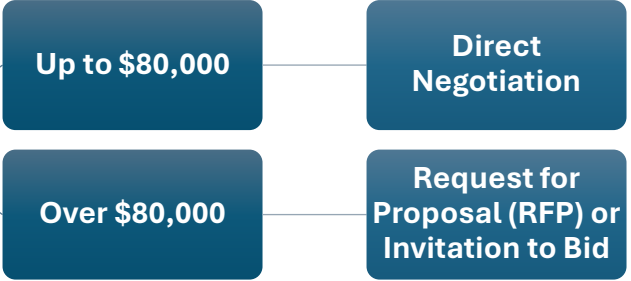


CD PROCUREMENT LAW AND IMPLEMENTATION INFORMATION

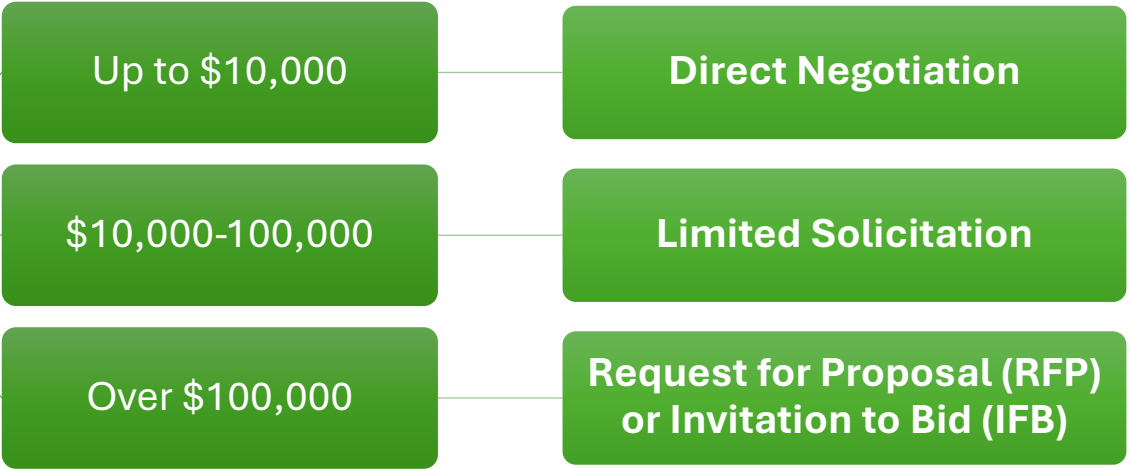
Architectural, engineering, land surveying. Contracts must comply with state procurement requirements provided in MCA 18-4-303 - 304.



Vehicles, machinery, equipment, materials, supplies, or for construction, restoration, or maintenance.



All other Services including auditing, accounting, and legal services.





Procurement is a function that exists in both the public and private sector for acquiring goods and services for an organization or government. Public procurement is the legal authority that advises, plans, obtains, and evaluates a government's expenses on goods and services that are used to fulfill any government activities, obligations, and objectives.¹

Procurement is an essential function within state and local governments to help reduce costs and generate savings, and participants in procurement should follow principles such as impartiality, flexibility, and effective use of public funds to ensure that they are keeping procurement transparent and fair.²

LAWS, RULES & Executive Orders

Procurement Law for the State of Montana: Title 18 Montana Code Annotated (MCA)

[State of Montana Procurement Resources](#)

Procurement Rules for the State of Montana: Administrative Rules of Montana Chapter 2.5

State of Montana Executive Orders:

Promoting Equal Pay for Montana Women – No. 12-2016

Providing for Internet Neutrality Principles in State Procurement – No. 03-2018, 06-2018

Procurement Law for Conservation Districts: Title 76 Chapter 15 Part 10 MCA

76-15-1001 Power to enter and execute contracts

76-15-1002 Services contracts

76-15-1004 Repealed

- Now MCA 76-15-1002, that requires services contracts to comply with state procurement law (higher thresholds)

76-15-1005 Requirements for purchases or construction contracts

- Now requires purchases or construction contracts to follow the selection criteria for proposals and bidding to comply with state procurement law. In MCA 18-4-303 and 18-4-304.

76-15-1006 Advertisements (required for RFQ, RFP, and competitive bidding)

- No change

76-15-1011 Exemptions from advertising and bidding

- Increases limits to match state procurement law

76-15-1012 Terms and extensions

- Now requires terms and extensions match state procurement law for the selection criteria for proposals and bidding in MCA 18-4-303 and 18-4-304.

76-15-1013 Division of contracts prohibited

- No change

76-15-1014 Cooperative purchasing contracts

- No change

DEFINITIONS

Architectural, engineering, and land surveying: Means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

Contract: A contract is an agreement to do or not to do a certain thing pursuant to MCA Title 28, Chapter 2. It is essential to the existence of a contract that there be: (1) identifiable parties capable of contracting; (2) their consent; (3) a lawful object; and (4) a sufficient cause or consideration. An executed contract is one the object of which is fully performed.

Construction Bid: This solicitation requires a bottom-line price, and the provider is selected based solely on price. The solicitation typically contains considerably more detail than an RFP and is often used for construction services and materials.

Direct Negotiation: This procurement is accomplished by contacting a preferred provider and negotiating an agreement for services. Competitive bid is not required.

Emergency: including but not limited to fire, flood, explosion, storm, earthquake, riot or insurrection, if the emergency is declared and recorded in the minutes of the board of supervisors meeting. (MCA 76-15-1011(1)).

Invitation for Bids: means all documents, whether attached or incorporated by reference, used for soliciting bids.

Licensed professional or licensed architect, professional engineer, professional land surveyor: Means a person providing professional services who is not an employee of the agency for which the services are provided.

Limited Solicitation: Requires at least 3 viable written or oral quotations, if available. The limited solicitation procedure must be documented.

Procurement: Acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Purchase Description: means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

Request for Qualifications (RFQ): Engineering and legal services are typically procured by requesting a statement of qualifications. Sometimes an RFQ response will list rates but does not provide a cost estimate. While project sponsors usually consider price when selecting a provider, it's not required.

Request for Proposals (RFP): This solicitation typically will require a project-specific budget with a cost estimate. Selection will be dependent, in part, on price.

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

Responsive: means conforms in all material respects to the invitation for bids or request for proposals.

Q&A

WHAT ARE THE PROCUREMENT REQUIREMENTS FOR DNRC GRANTS?

MCA 76-15-1001. Restriction on use of funds. A conservation district shall comply with state procurement laws when expending state-funded grants and loans.

WHAT ARE THE PROCUREMENT REQUIREMENTS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES?

MCA 76-15-1002. Contracts for architectural, engineering, and land surveying services as defined in MCA 18-8-202 must comply with the state public procurement requirements of Title 18, chapter 8, part 2.

WHAT ARE THE ADVERTISING REQUIREMENTS FOR CONSERVATION DISTRICTS?

MCA 76-15-1006. Advertisements. (1) The advertisement for requests for bids, proposals, or qualifications must be published in a newspaper of general circulation that includes the conservation district.

(2) A second publication may not be made less than 5 days or more than 12 days before the opening of bids.

(3) A second publication may not be made less than 5 days or more than 12 days before the deadline for the submission of a request for proposals or a request for qualifications.

WHAT ARE THE EXEMPTIONS FROM ADVERTISING AND BIDDING?

See MCA 76-15-1011 for additional information.

(1) When immediate delivery of supplies, equipment, or services is required in an emergency, including but not limited to fire, flood, explosion, storm, earthquake, riot, or insurrection.

(2) Supplies or services may be purchased without bid from government agencies if purchased at a substantial savings.

(3) For the purchase of vehicles, machinery, equipment, materials, or supplies or for construction, repair, restoration, or maintenance under \$80,000.

(4) Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a substantial savings over purchase.

WHAT IS THE DIFFERENCE BETWEEN A REQUEST FOR PROPOSAL AND AN INVITATION TO BID?

Invitation for Bids (IFB) vs. Request for Proposals (RFP)	
Invitation for Bid (IFB)	Request for Proposal (RFP)
Purpose: Specific well-defined project with exact specifications	Purpose: Needs and end results are clear
Specifications: Clear how end results should be met	Specifications: Methods for meeting needs are NOT clear. Input from vendors is needed on how requirements will be fulfilled to meet end result
Process: Sealed bid process where bids are opened publicly at a specific time.	Process: Competitive sealed proposals are opened and evaluated using the advertised criteria and relative importance
Evaluation Criteria: Price most important factor	Evaluation Criteria: Ability to meet technical requirements, experience & price
Outcome: A fixed-price contract	Outcome: contract with room for adjustments and revision during the project lifecycle.

Competitive Sealed Bidding Checklist (MCA 18-4-303)

1. Consult the Montana Code Annotated (MCA):
 - Start with Title 18, Public Contracts.
 - Look for specific sections pertaining to definitions (MCA 18-4-301).
 - Look for specific sections pertaining to advertisements (MCA 76-15-1006).
2. Seek Legal Counsel:
 - For definitive interpretation and to ensure full compliance, consult with legal counsel experienced in Montana public procurement law.

I. Invitation for Bids (IFB) Preparation

- 1. Issue an Invitation for Bids (IFB).
- 2. Include a comprehensive purchase description in the IFB.
- 3. Include all applicable conditions for the procurement in the IFB.

II. Public Notice

- 4. Give adequate public notice of the IFB.
- 5. Ensure notice is given a reasonable time before the bid submission deadline.
- 6. Follow departmental rules for public notice.
- 7. Consider publication in a newspaper of general circulation at a reasonable time before the bid submission deadline.

III. Bid Submission and Confidentiality

- 8. Do NOT allow public inspection of bids and other information received from bidders until notice of intent to award is provided.
- 9. After notice of intent to award, allow inspection by other bidders and the public, subject to limitations specified in 18-4-304(8).

IV. Bid Acceptance and Evaluation

- 10. Unconditionally accept bids without alteration or correction (unless authorized by this chapter).
- 11. Evaluate bids based *only* on the requirements set forth in the IFB.
- 12. Include criteria for acceptability in the IFB (e.g., inspection, testing, quality, workmanship, delivery, suitability).
- 13. Ensure that criteria affecting bid price and considered for award are objectively measurable (e.g., discounts, transportation costs, total/life-cycle costs).
- 14. Clearly set forth all evaluation criteria to be used in the IFB.

V. Bid Correction, Withdrawal, or Cancellation

- 15. Permit correction or withdrawal of inadvertently erroneous bids (before or after award) or cancellation of awards/contracts based on bid mistakes, in accordance with departmental rules.
- 16. Do NOT permit changes in bid prices or other provisions prejudicial to the state or fair competition after bid opening.
- 17. Support all decisions to permit correction/withdrawal or to cancel awards/contracts based on bid mistakes with a written determination by the department (unless otherwise provided by rule).

VI. Contract Award

- 18. If an award is made, make it with reasonable promptness.
- 19. Provide written notice to the lowest responsible and responsive bidder whose bid meets IFB requirements and criteria.

- 20. Apply preferences established by Title 18, chapter 1, part 1.
- 21. **If bids exceed available funds and lowest bid doesn't exceed by more than 5% (and time/economic considerations preclude re-solicitation):**
 - a. Director or head of purchasing agency may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder.
 - b. Negotiation may include changes in bid requirements to bring the bid within available funds.

VII. Alternative Bidding Process (Unpriced Offers)

- 22. If impractical to initially prepare a purchase description for price-based award, issue an IFB requesting unpriced offers.
- 23. Follow up with a second IFB limited to bidders whose offers were qualified under the first solicitation.

VIII. Tie Bids

- 24. In case of a tie bid, give preference to the bidder offering American-made products or supplies, if any.

IX. Post-Bid Notice

- 25. Prior to awarding a contract, provide public notice of intent to award.
- 26. Allow 7 days for the public to submit written comments regarding the proposed award.

Competitive Sealed Proposals Checklist (MCA 18-4-304)

1. Consult the Montana Code Annotated (MCA):
 - Start with Title 18, Public Contracts.
 - Look for specific sections pertaining to definitions (MCA 18-4-301).
 - Look for specific sections pertaining to advertisements (MCA 76-15-1006).
2. Seek Legal Counsel:
 - For definitive interpretation and to ensure full compliance, consult with legal counsel experienced in Montana public procurement law.

I. General

1. Determine if procurement of supplies and services will be made through competitive sealed proposals.

II. Request for Proposals (RFP) Solicitation and Notice

2. Solicit proposals through a Request for Proposals (RFP).
3. Give adequate public notice of the RFP in the same manner as provided in 18-4-303(2) (i.e., reasonable time before submission, departmental rules, newspaper publication consideration).

III. Proposal Confidentiality and Disclosure

4. Do NOT allow public inspection of proposals and other information received from offerors until notice of intent to award is provided.
5. After notice of intent to award, allow inspection by other offerors and the public, subject to the limitations in subsection (8).
6. **Prior to releasing proposals and other information received from offerors, evaluate whether public disclosure must be limited due to:**
- a. The Uniform Trade Secrets Act (Title 30, chapter 14, part 4).
 - b. Matters involving individual safety.
 - c. Other constitutional protections.

IV. Proposal Evaluation and Award

7. State the evaluation criteria and their relative importance within the RFP.
8. Use *only* the evaluation criteria set forth in the RFP for evaluation.
9. If an award is made, make it to the responsible and responsive offeror whose proposal *best* meets the evaluation criteria.
10. Ensure the contract file demonstrates the basis on which the award is made.

V. Proposal Discussions

11. The department *may* discuss a proposal with an offeror for the purpose of clarification or revision.

VI. Post-Proposal Notice

12. Prior to awarding a contract, provide public notice of intent to award a contract.
13. Allow 7 days for the public to submit written comments regarding the proposed award.

Request for Qualifications (RFQ) Checklist (Based on 18-8-204)

1. Consult the Montana Code Annotated (MCA):
 - Start with Title 18, Public Contracts.
 - Look for specific sections pertaining to "qualifications," "prequalification," or the initial stages of selecting professional services. While not explicitly named "Request for Qualifications" in the provided text, the process described in 18-8-204 (Procedures for selection of architectural, engineering, and land surveying services).
2. Seek Legal Counsel:
 - For definitive interpretation and to ensure full compliance, consult with legal counsel experienced in Montana public procurement law.

I. Purpose of the RFQ

- Clearly state the objective: What kind of services or project is anticipated?
- Explain that this is a pre-qualification step, not a request for pricing.

II. Background Information

- Provide a brief overview of the project or need.
- Include the government name and contact person for inquiries.

III. Required Submission Content (Qualifications)

- Firm's legal name, address, and contact information.
- Company background and history.
- Organizational structure.
- Resumes/CVs of key personnel proposed for the project.
- Relevant project experience (including similar projects, size, and complexity).
- References (client names and contact information).
- Information on financial stability (if applicable, though typically more detailed in an RFP).
- Copies of certifications, licenses, and professional registrations.
- Confirmation of ability to meet insurance requirements.
- Description of quality control procedures.
- Outline of the approach to project management.
- Indication of location/presence (if a relevant factor).

IV. Submission Instructions

- Specify the due date and time for submission.
- Detail the submission method (e.g., electronic, hard copy, number of copies).
- Outline formatting requirements (e.g., page limits, font size).
- Describe the inquiries/Q&A process (how to submit questions, deadline for questions).

V. Evaluation Criteria

- Qualifications of personnel.
- Capability to meet time and budget requirements.
- Location.
- Present and projected workloads.
- Related experience on similar projects.
- Recent and current work for the local government.

VI. Selection Process

- Provide a description of how firms will be shortlisted or selected.
- Outline the notification process for selected and non-selected firms.
- Include a statement that selected firms may proceed to an RFP or direct negotiation.

VII. Disclaimers

- State the right to reject any or all submissions.
- Clarify that there is no obligation to award a contract.
- Confirm that costs incurred by submitting firms are their sole responsibility.
- Address public record considerations (e.g., "trade secrets" clauses).

Evaluation Considerations:

I. Initial Qualification and Discussion

- 1. Encourage firms to submit annually or biennially a statement of qualifications and performance data.
- 2. Evaluate current statements of qualifications and performance data on file, along with new submissions for the proposed project.
- 3. Conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods for furnishing the required services.

II. Firm Selection

- 4. Select the firm considered most qualified to provide the services required for the proposed project.
- 5. Base selection on criteria established under agency procedures, guidelines, and applicable law.
- 6. Ensure agency procedures and guidelines are available to the public.
- 7. Ensure agency procedures and guidelines include, at a minimum, the following criteria as they relate to each firm:
 - a. Qualifications of professional personnel to be assigned to the project.
 - b. Capability to meet time and project budget requirements.
 - c. Location.
 - d. Present and projected workloads.
 - e. Related experience on similar projects.
 - f. Recent and current work for the agency.
- 8. If no other agency procedures are specifically adopted, follow these minimum criteria.

III. Local Agency "As-Needed" Contracts (Optional)

- 9. After evaluating firms (per sections I and II), a local agency *may* enter into a contract with one or more selected firms to provide services on an "as-needed" basis for one or more projects.
- 10. Mutually agree on the term of such "as-needed" contracts.
- 11. Understand that this does not prevent a local agency from following standard procurement procedures for a particular project, unless the "as-needed" contract provides otherwise.