1.6. Part V of S.L. 2021-180 amended NCGS § 143-128.1A(c)(5) to additionally add pricing into the selection criteria for Design-Builders (see table below). This new amendment thereby aligns NCGS Design-Build procurement law with the Uniform Guidance.

For ARPA-funded projects in North Carolina, the procurement process, while including qualifications-based selection, must also include price.

The following guidelines will be used by the Division for Design-Build procurement for ARPA-funded projects:

- (1) This guidance does not exempt recipients of ARPA funds from meeting current or future requirements or guidance provided by the U.S. Treasury.
- (2) Towns/Counties/Authorities (local government units, or LGUs) can select a Design-Build delivery method if they choose. The selection of the Design-Builder must adhere to both Uniform Guidance (2 CFR 200) in addition to NCGS § 143-128.1A and the amendment to NCGS § 143-128.1A(c)(5). The selection must be according to a competitive qualification-selection-based (QSB) procurement process, which includes price.
- (3) This Design-Builder selection process may take place before or after the ARPA Request-for-Funding form or a Funding Application is sent to the Division.
- (4) Each LGU must document the Design-Builder selection process using the attached Certification Form. (See attached Certification form for Design-Build). The RFQ announcement and selection process documentation must be made available to the Division upon request.
- (5) If an A/E firm assists an LGU in creating the RFQ or evaluating responses to the RFQ for an LGU, this A/E firm is disqualified from responding to the RFQ itself (i.e., being part of a Design-Builder Team, which responds to the RFQ).
- (6) Preparing a cost estimate to be used in a Division Request-for-Funding Form or an Application for funding does not disqualify an A/E firm from responding to a future RFQ for the project.

<p>Uniform Guidance 2 CFR 200.320(b)</p>	<p>Methods of procurement to be followed</p> <p>(2) Proposals</p> <ul style="list-style-type: none"> (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical; (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections; (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
<p>SECTION 1.6. Part V of S.I. 2021-180 is amended by adding a new section to read as follows:</p>	<p>DESIGN-BUILD CONTRACTS USING CERTAIN FEDERAL FUNDS SECTION</p> <p>5.17.(a) Notwithstanding any other provision of law, any unit of local government (unit) that contracts for design-build services using federal funds subject to the procurement standards set forth in 2 CFR Part 200 (Uniform Guidance), in whole or in part, shall comply with either:</p> <ul style="list-style-type: none"> (1) G.S. 143-128.1A in its entirety and all applicable federal requirements related to the use of the federal funds. (2) All of the following: <ul style="list-style-type: none"> a. G.S. 143-128.1A(a), (b), (c), and (f). In satisfying the requirements of G.S. 143-128.1A(c)(5), the public notice of the request for qualifications shall be issued at least 7 days before the date of the opening of proposals. <u>The public notice shall identify all selection criteria, including price,</u> and the relative weight of the selection criteria. b. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the unit shall again solicit for design-builders. If as a result of the second solicitation not as many as three responses are received, the unit may make a selection as provided in sub-subdivision c. of this subdivision even though fewer than three responses were received. c. The unit shall select and commence contract negotiations with the design-builder whose response is ranked most advantageous to the unit based on the selection factors identified as provided in sub-subdivision a. of this subdivision. If a contract cannot be negotiated with the highest ranked design-builder, negotiations with that design-builder shall be terminated and negotiations shall be initiated with the next-highest ranked design-builder. d. All applicable federal requirements related to the use of the federal funds. <p>SECTION 5.17.(b) This section expires on December 31, 2025; provided, however, any design-build contract executed pursuant to this section prior to December 31, 2025, shall be valid and the unit may continue to make payments under the contract entered into prior to December 31, 2025, so long as the contract was executed as provided in subsection (a) of this section.</p>