

NO. **23 - 0006**

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF APPROVING THE)
BROADLINC PUBLIC DEVELOPMENT)
AUTHORITY (PDA) A FUNDING AWARD)
UNDER THE AMERICAN RESCUE PLAN)
ACT (ARP) ELIGIBLE CATEGORY)
BROADBAND OTHER (5.21))

RESOLUTION

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners has the care of County property and the management of County funds and business; and

WHEREAS, the American Rescue Plan (ARP) Act was signed into law on March 11, 2021 and Spokane County has been appropriated \$101,547,383 to combat the challenges created by the COVID-19 pandemic; and

WHEREAS, on May 10, 2021 as required by the U.S Treasury under the Coronavirus State and Local Fiscal Recovery Fund, Spokane County Chief Executive Officer Scott Simmons signed the award terms: and

WHEREAS, on April 26, 2022 the Spokane Board of County Commissioners, via Resolution 2022-0268 allocated \$3,000,000 of American Rescue Plan Act (ARP)/Coronavirus State And Local Fiscal Recovery Funds (CSLFRF) funding to Expenditure Category 5.21 Infrastructure Broadband: Other; and

WHEREAS, the Spokane Board of County Commissioners, on July 19, 2022 awarded via resolution 2022-0574 firms for up to \$2,600,000 of the original directed allocation and have determined to utilize the remaining balance of \$400,000 direct funds within Expenditure Category 5.21 Infrastructure Broadband for purposes of a broadband public development authority; and

WHEREAS, the Public Development Authority (PDA) BROADLINC as authorized via Resolution 2022-0845 submitted a project request to Spokane County for an allocation of up to \$400,000 toward the PDA initial startup costs until other revenues streams are received by the entity; and

WHEREAS, Jeff McMorris, Community Engagement & Public Policy Advisor, Heather Arnold, Grants Administrator, F. Dayle Andersen, Deputy Prosecutor Spokane County Prosecutor's Office, and with consultation from the contracted vendor Clifton Larson Allen (CLA), that as a sub-recipient under the terms and provisions of ARP, that the BROADLINC project qualifies as a sole source project per the ARP Sole Source Justification form.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Spokane County, pursuant to the provisions of RCW 36.32.120(6), the Proposal submitted by the BROADLINC PDA is consistent with the type of projects promoted by ARP funding and such

works will assist in addressing the necessary investments in Infrastructure Broadband: Other. The approval of these projects will result in increased capacity and resiliency in Spokane County through project completion occurring before the end of 2026; wherefore:

1. This selection and award does not constitute contract(s) with the entities of firms; and
2. The Community Engagement & Public Policy Advisor and Spokane County Grant's Administrator is authorized to negotiate on behalf of Spokane County and at other than public meeting, any agreements, change orders, annual term renewals or any other document(s) necessary to complete these projects, whether the values of such documents in the aggregate, or incrementally, and notwithstanding any limitation of value to the contrary in County Code Chapter 1.04; and
3. Either the Chairman of the Board, majority of the Board, Chief Executive Officer, or Senior Director of Finance & Administration is hereby authorized to execute, at other than an open meeting, any and all documents to implement this award as well as any subsequent amendments.
4. Each and every recital set forth herein above is adopted as Findings of Fact in support of this award.

APPROVED BY THE BOARD this 10th day of January 2023.



BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

Mary E. Kuny
Chair

Paul W. ...
Vice-Chair

ATTEST:

GINNA VASQUEZ
Ginna Vasquez, Clerk of the Board

AL ...
Commissioner

AM ...
Commissioner

CLIVE ...
Commissioner



SOLE SOURCE DECLARATION FORM

American Rescue Plan (ARP)

Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)

Funding Authority: U.S. Department of Treasury

CFDA# 21.027 – Coronavirus Relief Fund

Pursuant to County Code 1.04.120, the following Two conditions must both apply to your request for a Sole Source:

1. This purchase is available from only one source, and there are no alternates, and
2. This purchase has product differentiation that makes it unique in some respect from all other products. The uniqueness or unique feature must be of demonstrably real importance and benefit in the way the end item is to be used. (please contact the purchasing department with any questions).

Additionally, the below condition must apply to your request for a Sole Source:

1. Eligibility from the US Treasury for sole source eligibility based on current ARP category allowances accessed via this link: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>

Estimated Total Cost (including tax etc.) \$400,000

Start Date: December 13, 2022

End Date: December 31, 2026

The requesting agency must provide a response to the five questions below:

1. Explain why the requested good, service provider, supplier or manufacturer is the only product or service that can satisfy the requirements of the requesting department and explain why there are no alternates or why alternates are unacceptable. Be specific concerning specifications, features, characteristics, requirements, capabilities, compatibility and performance.

Pursuant to the provisions in RCW 43.330.530 through RCW43.330.538, Spokane County may coordinate with local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans promoting deployment of broadband infrastructure and greater broadband access, while protecting proprietary information. The purpose of such actions being to encourage, foster, develop, and improve affordable, quality broadband accessibility for underserved, and unserved communities and populations in Spokane County.

Spokane County, acting through the Board of County Commissioners, created a public development authority (PDA), BROADLINC, that will (i) oversee acquisition of broadband assets/infrastructure, as lead or co-applicant (where most appropriate), on behalf of member cities and towns of Spokane County, (ii) administer broadband assets/infrastructure for shared use and benefit with the

participating cities, towns and areas, and (iii) insure necessary broadband infrastructure and services delivery enhancements.

- II. Explain why the requested good, services provider, supplier or manufacture is the only practicable available source from which to obtain this product or service and describe the efforts that were made to verify and confirm whether, or not, this is so. (Obtain and include a letter from the manufacturer confirming, claims made by distributors of exclusive distributorship for the product or service, if, that is cited as a reason for this Sole Source.

See Resolution 22-0845 (attached) .

Various cities and towns within Spokane County will be under interlocal cooperation act agreements (ILAs) with the BROADLINC PDA for the sole purpose of regional broadband infrastructure capacity and services delivery expansion to such entities as authorized under RCW 35.21.730 through RCW 35.31.759 to further the general public health, safety, welfare and economic development opportunity from broadband infrastructure and accessibility expansion.

- III. Explain the consequence(s) to the County or Public, including an estimate of the impact (financial or otherwise), if this Sole Source is not declared.

As no other broadband PDA exists, the deliverables will not be completed for the public benefit. Without this Sole Source declaration, many area residents will remain without adequate broadband access.

- IV. Explain why the price for this product or service is considered to be reasonable

The funding is a reimbursement model only for eligible uses per the ARP/CSLFRF CFDA 21.027 FUNDING American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) Funding Authority: U.S. Department of Treasury CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds (see attached). Furthermore, BROADLINC must abide by State and Federal standards, open public records and prevailing wage for all work accomplished. Only approved expenses incurred will be reimbursed based on the original budget.

- V. Explain the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the taxpayer's dollars.

Due diligence was conducted by the project requestor, County Legal, County Grants Management and through their contracted firm Clifton Larson Allen (CLA) to see if other entities existed to service this request and justify the Sole Source declaration (see attached).



I hereby request that a sole source, as defined by RCW and/or County Code, be declared for procurement of the aforementioned statement of work, material, equipment, supply or service. I hereby certify under penalty of perjury under the laws of the State of Washington that I have performed a diligent search to determine other sources for this necessary purchase and assert a good faith determination that there are no other source for this needed for this procurement request; the statements contained herein are truthful and accurate to the best of my knowledge and ability.

Jeffrey McMorris, Community Engagement and Public Policy Advisor	<i>Jeffrey McMorris</i>
Print Name of Department Head or Designee	Signature
Board of County Commissioners	<i>January 4, 2023</i>
Department Name	Date



ARP/CSLFRF CFDA 21.027 FUNDING

American Rescue Plan (ARP)
Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)
Funding Authority: U.S. Department of Treasury
CFDA# 21.027 – Coronavirus State and Local Fiscal Recovery Funds

The Contractor specifically agrees to comply with all applicable state and federal laws, rules, regulations, requirements, program guidance, including but not limited to the following:

All applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies including, but not limited to: nondiscrimination laws and/or policies, Energy Policy and Conservation Act (PL 94-163, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil Rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (PL 93-288, as amended), Ethics in Public Services (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

Comply with all procurement requirements of 2 CFR Part 200.317 - 200.327. All sole source contracts expected to exceed \$50,000 must be submitted to Spokane County for review and approval prior to the award and execution of a contract.

Any contract awarded to the successful Contractor must contain and/or comply with the following provisions in accordance with 2 CFR Part 200.317 - 200.327:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;
- Termination for cause and for convenience by Spokane County or the Contractor including the manner by which it will be effected and the basis for settlement;
- Compliance with Executive Order 11246, "Equal Employment Opportunity," (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, as supplemented in Department of Labor regulations (41 CFR Chapter 60);
- For Capital Expenditure that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For all contracts in excess of \$100,000 with respect to water, sewer, or broadband that involve the employment of mechanics of laborers: Compliance with the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704) as supplemented by Department of Labor Regulations (29 CFR Part 5);
- For construction or repair contracts: Compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR part 3);
- For construction contracts in excess of \$2,000 when required by Federal grant program legislation: Compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);



- For construction contracts in excess of \$100,000 that involve the employment of mechanics and laborers: Compliance with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Compliance with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency;
- For contracts in excess of \$150,000: Compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended;
- Compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Federal awarding agency requirements and regulations pertaining to copyrights and rights in data;
- Access by Spokane County, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions;
- Retention of all required records for six years after Spokane County makes final payment and all other pending matters are closed;
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871);
- Notice of awarding agency requirements and regulations governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards (37 C.F.R. Part 401) and the standard patent rights clause (37 C.F.R. section 401.14);
- Compliance with Executive Order 13858 "Strengthening Buy-American Preferences for Infrastructure Projects" as appropriate and to the extent consistent with law; and
- Compliance with 2 C.F.R. § 200.216, prohibitions regarding certain telecommunications and video surveillance services or equipment are mandated by section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018).

Contractor must comply with Executive Orders 12549 and 12689 and 2 C.F.R. Part 180, which restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor must certify that it is not presently debarred, suspended or proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

Contractor must comply with the requirements of 31 U.S.C. § 3729-3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See also 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.



Contractor must maintain a Conflict of Interest Policy consistent with 2 CFR 200.318(c) that is applicable to all activities funded with the award. All potential conflicts of interest related to this award must be reported to Spokane County and/or U.S. Treasury

Contractor is required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

Contractor's costs must be compliant with 2 CFR Part 200 Subpart E Cost Principles.

Contractor must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, Member of Congress, an officer, or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning an award, making of any federal grant, federal loan, continuation, renewal, amendment or modification of any federal contract, grant loan, or cooperative agreement, and that if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award, the Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

In the event of the Contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, Spokane County may rescind, cancel, or terminate the contract in whole or in part in its sole discretion. The Contractor is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars, or policies.

Submit to Clerk of the Board with accompanying paperwork (Resolutions, Agreements, etc.)

AGENDA SHEET

SUBMITTING DEPARTMENT: Commissioners

CONTACT PERSON: Jeffrey McMorris

PHONE NUMBER: 509-477-2246

CHECK TYPE OF MEETING BELOW: **BELOW FOR CLERK'S USE ONLY:**

Regular Session Agenda

Clerk's Resolution No.	<u>23-0006</u>
Approved:	<u>Majority/Unanimous</u>
Denied:	<u>Majority/Unanimous</u>
Renews/Amends No.	_____
Public Works No.	_____
Purchasing Dept. No.	_____

AGENDA TITLE: IN THE MATTER OF APPROVING THE BROADLINC FUNDING AWARD UNDER THE AMERICAN RESCUE PLAN (ARP) ELIGIBLE CATEGORY BROADBAND OTHER (5.21).

BACKGROUND: (Attach separate sheet(s) if necessary): BROADLINC funding award under the American Rescue Plan (ARP) eligible category Broadband Other (5.21)

FISCAL IMPACT (Amount & source of funds): \$400,000 of funds directed to the eligible category Broadband Other (5.21)

REQUESTED BOARD ACTION: Approve

This Item will need to be codified in the Spokane County Code: No