



## CONSERVATION AND RESOURCE DEVELOPMENT DIVISION

Renewable Resource Grant Program - RRG

Reclamation and Development Grant Program - RDG

### GUIDANCE FOR CONSTRUCTION PROJECTS NOT REGULATED BY DEQ

These guidelines are for DNRC-funded design and construction projects not regulated by Montana DEQ. Such project types may include irrigation, nonpoint source reduction, and certain stormwater, reclamation, or restoration.

#### State Agency Approval of Project Plans and Specifications

DNRC requires state agency review of project plans and specifications for any DNRC-funded design and construction project before a construction contractor is procured. The grant recipient must follow the appropriate steps depending on whether a project is on a facility regulated by the Montana Department of Environmental Quality (DEQ).

The grant recipient must determine whether a project is on a facility regulated by DEQ. The grant recipient should consult DEQ if unsure about their specific project.

#### Projects Regulated by DEQ – Follow and Document DEQ’s Process

For example, projects on public drinking water and wastewater systems.

1. Consult DEQ at the beginning of the project planning process.
2. Follow DEQ’s review and approval process.
3. Note anticipated DEQ review and approval milestones in the DNRC Project Schedule Form. Keep DNRC informed and updated on schedule updates via emails, quarterly reports, project calls, etc.
4. Provide DNRC Grant Manager with documentation of milestones as soon as documentation is available (draft plans and specifications sent to DEQ, DEQ approval letter, approved plans and specifications, bid documents, award, contract, etc.).

#### Projects NOT Regulated by DEQ – Submit draft bid documents, plans and specifications, and permits to DNRC for Technical Review

For example, irrigation, stream restoration, or some stormwater and replace-in-kind projects.

1. Upon grant start up, alert DNRC the project is NOT regulated by DEQ. DNRC will review draft project plans and specifications, draft bid documents, and permits.
2. Note anticipated DNRC review milestones in the DNRC Project Schedule Form. Keep DNRC informed on schedule updates via email, quarterly reports, project calls, etc.
3. Before selecting project vendors and/or bidding the project, submit draft project plans, designs, and/or specifications to DNRC for review. Note “For DNRC Review – XYZ Project Plans” in the email subject line.
  - DNRC will review the documents to ensure the project meets the terms and conditions of the grant agreement. DNRC will respond with review comments within two weeks.
  - DNRC does not regulate these projects and, therefore, does not “approve” the draft project documents; however, if bid documents do not meet the terms and conditions of the grant agreement, DNRC will not reimburse any associated expenses.
4. Once the grant recipient receives DNRC’s review comments, the grant recipient may proceed with procuring project vendors and/or bidding the project.

5. Grant recipient will send DNRC the final bid package, award, contract, and any remaining permits.

## Procurement

Grant recipients must follow all applicable procurement laws and guidance. See the document below for more information.

- DNRC's Procurement Guidance and Plan: [https://dnrc.mt.gov/docs/conservation/RD-Bureau/Bureau-Guidance/06\\_RDB\\_Procurement-Plan.pdf](https://dnrc.mt.gov/docs/conservation/RD-Bureau/Bureau-Guidance/06_RDB_Procurement-Plan.pdf).

## Engineering Services

The State of Montana requires projects to be designed and inspected during construction by a Montana registered engineer. Additionally, all land surveying projects must be performed by a Montana registered land surveyor. [MCA 18-2-121](#)

Procurement Method:

- Federal – Request for Proposals (RFP) – A procurement method in which a fixed price contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. [2 CFR 200.320\(b\)\(2\)](#)
- State of Montana – Request for Qualifications (RFQ) – Procedures for the procurement of licensed Engineers, surveyors and architects. [MCA 18-8-2](#)

Additional Resource:

- Midwest Assistance Program (MAP) How to Hire an Engineer is available on the DNRC website: <https://dnrc.mt.gov/Conservation/Conservation-Programs/WASACT/publications-and-resources>

## MEPA

DNRC must ensure each grant-funded project complies with the Montana Environmental Policy Act (MEPA) and as a condition of grant agreements. DNRC will not authorize the local government to advertise for bids until the appropriate MEPA decision is finalized. DNRC will not reimburse activities not included under the MEPA decision notice.

## Permits, Licenses, Authorizations

Grant recipients are responsible for obtaining all permits, licenses, or authorizations prior to initiation of the project or required to be obtained by the time of completion of the project to be eligible for reimbursement funds from DNRC.

Permits or authorizations may include but are not limited to:

- Beneficial Water Use Permits ([MCA 85-2-302\(1\)](#)), Change in Appropriation Right Authorization ([MCA 85-2-402\(1\)\(a\)](#)) or other requirement under the Montana Water Use Act;
- Sage Grouse Habitat ([Executive Order 21-2015](#));
- [Stream permitting requirements](#), including 310 or floodplain permits; and
- Other permits or authorizations that may be required by state, local, or federal agencies prior to beginning work on the project or project completion.

## Construction Bidding

Plans, specifications, and a construction cost estimate are required for bidding construction projects. Once drafted, bid documents may need to be reviewed and approved by the DNRC before advertising for

construction contracting or materials procurement. For infrastructure type projects, it is highly recommended to use the Montana Public Works Standard Specifications and the Engineers Joint Contract Documents Committee (EJCDC) to complete the Plans and Specifications/Project Manual.

### **Federal Requirements**

- Sealed Bids: [2 CFR 200.320\(b\)\(1\)](#)
- Bonding Requirements: [2 CFR 200.326](#)
- Contract provisions: [2 CFR 200.327](#)
- Special Provisions: [Uniform Specification Supplements Section 00900](#)
- Additional Agency or Program Requirements: Grants may have additional agency or program requirements. Refer to the specific grant program guidance for more information.

### **State Requirements**

A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)). Inspection does not need to be full time but is required during key milestones of construction. Key construction milestones may include checking grade before and inspection during liner installation, forming, placing rebar and pouring concrete, placing riprap, pipeline inspection before burial, final walkthrough, etc.

Invitation for Bids (IFB) [MCA 18-4-303](#) establishes requirements for Competitive Sealed Bidding including public notice, review and inspection, awards and preference. If an award is made, it must be made with reasonable promptness by written notice to the lowest responsible, qualified, and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by [MCA 18-1-102](#). Construction Contract Indemnification Provisions, [MCA 18-2-124](#).

## **Construction Options**

### **Invitation for Bid – Contractor and Materials**

A selected contractor is hired by competitive bidding and procures the materials for the project and constructs the project according to approved plans and specifications.

- Benefits include contractor warranty on construction and materials.
- Competitive Sealed Bidding ([MCA 18-4-303](#)) or Sealed Bids [2 CFR 200.320\(b\)\(1\)](#).
- A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)).
- DNRC requires As-Builts that are certified by a licensed engineer as part of the Final Reporting Requirements.

### **Invitation for Bid – Separate Contractor and Materials**

Local governments may procure materials and a construction contractor separately to address supply chain issues. The local government must request approval to purchase materials separately from a construction or contractor invitation for bid.

- The project cannot be broken into parts to avoid procurement requirements, therefore total cost of contracted construction and materials for a project governs the procurement strategy.
- Competitive Sealed Bidding ([MCA 18-4-303](#)) or Sealed Bids [2 CFR 200.320\(b\)\(1\)](#).
- A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)).

- DNRC requires As-Builts that are certified by a licensed engineer as part of the Final Reporting Requirements.

#### **Local Government Provides Labor and Equipment for Construction**

Local governments must request authorization to use their own labor and equipment for construction projects. Common types of these projects are canal/ditch conversion to pipe and canal lining.

- Procurement of materials must follow federal, state and/or local procurement laws, rules, and regulations.
- The entity must provide DNRC with documentation of similar projects constructed or must provide DNRC with the manpower and machinery available to complete the construction according to plans and specifications.
- Accurate expense records of labor and machinery used for construction must be kept and provided to DNRC for reimbursement.
- A licensed engineer or surveyor registered in Montana must be present for inspection and completion of the project ([MCA 18-2-121](#)).
- DNRC requires As-Builts that are certified by a licensed engineer as part of the Final Reporting Requirements.

**Grant recipients should consult their legal counsel regarding procurement standards to hire an engineer, purchase goods or services, and bid construction projects. Your DNRC grant manager can answer questions about your grant agreement requirements.**