

April 12, 2022

## MISSOULA COUNTY CONTRACTS POLICY

### **1. Purpose**

This policy seeks 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 and/or services. Departments may apply additional requirements if they are equal to or more restrictive than the procedures and standards established in this policy and consistent with the purposes of this policy.

### **3. 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 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 and providing sample language and documents. The County Auditor should **not** be considered an alternative to the Attorney’s Office for legal questions or Risk Management for risk or insurance questions.
- 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 documents except for 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.

### **4. General Guidelines**

- A. All contracts must go through legal review by the County Attorney’s Office and risk review by the County Risk Manager before being signed.

- B. All contracts over \$10,000 must be recorded by the Clerk and Recorder's Office.
- C. Contracts shall not be artificially divided into separate projects or expenditures to circumvent the requirements of a more formal purchasing process.
- D. Long term service contracts for 12 months or more shall engage in the competitive process at least every 7 years according to the dollar thresholds established in this policy.
  - i. Service contracts of less than seven years may be extended without engaging in a new procurement process as long as the total contract, including extensions, does not exceed seven years.
- E. 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.
- F. Per 18-4-313, MCA, the maximum contract term for hardware, software, or other information technology resources is ten years.
- G. 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.
- H. Apart from 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.

## **5. Contract Authority**

The authority to enter into contracts for the benefit of Missoula County, its departments and entities is generally exercised by the Missoula County Board of County Commissioners. All independently elected officials may sign contracts for their departments within their budgeted authority, though all parts of the Contracts Policy must still be followed, including legal and risk review, and recording of contracts. Department heads may execute invoice-based contracts in accordance with Section 6(A).

## **6. 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 services; or,
    - b. 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 8(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 claim's 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 6\(A\)\(i\)](#) 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.** Bid bonds, performance bonds, or other security may be required for any contract, to secure performance and payment of workers, subcontractors, and suppliers.
- 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 following provisions:
    - 1. 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:
        - i. Pay the travel allowance that is in effect and applicable to the district in which the work is being performed; and
        - ii. 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.

2. 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.
- 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.
- c. **Gross Receipts Tax.** Per [MCA 15-50-206](#), the county will withhold 1% of all payments due by a public contractor for all construction projects over \$5,000 as gross receipts tax and transmit that amount to the Montana Department of Revenue. Definitions of “public contractor” and “gross receipts tax” can be found at [MCA 15-50-101](#) and [15-50-205](#).

#### 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 7 years;
- c. Funds are available to support the continued performance of the contract;
- d. Contract renewal is in the best interests of the County.

A new contract must be submitted to the Board of County Commissioners for signature.

### **7. Exceptions**

The following exceptions preempt the provisions of this policy.

A. **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.

**B. 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.

## **8. 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.

## **Definitions:**

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

**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.

**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.

**Construction services:** Work performed by an individual in building construction, heavy construction, highway construction, and remodeling work.

**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.

**Contractor:** Any individual or business having a contract with the county.

**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.

**Goods:** Supplies, equipment, materials, commodities, specially manufactured products, etc acquired to conduct the routine activities of county government.

**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.

**MCA:** The Montana Code Annotated.

**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.

**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.

**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.

**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.

**Procurement officer:** The employee of the department issuing an IFB, RFP, or RFQ responsible for administration of the procurement process.

**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.

**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.

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

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

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

**Sustainability:** is a concept that promotes a future that meets today's needs without compromising the ability of future generations to meet their needs.

**Sustainable Procurement:** is the process of purchasing products and services in ways that promote fiscal responsibility, social equity, and community and environmental stewardship.

**Vendor:** A person or company offering goods for purchase or services for hire.