



The Montana Department of
**Natural Resources
& Conservation**

CONSERVATION DISTRICT

Purchasing/Procurement Guide

Disclaimer: Please read this notice before relying on any information in this document. It is provided as guidance only and does not constitute legal advice. The information provided should not be interpreted or used as a substitute for a legal opinion from your county attorney or otherwise retained and qualified legal counsel. When considering which rules to follow (federal, state, or local requirements), an entity must comply with the most restrictive requirements.

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.

Adapted from Montana Association of Counties County Purchasing/Procurement White Paper

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PURPOSE

This white paper will give conservation district (CD) supervisors and staff general guidance on procuring or purchasing materials or supplies, professional and general services, machinery, equipment, and contractors.

GENERAL RECOMMENDATION

Each CD should consider adopting policies and procedures that address all purchases by CD employees and elected officials. The policy should take into consideration the overall size of the CD budget, desired levels of oversight, Montana statute, grant program requirements, and federal procurement rules. Please be advised that state and federal funds through grant and loans require compliance with *both* local procurement laws and rules *and* state and/or federal procurement laws and limits.

SMALL PURCHASES (LESS THAN \$10,000)

Anything under this amount, so long as it falls within the CD's budgetary constraints, may be purchased by the CD by conducting direct negotiation with a selected vendor. Locally adopted policies and procedures may direct that a process of getting quotes or other pricing is necessary for frequent or recurring purchases.

When implementing a definition of a small purchase, keep in mind that:

- Small purchases mean anything up to \$10,000¹ or up to \$80,000 ²for vehicles, machinery, equipment, materials, or supplies, or for construction, repair, restoration, or maintenance.
- A lesser limit may be adopted via local policy If desired.
- Budget constraints still apply.
- No process, bidding, or quotes are required, but if it is a recurring purchase then a formal process may be appropriate to ensure fiscal responsibility.
- Grant programs or federally funded projects may require different limits or require additional documentation/process.

¹ MCA 76-15-1011(3)(c)(i)

² MCA 76-15-1011(3)(a)

LIMITED SOLICITATION (\$10,000 - \$100,000³)

In the case of purchases between \$10,000 and \$100,000, CDs are required to solicit and document quotes or proposals from three vendors. If less than three vendors are available, all available vendors should be solicited with documentation to that effect. See the Limited Solicitation Worksheet.

Limited solicitations must consider:

- 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.
- 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 to enter into a contract;
- 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 according to recordkeeping requirements; and
- If only one qualified vendor or service provider, document along with rationale.

In the above two categories, the CD has a great deal of latitude based on local circumstances; best practice is to adopt a formal policy that provides for controls that make sense. Consult your county attorney and your auditor prior to adoption.

PURCHASES OF \$100,000 OR MORE (EXCLUDING ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING)

State statute (MCA 76-15-1011) triggers bid requirements at greater than \$100,000⁴. However, nothing prevents a CD from implementing a restriction at a lower amount through an adopted policy. This section speaks to the general circumstances that would surround a purchase or request of greater than \$100,000. If the CD is buying vehicles, machinery, equipment, materials, or supplies for construction, repair, restoration, or maintenance and the cost exceeds \$80,000,

³ MCA 76-15-1011(3)(c)(ii)

⁴ MCA 76-15-1011(3)(c)(iii)

the CD must bid unless a statutory exemption exists. In all instances where you believe an exception may apply, consult your county attorney. However, a CD should consider adopting a policy regarding accepting proposals for major service purchases.

Purchases of \$100,000, or more, must consider:

- Local policy should be contemplated and included in any adopted procurement/purchasing policy.
- Statutory requirements apply (MCA 76-15-1011).
- Exemptions exist, but are limited:
 - MCA 76-15-1011 provides an exemption from bidding requirements for emergencies declared by the CD Supervisors in an open meeting. These may include but are not limited to items made necessary by fire, flood, explosion, storm, earthquake, riot, or insurrection. It does not include poor planning.
 - Vehicles, machinery, equipment, materials, or supplies may be rented if the rental results in a substantial savings over purchase MCA 76-15-1011(4).
- Purchases that fall within this range require bidding through a Request for Proposals (RFP) or Invitation for Bids (IFB) with proper notice (MCA 76-15-1006).
 - RFPs must meet the requirements in MCA 18-4-304.
 - IFBs must meet the requirements in MCA 18-4-303.
- CDs may set the threshold at a lower amount but not higher.
- Dividing contracts to circumvent bidding requirements is prohibited (MCA 76-15-1013).
- Every contract subject to bidding must be let to the lowest responsible bidder.
- Maintain all documentation of public notice (affidavits of publication), bid tabulation, etc.

ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING PROCUREMENT

Architectural, engineering, and land surveying procurement require a 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.

- Different method of selection – determine qualifications first and negotiate pricing second.
- Must be publicly noticed that the services are required (MCA 18-8-203):
 - Per occasion/project and/or generally announcing your projected requirement for any category or type.

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- 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 CD.
- Full RFP/RFQ will detail the required submittal criteria listed above, how the CD 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 (MCA 18-8-203).
- 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 CD 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 by the parties.
 - Even if the CD enters into 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 CD determines to be fair and reasonable taking into account the estimated value, complexity, scope etc.
 - If the CD is unable to negotiate a satisfactory contract with the selected firm, negotiations with that firm must be formally terminated and the CD shall select the next firm and repeat.
- Negotiation for general services or "as needed":

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- MCA 18-8-204 allows for procurement of one or more firms on an as-needed basis and allows for solicitation that may meet a variety of needs.
- The as-needed language also means that the CD 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 inquiries 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 is to 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 CD may advertise the specific project and go through the procurement process even if firms are under contract on an as-needed basis.

ADVERTISING REQUIREMENTS FOR CONSERVATION DISTRICT

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.

TOTAL CONTRACT VALUE

The Total Contract Value (TCV) is the entire financial obligation of a contract, encompassing all payments, fees, and potential additional costs over the contract's lifespan. It includes not only the initial purchase price but also any recurring fees, renewal costs, installation, shipping, and other associated expenses. TCV is a significant factor that dictates the procurement process. When planning for a procurement, CDs must consider the TCV in determining the necessary steps and procedures for a given procurement. The planning tools and templates later in this document will help determine TCV.

CONFLICTS OF INTEREST

MCA 2-2-201 prohibits public officers, employees and former employees from having an interest in contracts. A CD procurement policy should maintain standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award and administration of contracts. No employee, officer, agent or board member with a real or

apparent conflict of interest may participate in the selection, award or administration of a contract. In the event a CD identifies a conflict of interest, either through disclosure or through the opinion of their county attorney, with the lowest responsible bid and the consulting firm managing the project, the county should disqualify the consulting firm from all portions of the project where the conflict exists.

Contracts should require disclosure of any potential conflicts of interest prior to any phase of an assigned project or proposed task order. Upon disclosure, the CD should determine whether the conflicts can be mitigated. If all conflicts cannot be fully mitigated, the CD should disqualify the firm from performing duties or task orders where any conflicts exist or will exist since the consulting staff cannot adequately advise a client or supervise a project when any such conflicts exist. Note that the procurement of services by another firm may be required if this occurs.

REQUIRED CONTRACT PROVISIONS

Bid Bond

- Required: MCA 18-1-201 requires bid security for all bids solicited by a CD, 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: Nonapplicable to local government.

Performance and 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.
- Exceptions: MCA 18-2-201(4) provides that a local government may waive for projects less than a certain dollar amount.

Prevailing Wage for Public Works Contracts in Excess of \$25,000

- Definition: "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for non-construction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000.
- Required: MCA 18-2-422 requires public works contracts to contain standard prevailing wage rate.
- Reference: Additional information on the State Prevailing Wage Rate can be found on the Montana Department of Labor and Industry website at: erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/.

Montana Preference

- Employment: MCA 18-2-403 requires inclusion of a contract provision requiring the contractor to give preference to 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.

Safety Precautions

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

Other Insurance

- Broad-form liability insurance should be required which shows the CD or other entity as an additional named insured. The contract should also include a requirement that the contractor defend and indemnify the CD against any claim arising out of the performance of the contract not attributable to the CD'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 other permits, the contract should specify who is to obtain the permit.

PURCHASING DECISION WORKSHEET

Use this worksheet to help guide your organization to select the appropriate procurement process.

1. Brief description of goods/services to be procured: (What exactly are you buying?)
2. Business need/problem statement: (Why are you buying this? What problem does it solve, or opportunity does it address?)
3. Define the requirements for the purchase:
 - a. Functional Requirements: (What the goods/services must do or must be capable of? Are there defined specifications? Is there a scope of work?)
 - b. Non-Functional Requirements: (How well the goods/services must perform, quality attributes?)
 - c. Compliance/Regulatory Requirements: (Any specific laws, regulations, or internal policies that must be adhered to?)
4. Is the service needed Engineering, Architectural or Land Surveying?
5. What is the required delivery or completion date?
6. Is the good or service a one-time purchase or ongoing purchase?
7. Ongoing purchase. How many years do you need the service?

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8. What is the organization's budget for the purchase?
9. What is the estimated cost for the purchase?
10. Ongoing purchase. What is the annual cost? What is the cost over the span of the years needed for the purchase?
11. Are the funds for the purchase from a state or federal source?

Definitions:

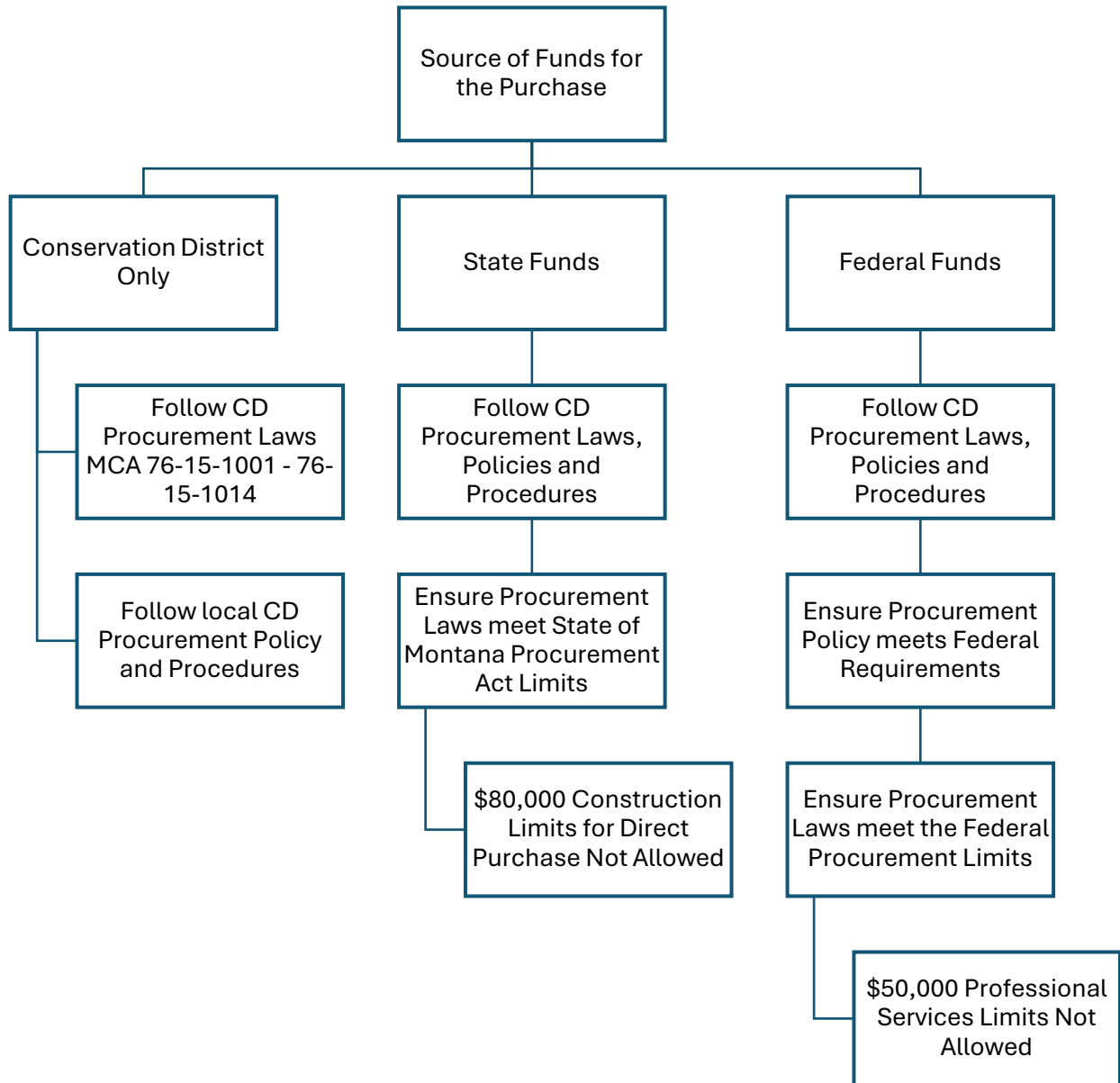
"Goods" generally refers to tangible, physical items that an organization acquires. These are products that can be touched, stored, and often have a quantifiable unit (e.g., number of items, weight, volume). Often described as supplies, equipment, or materials.

"Service" refers to intangible activities or work performed by an external provider for an organization, where ownership of a physical product is generally not transferred. Often described as professional (consulting, legal, accounting, auditing, marketing, advertising or training) or operational services (facilities management, IT support or temporary staffing).

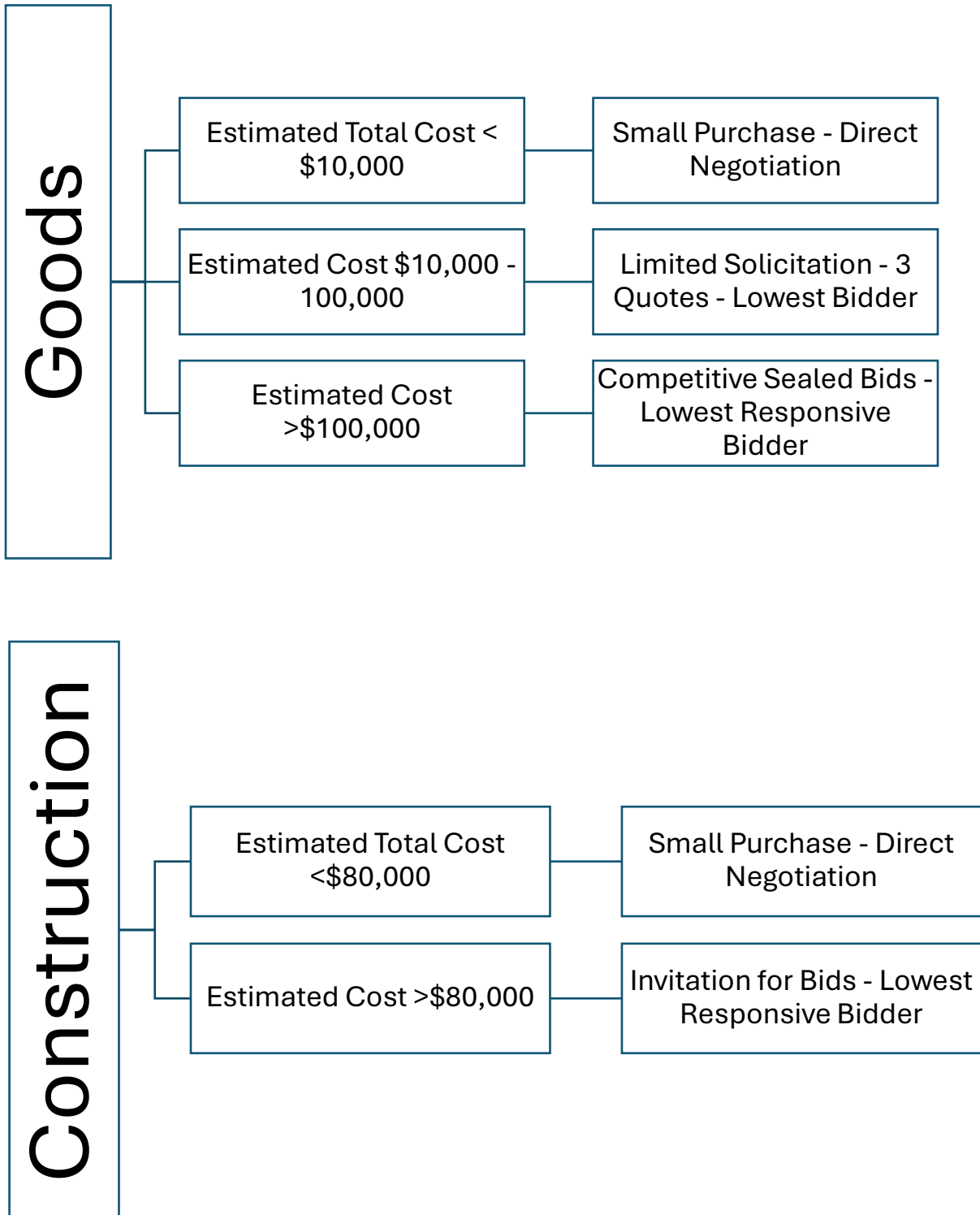
"Construction" refers to the process of acquiring the necessary "works," goods, and services required to build, alter, renovate, or maintain physical structures and infrastructure. This can include both goods (construction materials) and services (engineering, architecture, labor).

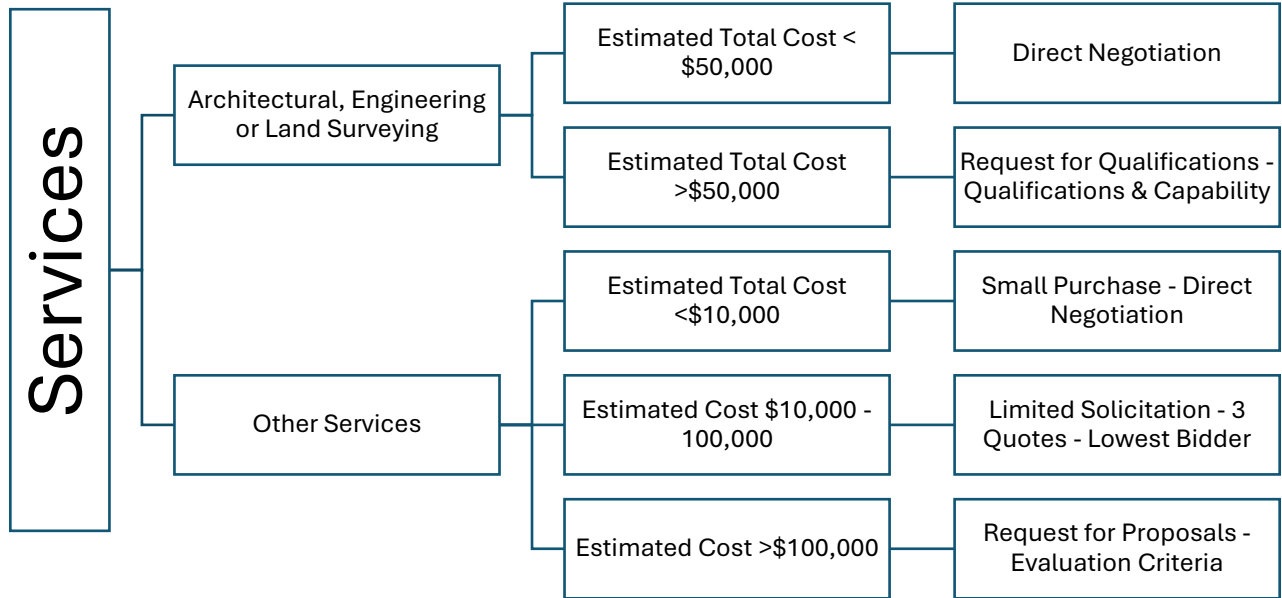
Goods vs. Services: While goods are tangible, services are intangible. Services involve an activity performed for the organization (e.g., consulting, cleaning services, legal advice, software). It's crucial for procurement to clearly distinguish between the two as they often have different contractual terms, performance metrics, and procurement processes.

PROCUREMENT DECISION TREE



PROCUREMENT REQUIREMENTS BY ESTIMATED CONTRACT VALUE





PROCUREMENT PLAN TEMPLATE

How to Use This Template:

1. Review and Adapt: Go through each section and determine if it's relevant to *your* organization. Some sections might be overkill for small, routine purchases, while others might need more detail for strategic, high-value procurements.
 2. Define Scoring: For the "Supplier Evaluation & Selection" section, decide on your scoring methodology (e.g., 1-5 scale where 1=Poor, 5=Excellent; or 1-10). Be consistent.
 3. Add Your Specific Policies: Integrate your company's internal policies, approval thresholds, and legal requirements directly into the worksheet.
 4. Create a Digital Version: While you can print this, consider creating a digital version (e.g., in Google Docs, Microsoft Word, or a dedicated procurement system) for easier collaboration, tracking, and record-keeping.
 5. Train Your Team: Ensure everyone involved in procurement understands how to use the worksheet and the importance of completing it thoroughly.
 6. Regularly Review: Periodically review and update the worksheet to reflect changes in your business needs, market conditions, or procurement best practices.
 7. Tiered Approach: For larger organizations, you might have different versions of this worksheet:
 - A simplified version for low-value, routine purchases.
 - A comprehensive version (like the one above) for medium-to-high value or strategic purchases.
 - An even more detailed version for extremely complex or critical procurements.
-

PROCUREMENT PLAN

Date Created: _____ Last Updated: _____

1. Project/Procurement Overview

- Procurement Title/Name:
- Project Manager/Lead:
- Date Initiated:
- Required Delivery/Completion Date:
- Brief Description of Goods/Services to be Procured:
- Business Need/Problem Statement:

2. Approvals

- Name/Department:
- Role/Responsibility in Procurement:

3. Requirements Definition

- Functional Requirements: (What the goods/services *must do or must be capable of*)
- Non-Functional Requirements: (How well the goods/services *must perform*, quality attributes)
- Compliance/Regulatory Requirements: (Any specific laws, regulations, or internal policies that must be adhered to)
- Security Requirements (if applicable):

4. Procurement Strategy: (See the Procurement Decision Tree)

- ☐ Request for Qualifications (RFQ)
- ☐ Request for Proposal (RFP)
- ☐ Direct Negotiation
- ☐ Limited Solicitation

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[] Competitive Sealed Bid

[] Emergency Purchase

[] Cooperative Purchase

- Reason for Sourcing Method Choice:
- Number of Potential Suppliers Identified
- Supplier Vetting Criteria: (What will you look for in a supplier?)
 - e.g., financial stability, industry experience, references, certifications, track record, availability
- Due Diligence Steps Taken: (e.g., reference checks, financial analysis, site visits, audit reports, suspension or debarment)

5. Supplier Evaluation & Selection

- Evaluation Criteria & Weighting: (Assign a weight to each criterion based on its importance. The sum of weights should be 100%)

EXAMPLE EVALUATION CRITERIA

EVALUATION CRITERION	DESCRIPTION	WEIGHT (%)	SCORE (1-5 OR 1-10)	WEIGHTED SCORE
COST/PRICE				
TECHNICAL FIT/FEATURES				
QUALITY/RELIABILITY				
SUPPLIER EXPERIENCE/REPUTATION				
SERVICE & SUPPORT				
DELIVERY/LEAD TIME				
PAYMENT TERMS				
RISK MITIGATION				

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INNOVATION/FUTURE CAPABILITY	
SUSTAINABILITY	
OTHER (SPECIFY)	
TOTAL	100%

- Supplier Proposals Received:
 - Supplier A: [Name]
 - Supplier B: [Name]
 - Supplier C: [Name]
- Summary of Key Differences between Top Contenders:
- Recommended Supplier(s):
- Reasoning for Recommendation: (provide a clear, concise justification based on the evaluation criteria and overall value)

6. Financial Analysis

- Budget Allocated:
- Proposed Cost (Supplier A):
 - One-time costs:
 - Recurring costs (monthly/annually):
- Proposed Cost (Supplier B):
 - One-time costs:
 - Recurring costs (monthly/annually):
- Total Cost of Ownership (TCO) Analysis (if applicable): (Consider maintenance, training, integration, disposal, etc.)
- Payment Terms: (e.g., Net 30, Upfront, Milestones)

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- Funding Source:
- Approval Authority Required:

7. Risk Assessment & Mitigation

- Potential Risks Identified: (e.g., Supplier failure, Project delays, quality issues, Cost overruns, Security breach, Integration challenges, Regulatory non-compliance)
 - Risk 1: [Description] - Likelihood: [High/Medium/Low] - Impact: [High/Medium/Low]
 - Risk 2: [Description] - Likelihood: [High/Medium/Low] - Impact: [High/Medium/Low]
- Mitigation Strategies: (How will you address the identified risks?)
 - Strategy for Risk 1:
 - Strategy for Risk 2:
- Contingency Plan (if applicable): (What is plan B?)

8. Contractual Considerations

- Key Contract Terms to Negotiate/Include:
 - [e.g., Service Level Agreements, Performance metrics, Warranties, Indemnification, Intellectual Property, Termination clauses, Data privacy, dispute resolution]
- Legal Review Required? ☐ Yes ☐ No
- Anticipated Contract Term: [e.g., 1 year, 3 years, ongoing]
- Renewal Options:

9. Approvals & Sign-offs

- Prepared By:
 - Name:

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- Title:
 - Date:
 - Signature:
- Reviewed By:
 - Name:
 - Title:
 - Date:
 - Signature:
- Approved By:
 - Name:
 - Title:
 - Date:
 - Signature:
- Approved By:
 - Name:
 - Title:
 - Date:
 - Signature:
- Approved By:
 - Name:
 - Title:
 - Date:
 - Signature:

10. Post-Decision & Next Steps

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- Communication Plan: (How will the decision be communicated to stakeholders and unsuccessful bidders?)
- Implementation Plan: (Brief outline of next steps after approval.)
- Performance Monitoring Plan: (How will you measure the success of this procurement?)
- Lessons Learned (Post-implementation): (To be completed after project completion.)

LIMITED SOLICITATION WORKSHEET

<u>PRODUCT/WORK DESCRIPTION OR BRAND/MODEL (Equipment)</u>			
	Vendor 1	Vendor 2	Vendor 3
1. Vendor Name 2. Contact Person 3. Phone/Email 4. Date of Outreach	1. 2. 3. 4.	1. 2. 3. 4.	1. 2. 3. 4.
Price Quoted			
Vendor Awarded*			

This procedure requires a minimum of three written or oral quotations, if available. The limited solicitation procedure must be documented.

COMPETITIVE SEALED BIDDING (IFB) 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

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

II. Public Notice

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

III. Bid Submission and Confidentiality

- ☐ Do NOT allow public inspection of bids and other information received from bidders until notice of intent to award is provided.
- ☐ 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

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

V. Bid Correction, Withdrawal, or Cancellation

- ☐ 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.
- ☐ Do NOT permit changes in bid prices or other provisions prejudicial to the state or fair competition after bid opening.
- ☐ 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).

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VI. Contract Award

- ☐ If an award is made, make it with reasonable promptness.
- ☐ Provide written notice to the lowest responsible and responsive bidder whose bid meets IFB requirements and criteria.
- ☐ Apply preferences established by Title 18, chapter 1, part 1.
- ☐ If bids exceed available funds and lowest bid doesn't exceed by more than 5% (and time/economic considerations preclude re-solicitation):
 - ☐ Director or head of purchasing agency may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder.
 - ☐ Negotiation may include changes in bid requirements to bring the bid within available funds.

VII. Alternative Bidding Process (Unpriced Offers)

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

VIII. Tie Bids

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

IX. Post-Bid Notice

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

COMPETITIVE SEALED PROPOSALS (RFP) 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

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

II. Request for Proposals (RFP) Solicitation and Notice

- ☐ Solicit proposals through a Request for Proposals (RFP).
- ☐ 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

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

IV. Proposal Evaluation and Award

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

V. Proposal Discussions

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

VI. Post-Proposal Notice

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

REQUEST FOR QUALIFICATIONS (RFQ) CHECKLIST (MCA 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.

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- ☐ 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

- ☐ Encourage firms to submit annually or biennially a statement of qualifications and performance data.
- ☐ Evaluate current statements of qualifications and performance data on file, along with new submissions for the proposed project.
- ☐ 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

- ☐ Select the firm considered most qualified to provide the services required for the proposed project.
- ☐ Base selection on criteria established under agency procedures, guidelines, and applicable law.
- ☐ Ensure agency procedures and guidelines are available to the public.
- ☐ 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.
- ☐ If no other agency procedures are specifically adopted, follow these minimum criteria.

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

- ☐ 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.
- ☐ Mutually agree on the term of such "as-needed" contracts.
- ☐ 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.

FEDERAL PROCUREMENT REQUIREMENTS

CDs that receive federal grant funds will be required to have documented procurement standards. Below is a checklist that CDs can use to ensure that the procurement policies meet the federal award or subaward requirements (2 CFR 200.318).

General Procurement Standards Checklist

I. General Requirements

☐ **Documented Procurement Procedures:**

- ☐ Maintain and use documented procurement procedures.
- ☐ Ensure procedures are consistent with state, local, and tribal laws/regulations.
- ☐ Ensure procedures align with federal standards and federal procurement limits.

☐ **Oversight of Contractors:**

- ☐ Maintain oversight to ensure contractors perform according to contract terms, conditions, and specifications.

II. Conflicts of Interest

☐ **Individual Conflicts of Interest:**

- ☐ Maintain written standards of conduct covering conflicts of interest for employees involved in contract selection, award, and administration.
- ☐ Prohibit participation in contract selection/award/administration by any employee, officer, agent, or board member with a real or apparent conflict of interest (including immediate family, partners, or employing organizations with a financial or tangible personal benefit).
- ☐ Prohibit solicitation or acceptance of gratuities, favors, or anything of monetary value from contractors.
- ☐ Set standards for situations where financial interest is not substantial or gifts are unsolicited items of nominal value (if desired).
- ☐ Provide for disciplinary actions for violations by employees, officers, agents, or board members.

☐ **Organizational Conflicts of Interest (if applicable):**

III. Efficiency and Cost-Effectiveness

- ☐ Avoidance of Unnecessary or Duplicative Items:
- ☐ Procurement Arrangements Using Strategic Sourcing:
- ☐ Use of Excess and Surplus Federal Property:
- ☐ Use of Value Engineering Clauses:

IV. Contractor Selection & Management

☐ **Responsible Contractors:**

- ☐ Award contracts only to responsible contractors with the ability to perform successfully.
- ☐ Consider contractor integrity, public policy compliance, proper employee

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classification, past performance, and financial/technical resources.

[] Procurement Records:

- []** Maintain records detailing the history of each procurement transaction.
- []** Include rationale for procurement method, contract type selection, contractor selection/rejection, and basis for contract price.

[] Time-and-Materials Type Contracts:

- []** Use only after determining no other contract is suitable.
- []** Include a ceiling price that the contractor exceeds at its own risk.
- []** Assert a high degree of oversight to ensure efficient methods and effective cost controls.

V. Dispute Resolution & Compliance

[] Settlement of Contractual and Administrative Issues:

- []** Responsible for settlement of all contractual and administrative issues (source evaluation, protests, disputes, claims).
- []** Report violations of law to the proper federal, state, or local authority.

[] Examples of Labor and Employment Practices (Optional, if applicable and consistent with regulations):

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.

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 three 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.

QUESTIONS & ANSWERS

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
 - (a) set forth the evaluation criteria to be used; and
 - (b) 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 substantial savings over purchase.

WHAT IS THE DIFFERENCE BETWEEN GOODS AND SERVICES?

While goods are tangible, services are intangible. Services involve an activity performed for the organization (e.g., consulting, cleaning services, legal advice, software). It's crucial for procurement to clearly distinguish between the two as they often have different contractual terms, performance metrics, and procurement processes.

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

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.