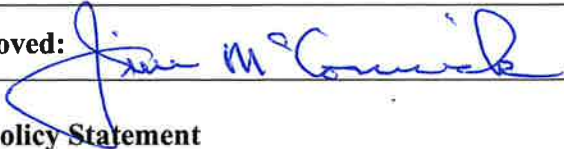




## LEWIS AND CLARK COUNTY POLICY

<b>Subject: Purchasing Policy</b>	<b>Policy No: 1.1.4</b>
<b>Approved:</b> 	<b>Effective Date: August 19, 2021</b> <b>Revised Date: April 12, 2022</b>

### I. Policy Statement

- A. **Purpose.** This policy seeks to establish specific directions and guidelines for all departments, 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 seeks to comply with Montana Code Annotated (MCA) [Title 7, Chapter 5, Part 23](#), “County Contracts”, the applicable parts of [MCA Title 18](#), “Public Contracts”, and [Administrative Rule of Montana \(ARM\) 2.5](#), “State Procurement”.

### II. Applicability

- A. **Authority.** The authority to enter into Contracts for the benefit of the County, its departments, and all entities is exercised by the Lewis and Clark County Board of County Commissioners (the “Board”). All Contracts must be approved by the Board.
- B. **Administration.**
1. Department Directors are responsible for the implementation of this policy within their departments and for establishing procedures to demonstrate compliance.
  2. The County Purchasing Officer shall provide general oversight and assistance to departments in the administration of this policy and should be considered a resource for questions and information regarding purchasing and contracting. 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 Bid openings;
    - d. Serving on evaluation committees; and
    - e. Reviewing department documentation and procedures to verify compliance with this policy.

3. 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 and the Finance Officer prior to seeking an interpretation or ruling from the Board or their Designee.
4. The public has the right to inspect all purchasing and Contract documents with the exception of sealed Bids prior to opening, protected confidential information, and legitimate Trade Secrets. In the event that copies are requested, the request will be considered a public records request. Please 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, [§ 30-14-4, MCA](#).
  2. **ARM.** Administrative Rules of Montana.
  3. **Bid.** A price offered by a Vendor to furnish specific Goods, Services, and/or Construction in response to an Invitation for Bids (IFB).
  4. **Bidder.** Any entity submitting a competitive Bid in response to an IFB.
  5. **Bid Security.** A guarantee in the form identified in [§ 18-4-312, MCA](#) that the Bidder/Offeror, if selected, will enter into the Contract as Bid within 30 days. Otherwise, the Bidder or guarantor will forfeit the amount of the security.
  6. **Board.** The Board of County Commissioners for Lewis and Clark County, Montana.
  7. **Change Order.** A Contract modification that changes the specifications, statement of work, drawings, Contract value, or the Contract performance timeframe.
  8. **Construction.** The process of building, altering, repairing, improving, abating, or demolishing any structure or building, or other improvements of any kind to any Real Property. This does not include routine repair, operation, or maintenance of existing Real Property.
  9. **Contract.**
    - a. A deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts;

- b. Any type of agreement regardless of what it is called for the Procurement of Goods, Services, consultant Services, or Construction; and
  - c. A Purchase Order.
10. **Contractor.** A person or entity having a Contract with the County.
  11. **County.** Lewis and Clark County, Montana.
  12. **Chief Administrative Officer.** The Chief Administrative Officer of Lewis and Clark County, Montana, or such person's Designee.
  13. **Department Director.** The duly appointed director of any department of the County.
  14. **Designee.** A duly authorized representative of a person holding a superior position.
  15. **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.
  16. **Exigency Purchase.** A Purchase of Goods or Services due to a sudden and unexpected happening, unforeseen occurrence, or condition which requires immediate action.
  17. **Goods.** Any tangible Personal Property other than Real Property.
  18. **Interlocal Agreement.** A written contract between political subdivisions for the purpose of cooperation in order to provide services on the basis of mutual advantage.
  19. **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.
  20. **Item.** A single, separate unit, article, product, material, or Service.
  21. **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.
  22. **MCA.** Montana Code Annotated.
  23. **Personal Property.** Property consisting of movable articles both physical, such as furniture or computers, or non-physical, such as stocks or bonds.

24. **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.
25. **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 Proposal (RFP).
26. **Public Works Contract.** A Contract for Construction Services or non-Construction Services in which the total cost of the Contract is in excess of \$25,000.
27. **Purchase/Procurement.** 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.
28. **Purchasing Agent.** The elected official, Department Director, or Designee that is procuring Goods or Services.
29. **Purchasing Officer.** The employee of the Grants and Purchasing Department charged with the administration of the Procurement process and ensuring that Purchasing Agents follow federal and state Procurement laws and this policy.
30. **Purchase Order (PO).** A County document used to authorize a Purchase transaction with a Vendor.
31. **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.
32. **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.
33. **Real Property.** Property consisting of lands and all rights, privileges, or improvements belonging to, and passing to lands as buildings, crops, or mineral rights.
34. **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.
35. **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.

36. **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.
37. **Responsive.** A Vendor that has submitted a Bid, offer, Proposal, Quotation, or response that conforms in all material respects to the Solicitation.
38. **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.
39. **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.
40. **Statement of Qualifications (SOQ).** The formal response to an RFQ.
41. **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.
42. **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.
43. **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 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.
44. **Vendor.** An actual or potential consultant, supplier, or Contractor of Construction Goods, Services, and/or consultant Services.

#### IV. Directives

- A. **Scope.** This policy is applicable to all County 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.** Violations of ethical standards shall be handled in accordance with applicable state statute and the County Human Resources Manual.
- C. **Revision to Policy.** 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. Long-term Contracts (i.e., 12 months or more) cannot exceed seven years and must engage in the competitive process according to the dollar thresholds established in this policy.
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. 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.
5. No employee may solicit or accept gifts in excess of \$50, or of substantial economic benefit tantamount to a gift, from a potential or actual Vendor.

#### **E. Unauthorized Purchases.**

1. County employees are not authorized to Purchase non-exempt Goods or Services (see Item F) without a Purchase Order 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. All Procurements shall comply with Montana statute, if applicable.
3. The Purchase of food and/or beverages with County funds must be for a public purpose and pre-approved in writing by the Purchasing Officer and Chief Administrative Officer or these officers' respective Designees/departments.
4. 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.
5. 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).
11. Advertising of employment vacancies or required notices as provided in law.
12. Gas credit card 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. Professional medical Services and 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 Interlocal Agreement.

21. Franchise agreements.
22. Vehicle registration fees.
23. Hotel accommodations.
24. Office space rental or lease.
25. Permit and license fees.
26. Warranty or maintenance agreement costs required by the original manufacturer or installer.
27. Proprietary software maintenance agreements.
28. Door prizes that are customary when attending trade or professional organization conferences (not to exceed \$50).

**G. Exceptions.** This policy does not apply to:

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 statutes 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 County Grants and Purchasing Department may modify or amend County 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 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; and
    - iv. A brief description of the emergency conditions justifying the Purchase.
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. As provided in [ARM 2.5.605](#):
- 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; and
    - iv. The written determination that shall provide the reasons for the Exigency Purchase.

#### **H. Payment for Goods and Services.**

1. Prompt Payment Act. In accordance with [§ 28-2-21, MCA](#), 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. Services that exceed \$80,000 annually by an individual or entity require a formal Bid or justification of Single Source. Architectural, engineering, and surveying Contracts have a lower dollar threshold of \$50,000.

3. **Credit Cards.** The process for issuing, using, and reconciling credit cards is outlined in the County's Credit Card Policy. Failure to comply with this policy may result in employee removal from the credit card program and other disciplinary action as appropriate in accordance with County disciplinary procedures. 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).

#### **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.
  - c. Postage.
2. Misuse of petty cash funds are subject to non-reimbursement and personal liability.
3. Refer to the County Cash Management Policy, Section IV, Number 2, Subsection b for petty cash reconciliation policy and procedures.

#### **V. Procurement Processes**

- A. **Small Purchases – Quote.** Purchases of Goods or Services less than \$25,000 may use a Quote process. Although a Vendor may be chosen without seeking formal competition, it is recommended that departments use prudent purchasing practices and obtain competitive prices when practicable.
  1. A department contacts Vendors to obtain a price 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 articles or equipment 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.

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

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

**B. Limited Solicitation.** Purchases of Goods or Services equal to or greater than \$25,000 and less than \$80,000 (excluding Contracts for architectural, engineering, or land surveying Services which have a lower threshold of \$50,000) shall use a Limited Solicitation process.

1. The department develops a written opportunity for a minimum of three Vendors to offer a price on the desired Item or Service according to the specifications established for the Purchase.

2. 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 selection criteria, including relative importance, to be used in addition to price.

3. The Vendor is selected using the criteria stated in the written opportunity.

4. 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 Vendor response selected. Responses shall be made available for public inspection or telephone inquiry.

**C. Invitation for Bids (IFB).** An IFB is required for the Procurement of Goods, Services, and equipment equal to or 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 equal to or greater than \$80,000.

1. An IFB must contain:

- a. Detailed specifications for the Item(s) sought;
- b. Statements alerting Bidders to any special requirements in the Bid;

- c. Shipping and billing instructions; and
  - d. Contract provisions that inform Bidders to standard requirements or conditions for doing business with the County.
2. The department arranges for notice of the IFB to be published a minimum of two times with publication dates at least 7 days apart (see [§ 7-1-2121, MCA](#)). The final published notice must appear at least three business days prior to the Bid opening. The published notice shall contain:
  - a. A brief statement about the Procurement for which Bids are sought;
  - b. Where complete specifications may be obtained, if not provided in the published notice;
  - c. The contact information for the County employee responsible for answering questions about the Bid;
  - d. Specific Bid requirements for Contract or performance security;
  - e. The initial Contract term and any renewal periods;
  - f. The address where Bids are to be mailed;
  - g. The due date and time for receipts of Bids; and
  - h. The date and location of Bid opening.
3. The department has the right to invite Vendors to participate.
4. Bid Security is required for all Bids submitted in response to an IFB and must be provided in accordance with [§§ 18-1-201 through 206](#). Each Bidder must provide a Bid bond or other 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 bond or other 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.
5. Requirements for performance security are determined on a case-by-case basis.
6. Bids must be opened publicly at the time and place designated in the IFB. Each Bidder and any member of the public has the right to be present and has the right to examine Bids, with the exception of legitimate Trade Secrets, after they have been opened and reviewed by a representative of the department issuing the IFB.
7. Bid is awarded to the lowest Responsible Bidder. The County reserves the right to reject any or all bids, to waive immaterial irregularities, or to accept any bid deemed to be for the public good.
8. 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. IFB with specifications including any addenda;
- c. List of known Vendors;
- d. All Bids;
- e. Tabulation of Bids;
- f. Correspondence concerning the Purchase, including a recommendation for award from the issuing department, if appropriate;
- g. An explanation if the Contract is awarded to anyone other than the low Bidder;
- h. Evidence of a performance and payment bond, if required; and
- i. A signed Purchase Order or Contract.

**D. IFB – Public Works Contract.** In addition to the requirements of Section IV. C., Bid specifications and Contracts for Construction and non-Construction Services equal to or greater than \$25,000 are subject to the following provisions:

- 1. Security requirements. In accordance with [§ 18-2-201, MCA](#), all Construction Contracts shall execute a performance and payment bond to secure performance on the Contract and payment of workers, subcontractors, and supplier. [§§ 18-2-201\(4\), MCA](#) allows the bond requirement to be waived for Contracts less than \$50,000.
- 2. Contractor shall agree to:
  - a. Pay the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed; and
  - b. Give preference to the employment of bona fide Montana residents in the performance of work.

**E. Request for Proposals (RFP).**

- 1. An RFP is a method used for Procurement of Goods and Services equal to or greater than \$80,000 when it is desirable to incorporate factors other than cost into the selection criteria. 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 prior established criteria which involves more than price.
- 2. The department shall put together the RFP package to include all pertinent information about the products or Services sought, as well as the selection criteria, relative importance, and scoring methodology that will be used to determine Vendor selection.
- 3. The department arranges for notice of the RFP to be published a minimum of two times with publication dates at least 7 days apart (see [§ 7-1-2121, MCA](#)). The final published notice must appear at least 3 days prior to the due date. The published notice shall contain:

- a. A brief statement about the Procurement for which Proposals are being sought;
  - b. Where complete Proposal details may be obtained, if not provided in the published notice;
  - c. The contact information for the County employee responsible for answering questions about the Proposal;
  - d. Any specific requirements for Contract or performance security;
  - e. The initial Contract term and any renewal periods;
  - f. The address where Proposals are to be mailed; and
  - g. The due date and time for receipt of Proposals.
4. After the proposals have been opened and reviewed, 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 an RFP response must complete an Affidavit of Trade Secret Confidentiality and clearly mark and separate and bona fide Trade Secret material. This information is removed before public inspection.
  5. Awards will be made to the Responsible Vendor whose Proposal is most advantageous to the department, with price and other factors considered. The County must have a written method for conducting technical evaluations of the Proposals received and for selection of the Vendor. It is recommended that a selection committee of at least 3 people be used to consider the complex or high dollar RFPs. The award may need to 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 offering.
  6. The County reserves the right to reject any or all proposals, to waive irregularities, or to accept any bid deemed to be for the public good.
  7. The department needs to maintain, at a minimum, a record of the following documents:
    - a. Record of public notice of the RFP and mailing list;
    - b. A copy of the RFP and addenda;
    - c. Copies of submitted Proposals;
    - d. A determination of award detailing the basis on which the award was made;
    - e. Notes, meeting minutes, recordings, or minutes of any discussion with the Offerors; and
    - f. A signed Purchase Order or Contract.

**F. Request for Qualifications (RFQ).**

1. An RFQ is used to acquire Professional Services equal to or 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. The department shall put together the RFQ package to include all pertinent information about the Professional Services sought, as well as the selection criteria, relative importance, and scoring methodology that will be used to determine Vendor selection.
3. The department shall arrange for notice of the RFQ to be published a minimum of two times with publication dates at least 7 days apart (see § 7-1-2121, MCA). The final published notice must appear at least 3 days prior to the due date. 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 contact information for the County employee responsible for answering questions about the Services;
  - d. The initial Contract term and any renewal periods;
  - e. The address where Statements of Qualifications (SOQ) are to be mailed; and
  - f. The due date and time for receipt of SOQ.
4. The department may evaluate SOQ responses 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.
5. After the preliminary evaluation of the firms' qualifications, the department may conduct discussions with finalists and select the firm best suited to provide the Services desired.
6. A Contract is then negotiated at a price the department determines to be fair and reasonable given the estimated value of such Services.

7. The County reserves the right to reject any or all proposals, to waive irregularities, or to accept any bid deemed to be for the public good.
8. The department shall maintain, at a minimum, a record of the following documents:
  - a. Record of public notice of the RFQ and mailing list;
  - b. A copy of the RFQ and addenda;
  - c. Copies of submitted SOQ;
  - d. A determination of award detailing the basis on which the award was made;
  - e. Notes, meeting minutes, recordings, or minutes of any discussion with the Offerors; and
  - f. A signed Purchase Order or Contract.
9. The RFQ process as outlined above may be used to create a pool of at least 2 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 equal to or greater than \$80,000, an IFB is used, and the prequalified Vendor pool is good for 5 years.

**G. Sole or Single Source Purchases**

1. Under some limited circumstances, a determination of Sole Source or Single Source may be made by the Department Director, with the approval of the Grants and Purchasing Department 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 compatibility of current Services or equipment, accessories, or replacement parts is the paramount consideration;
  - b. There is no alternative, equivalent product to the one required;
  - c. There is only one acceptable or suitable source for the supply or Service Item; and/or
  - d. Grant terms specify the equipment to be Purchased.
3. For Sole or Single Source Purchases greater than or equal to \$25,000, 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.
4. Sole or Single Source procedures do not apply if the Items or Services are under the \$25,000 threshold.

#### **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 approved by the Grants and Purchasing Department, directly negotiate with a Vendor or Vendors if the Purchasing Officer determines a second or subsequent Solicitation would be unsuccessful. The department may conduct negotiations as appropriate as to price, delivery, and terms.

#### **I. Cone of Silence**

1. A cone of silence shall be established on all County competitive selection processes. The cone of silence prohibits any communication regarding an IFB, RFP, RFQ, or other competitive Solicitation between any Bidder (or its agents or representatives) or other entity with the potential for a financial interest in the award (or their respective agents or representatives) regarding such competitive Solicitation, and any County Commissioner or County employee, selection committee member, or other persons authorized to act on behalf of the County including the County's architect, engineer or their sub-consultants.
2. The cone of silence shall be in effect from the time of advertisement until Contract award. Each competitive Solicitation shall provide notice of the cone of silence requirements. Violations of the cone of silence may be grounds for disqualification from the selection process.
3. The cone of silence shall not apply to:
  - a. Communications at any public proceeding or meeting; and
  - b. Purchases exempt from competitive selection, small Purchases, Sole or Single Source Procurements, and emergency Procurements as defined in this policy.
4. The cone of silence shall terminate when the Board or a County employee authorized to act on behalf of the Board awards or approves the Contract, rejects all Bids or responses, or otherwise takes action to end the selection process.

## J. Required Contract Provisions

1. Standard legal documents will be developed by the County Attorney and maintained by County Finance. The approved standard legal documents shall be used. A department may not modify the approved standard legal documents without the approval of the County Attorney's Office. The Board is the final approval authority.
2. Contract language. All Contracts must comply with any applicable legal requirements including, but not limited to, the prevailing wage required for Public Works Contracts.
3. Grant funded expenditures. Any Contract to be funded by one or more grants must conform to grant award documents and include any Contract language required by the grant.
4. Security requirements for Contracts, in general. 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.
5. Insurance 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.
6. 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. Changes to 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. Changes resulting in increased costs of the approved contract value shall require approval of the Board.
7. 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.
  - b. Performance security requirements. To comply with [§ 18-2-201, MCA](#), performance security is required on Construction Contracts as a guarantee that Contract provisions are performed and that laborers, suppliers, and

subcontractors are paid. This provision may be waived for Contracts less than \$50,000.

**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 or Department Director. To support the request for a variance, the requestor shall provide a written request to the Purchasing Officer, or their Designee, that 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.

**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 purchasing policy and/or Montana Procurement 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. Administrative Rule of Montana
- C. Credit Card Policy
- D. Cash Management Policy
- E. Public Records Request Response Policy