

MISSOULA COUNTY
PURCHASING AND CONTRACTS POLICY

1. **Purpose.** This policy seeks to establish fair, open, and competitive procedures for selecting vendors of goods and services at various spending thresholds and to identify the contract form required given the circumstances of the purchase. This policy strives to comply with [MCA Title 7, Chapter 5, Part 23 “County Contracts”](#) and the applicable parts of [MCA Title 18, “Public Contracts”](#) and [Rule 2.5 of the Administrative Rules of the state of Montana, “State Procurement.”](#)
2. **Scope and Applicability.** This policy is applicable to all county departments and entities, for all acquisitions of goods or services. Departments may apply additional requirements as long as they are: a) equal to or more restrictive than the procedures and standards established in this policy and b) consistent with the purposes of this policy.
3. **Contract Authority.** The authority to enter into contracts for the benefit of Missoula County, its departments and entities is exercised by the Missoula County Board of County Commissioners. Department heads may execute invoice based contracts in accordance with [Section 9\(A\)](#). All other contracts must be approved by the Board of County Commissioners.
4. **Administration.**
 - A. Department heads are responsible for the implementation of this policy within their departments and for establishing procedures to demonstrate compliance.
 - B. The County Auditor shall provide general oversight and assistance to county departments in the administration of this policy and should be considered a resource for questions and information regarding purchasing and contracting. In that role the County Auditor’s responsibilities include, but are not limited to: assisting departments with conducting solicitations, providing sample language and documents, performing bid openings, serving on evaluation committees, and reviewing department documentation and procedures to verify compliance with this policy.
 - C. Although the County Commissioners have final authority for administration, interpretation, and application of the terms of this policy, it is strongly recommended that questions of interpretation be resolved with the County Auditor prior to seeking an interpretation or ruling from the Commissioners.

- D. The public has the right to inspect and copy all purchasing and contract documents with the exception of sealed bids and legitimate trade secrets as defined in [MCA 30-14-4](#). No fee will be charged for document inspection or to vendors who provide their own copying equipment. The procurement officer may impose reasonable conditions on the manner and time of the copying to avoid disruption and to protect public access to the records. When copies are made by procurement officer or designate, a fee will be charged consisting of 50 cents for the first copy and 25 cents for each page thereafter.

5. **General Guidelines.**

- A. Purchases or contracts shall not be artificially divided into separate projects or expenditures to circumvent the requirements of a more formal purchasing process.
- B. Long term service contracts for 12 months or more shall engage in the competitive process at least every 5 years according to the dollar thresholds established in this policy.
- C. Maintenance and service contracts related to underlying assets (e.g. software, road maintenance equipment) shall engage in the competitive process at the expiration of the expected useful life of the asset.
- D. If the bids/proposals received indicate that the cost of the goods or services sought will be greater than the amount budgeted, then a budget amendment must be approved by the Commissioners before the contract is submitted for approval.
- E. Awards shall be made to responsible vendors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such characteristics as integrity, compliance with public policy, record of past performance, and financial and technical resources.
- F. With the exception of individuals serving as jurors in District Court or Justice Court, all vendors must provide a Form W-9 to Finance before any payments for them will be processed.
- G. Unnecessary constraints shall not limit full and open competition. Examples of such constraints include:
 - i. Placing unreasonable requirements on vendors to qualify for business;
 - ii. Requiring unnecessary experience and excessive bonding;
 - iii. Writing unduly restrictive specifications;

- iv. Specifying a “brand name” product instead of allowing “an equal” product to be offered.
- H. No employee shall participate in the award and/or administration of a contract if a conflict of interest exists, whether real or apparent. Such a conflict arises when the employee has a special relationship as a related party to a vendor or potential vendor.
- I. No employee may solicit or accept gifts in excess of \$50, or of a substantial economic benefit tantamount to a gift, from potential or actual vendors.

6. Interpretation.

- A. If it is unclear which method of vendor selection to use, the decision shall always be made in favor of the more formal process.
- B. For items purchased multiple times during a fiscal year, the method of vendor selection shall be determined by the total value of the multiple purchases.
- C. For exchanges of property or services, this policy shall be interpreted to apply to the equivalent dollar value of the property or services to be exchanged.
- D. Summary flow charts are included with this policy for quick reference. However, the flow charts provide a summary only. To the extent that the flow charts are incomplete or inconsistent with the text of this policy, the text of the policy controls.

7. Definitions. When used in this policy, the following terms and expressions shall have the meanings set forth below.

- A. **Affidavit for Trade Secret Confidentiality:** A notarized statement submitted by an offeror’s attorney acknowledging that material included in a Request for Proposals (RFP) is open to public inspection except for information that meets the provisions of the [Montana Uniform Trade Secrets Act, MCA 30-14-4](#).
- B. **Bid:** A competitive price offer made by an intended bidder, usually in response to an Invitation for Bid (IFB).
- C. **Bidder:** Any seller submitting a competitive bid in response to an Invitation for Bid.
- D. **Bid security:** A guarantee in the form identified in [MCA 18-4-312](#) that the bidder/offeror, if selected, will enter into the contract as bid within 30 days; otherwise, the bidder or guarantor will forfeit the amount of the security.

- E. **Competition:** The process by which two or more vendors vie to secure the business of a purchaser by submitting the most favorable bid or offer for the requested supplies or services.
- F. **Construction services:** Work performed by an individual in building construction, heavy construction, highway construction, and remodeling work.
- G. **Contract:** A legally enforceable written or verbal agreement between Missoula County and any other governmental, public, or private entity for the procurement of goods or services of any type.
- H. **Contractor:** Any individual or business having a contract with the county.
- I. **Emergency purchase:** A purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition that requires immediate action.
- J. **Goods:** Supplies, equipment, materials, commodities, specially manufactured products, etc acquired to conduct the routine activities of county government.
- K. **Invitation for bids (IFB):** A method for establishing a price on desired goods using a written description of the specifications or attributes of the items sought, published notice, and formal, sealed bids. The IFB, RFP, and RFQ are the most formal methods of vendor selection.
- L. **Invoice:** An itemized statement furnished to a purchaser by a seller, usually specifying the price of goods or services and the terms of sale. This is the least formal form of contract.
- M. **Limited solicitation:** A process for establishing a price on desired goods or qualifications for performing desired services that does not require sealed bids or proposals but does require documented competition. The solicitation is issued in writing and requires a written response. This is a medium level of formality for selecting a vendor.
- N. **MCA:** The Montana Code Annotated.
- O. **Non Construction Services:** Work performed by an individual, not including management, office, or clerical work, for: the maintenance of publicly owned buildings and facilities; grounds maintenance for publicly owned property; the operation of public drinking water supply, waste collection, and waste disposal systems; nursing, nurse's aid services, and medical laboratory technician services; material and mail handling; food service and cooking; motor vehicle and construction equipment repair and servicing; and appliance

and office machine repair and servicing. See [MCA 18-2-401](#) for a complete listing of non-construction services.

- P. **Offeror:** A vendor who submits a response to a Request for Proposals.
- Q. **Performance security:** A guarantee in the form identified in [MCA 18-4-312](#) that the bidder, if selected, will perform the specified work and will pay all laborers, suppliers, and subcontractors.
- R. **Professional Services:** Labor, time, or effort furnished by a person licensed, registered, or certified to provide such labor. The term includes, but is not limited to, architects, engineers, surveyors, attorneys, accountants, land use planners, and consultants.
- S. **Procurement:** The acquisition, with or without cost, buying, purchasing, renting, leasing, or otherwise obtaining goods or services. The term includes all functions that pertain to acquiring the goods or services, including the description of requirements, the search for and selection of sources, preparation and award of contract, and contract administration and monitoring. It does not include the acquiring of supplies or services by gift.
- T. **Procurement officer:** The employee of the department issuing an IFB, RFP, or RFQ responsible for administration of the procurement process.
- U. **Public works contract:** A contract for construction services or non-construction services in which the total cost of the contract is in excess of \$25,000.
- V. **Quote:** A method of establishing a price on desired goods, usually issued and obtained verbally. The lowest price quoted is generally used to select the vendor from whom the purchase will be made. This is the least formal method of vendor selection requiring documentation of competition.
- W. **Related party:** A vendor or potential vendor who has a special relationship (including personal, familial, or financial) with the county or an employee of the county. Disclosure of the existence of the special relationship is necessary to avoid the appearance of preferential access to county business.
- X. **Reputable county vendor:** A vendor that provides goods or services in its ordinary course of business and is duly licensed and operating in compliance with applicable laws and regulations. Consideration of vendor integrity, past performance for the county, and financial and technical resources may also be used as a guide to selection.
- Y. **Request for Proposals (RFP):** A formal process requesting vendors submit proposals to provide a solution to a problem or a need that a department has

identified. The county has the ability to evaluate an offeror's response in accordance with established or stated criteria. The IFB, RFP, and RFQ are the most formal methods of vendor selection.

- Z. **Request for Qualifications (RFQ):** A formal process of inviting statements of qualifications used to contract for professional services,, to prequalify contractors prior to issuing an IFB, or to prequalify a pool of vendors to provide services on a specific project or to utilize on an as-needed basis.. The IFB, RFP, and RFQ are the most formal methods of vendor selection.

 - AA. **Responsible:** The capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

 - BB. **Responsive:** A bid, offer, or statement of qualifications that conforms in all material respects to the requirements or specifications identified in an IFB, RFP, or RFQ.

 - CC. **Sealed bid:** A bid submitted in a sealed envelope to prevent dissemination of its contents before the deadline for submission of all bids.

 - DD. **Services:** Labor, time, or effort furnished by a vendor.

 - EE. **Solicitation:** A generic term used in lieu of the various methods of seeking competition for the goods and services desired by the County.

 - FF. **Specifications:** A detailed description of what the purchaser requires and what a bidder or offeror must offer to be considered for an award. A specification may be a description of the physical or functional characteristics, or the nature of a supply or service.

 - GG. **Vendor:** A person or company offering goods for purchase or services for hire.
8. **Procedures for Vendor Selection.** The procedures used for vendor selection depend on the type and amount of the expenditure and are addressed below in order of increasing formality and complexity. The County encourages the use of local vendors.
- A. **Reputable county vendor.** For purchases of goods and services less than \$10,000, any purchasing technique may be used that best meets the needs of a department. Although a vendor may be chosen without seeking competition, it is recommended that departments use prudent purchasing practices and obtain competitive prices when practical. The supplier selected must be a "reputable county vendor".

- B. Quote.** For purchases of goods or services more than \$10,000 but less than \$20,000, a quote process is used.
- i. The department contacts a minimum of three vendors to obtain a price on the desired item or service. Although price usually determines the vendor selected, other factors may be considered, such as: quality and/or availability of the articles or equipment desired, responsiveness to the specifications desired for the work to be performed or the goods to be supplied, past experience with the vendor, and/or status as a reputable county vendor. Vendor prices may be obtained verbally or through email, fax, or website posting.
 - ii. The department maintains a record of the items sought, the vendors contacted, the prices quoted, and the vendor selected. Any quote obtained from a Related Party must be documented and disclosed. If three vendors are not available, an explanation must be provided.
- C. Limited solicitation.** A limited solicitation process is used for the procurement of goods and services greater than \$20,000 but less than \$80,000, subject to the exception noted in [Section 8\(G\)](#) below for architectural, engineering, or land surveying services. The dollar range for use of a limited solicitation applies to the initial contract term and any possible renewal periods.
- i. The department develops a written opportunity for a minimum of three vendors to offer a price on the desired item or service according to the specifications established for the purchase. In addition to the description of the goods or services desired, vendors should be provided with other relevant information, including but not limited to: compatibility with other county equipment; date the supplies, services, materials, equipment must be delivered or be available for county use; anticipated duration of the need for the services requested; and any selection criteria, including relative importance, to be used in addition to price. The vendor is selected using the criteria stated in the limited solicitation.
 - ii. The department documents the solicitation process by maintaining a file including: the written solicitation, a summary listing of the vendor responses, and a complete copy of the vendor response selected. Responses shall be available for public inspection or telephone inquiry. If three vendors are not available, an explanation must be provided. Any solicitation received from a Related Party must be documented and disclosed.
- D. Invitation for Bids.** For procurement of goods, services, and equipment greater than \$80,000 where vendor selection is determined exclusively on price, an invitation for bid process is used. An IFB is also used for multiple

purchases of the same item when it is reasonably expected that the annual amount of such purchases will be greater than \$80,000. IFB for construction contracts have additional requirements discussed in [Section 8\(E\)](#) below. An RFQ process may be used to prequalify vendors before an IFB is issued. See Section 8(H) below.

- i. The department develops an IFB package which generally conforms to the sample documents available from the County Auditor. The package includes all pertinent information and specifications about the products or services sought.
- ii. The department arranges for notice of the IFB to be published for a minimum of two consecutive weeks in the newspaper under contract with the county to provide legal advertising. The final published notice must appear at least 3 days prior to the bid opening. The published notice shall contain: a brief statement about the procurement for which bids are sought, where complete specifications may be obtained if not provided in the published notice, the contact information for the county employee responsible for answering questions about the bid, specific bid requirements for contract or performance security, the initial contract term and any renewal periods, the address where bids are to be mailed, the due date and time for receipt of bids, and the location of the bid opening.
- iii. Bid security is required for all bids submitted in response to an IFB and must be provided in accordance with [MCA 18-1-201 through 206](#). Specifically:
 - a. Each bidder must provide a bid bond or other security in the amount of 10% of the bid price to protect and indemnify the county against the failure or refusal of the bidder to enter into the contract, if awarded.
 - b. The bond or other security is subject to forfeit if the bidder fails to enter into a contract within 30 days of bid acceptance.
 - c. The bid bond or other security must be in the form specified in [MCA 18-1-203](#) and payable to the county. Although other forms of security are allowed, the most common forms are cashier's check or bond executed by a surety corporation.
 - d. Bid security is returned to bidders whose bids are not accepted.
- iv. Requirements for performance security are determined on a case by case basis.
- v. Bids must be opened publicly at the time and place designated in the IFB. Each bidder and any member of the public has the right to be present,

either in person or by agent, and has the right to examine the bids after they have been opened and reviewed by a representative of the department issuing the IFB. A record must be maintained of the amount of each bid, any other relevant information, and the name of each bidder. After the bid has been awarded, all bids and bid documents must be open to public inspection.

- vi. The bid is awarded to the lowest responsible bidder.
 - a. If there are no out of state bidders, [MCA 7-5-2309](#) allows an optional bidding preference to a county resident whose bid is no more than \$500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder who is not a county resident.
 - vii. Any bid from and awarded to a Related Party must be documented and disclosed.
 - viii. The department issuing the IFB is responsible for maintaining complete documentation on the process including the text of the IFB, all responses received, proof of publication of the public notice, and a copy of the award contract.
- E. IFB – Public Works Contracts.** In addition to the requirements of [Section 8\(D\)](#), bid specifications and contracts for construction and non construction services greater than \$25,000 are subject to the following provisions:
- i. Contractor shall agree to:
 - a. Give preference to the employment of bona fide Montana residents in the performance of the work;
 - b. Include provisions for work that is performed at a project location to:
 - 1. Pay the travel allowance that is in effect and applicable to the district in which the work is being performed; and
 - 2. Pay the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed;
 - c. Post a copy of the applicable prevailing wage rates in a prominent and accessible site at the project location; and,
 - d. Maintain payroll records capable of certification for at least three years after completion of work under the Agreement.

- e. If the term of the contract calls for more than 30 months to fully perform, contractor further agrees to increase the standard prevailing rate of wages by 3% every 12 months after the contract award date and apply the adjustment every 12 months for the duration of the contract.
 - ii. **Performance security requirements.** In accordance with [MCA 18-2-201](#), all construction contractors shall execute a bond to secure performance on the contract and payment of workers, subcontractors, and suppliers. [MCA 18-2-201\(4\)](#) allows the bond requirement to be waived for contracts less than \$50,000.
 - iii. **Bidding preferences.** Per [MCA 7-5-2309\(2\)](#), if one or more out of state bidders respond to a IFB for construction, repair, or maintenance of a building, road, or bridge, a resident bidder must be allowed a preference if the state of the non-resident enforces a preference for residents.
- F. Request for proposals (RFP).** An RFP is used for procurement of goods and services greater than \$80,000 when it is desirable to incorporate factors other than cost into the selection criteria. It is recommended that a selection committee be used to consider complex or high dollar RFPs.
- i. The department develops an RFP package which generally conforms to the sample documents available from the County Auditor. The package includes all pertinent information about the products or services sought, as well as the selection criteria, relative importance, and scoring methodology that will be used to determine vendor selection. If the department wants to consider the proposals without reference to cost, RFP instructions must clearly state that cost information is to be submitted in a separate, sealed envelope and must not be included in the body of the proposal.
 - ii. The department arranges for notice of the RFP to be published for a minimum of two consecutive weeks in the newspaper under contract with the county to provide legal advertising. The final published notice must appear at least 3 days prior to the RFP due date. The published notice shall contain: a brief statement about the procurement for which proposals are sought, where complete proposal details may be obtained if not provided in the published notice, the contact information for the county employee responsible for answering questions about the proposal, any specific requirements for contract or performance security, the initial contract term and any renewal periods, the address where proposals are to be mailed, and the due date and time for receipt of proposals.
 - iii. Bid security as described in [Section 8\(D\)\(iii\)](#) above is required for all proposals, except those exclusively for services. Requirements for performance security shall be determined on a case by case basis. RFPs

for public works contracts greater than \$25,000 are subject to the prevailing wage requirements of [MCA Title 18, Chapter 2, Part 4](#). See [Section 8\(E\)\(i\)](#) above.

- iv. After the proposals have been opened and reviewed by the procurement officer, proposal documents may be inspected by the public, subject to the limitations of the Uniform Trade Secrets Act, [MCA Title 30, Chapter 14, Part 4](#). An attorney for an offeror claiming trade secret status for parts of an RFP response must complete an Affidavit of Trade Secret Confidentiality and clearly mark and separate any bona fide trade secret material. This information is removed before public inspection.
 - v. The award is made to the responsible and responsive offeror whose proposal obtains the highest score according to the stated evaluation criteria. No other criteria may be used.
 - vi. Any bid from and awarded to a Related Party must be documented and disclosed.
 - vii. The department issuing the RFP is responsible for maintaining complete documentation including the text of the RFP, all responses received, proof of publication of the public notice, copies of the scoring sheets used to evaluate the merits of the proposals, and a copy of the award contract.
- G. Request for Qualifications (RFQ).** A request for qualifications process is used to acquire professional services greater than \$80,000. A lower threshold of \$50,000 applies to architectural, engineering, or land surveying services, and procurement of these services must be consistent with [MCA Title 18, Chapter 8, Part 2](#). A provider of professional services is selected based on demonstrated competence and qualifications for the type of services desired at a fair and reasonable price.
- i. The department develops an RFQ which generally conforms to the sample documents available from the County Auditor. The package includes all pertinent information about the professional services sought, as well as the selection criteria to be used.
 - ii. The department arranges for notice of the RFQ to be published for a minimum of two consecutive weeks in the newspaper under contract with the county to provide legal advertising. The final published notice must appear at least 3 days prior to the RFQ due date. The published notice shall contain: a brief statement about the services sought, where complete details about such services may be obtained if not provided in the published notice, the contact information for the county employee responsible for answering questions about the services, the initial contract

term and any renewal periods, and the due date and time for receipt of materials.

- iii. The department evaluates statements of qualifications submitted by firms based on the following criteria:
 - a. The qualifications of the professional personnel to be assigned to the project;
 - b. Capability to meet time and budget requirements;
 - c. Physical location of firm;
 - d. Present and projected workloads;
 - e. Related experience;
 - f. Recent and/or current work for the county.
 - iv. After the preliminary evaluation of the firms' qualifications, the department conducts discussions with finalists and selects the firm best suited to provide services desired. A contract is then negotiated at a price that the department determines to be fair and reasonable given the estimated value of the services and the scope, complexity, and nature of such services.
 - v. The department issuing the RFQ is responsible for maintaining complete documentation including the text of the RFQ, all responses received, proof of publication of the public notice, copies of the scoring sheets used to evaluate the firms' qualifications, and a copy of the award contract.
- H. Request for qualifications – prequalification of bidders. An RFQ may be used to prequalify contractors for construction projects of significant complexity and cost. The RFQ process as outlined in G(i)-G(iii) and G(v) is used to select a minimum of three contractors for designation as “prequalified”; this group is then invited to respond to the project IFB. The bid is awarded to the lowest prequalified bidder.
- I. Request for qualifications – creation of prequalified vendor pools. An RFQ may be used to create a pool of at least three vendors to provide services on a project of uncertain duration with many individual sub-projects or to provides services on an as-needed basis. The RFQ process as outlined in G(i)-G(iii) and G(v) may be used to select a minimum of three contractors for designation as “prequalified”. The Facilities Manager may use labor rates per hour, 24/7 availability, markup on materials, and prior experience with the vendor or vendor references as prequalification criteria. As specific needs

arise, quotes are solicited from the prequalified vendor pool. If the scope of work exceeds \$80,000, an IFB is used. Project specific vendor pools expire at project completion. Vendors in pools for as-needed services must be re-qualified every three years. The department issuing the RFQ must maintain documentation to support the selection process.

9. Form of Contract.

A. **Invoice.** Although an invoice is a type of contract, it is frequently used in combination with a formal contract to bill services performed or products delivered to date according to contract terms. In certain circumstances, an invoice may be used on a standalone basis.

i. **When allowed.** An invoice based contract is allowed if:

- a. The total amount of the purchase is less than \$25,000 for goods or less than \$10,000 for purchases other than goods; or,
- b. The contract term is not more than 1 day (i.e., a single delivery of goods, or performance of services on a single day).
- c. Department has provided the Risk Management office with proof of the vendor's adequate workers' compensation, general liability, and/or other types of insurance as directed by the Missoula County Risk Manager before a purchase for services is made.

ii. **When not allowed.** An invoice based contract is not allowed for services if the conditions in 9(A)(i)(a) or (b) are not met. Additionally, an invoice based contract is not allowed if:

- a. The service involves contractors working directly with the public;
- b. The service involves contractors directly interacting with patients;
- c. The service involves inherently dangerous activities; or
- d. The department head believes there is risk or complexity warranting legal review, risk review, and/or commissioner signature.

iii. **Authority to contract.** Department heads or their designees are authorized to enter into invoice-based contracts when the requirements above are satisfied.

iv. **Payment procedure.** Invoice approval and payment is subject to the claims procedures established by the County Auditor.

B. Contract requirements.

- i. **When required.** A written contract is required for all purchases of goods and services which do not meet the criteria in [Section 9\(A\)\(i\)](#) for use of an invoice.
- ii. **Contract language.** All contracts must comply with any applicable legal requirements, including but not limited to the prevailing wage language required for public works contracts. Standard contracts for use with an independent contractor or an outside contractor are available from the County Auditor.
- iii. **Grant funded expenditures.** Any contract to be funded by one or more grants must conform to grant award documents and include any contract language required by the grant.
- iv. **Security requirements for contracts, in general.** Bonds or other security may be required for any contract, to secure performance and payment of workers, subcontractors, and suppliers. Security required for contracts other than construction shall be determined on a case by case basis.
- v. **Insurance requirements.** Contract provisions shall require the contractor to carry adequate workers' compensation, general liability insurance, and/or other types of insurance as directed by the Missoula County Risk Manager.
- vi. **Public works contracts.** All contracts for construction and non-construction services must include any provision required by law, including the requirements of [MCA Title 18, Chapter 2](#):
 - a. **Prevailing wage requirements.** In accordance with [MCA Title 18, Chapter 2, Part 4](#), all public works contracts in excess of \$25,000 must contain the provisions in [Section 8\(E\)\(i\)](#) above:
 - b. **Performance security requirements.** To comply with [MCA 18-2-201](#), performance security is required on construction contracts as a guarantee that contract provisions are performed and that laborers, suppliers, and subcontractors are paid. This provision may be waived for contracts less than \$50,000.
- vii. **Procedure for review of contract language.**
 - a. **Standard contracts.** Standard contracts for use with an independent contractor or an outside contractor are available from the County Auditor; these require review by the County Attorney, Human Resources, and the county Risk Manager prior to approval by the County Commissioners.

- b. **Non-Standard contracts.** Any non-standard contract or standard contract containing modifications to the boilerplate language must be reviewed by the County Attorney, Human Resources, and the county Risk Manager prior to approval by the County Commissioners.
 - c. **Public works contracts.** In accordance with [MCA 18-2-404](#), all public works contracts must be approved in writing by the County Attorney's office prior to execution of the contract by the Board of County Commissioners. Attorney approval of a public works contract must be documented on a Request for Commissioner Action before it is submitted to the Board of County Commissioners for execution.
- viii. **Contract renewal.** Upon expiration of a contract, the contract may be renewed after sufficient consideration of the following:
- a. The renewal periods are consistent with the original solicitation;
 - b. The total contract term, including extensions and renewals, does not exceed 5 years;
 - c. Funds are available to support the continued performance of the contract; and,
 - d. Contract renewal is in the best interests of the County.
 - e. A new contract must be submitted to the Board of County Commissioners for signature.

10. **Exceptions.** The following exceptions preempt the provisions of this policy.

- A. **Procurement under cooperative agreements with the US Environmental Protection Agency (EPA).** Procurement activities in connection with cooperative agreements with the EPA and contracts arising from such activities are subject to all provisions shown in Appendix A of this policy.
- B. **Direct negotiation.** When no bids or proposals are received in response to an IFB or RFP or if none of ones received are from responsible and responsive bidders or offerors, the procurement officer may:
 - i. Cancel and reissue the IFB or RFP. If the department elects to reissue the request for bids or proposals, the procurement officer shall attempt to increase the number of potential vendors by modifying the specifications, allowing more time for the preparation of responses, broadening the potential pool of vendors, etc.

- ii. Negotiate directly with a vendor. Subject to the approval of the County Auditor, the procurement officer may negotiate directly with a vendor or vendors if a determination is made that a subsequent IFB or RFP would also be unsuccessful.
 - iii. The department must document the circumstances that lead to direct negotiation for the desired goods or services.
- C. **Emergencies.** Under very limited circumstances, a department may need the flexibility to make an emergency purchase. Such purchases are typically made outside of the normal purchasing procedures due to the sudden and unexpected situation that requires immediate action. The following procedures must be considered when making a determination regarding an emergency purchase.
- i. The purchase shall be limited to the supplies or services necessary to address the emergency;
 - ii. Competition to the extent practical shall be obtained;
 - iii. The Board of County Commissioners and the County Auditor shall be notified as soon as possible about the need for emergency purchases and/or contracts;
 - iv. The department making the emergency purchase shall maintain a file of each emergency purchase, including the vendor's name, a list of supplies or services purchased and the amounts, and a brief description of the emergency conditions justifying the purchase.
- D. **Sole source purchases.** Under some limited circumstances, a department may need to consider making a sole source purchase for a supply or service available from only one known vendor. Because this purchase occurs without benefit of competition, departments should exercise great reluctance to use this procurement method.
- i. Sole source procurement is permissible under the following circumstances:
 - a. The compatibility of current services or equipment, accessories, or replacement parts is the paramount consideration;
 - b. There is no alternative, equivalent product to the one required;
 - c. There is only one acceptable or suitable source for the supply or service item;

- d. Grant terms specify the equipment to be purchased.
 - ii. For sole source purchases over \$10,000, the department shall complete a sole source justification form prior to purchase and submit it to the County Auditor for approval. The department shall maintain a record of all sole source purchases over \$10,000 and include:
 - a. The vendor's name;
 - b. The amount and date of the purchase;
 - c. The item or service purchased;
 - d. The approved sole source justification form.
- E. Time and materials invoicing.** A department may use an invoice based on time and materials in lieu of a standard contract when it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Prior written approval from the County Auditor is required to use time and materials invoicing. Labor rates must be established through a competitive process, and the department head or designate must monitor contractor performance during course of the work. An IFB must be used for any project likely to exceed \$80,000.

F. Other exceptions. This policy does not apply to:

- i. **Professional licenses and training** to maintain professional licensure or membership in professional accreditation organizations, including professional training, where relevant to the performance of an employee's work duties.
- ii. **Purchases from Missoula County Central Services.** Central Services shall comply with this policy for all purchases made on behalf of other departments including office supplies, copiers, paper, and motor pool vehicles.
- iii. **Purchases made under state bid contracts pursuant to [MCA 7-5-2308](#).** Under this exception, the state of Montana has engaged in the competitive procurement process.
- iv. **Purchases made through a membership in a purchasing alliance.** Under this exception, Missoula County has a membership in a purchasing alliance that serves public agencies. The purchasing alliance engages in a competitive process on behalf of its members. Missoula County is currently a member of the National Joint Powers Alliance and the US

Communities Government Purchasing Alliance. The County Auditor can provide further information about these organizations.

- v. **Purchases at public auction pursuant to [MCA 7-5-2303](#)** when, in lieu of soliciting bids, the department purchases at public auction a vehicle, road machinery, or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than \$60,000.
 - vi. **Regulated Utilities**, although any contract for a fixed price supply of energy must be signed by the Board of County Commissioners.
 - vii. **Services provided by a grant sub-recipient or a community based organization.** This policy does not apply to a non-County organization which is a sub-recipient with Missoula County on a grant or to a community based organization receiving funding from the Community Assistance Fund. However, county departments administering grants shall comply with other procurement regulations stated in the grant award documents.
 - viii. **Maintenance agreements** provided by an existing software vendor or software upgrades under software licenses.
11. **Variances.** The County Commissioners have the discretion to grant a variance from the provisions of this policy at the request of a department head. Prior to the vendor selection process or contract execution, a request for variance shall be made in writing, with a copy to the County Auditor; the department head shall present the case for the variance at an administrative meeting of the County Commissioners. To support the request for variance, the department head shall be prepared to demonstrate good cause for the variance, as well as:
- A. How compliance with legal requirements will be achieved;
 - B. How clear contract obligations will be formulated without undue exposure to liability;
 - C. How a fair and open process for the expenditure of public funds will be maintained.
12. **Vendor Protest Procedure.** A bidder or offeror aggrieved in connection with the solicitation or award of a contract may protest as follows:
- A. The protest must be in writing and state in detail all of the protestor's objections and allegations of violations of the Missoula County Purchasing and Contracts Policy and/or Montana state procurement law. The complete protest must be submitted to the County Auditor no later than 14 days after the execution of the contract in question. If the protest is not resolved by

mutual agreement, the County Auditor shall issue a written decision on the protest within 30 days after receipt of the protest.

- B. If the County Auditor rejects the protest, the reasons must be stated; and the protestor must be informed of the right to appeal the decision to the Board of County Commissioners. Such an appeal must be made in writing within 14 days of the date of the County Auditor's written decision.
- C. The Board of County Commissioners shall have a hearing within 30 days where the bidder or offeror has the opportunity to present arguments in the case.
- D. After the hearing, the Board of County Commissioners may deny the protest, or as appropriate, may order one of the following remedies:
 - i. If the contract has not yet been awarded and it is determined that a solicitation or proposed award of a contract is in violation of this policy or applicable law, the solicitation or proposed award may be cancelled or revised to comply with the law;
 - ii. If the contract has been awarded and the Board of County Commissioners determines that the solicitation or award is in violation of the law and the person awarded the contract has not acted fraudulently or in bad faith, the Commissioners may either:
 - a. Ratify and affirm the contract, provided it is determined that doing so is in the best interests of the County; or,
 - b. Terminate the contract and compensate the person awarded the contract for the actual expenses reasonably incurred under the contract prior to termination.
 - iii. If the contract has been awarded and the Board of County Commissioners determines that the solicitation or award of the contract is in violation of the law and the person awarded the contract has acted in bad faith, the Commissioners may either:
 - a. Declare the contract void; or,
 - b. Ratify and affirm the contract if that action is in the best interests of the County, without prejudice to the County's rights to appropriate damages.
 - iv. The County is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.

13. Real Property and Conservation Easements. Acquisitions of real property and conservation easements are subject to the provisions of [MCA 7-8-2202](#). Real property in excess of \$20,000 and conservation easements greater than \$80,000 are subject to valuation prior to purchase either by a certified general real estate appraiser or by three disinterested citizens appointed by a district court judge. Payment may not exceed such appraised value. Negotiations for such acquisitions shall be done in consultation with the County Attorney's Office.

Appendix A

Procurement under Cooperative Agreements with the US Environmental Protection Agency

Procurements completed under the auspices of Cooperative Agreements with the U.S. Environmental Protection Agency (EPA) shall comply with federal regulations at 40 CFR Part 33; 40 CFR Parts 30.40-48; and 40 CFR Part 31.36. Specifically, for procurements made as part of any such Cooperative Agreement, the County, in addition to compliance with the County procurement requirements identified above, the relevant Department shall:

(A) The Department shall review all proposed purchases in order to avoid purchasing unnecessary items and to limit purchases to necessary quantities, and shall review lease versus purchase options where and when appropriate to determine which would be the most economical and practical procurement.

(B) Solicitations for goods and services shall provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(C) No contract or sub-award will be entered into with parties that are debarred, suspended, or excluded from Federal assistance programs.

(D) To ensure nondiscrimination in the award of contracts under federal financial assistance agreements, the Department shall make good faith efforts to include Disadvantaged Business Enterprises in the procurement process. *Disadvantaged business enterprise (DBE)* means an entity owned or controlled by a socially and

economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program. All procurement efforts shall make the following good faith efforts whenever procuring construction, equipment, services and supplies under an applicable federal financial assistance agreement:

- i) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. The program will place DBEs on solicitation lists and soliciting them whenever they are potential sources.
- ii) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- iii) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- iv) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- v) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- vi) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

E. For all contracts subject to the provisions of 40 CFR Part 33 the Department shall include the following requirements:

(i) All contracts must require the prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the recipient.

(ii) All contracts must require that Missoula County must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(iii) Missoula County shall require of the prime contractor that if a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor shall employ the six good faith efforts described in §33.301 if soliciting a replacement subcontractor.

(iv) All contracts must require the prime contractor to employ the six good faith efforts described in §33.301.

(v) All contracts must require the prime contractor to provide EPA Form 6100-2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100-2 directly to the appropriate EPA DBE Coordinator.

(vi) All contracts must require the prime contractor to have its DBE subcontractors complete EPA Form 6100-3—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.

(vii) All contracts must require the prime contractor to complete and submit EPA Form 6100-4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

(viii) All contracts must contain this statement: The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

F. All contracts and subcontracts shall include the following provisions:

(i) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(ii) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions

where the contract may be terminated because of circumstances beyond the control of the contractor.

(iii) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, EPA may accept the bonding policy and requirements of the recipient, provided EPA has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(d) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(e) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, EPA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(f) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of the appendix to Circular A-110, as applicable.