LEWIS AND CLARK COUNTY POLICY

Subject: Procurement Policy Procurement Policy	**Policy No: 1.1.6**
Approved:	**Effective Date: April 12, 2022** **Revised Date: April 18, 2024**

I. Policy Statement

A. Purpose

1. This policy establishes specific directions and guidelines for all offices, departments, Elected Officials, employees, and agents of Lewis and Clark County (the "County"). The provisions of this policy shall apply to every Purchase of Goods and Services of the County unless an alternative purchasing method is required by federal and/or state law or grant provisions. This policy incorporates Subpart D of 2 Code of Federal Regulations (CFR) 200 relative to non-federal entity Procurement standards, applicable subparts of Federal Acquisition Regulations (FAR), Montana Code Annotated (MCA) Title 7, Chapter 5, Part 23, "County Contracts", MCA Title 18 Chapter 2, "Construction Contracts", MCA Title 18, Chapter 8, Part 2, "Architectural, Engineering, and Land Surveying Services", and adopts the specific parts of MCA cited herein.

II. Applicability

A. Authority

1. The authority to enter into Contracts for the benefit of the County, its departments, and all entities is exercised exclusively by the Lewis and Clark County Board of County Commissioners (the "Board"), except as authorized by resolution of the Board or as allowed by law.

B. Administration

1. Elected Officials/Department Directors are responsible for the implementation of this policy within their departments and for establishing procedures to demonstrate compliance.

2. The expenditure of County funds shall be used for the legitimate business needs of the County and for uses that achieve the mission of the County.

3. The County Purchasing Officer provides general oversight and assistance to departments in the administration of this policy and should be considered a resource for questions and information regarding Procurement. In that role, the Purchasing Officer's responsibilities include, but are not limited to:

    a. Assisting departments with conducting Solicitations;

    b. Providing sample language and documents;

    c. Performing unsealing of Formal Solicitations;

    d. Coordination of evaluation committees; and

    e. Reviewing department documentation and procedures to verify compliance with this policy.

4. The Board has final authority for administration, interpretation, and application of the terms of this policy. However, it is recommended that questions of interpretation be resolved with the Grants and Purchasing Department prior to seeking an interpretation or ruling from the Board.

5. The public has the right to inspect all purchasing and Contract documents with the exception of sealed Bids or Proposals prior to issuing a Notice of Intent to Award, protected confidential information, legitimate Trade Secrets, or as otherwise limited by law. In the event that copies of Procurement records are requested, the request will be considered a public records request. Refer to Public Records Request Response Policy 1.1.4 to comply.

III. **Definitions**

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

1. **Affidavit for Trade Secret Confidentiality.** A notarized statement submitted by an Offeror's attorney acknowledging that material included in a Request for Proposals (RFP) is open to public inspection except for information that meets the provisions of Montana Uniform Trade Secrets Act, MCA Title 30, Chapter 14, Part 4.

2. **Bid.** A price offered by a Bidder to furnish specific Goods, Services, and/or Construction in response to an Invitation for Bids (IFB).

3. **Bidder.** Any entity submitting a competitive Bid in response to an IFB.

4. **Bid Security.** A guarantee in the form identified in 18-4-312, MCA that the Bidder, if selected, will enter into an agreement as Bid within 30 days. Otherwise, the Bidder or guarantor will forfeit the amount of the security.

5. **Board.** The Board of County Commissioners for Lewis and Clark County, Montana.

6. **Change Order.** A Contract modification that changes the specifications, statement of work, drawings, Contract value, or the Contract performance timeframe.

7. **Construction.** The process of building, altering, repairing, remodeling, improving, abating, or demolishing any structure or building, or other improvements of any kind to any Real Property, road, or bridge. This does not include routine repair, operation, or maintenance of existing Real Property, road, or bridge.

8. **Contract.**
   a. A deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts; or

   b. Any type of agreement regardless of what it is called for the Procurement of Goods, Services, consultant Services, or Construction.
9. **Contractor.** A person or entity having a Contract with the County.

10. **Contract Agent.** A person designated by the respective Elected Official/Department Director who may solicit and negotiate Contracts on behalf of the County. Contract Agents must be trained in basic contracting by the Purchasing Officer in order to be authorized.

11. **County.** Lewis and Clark County, Montana.

12. **Chief Administrative Officer.** The Chief Administrative Officer of Lewis and Clark County, Montana.

13. **Department Director.** The duly appointed director of any department of the County.

14. **Designated Point of Contact.** The County employee, or other persons authorized by the Solicitation, to receive communication on behalf of the County regarding a Formal Solicitation, including the County's architect, engineer, or their sub-consultants hired to conduct a Solicitation.

15. **Designee.** A duly authorized representative of a person holding a superior position.

16. **Elected Official.** The duly elected or appointed officer of any office of the County.

17. **Emergency Purchase.** An expeditious Purchase of Goods, Services, consultant Services, and/or Construction to reduce an imminent or existing threat to the health, safety, or welfare of persons or property within the County.

18. **Exigency Purchase.** A Purchase of Goods or Services due to a sudden and unexpected happening, unforeseen occurrence, or condition which requires

immediate action.

19. **Formal Solicitation.** Invitations for Bid, Requests for Proposals, and Requests for Qualifications.

20. **Goods.** Any tangible Personal Property other than Real Property.

21. **Intergovernmental Agreement.** A written Contract between political subdivisions for the purpose of cooperation in order to provide Services on the basis of mutual advantage.

22. **Invitation for Bids (IFB).** The Solicitation document used for competitive sealed Bidding for the Purchase of Goods, Services, and/or Construction, for which the County has adequate funding. The IFB is used when the County is capable of specifically defining the scope of work for which the Contractual Service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.

23. **Item.** A single, separate unit, article, product, material, or Service.

24. **Limited Solicitation.** A process for establishing the price on desired Goods or qualification for performing desired Services that does not require sealed Bids or Proposals but does require documented competition. The Solicitation is issued in writing and requires a written response.

25. **MCA.** Montana Code Annotated.

26. **Notice of Award.** A written notification from the Board to a Bidder stating that they are the successful Bidder and a Purchase and/or Contract may be awarded to them in accordance with the Invitation for Bids.

27. **Notice of Intent to Award.** A written notice which is posted, prior to awarding a Contract or Purchase resulting from an Invitation for Bids, Request for Proposals, or Request for Qualifications which shows the intended selection of a Vendor.

28. **Offeror.** Any entity submitting a Proposal in response to a Request for Proposals.

29. **Payment Bond.** A surety bond provided by a Contractor to guarantee that its employees, subcontractors, and material suppliers on the project will be paid.

30. **Performance Bond.** A surety bond provided by a Contractor that protects the County from loss in the case of the Contractor's inability to complete the project as agreed.

31. **Personal Property.** Property consisting of movable articles both physical,

such as furniture or computers, or non-physical, such as stocks or bonds.

32. **Procurement.** The process in which Solicitation is conducted in order to obtain a Contract, or other type of agreement such as a PO/FPO, for Goods or Services.

33. **Professional Services.** Labor, time, or effort furnished by a person licensed, registered, or certified to provide such Services. The term includes, but is not limited to, architects, engineers, surveyors, attorneys, accountants, land use planners, and consultants.

34. **Proposal.** An executed formal document submitted to the County stating the Goods, Services, and/or consultant Services offered to satisfy the need requested in a Request for Proposals (RFP).

35. **Public Works Contract.** As defined in [18-2-401(11), MCA], a Contract for Construction Services or non-Construction Services in which the total cost of the Contract is in excess of $25,000.

36. **Purchase.** Buying, renting, leasing, or otherwise acquiring any supplies, materials, equipment, Goods, consultant Services, Construction, and/or Services required by the County for public purposes in accordance with the law and County procedures.

37. **Purchasing Agent.** A person designated by the respective Elected Official/Department Director who may solicit for Goods or Services on behalf of the County. Purchasing Agents must be trained in basic Procurement by the Purchasing Officer in order to be authorized.

38. **Purchasing Officer.** The County employee charged with the administration of the Procurement process and ensuring that Purchasing Agents follow federal and state Procurement laws and this policy.

39. **Purchase Order (PO)/Field Purchase Order (FPO).** A County document used to authorize a Purchase transaction with a Vendor as authorized by the budget authority resolution of the Board.

40. **Qualified Bidder, Offeror, Proposer, Quoter, or Respondent.** An individual or business entity that has submitted a Bid, Proposal, Quotation, or response and has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability that gives reasonable assurance of good faith and performance.

41. **Quotation/Quote.** Any oral or written informal offer by a Vendor to the County to furnish specific Goods and/or Services at a stated price.

42. **Real Property.** Property consisting of lands and all rights, privileges, or improvements belonging to, and passing to lands as buildings, crops, or

mineral rights.

43. **Request for Proposals (RFP).** A formal process requesting Vendors submit Proposals to provide a solution to a problem or a need that a department has identified. The County has the ability to evaluate an Offeror's response in accordance with established or stated criteria.

44. **Request for Qualifications (RFQ).** A formal process of inviting Statements of Qualifications used to Contract for Professional Services or to prequalify a pool of Vendors to provide Services on a specific project or to utilize on an as-needed basis.

45. **Respondent.** Any entity submitting an SOQ in response to a Request for Qualifications.

46. **Responsible.** A Vendor who has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good faith performance.

47. **Responsive.** A Vendor that has submitted a Bid, offer, Proposal, Quotation, or response that conforms in all material respects to the Solicitation.

48. **Services.** The furnishing primarily of labor, time, and/or effort by a Vendor, wherein the provision of Goods or other specific end products, other than documents relating to the required performance, is incidental or secondary. This term shall not include Construction or employment agreements.

49. **Single Source.** Goods and/or Services which may be available from more than one source but for a justifiable reason, needs to be acquired from a particular Vendor.
50. **Standard Terms and Conditions.** Standard provisions established by the County related generally to Solicitation or Contract standards and the obligations of the parties.

51. **Statement of Qualifications (SOQ).** The formal response to an RFQ.

52. **Sole Source.** Goods and/or Services which are proprietary or available from only one source and for which there are no other competitive alternate sources.

53. **Solicitation.** Request for information, expression of interest, Invitation for Bids, Request for Qualifications, Request for Proposals, request for Quotations, or a multi-step Bidding procedure.

54. **Total Contract Value.** The full amount of revenue associated with a Contract accumulated during the duration of its full term wherein a Vendor derives benefit.

55. **Trade Secret.** Information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons or entities who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

56. **Vendor.** An actual or potential consultant, supplier, or Contractor of Construction Goods, Services, and/or consultant Services.

IV. Directives

A. Scope

1. This policy is applicable to all County offices, departments, and entities for all acquisitions of Goods and Services. Departments may apply additional requirements as long as they are equal to or more restrictive than the procedures and standards established in this policy and consistent with the purpose of this policy.

B. Ethical Standards

1. Violations of ethical standards shall be handled in accordance with applicable state statute and the County Human Resources Manual.

2. No Elected Official or employee may participate in the selection, award and/or administration of a Contract if a conflict of interest exists, whether real or perceived. Such a conflict arises when the employee has a special relationship, such as a related party, to a Vendor or potential Vendor.

3. No employee may solicit gifts or accept gifts with a value of $50 or greater, or of substantial economic benefit tantamount to a gift, from a potential or actual Vendor.

C. Revision to Policy

1. The Purchasing Policy will be reviewed no less than every three years by the Chief Administrative Officer, Grants and Purchasing Department, and Finance Department. Revisions must be approved by the Board.

D. General Guidelines

1. Purchases or Contracts shall not be artificially divided into separate projects or expenditures to circumvent the requirements of a more formal purchasing process.

2. As established in 18-4-313, MCA, Contract terms cannot exceed seven years and must engage in the competitive process according to the Total Contract Value thresholds established in this policy. Contract terms for information technology Contracts cannot exceed 10 years.

3. Awards shall be made to Responsible Vendors possessing the ability to perform successfully under the terms and conditions of a proposed Procurement. Considerations shall be given to such characteristics as integrity, compliance with public policy, record of past performance, and financial and technical resources.

4. In order to ensure objective performance and eliminate unfair competitive advantages, Vendors that develop or draft specifications, requirements, or statements of work for a Solicitation, or assist in the development of a Solicitation in any way, must be excluded from competing for such Procurements.

5. The Purchase of food and/or beverages with County funds must be for a public purpose, related to the County's conduct of business, and pre-approved in writing by the Purchasing Officer.

   a. Allowable food/beverage purchase examples include, but are not limited to:

      i. Meetings, trainings, or events extending beyond regular work schedules, conducted during regular mealtimes, without being relieved of duty;

      ii. Employee required to work unexpectedly beyond their regular work schedule, during regular mealtimes, and cannot be relieved of duty; or

      iii. Hosting an event that specifically includes funds for the purchase food and/or beverages wherein payment or reimbursement will be processed for the dollar amount of the funds to be expended.

   b. Unallowable food/beverage purchase examples include, but are not limited to:

      i. Alcoholic beverages;

      ii. Staff or board meetings;

      iii. Food or beverage provided to Vendors outside of Contract requirements; or

      iv. Food or beverage furnished to boost morale.

E. **Unauthorized Purchases**

1. County employees are not authorized to Purchase non-exempt Goods or Services (see Section V. F. of this policy below) without a Contract, PO or FPO, or credit card except in case of emergency as defined herein.

2. Any Purchase made contrary to the provisions of this policy may be subject to disciplinary action.

3. The Purchase of greeting cards (e.g., birthday, retirement, or other special occasions), cakes, snacks, gifts, flowers, or other supplies for office parties or employee social functions for any occasion are not authorized.

4. The Purchase of appliances for employee use is not authorized.

F. **Transactions Exempt from Competitive Procurement**

1. Real Property or conservation easements. Acquisitions of Real Property and conservation easements are subject to the provisions of [7-8-2519, MCA] and [7-8-2520, MCA]. Real Property in excess of $20,000 or a conservation easement using public funds in an amount in excess of $80,000 are subject to valuation prior to Purchase by a certified real estate appraiser or by three disinterested citizens of the County appointed by a district judge. Payment may not exceed such appraised value.

2. Court-ordered fines and judgements resulting from litigation.

3. Exceptional disbursements as authorized by the Board.

4. Court-ordered fees resulting from the judicial process which are processed by the Clerk of Court and charged against the appropriate budget for such fees.

5. Cash transfers and investment transactions for fiscal management purposes processed through the Accounting Department and disbursed from general ledger accounts.

6. Debt Service payments processed by the Accounting Department and charged against budgetary accounts.

7. Refunds.

8. Inter-fund or inter-departmental transfers or reimbursements within or among County departments.

9. Insurance including but not limited to liability, property, medical, and workers compensation insurance or payments from any loss fund established for such purpose.

10. Utilities (e.g., electricity, natural gas, telephone, cell phones, internet services).

11. Advertising of employment vacancies or required notices as provided in law.

12. Fuel charges.

13. Postage and express mail charges.

14. Dues and memberships in trade or professional organizations.

15. Subscriptions for periodicals, magazines, newspapers, copyrighted material, etcetera.

16. Authorized hospital expenses.

17. Job related travel, seminars, and conferences.

18. Legal Services including attorneys, expert witnesses, court reporter Services, and legal fees.

19. Title insurance, title commitments, title searches, ownership and encumbrance searches, and real estate appraisal Services to determine the market value of Real Property.

20. Transactions authorized by Intergovernmental Agreement.

21. Franchise agreements.

22. Vehicle registration fees.

23. Lodging accommodations.

24. Office space rental or lease.

25. Permit and license fees.

26. Door prizes that are customary when attending trade or professional organization conferences (not to exceed $50).

G. **Exceptions.** The following purchases qualify as exceptions to the standard provisions of this policy. Elected Officials/Department Directors shall request written authorization from the Purchasing Officer and Chief Administrative Officer in order to ensure that the purchase qualifies as an exception.

1. Purchase made under state Bid Contracts pursuant to 7-5-2308, MCA. Under this exception, the State of Montana has engaged in the competitive Procurement process. The State of Montana, Department of Administration, Financial Services Division, State Procurement Bureau administers statewide Contracts and agreement for use by Montana local governments. Statewide Contracts and agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden while complying with State statues governing the Purchase of products and Services.

2. Purchases made at public auction pursuant to 7-5-2303, MCA when, in lieu of soliciting Bids, the department Purchases at public auction a vehicle, road machinery, or other machinery, apparatus, appliances, equipment, materials, or supplies for an amount less than $150,000.

3. State or federally funded grant Procurement. The County recognizes that certain Procurement procedures for state or federally funded grant programs may conflict with standard County procedures. In the event of a conflict, the Grants and Purchasing Department may modify or amend these Procurement procedures in order to comply with Procurement procedures for state or federally funded grant programs on a case-by-case basis.

4. Emergency Purchases. Emergency Purchases (see 7-5-2304, MCA) are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, riot, or insurrection; for the immediate preservation of order or public health; for the restoration of a condition of usefulness that has been destroyed by accident, wear, tear, or mischief; or for the relief of a stricken community overtaken by calamity. Under these specific circumstances, the provisions of 7-5-2301, MCA (i.e., competitive, advertised Bidding requirements) do not apply. However, the following procedures must be applied when conducting an Emergency Purchase:

    a. The Purchase shall be limited to the supplies or Services necessary to address the emergency;

    b. Competition to the extent practicable shall be obtained;

    c. The Board and the Chief Administrative Officer shall be notified immediately about the need for Emergency Purchase and or Contracts; and

    d. The department making the Emergency Purchase will maintain a file of each Emergency Purchase including:

        i. The Vendor's name;

        ii. A list of supplies or Services Purchased;

        iii. The amounts of each Purchase;
        iv. Date of each Purchase;

        v. Documentation of Purchase (e.g. receipt, invoice, PO/FPO, Contract); and

        vi. A brief description of the emergency conditions justifying the Purchase.

    e. Emergency Purchases must only be made while conditions of the emergency or disaster warrant Purchases made without the delay of the regular Procurement process, and regular Procurement must resume as soon as conditions allow.

f. Procurement made under a disaster or emergency declaration should follow as best as possible the FEMA Public Assistance Program and Policy Guide, especially regarding records management.

5. Exigency Purchases. Under very limited circumstances, a department may be required to make a Purchase due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action.

    a. The Purchase shall be limited to those supplies or Services necessary to meet the exigency;

    b. This type of Procurement is not exempt from the competitive, advertised Bidding requirements of 7-5-2301, MCA;

    c. The procedure used shall assure that the required supplies or Services are Procured in time to meet the exigency. However, such competition as is practicable shall be obtained; and

    d. The department making the Exigency Purchase will maintain a file of such Purchases including:

        i. The Vendor's name;

        ii. The amount and type of the Contract or agreement;

        iii. A listing of the supplies or Services Procured under the Contract or agreement;

        iv. Date of each Purchase;

        v. Documentation of Purchase (e.g. receipt, invoice, PO/FPO, Contract); and

        vi. The written determination that shall provide the reasons for the Exigency Purchase.

6. Cooperative Purchasing Agreements.

    a. As provided in 7-5-2310, MCA, the Board may enter into cooperative purchasing agreements;

    b. Only those purchasing cooperatives for which there are agreements in place may be used by Departments;

    c. Procurement requirements must be properly verified by the Purchasing Officer before using a Contract obtained through an authorized purchasing cooperative.

7. Warranty or maintenance agreement costs required by the original manufacturer or installer.

8. Proprietary maintenance agreements including software and system controls.

H. **Payment for Goods and Services**

1. Prompt Payment Act. In accordance with [MCA Title 28, Chapter 2, Part 21], local governments are required to pay Vendors for Goods and Services in a timely fashion. Departments are required to date stamp invoices upon receipt and shall make payment within:

    a. 45 days for Goods or Services other than Construction Services; or

    b. 30 days for Construction Services.

2. An independent Contractor Contract or Professional Services agreement is required for all Services provided by an individual/person or legally formed entity.

3. Invoice-based Contracts. While invoices are frequently used in combination with a formal Contract in order to bill Services, in certain circumstances an invoice may be used on a standalone basis as the Contract. Invoice-based Contracts are allowed if:

    a. The total amount of the Purchase is $25,000 or less; and

    b. The Finance Department has been provided with applicable payment and insurance information (e.g., worker's compensation insurance or waiver, general liability insurance, W-9, ACH payment authorization, etc.).

    c. Invoice-based Contracts are not allowed for Services if:

        i. The Service involves Contractors working directly with the public;

        ii. The Service involves inherently dangerous activities;

        iii. The Elected Official/Department Director believes there is risk or complexity warranting a formal Contract; or

        iv. Project is grant funded and has required terms and conditions that the Vendor is obligated to adopt.

4. Credit Cards. The process for issuing, using, and reconciling credit cards is outlined in the County's Credit Card Policy 1.1.5.. All employees are required to read and sign an affidavit that they have read the applicable policy and received

training in proper use before obtaining a County-issued credit card.

a. The goals of the credit card program include:

   i. Providing an efficient and cost-effective method of purchasing and paying for Goods and Services required by departments;

   ii. Reducing the time and money spent processing transactions;

   iii. Ensuring that Lewis and Clark County bears no legal liability from inappropriate use of credit cards; and

   iv. Providing for disciplinary action if the credit cards are misused.

b. A credit card will be issued to employees who frequently Purchase Goods or Services. All cards will have a maximum monthly limit and per transaction limit that shall be determined by the Chief Administrative Officer or Designee.

c. Credit cards shall not be used to Purchase capital equipment or centralized information technology equipment (i.e., computers or other Items that must have the approval of the IT&S Department in order to Purchase).

5. POs/FPOs are preferred for the Purchase of Goods or materials.

6. Except as provided in law, Contract provisions requiring payment, fully or in part, for Goods or Services before receipt of such shall not be authorized.

I. **Petty Cash**

1. Petty cash Purchases are limited to an immediate need or small cash Purchases which do not exceed $50, including:

   a. Tools and repair parts needed immediately to continue working;

   b. Minor supplies needed immediately to fulfill a deadline; or

   c. Postage.

2. Misuse of petty cash funds are subject to non-reimbursement and personal liability.

3. Refer to the County Cash Management Policy for petty cash reconciliation policy and procedures.

V. **Purchasing Procedures**

A. **Small Purchase**

1. Purchases of Goods or Services with a total value of $25,000 or less may be conducted by obtaining a single Quote, including when federal funds are used as authorized by resolution to self-certify an increase in the federal micro-purchase threshold.

   a. Although a Vendor may be chosen without seeking competition, it is recommended that departments use prudent purchasing practices and obtain competitive prices when practicable.

2. A department contacts Vendors to obtain Quoted prices on the desired Item or Service. Although price usually determines the Vendor selected, other factors may be considered, such as:

   a. Quality and/or availability of the Goods or Services desired;

   b. Responsiveness to the specifications desired for the work to be performed or the Goods to be supplied; and

   c. Past experience with the Vendor, and/or status as a County Vendor.

   d. Vendor prices may be obtained verbally, in writing, or electronically (i.e., email or fax).

3. The department shall maintain record of the Goods or Services sought, the Vendors contacted, the prices Quoted, and the Vendor selected.

B. **Limited Solicitation**

1. Purchases of Goods or Services greater than $25,000 and $80,000 or less shall use a Limited Solicitation process.

2. The department develops an opportunity for a minimum of three Vendors to offer a price on the desired Goods or Service according to the specifications established for the Purchase.

3. For the Procurement of architectural, engineering, or land surveying Services, Solicitations shall meet the requirements established in MCA Title 18, Chapter 8, Part 2. As provided in 18-8-212, MCA, Professional Services (i.e., architectural, engineering, or land surveying) for which the fees are estimated not to exceed $50,000 may Contract for those Professional Services by Direct Negotiation rather than Limited Solicitation.

4. In addition to the description of Goods or Services desired, Vendors should be provided with other relevant information including, but not limited to:

   a. Compatibility with other County-owned equipment;

b. Date the supplies, Services, materials, and/or equipment must be delivered or be available for County use;

c. Anticipated duration of the need for the Services requested;

d. Contract provisions that inform Vendors to standard requirements or conditions for doing business with the County; and

e. Any evaluation criteria, including relative importance, to be used in addition to price.

5. Departments may obtain responses to the opportunity verbally, in writing, or electronically (i.e., email or fax).

6. Factors that may be considered when selecting a Vendor include price, quality, availability, Responsiveness, and past experience.

7. The department shall document the Limited Solicitation process by maintaining records including the written opportunity, a summary listing of the Vendor responses, and a complete copy of the selected Vendor's response. Responses shall be made available for public inspection or telephone inquiry.

C. **Formal Solicitation - Invitation for Bids (IFB)**

1. As established in 7-5-2301, MCA, an IFB is required for the Procurement of Goods and Services greater than $80,000 where Vendor selection is determined solely on price. This process may be used for multiple Purchases of the same Item when it is reasonably expected that the Total Contract Value of such Purchases will be greater than $80,000.

2. An IFB must contain:

    a. Detailed specifications for the Item(s) sought;

    b. Any criteria, other than cost, to be used in the evaluation and determination of product acceptability on Bids received;

    c. Statements alerting Bidders to any special requirements in the Bid;

    d. Shipping and billing instructions;

    e. Contract provisions that inform Bidders to standard requirements or conditions for doing business with the County; and

    f. Standard Terms and Conditions related to County Procurement and any terms and/or conditions related to federal and/or state funding, if applicable.

3. The department shall arrange for notice of the IFB to be published a minimum of two times with publication dates at least 6 days apart (see 7-1-2121, MCA). The final published notice must appear a reasonable time prior to the time and date set forth in the IFB for the submission of Bids. For projects related to a Rural Improvement Districts (RID), the time fixed for the opening of the bids shall follow 7-12-2134, MCA. The published notice shall contain:

   a. A brief statement about the Procurement for which Bids are sought;

   b. Where complete details of the IFB may be obtained;

   c. The Designated Point of Contact for communication regarding the Solicitation;

   d. Bid Security requirements;

   e. Specific Contract requirements for Performance Bond and/or Payment Bond;

   f. The address where Bids are to be received;

   g. The due date and time for receipt of Bids; and
   h. The date and location of Bid opening.

4. The department has the right to invite Vendors to participate.

5. Bid Security is required for all Bids submitted in response to an IFB and must be provided in accordance with MCA Title 18, Chapter 1, Part 2. Each Bidder must provide a Bid Security in the amount of 10% of the Bid price to protect and indemnify the County against failure or refusal of the Bidder to enter into the Contract, if awarded. The Bid Security is subject to forfeit if the Bidder fails to enter into a Contract within 30 days of Bid acceptance. Bid Security is returned to Bidders whose Bids are not accepted.

6. As provided in 18-2-302(2), MCA, the requirements for Bid Security on building or Construction projects, as defined in 18-2-101, MCA, that cost less than $150,000 may be waived by the Elected Official/Department Director and shall be stated in the notice of the Invitation for Bids.

7. Requirements for Performance Bond and/or Payment Bond. See Section V. J. 10. of this policy.

8. Bids must be opened publicly at the time and place designated in the IFB and entered into the public record. Each Bidder and any member of the public has the right to be present. The County may reject any or all Bids, waive immaterial irregularities, or accept any Bid deemed to be for the public good.

9. Bids must be unconditionally accepted without alteration or correction, except as authorized by this policy. Bids must be evaluated based on the requirements

set forth in the Invitation for Bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and sustainability for a particular purpose. Those criteria that will affect the Bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. Only criteria set forth in the Invitation for Bids may be used in Bid evaluation.

10. Correction or withdrawal of inadvertently erroneous Bids, before or after award, or cancellation of awards or Contracts based on Bid mistakes may be permitted. After Bid opening, changes in Bid prices or other provisions of Bids prejudicial to the interest of the County or fair competition shall not be permitted. All decisions to permit the correction or withdrawal of Bids or to cancel awards or Contracts based on Bid mistakes must be supported by a written determination.

11. A Bid tabulation record shall be created which shows the name of each Bidder, the amount of each Bid, and any other relevant information to include any corrections made to the Bid amounts.

12. In the case of a tie Bid, the discretion of the Elected Official/Department Director will be used to resolve such Bids, except that a Bidder offering American-made products or supplies must be given preference.

13. If an award is made, it shall be made with reasonable promptness by written notice to the lowest Responsive and Responsible Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids.

14. The Purchasing Officer shall post the Bid tabulation record and a Notice of Intent to Award on the Solicitation page of the County's website. The public shall have five days from the issuance of a Notice of Intent to Award to submit written comments regarding the proposed award.

15. Following the posting of the Notice of Intent to Award and the expiration of the public comment period, the Board shall issue a Notice of Award to the lowest Responsive and Responsible Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids.

16. Bids and other information received from Bidders in response to an Invitation for Bids may not be inspected by the public until the Purchasing Officer has posted a Notice of Intent to Award.

17. Prior to releasing Bids or information received from Bidders, the Purchasing Officer shall evaluate whether public disclosure must be limited in accordance with 18-4-304(8), MCA:

    a. Under the Montana Uniform Trade Secrets Act provided for in MCA Title 30, Chapter 14, Part 4;

b. Due to matters involving individual safety; and

c. As required by other constitutional protections.

18. The department shall maintain, at a minimum, records containing the following documentation:

    a. Record of public notice of the IFB and mailing list (if applicable);

    b. The IFB with specifications including any addenda;

    c. All Bids received;

    d. Tabulation of Bids;

    e. Notice of Intent to Award;

    f. A Notice of Award and/or Contract signed by the Board;

    g. Correspondence concerning the Purchase, including a recommendation for award from the issuing department, if appropriate;

    h. An explanation if the Contract is awarded to anyone other than the low Bidder;

    i. Any public comment received during the prescribed period after the issuance of the Notice of Intent to Award; and

    j. Evidence of Bid Security.

D. **Formal Solicitation - Request for Proposals (RFP)**

1. An RFP is a method used for Procurement of Goods and Services greater than $80,000 when it is desirable to incorporate factors other than cost into the evaluation criteria. *A lower threshold of $50,000 applies to architectural, engineering, or land surveying Services (see 18-8-212, MCA).* The RFP is used when it is not practical for the County to specifically define the scope of work to meet the specifications of the Solicitation. Evaluation of an RFP is based on established criteria which involves more than price.

2. The department shall provide an RFP package to include all pertinent information about the products or Services sought, Standard Terms and Conditions related to County Procurement, any terms and conditions related to federal and/or state funding, if applicable, and the evaluation criteria, relative importance, and scoring methodology that will be used to determine Vendor selection.

3. For the Procurement of Professional Services (i.e., architectural, engineering,

or land surveying Services), Solicitations shall meet the requirements established in MCA Title 18, Chapter 8, Part 2.

4. The department shall arrange for notice of the RFP to be published a minimum of two times with publication dates at least 6 days apart (see 7-1-2121, MCA). The final published notice must appear a reasonable time prior to the time and date set forth in the RFP for the submission of Proposals. The published notice shall contain:

    a. A brief statement about the Procurement for which Proposals are being sought;

    b. Where complete details of the RFP may be obtained;

    c. The Designated Point of Contact for communication regarding the Solicitation;

    d. Any specific Contract requirements or Performance Bond and/or Payment Bond requirements;

    e. The address where Proposals are to be received; and

    f. The due date and time for receipt of Proposals.

5. The department has the right to invite Vendors to participate.

6. Proposal documents may be inspected by the public subject to the limitations of the Uniform Trade Secrets Act, MCA Title 30, Chapter 14, Part 4. An attorney for an Offeror claiming Trade Secret status for parts of a Proposal must provide an Affidavit of Trade Secret Confidentiality and clearly mark and separate any bona fide Trade Secret material. This information is removed before public inspection.

7. Non-responsive Proposals will be eliminated from consideration. Proposals may be found non-responsive at any time during the Procurement process if:

    a. Any of the required information is not provided;

    b. The submitted price is found to be excessive or inadequate as measured by criteria stated in the RFP; or

    c. The Proposal does not conform to the specifications described and required in the RFP.

8. Contract award will be made to the Responsive and Responsible Offeror whose Proposal is most advantageous to the County, with price and other factors considered.

9. An evaluation committee of at least 3 people shall be used to consider and

evaluate Proposals based upon the evaluation criteria established in the Solicitation.

a. An evaluation committee member shall not be a County Commissioner.

b. An evaluation committee member shall not be the Designated Point of Contact for the Solicitation.

c. Evaluation committee members shall be determined prior to providing notice of the Solicitation.

d. Evaluation committee members shall review and sign a Non-disclosure and Conflict of Interest Certification prior to conducting evaluations of Proposals.

e. In assigning points or value to a Proposal, the evaluation requires the exercise of the evaluator’s discretion, involving a judgmental assessment of the evaluation criteria.

f. The award must be based upon a comparative evaluation as stated in the RFP of differing price, quality, and Contractual factors in order to determine the most advantageous offer.

g. Interviews may be conducted of one or any of the Offerors in order to better understand the nature of the Offeror’s qualifications or better determine the aspects of the Proposal. Evaluation committee members may reconvene after interviews have been conducted in order to amend the preliminary scores of Proposals established in the first evaluation meeting.

10. References provided by the Offerors may be verified as appropriate.

11. Once the evaluation committee has evaluated Proposals and determined the most advantageous offer, the Purchasing Officer shall post the evaluation score sheet and a Notice of Intent to Award on the Solicitation page of the County’s website. The public shall have five days from the issuance of a Notice of Intent to Award to submit written comments regarding the proposed award.

12. Following the posting of the Notice of Intent to Award and the expiration of the public comment period, the Board may enter into a Contract with the selected Offeror.

13. The County reserves the right to refine a Contract before execution if doing so is advantageous to the County. Proposals and other information received from Offerors in response to a Request for Proposals may not be inspected by the public until the Purchasing Officer provides Notice of Intent to Award.

14. Prior to releasing Proposals or information received from Offerors, the

Purchasing Officer shall evaluate whether public disclosure must be limited:

a. Under the Montana Uniform Trade Secrets Act provided for in MCA Title 30, Chapter 14, Part 4;

b. Due to matters involving individual safety; and

c. As required by other constitutional protections.

15. The County reserves the right to reject any or all Proposals, to waive irregularities, or to accept any Offer deemed to be for the public good.

16. The department shall maintain, at a minimum, records containing the following documentation:

a. Record of public notice of the RFP and mailing list (if applicable);

b. The RFP and any addenda;

c. All Proposals received;

d. An evaluation score sheet detailing the basis on which the award was made;

e. Notice of Intent to Award;

f. A Contract signed by the Board;

g. Correspondence concerning the Purchase, including a recommendation for award from the issuing department, if appropriate;

h. Any public comment received during the prescribed period after the issuance of the Notice of Intent to Award; and

i. Notes, meeting minutes, recordings, or minutes of any discussion with the Offerors.

E. **Formal Solicitation - Request for Qualifications (RFQ)**

1. An RFQ is used to acquire Professional Services greater than $80,000. *A lower threshold of $50,000 applies to architectural, engineering, or land surveying Services (see 18-8-212, MCA).* A provider of Professional Services shall be selected based upon demonstrated competence and qualifications for the type of Services desired at a fair and reasonable price.

2. For the Procurement of architectural, engineering, or land surveying Services, Solicitations shall meet the requirements established in MCA Title 18, Chapter 8, Part 2.

3. The department shall create an RFQ package to include all pertinent information about the Professional Services sought, Standard Terms and Conditions related to County Procurement, any terms and conditions related to federal or state funding, if applicable, and the evaluation criteria, relative importance, and scoring methodology that will be used to determine Vendor selection.

4. The department shall arrange for notice of the RFQ to be published a minimum of two times with publication dates at least 6 days apart (see 7-1-2121, MCA). The final published notice must appear a reasonable time prior to the time and date set forth in the RFP for the submission of SOQs. The published notice shall contain:

    a. A brief statement about the Services being sought;

    b. Where complete details about such Services may be obtained, if not provided in the published notice;

    c. The Designated Point of Contact for communication regarding the Solicitation;

    d. The address where Statements of Qualifications (SOQ) are to be mailed; and

    e. The due date and time for receipt of SOQs.

5. The department will evaluate SOQs submitted by firms based on the following criteria:

    a. The qualifications of the professional personnel to be assigned to the project;

    b. The capability of the firm to meet time and budget requirements;

    c. The physical location of the firm;

    d. Present and projected workloads;

    e. Related experience; and

    f. Recent and/or current work performed for the County.

6. Contract award will be made to the Responsive and Responsible Respondent whose qualifications are most advantageous to the County, with all factors considered.

7. An evaluation committee of at least 3 people shall be used to consider and evaluate SOQs based upon the evaluation criteria established in the Solicitation.

    a. An evaluation committee member shall not be a County Commissioner.

b. An evaluation committee member shall not be the Designated Point of Contact for the Solicitation.

c. Evaluation committee members shall be determined prior to providing notice of the Solicitation.

d. Evaluation committee members shall complete a Non-disclosure and Conflict of Interest Certification prior to conducting evaluations of SOQs.

e. In assigning points or value to an SOQ, the evaluation requires the exercise of the evaluator's discretion, involving a judgmental assessment of the evaluation criteria.

f. If an award is given, it must be based upon a comparative evaluation as stated in the RFQ of quality and other Contractual factors in order to determine the most advantageous SOQ.

g. After the preliminary evaluation of the Respondents' qualifications, the evaluation committee may conduct interviews with finalists and select the Respondent best suited to provide the Services desired. Interviews may be conducted of one or any of the Respondents in order to better understand the nature of the Respondent's qualifications or better determine the aspects of the SOQ. Evaluation committee members may reconvene after interviews have been conducted in order to amend the preliminary scores of SOQs established in the first evaluation meeting.

8. A Contract shall be negotiated at a price the department determines to be fair and reasonable given the estimated value of such Services.

9. References provided by the Respondents may be verified as appropriate.

10. Once the evaluation committee has evaluated SOQs and determined the most qualified Respondent, the Purchasing Officer shall post the evaluation score sheet and a Notice of Intent to Award on the Solicitation page of the County's website. The public shall have five days from the issuance of a Notice of Intent to Award to submit written comments regarding the proposed award.

11. Following the posting of the Notice of Intent to Award and the expiration of the public comment period, the Board may enter into a Contract with the selected Respondent(s).

12. The County reserves the right to refine a Contract before execution if doing so is advantageous to the County. SOQs and other information received from Respondents in response to a Request for Qualifications may not be inspected by the public until the Purchasing Officer provides Notice of Intent to Award.

13. Prior to releasing SOQs or information received from Respondents, the

purchasing Officer shall evaluate whether public disclosure must be limited in accordance with 18-4-304(8), MCA:

a. Under the Montana Uniform Trade Secrets Act provided for in MCA Title 30, Chapter 14, Part 4;

b. Due to matters involving individual safety; and

c. As required by other constitutional protections.

14. The County reserves the right to reject any or all SOQs, to waive irregularities, or to accept any SOQ deemed to be for the public good.

15. The department shall maintain, at a minimum, records containing the following documentation:

a. Record of public notice of the RFQ and mailing list (if applicable);

b. The RFQ and any addenda;

c. All SOQs received;

d. A determination of award detailing the basis on which the award was made;

e. Notice of Intent to Award;

f. A Contract signed by the Board;

g. Correspondence concerning the Purchase, including a recommendation for award from the issuing department, if appropriate;

h. Any public comment received during the prescribed period after the issuance of the Notice of Intent to Award; and

i. Notes, meeting minutes, recordings, or minutes of any discussion with the Respondents.

16. The RFQ process as outlined above may be used to create a pool of at least two prequalified Vendors to provide Services on projects of uncertain duration with many individual sub-projects or to provide Services on an as-needed basis. As specific needs arise, Quotes are solicited from the prequalified Vendor pool. If the scope of work is greater than $80,000, an IFB or RFP shall be used. The prequalified Vendor pool is valid for a five-year period.

F. **Alternative Project Delivery Contracts**

1. The Board may authorize through resolution Alternative Project Delivery Contracts, per the provisions of MCA Title 18, Chapter 2, Part 5, when it is

determined that certain Construction projects should be managed by a qualified representative.

2. Alternative Project Delivery Contracts authorized under this policy include:

    a. Construction Management Contracts in which the Contractor acts as the public owner's Construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and Construction completion.

    b. General Contractor Construction Management Contracts in which the general Contractor, in addition to providing the preconstruction, budgeting, and scheduling Services, procures necessary Construction Services, equipment, supplies, and materials through competitive Bidding Contracts with subcontractors and suppliers to construct the project.

    c. Design-build Contracts in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and Construction delivery under a single Contract with the County.

G. **Sole or Single Source Purchases**

1. Under some limited circumstances, a determination of Sole Source or Single Source may be made by the Elected Official/Department Director, with the approval of the Purchasing Officer and the Chief Administrative Officer, after conducting a good faith review of available sources, which demonstrates that there is only one source for the required supply, Service, or Item. Because this acquisition takes place without the benefit of competition, departments should be reluctant to pursue this Procurement method.

2. Sole or Single Source Procurement is permissible under the following circumstances:

    a. The cost of the Goods or Services is $80,000 or less, per the requirements of 7-5-2301, MCA;

    b. The compatibility of current Services or equipment, accessories, or replacement parts is the paramount consideration;

    c. There is no alternative, equivalent product to the one required;

    d. There is only one acceptable or suitable source for the Goods or Service; and/or

    e. Grant terms specify the equipment to be Purchased.

3. For Sole or Single Source Purchases, the department shall submit to the Grants and Purchasing Department a Sole or Single Source justification prior to Purchase for approval. The justification shall include:

a. The Vendor's name;

b. The amount of the Purchase;

c. The date of the Purchase;
d. The Item(s) or Service(s) Purchased; and

e. The justification for using Sole or Single Source Procurement.

H. **Direct Negotiation**

1. When none of the Bids or Proposals received in response to a valid Solicitation are from a Responsible and Responsive Bidder or Offeror, the department may:

   a. Cancel and reissue the Solicitation. If the department reissues the Solicitation, they shall attempt to increase the number of potential Vendors and may modify any specification in the original Solicitation to enhance Vendor participation; or

   b. If authorized by the Purchasing Officer, the department can directly negotiate with a Vendor or Vendors if it is determined that a second or subsequent Solicitation would be unsuccessful. Upon authorization, the department may conduct negotiations as appropriate as to price, delivery, and terms.

2. As provided in 18-8-212, MCA, Professional Services (i.e., architectural, engineering, or land surveying) for which the fees are not to exceed $50,000 may Contract for those Professional Services by Direct Negotiation.

   a. For the Procurement of architectural, engineering, or land surveying Services, Solicitations shall meet the requirements established in MCA Title 18, Chapter 8, Part 2.

I. **Cone of Silence and Non-Disclosure for Formal Solicitation**

1. A cone of silence shall be established on all County Formal Solicitation processes. The cone of silence prohibits any communication regarding a Formal Solicitation between any Bidder or Offeror (or its agents or representatives) or other entity with the potential for a financial interest in the award (or their respective agents or representatives) and any County Elected Official, employee, or agent other than the Designated Point of Contact for the Solicitation.

2. The cone of silence shall be in effect from the time of posting the Formal Solicitation on the County website and until the County issues a Notice of Intent to Award, cancels the Solicitation, or otherwise takes action to end the selection process.

3. All evaluation committee members shall complete a Non-disclosure and Conflict of Interest Certification prior to conducting evaluations of Proposals.

4. Formal Solicitation shall provide notice of the cone of silence requirements. Violations of the cone of silence may be grounds for disqualification of Offerors from the competitive selection process.

5. The cone of silence shall not apply to:

   a. Communications at any public proceeding or meeting related to the Solicitation, (e.g., pre-Bid meetings, site tours, product demonstrations, and interviews); and

   b. Purchases exempt from Formal Solicitation, such as Small Purchases, Limited Solicitations, Sole or Single Source Procurements, and Emergency Purchases, as defined in this policy.

J. **Required Contract Provisions**

1. Standard legal documents shall be developed and maintained by the County Attorney's Office and retained by the Finance Department. A department shall not modify the approved standard legal documents without the approval of the County Attorney's Office. The Board is the final Contract approval authority.

2. Contract Agent. Elected Officials/Department Directors shall act as the Contract Agent, or designate a Contract Agent to act on behalf of the department, to engage in contract negotiations with selected Vendors. Contract Agents are responsible for ensuring the Contract meets the required legal sufficiency identified by the County Attorney's Office during the legal review process, as applicable. Contract Agents are also responsible for the management of the Contract during its full term.

3. Contract language. All Contracts must comply with any applicable legal requirements including, but not limited to, the prevailing wage required for Public Works Contracts greater than $25,000.

4. Grant funded expenditures. Any Contract to be funded by one or more grants must conform to grant award documents and include any Contract provisions required by the grant.

5. Security requirements for Contracts. Bonds or other security may be required for any Contract to secure performance and payment of workers, subcontractors, and suppliers. Security required for Contracts other than Construction may be determined on a case-by-case basis.

6. Insurance and license requirements. Contract provisions shall require the

Contractor to carry adequate workers' compensation insurance, or an exemption as provided under 39-71-401, MCA, general liability insurance, and/or other types of insurance as directed by the County Attorney's Office. Any applicable licensure shall also be provided by the Contractor.

7. Contract modifications (Change Orders/Contract Amendment). A cost analysis, consistent with federal and state guidelines, shall be conducted for all modifications to Contracts for Goods and/or Services.

   a. Changes to Total Contract Values that would result in exceeding the monetary threshold for the Procurement process used to acquire the Goods and/or Services are not authorized.

   b. Contract modifications shall require approval of the Board.

8. Public Works Contracts. All Contracts for Construction and non-Construction Services must include any provision required by law, including the requirements of MCA Title 18, Chapter 2:

   a. Prevailing wage requirements. In accordance with MCA Title 18, Chapter 2, Part 4, all Public Works Contracts in excess of $25,000 must contain the provisions for prevailing wages. Contractor shall agree to:

      i. Pay the standard prevailing rate of wages, including fringe benefits, which is in effect and appliable to the district in which the work is being performed; and

      ii. Give preference to the employment of bona fide Montana residents in the performance of work.

9. Per 18-2-404, MCA, Public Works Contracts subject to prevailing wage requirements must be approved in writing by the County Attorney's Office prior to execution by the Board. All Public Works Contracts, as defined by 18-2-401, MCA, which use the standard Contract forms prepared by the County Attorney's Office and available on the internal County website are deemed approved by the County Attorney per 18-2-404, MCA.

10. Performance Bond and Payment Bond requirements. Performance Bond and Payment Bond is required on Construction Contracts as a guarantee that Contract provisions are performed and that laborers, suppliers, and subcontractors are paid. In accordance with 18-2-201, MCA, all Construction Contracts shall execute a Performance Bond and Payment Bond to secure performance on the Contract and payment of workers, subcontractors, and supplier. As provided in 18-2-201(4), MCA, the requirements for Performance and Payment Bonds on building or Construction projects, as defined in 18-2-101, MCA, that cost less than $150,000 may be waived by the Elected Official/Department Director and shall be so stated in the notice for the Formal Solicitation.

11. The County shall not enter into a Procurement Contract under a federal or state award with any entity or individual that is suspended or debarred from such Contracts. Prior to award of a Contract procured under federal or state award, the department shall review the Excluded Parties List system at www.sam.gov for federal awards or the Debarred & Suspended Vendors list at https://spb.mt.gov/Agency-Resources/Debarred-Suspended-Vendors for state awards, and *document* that the Contractor is not classified as a suspended or debarred Contractor.

12. Certification of Nondiscrimination Against Firearms Entities/Trade Associations.

    a. Per 30-20-301, MCA, Contracts with a value of at least $100,000 with companies that have at least 10 full-time employees require the Contractor to certify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Contract against a firearm entity or firearm trade association.

K. **Variances**

1. The Board or their Designee have the discretion to grant a variance from the provisions of this policy at the request of an Elected Official/Department Director. To support the request for a variance, the requestor shall provide a written request to the Purchasing Officer which demonstrates:

    a. How compliance with legal requirements will be achieved;

    b. What clear Contract obligations, if applicable, will be formulated without undue exposure to liability; and

    c. How a fair and open process for the expenditure of public funds will be maintained.

2. Approval of requests for variance shall occur at a public meeting of the Board.

VI. **Protest Procedure**

A. A Bidder or Offeror aggrieved in connection with the Solicitation or award of a Contract may protest as follows:

1. The protest must be in writing and state in detail all of the protestor's objections and allegations of violations of the Lewis and Clark County Procurement policy and/or Montana Contract law. The complete protest must be submitted to the Grants and Purchasing Department no later than 14 days after the execution of the Contract in question. If the protest is not resolved by mutual agreement, the Purchasing Officer, or their Designee, shall issue a written decision on the protest within 30 days after receipt of the protest.

2. If the Grants and Purchasing Department rejects the protest, the reasons must be stated, and the protestor must be informed of the right to appeal the decision to the Board. Such an appeal must be made in writing within 14 days of the date of the written decision.

3. The Board shall have a hearing within 30 days where the Bidder or Offeror has the opportunity to present arguments in the case.

4. After the hearing, the Board may deny the protest, or as appropriate, may order one of the following remedies:

    a. If the Contract has not yet been awarded and it is determined that a Solicitation and proposed award of a Contract is in violation of this policy or applicable law, the Solicitation or proposed award may be cancelled or revised to comply with the law;

    b. If the Contract has been awarded and the Board determines that the Solicitation is in violation of the law and the entity awarded the Contract has not acted in bad faith, the Board may either:

        i. Ratify and affirm the Contract, provided it is determined that doing so is in the best interest of the County; or
        ii. Terminate the Contract and compensate the entity awarded the Contract for the actual expenses reasonably incurred under the Contract prior to termination.

    c. If the Contract has been awarded and the Board determines that the Solicitation or award of the Contract is in violation of the law and the entity awarded the Contract has acted in bad faith, the Board may either:

        i. Declare the Contract void; or

        ii. Ratify and affirm the Contract if that action is in the best interest of the County, without prejudice to the County's right to appropriate damages.

    d. The County is not required to delay, halt, or modify the Procurement process pending the result of a protest, contested case proceeding, or judicial review.

VII. **Closing**

VIII. **References**

A. Montana Code Annotated

B. Credit Card Policy

C. Cash Management Policy

D. Public Records Request Response Policy

E. FEMA Public Assistance Program and Policy Guide