Montana Association of Counties
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County Purchasing/Procurement

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Purpose

To give county elected officials general guidance on procuring or purchasing materials or supplies, professional and general services, machinery, equipment, contractors, etc.

General Recommendation

Each county should consider policy that addresses all purchases by county employees and elected officials. The policy should take into consideration the overall size of the county budget, desired levels of oversight, Montana statute, grant program requirements, and federal procurement rules.

Small Purchases & Those Exceeding the Limit but less than Statutory Threshold ($80,000)

SMALL PURCHASES (INFORMAL)

Boards of County Commissioners (BOCC) are allowed, by policy, to define a small purchase. Anything under this amount, so long as it falls within the department's budgetary constraints, may be purchased by the department head at their discretion. The policy may direct that a process of getting quotes or other pricing is necessary for frequent or recurring purchases.

Key points…

- "Small" may mean anything up to $80,000.
- If desired, "small" is defined at the local level via policy.
- Nothing is required by statute.
- No process, bidding, or quotes are required; however, if it is a recurring purchase, then a process may be appropriate to ensure fiscal responsibility.
- Authorization for these purchases is generally left at the department level.
- Budget constraints still apply.
- Generally, set at $5,000 or less, but processes may be set for any level in policy.
- Grant programs or federally funded projects many require additional documentation/process.

PURCHASES EXCEEDING SMALL PURCHASE LIMIT BUT LESS THAN STATUTORY THRESHOLD ($80,000)

Recommendation: Departments should be required to solicit quotes or proposals from three vendors, if available. If less than three vendors are available, all available vendors should be solicited with documentation to that effect.

Key points…

- "Exceeding small purchase limit but less than statutory threshold" may be anything less than $80,000 depending on if a small purchase policy is adopted as outlined above.
- If desired, this is also defined at the local level via policy.
- Nothing is required by statute.
- Authority to approve these purchases is a local decision.
- Budget constraints still apply.
- A process should be established with requirements for quotes or other price comparisons.
- BOCC may require documentation submittal and/or maintain approval authority.
- Grant programs or federally funded projects will require a process ensuring free and open competition is utilized and may have specific requirements.

Suggestions

- Determine decision making authority (BOCC or department head).
- Develop specifications in writing prior to soliciting quotes/pricing.
- Identify vendors or service providers.
- Contact at least two vendors or service providers.
- Evaluate quotes and responses.
- Determine responsive and responsible quote at lowest price.
- Maintain documentation.
- If there is only one qualified vendor or service provider, document it along with rationale.

REGARDING BOTH SMALL PURCHASES & THOSE EXCEEDING THE STATUTORY LIMIT ($80,000) …

The County has a great deal of latitude based on local circumstances, but MACo recommends adoption and implementation of a formal policy that provides for controls that make sense. Consult your county attorney and your auditor prior to adoption. If contract authority is delegated to an elected office or department head, that contract authority must be included in a resolution as part of the budget adoption process.

Purchases of $80,000 or More (excluding architectural, engineering, and land surveying)

State statute (MCA 7-5-2301) triggers bid requirements at greater than $80,000. However, nothing prevents a county from implementing a restriction at a lower amount, **through policy**. This section speaks to the general circumstances that would surround a purchase or request of greater than $80,000.

If the county is buying machinery, equipment, materials, or supplies and the cost exceeds $80,000, the county MUST bid UNLESS a statutory exemption exists. Those exemptions include auction purchases, printing and advertising contracts, emergencies, cooperative purchasing, and energy performance contracts. In all instances where you believe an exception may apply, consult your county attorney.

The bidding requirements apply to the purchase of things and do not cover the purchase of services such as insurance, inmate medical care, consultants, and similar nonmaterial purchases. However, a county should consider adopting a policy regarding the acceptance of proposals for major service purchases.

Key points…

- Should be contemplated and included in any adopted procurement/purchasing policy.
- County may set the threshold at a lower amount but not higher.
- Statutory requirements apply (MCA 7-5-2301).
- Requires bidding and proper notice (MCA 7-1-2121).
- Every contract subject to bidding **must be let to the lowest responsible bidder**. There are limited exceptions to this:
  - → MCA 7-5-2309 provides optional bidding preferences
  - → MCA 18-1-102 provides for reciprocity/in-state contractor preference guide
    - * Preference for Montana contractors limited to amount equal to what competitive bidders' state allows for preference.
- Dividing contracts to circumvent bidding requirements is prohibited (MCA 7-5-2305).
- Maintain all documentation of public notice (affidavits of publication), bid tabulation, etc.

Limited Exemptions Exist…

- Auction Purchase – MCA 7-5-2303 – Allows for purchases at public auction of vehicles, machinery, equipment, materials, and supplies up to $150,000.
- Printing and Advertising – MCA 7-5-2304 – Provides an exemption from bidding requirements for public printing entered into in accordance with Title 18, Chapter 7, Part 4 (call for bids from printing companies and qualifying newspapers).
- Emergencies – MCA 7-5-2304(2) – Provides an exemption from bidding requirements for emergencies declared by the BOCC in consultation with the county attorney. These may include but are not limited to items made necessary by fire, flood, explosion, storm, earthquake, epidemic, and riot. It does not include poor planning.
- Cooperative Purchasing – MCA 7-5-2304 – Provides an exemption for bidding requirements for purchase through a cooperative purchasing agreement as defined in MCA 18-4-401, to include procurement *conducted by or on behalf of more than one public procurement units*. If a county wants to engage directly with a purchasing service cooperative, such as Sourcewell, the county attorney should offer an opinion on whether the county can engage directly with the purchasing service cooperative in lieu of going through the State Procurement Bureau.
- Energy Performance Contracts – MCA 7-5-2315 – Exempts energy performance contracts.

NEW Conflicts of Interest: Effective October 1, 2025, HB 683 (2025) requires that a governing body shall not award a construction contract to a contractor that has a financial interest with a person, employee, contractor, subcontractor, or entity that has participated in the design or engineering of the project without a disclosure of the conflict. Disclosure of any conflicts of interest for any county construction contract must occur at the time of bidding. Failure to disclose conflicts of interest result in a bid being deemed nonresponsive. Before a contract award, the governing body shall hold a public meeting and receive public comment on disclosed conflicts and may determine and stipulate any appropriate remedies. For the purposes of disclosure, "financial interest" means "ownership of a legal or equitable interest of 24% or more or a relationship as director, advisors or other active participant in the affairs of a party."

Architectural, Engineering & Land Surveying Procurement

Also known as Request for Proposal(s) (RFP) or Request for Qualifications (RFQ). Identify these services based on qualifications first and then negotiate price second. If the county determines that one or more terms contracts are in its best interest, identify the types of services that may come up during the term and evaluate the respondents accordingly.

Key points…

- Different method of selection – determine qualifications 1st and negotiate pricing 2nd.
- Must be publicly noticed that the services are required (MCA 7-1-2121).
  - → Per occasion/project and/or generally announcing your projected requirement for any category or type.
  - → Notice should contain a brief summary of the services, contact information, and reference to the full RFP/RFQ and how to obtain a copy.
- Required Criteria (MCA 18-8-204):
  - → Qualifications of the professional personnel to be assigned
  - → Capability to meet time and project budget requirements
  - → Location
  - → Present and projected workloads
  - → Related experience on similar projects
  - → Recent and current work for the county
- Full RFP/RFQ will detail the required submittal criteria listed above, how the county will rank/score the proposals, any length limitations put on the submittals, contact information, background information, and anything else deemed relevant to assist in the respondent's ability to properly respond.
- Select the firm by evaluating statements of qualifications and performance data (MCA 18-8-204).
  - → Evaluate written responses.
    - * Ranking should be based on pre-determined scale using the required criteria above and as outlined in the full RFP/RFQ (i.e., assign points to each for a total of 100).
  - → Conduct discussions (interviews) with one or more firms regarding anticipated concepts and the relative utility of alternative methods of providing services.

* Again, assessment method of those interviewed should be pre-determined and combined with the evaluation of written criteria.

→ After conducting the evaluation of firms pursuant to MCA 18-8-204(1) & (2)(b), the county may enter into a contract with one or more of the firms on an as needed basis for one or more projects and for a term to be mutually agreed upon the parties.

* Even if the county enters a contract for a specific term, that does not preclude it from going through the selection process for a specific project

— Negotiation for a specific project:

→ Negotiate a contract with the most qualified firm at a price that the county determines to be fair and reasonable taking into account the estimated value, complexity, scope etc.

→ If the county is unable to negotiate a satisfactory contract with the selected firm, negotiations with that firm must be formally terminated and the county shall select the next firm and repeat.

— Negotiation for general services or "as needed":

→ MCA 18-8-204 allows for procurement of one or more firms on as as-needed basis and allows for solicitation that may meet a variety of needs. For example, the county may have advertised for services ranging from bridges to airports and the selected engineer for bridges may be different than the one selected for airports. In this instance, separate ranking for each type of service may be necessary based on the different professional needs. Depending on how the selection process/ranking comes out, more than one contract may need to be negotiated.

→ The as-needed language also means that the county may not have specific projects identified and thereby project specific cost negotiations may be impossible. In this instance, hourly personnel rates and reimbursable rates may be negotiated for general inquires or intermittent requests, but project specific costs should be negotiated as the tasks or projects arise and an addendum or "task order" added to the as-needed/term contract. Worded another way, negotiate the project specific costs at that time with engineers that have been selected following MCA 18-8-204 and whom are under contract for as-needed services. Alternatively, the county may advertise for the specific project and go through the procurement process even if firms are under contract on an as-needed basis.

NEW **Conflicts of Interest: Effective October 1, 2025, HB 683 (2025)** requires that a governing body shall not award a construction contract to a contractor that has a financial interest with a person, employee, contractor, subcontractor, or entity that has participated in the design or engineering of the project without a disclosure of the conflict. Disclosure of any conflicts of interest for any county construction contract must occur at the time of bidding. Failure to disclose conflicts of interest result in a bid being deemed nonresponsive. Before a contract award, the governing body shall hold a public meeting and receive public comment on disclosed conflicts and may determine and stipulate any appropriate remedies. For the purposes of disclosure, "financial interest" means "ownership of a legal or equitable interest of 24% or more or a relationship as director, advisors or other active participant in the affairs of a party."

Required Contract Provisions

BID BOND

— Required. MCA 18-1-201 requires bid security for all bids solicited by a county, school district, municipality, irrigation district, or other "public authority."

- Notice. MCA 18-1-202(1) requires that notice of the bid bond requirement be included in the "advertisement, request, or solicitation" for the bid. Must specify that a bid bond, guarantee bond, surety bond, cash, cashier's check, certified check, bank money order, or bank draft may be used to meet the requirement.
- Amount. MCA 18-1-202(2) sets a minimum of 2% for the amount bid for sale of bonds and 10% of the amount bid in other cases.
- Forfeiture. MCA 18-1-204 provides that the bid bond is forfeited if the bidder is awarded the contracts and refuses to accept it.
- Exceptions. None applicable to local government.

PERFORMANCE & PAYMENT BONDS

- Required. MCA 18-2-201 requires, as a condition of any construction contract, the execution and delivery of bonds guaranteeing completion of the work and payment of all laborers and suppliers of metal.
- Notice. The bonds are cost items, and the fact that they will be required should be noted in the bid specifications.
- Amount. 100% of the contract price.

PREVAILING WAGE FOR PUBLIC WORKS CONTRACTS IN EXCESS OF $25,000

- Required. MCA 18-2-422 requires public works contracts to contain standard prevailing wage rate.

MONTANA PREFERENCE

- Employment. MCA 18-2-403 requires inclusion of a contract provision requiring the contractor to give preference the employment of bona fide Montana residents, except when it conflicts with a collective bargaining agreement or a veteran's preference [MCA 18-2-403(7)(8)].
- Bidder. MCA 18-1-102 requires that for public contracts, there is no preference unless the nonresident bidder is from a state which enforces a preference, in which case the resident bidder is entitled to the same preference in evaluation bids.

NONDISCRIMINATION

- Required. MCA 49-3-207 provides that every local contract or subcontract for construction of public buildings or for other public work must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of any protected classes by the persons performing the contract.
- Exceptions. None. MCA 49-3-102 makes the requirement applicable to all local governments.

WORKERS' COMPENSATION

- Required. MCA 39-71-401 requires contractors to carry workers' compensation on their employees. While a county is not required to demand proof of workers' compensation coverage in a contract, it is recommended since the policy consideration for making an injured worker whole will push toward finding that a county is liable if the contractor does not have coverage.

SAFETY PRECAUTIONS

- It is recommended that the contract also include a provision that requires the contractor provide for the safety of other persons and property, included but not limited to traffic control, signage, barriers, and other actions.

OTHER INSURANCE

- Broad-form liability insurance should be required which shows the county or other entity as an additional named insured. The contract should also include a requirement that the contractor defend and indemnify the county against any claim arising out of the performance of the contract not attributable to the county's negligence (MCA 18-2-124).

COMPLIANCE WITH ALL LAWS AND REGULATIONS

- A general provision that makes the contractor responsible for compliance with all laws and regulations applicable to the work and which requires the contractor to use only properly licensed workers when the work being performed requires such licensure is also advisable. If the work requires a building permit, flood-plain permit, or whatever, the contract should specify who is to obtain the permit.

DISCLOSURE OF CONFLICTS OF INTEREST NEW

- Required. MCA § [TBA] requires a contractor with a financial interest with a person, employee, contractor, subcontractor, or entity that has participated in the design or engineering of a construction project, or that represents the owner in the oversight or management of the contracted project to disclose any conflict of interest. A bid that does not contain a conflict-of-interest disclosure is nonresponsive. Prior to formal award, the governing body shall, in a public meeting, receive public comment on disclosed conflicts and may determine or stipulate appropriate remedies.