

RESOLUTION NO. 12-2018

A RESOLUTION ADOPTING THE MONTANA PROCUREMENT ACT

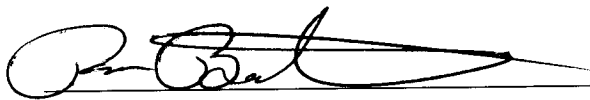
WHEREAS, counties that wish to receive federal grant money must have a procurement policy in place to do so, and

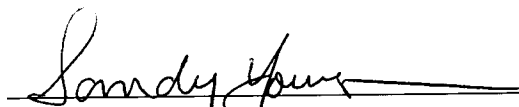
WHEREAS, Fergus County wishes to periodically receive federal grant money,


NOW, THEREFORE, BE IT RESOLVED that Fergus County adopts the Montana Procurement Act, which is found in Montana Code Annotated Title 18, Chapter 4, as the Fergus County Procurement Policy.


PASSED AND APPROVED this 25 day of May, 2018 by the Board of County Commissioners, Fergus County, Montana.

BOARD OF COMMISSIONERS:


ROSS BUTCHER


SANDY YOUNGBAUER


CARL SEILSTAD

ATTEST:

RANA WICHMAN, Clerk & Recorder

Procurement Policy Fergus County, Montana

Section I. Policy Introduction

A. Authority

“The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.” Montana Code Annotated § 7-5-2101(1).

B. Purpose

The purpose of this Policy is to ensure uniform, transparent, and equitable rules regarding the purchase and procurement of goods and services with public funds. **This policy shall not apply to expenditures that have been approved via the annual budgeting process.**

Fergus County has adopted the Montana Procurement Act, which is found in Title 18, Chapter 4, of the Montana Code Annotated. The purpose of the Procurement Act is to simplify, clarify, and modernize procurement; permit the continued development of procurement policies and practices; make procurement laws as consistent as possible; provide for increased public confidence; ensure the fair and equitable treatment of all persons who deal with the procurement system; provide increased economy and maximize the purchasing value of public funds; foster effective, broad-based competition; provide safeguards; and provide remedies for unlawful bid solicitations or contract awards.

The following is an overview of the County’s policies and contains procedures designed to promote consistency throughout County departments. It is intended to guide County departments through the purchasing process but is not intended to inform employees of all technical and/or legal requirements.

Section II. Procurement Methods

A. Competitive Bidding

Formal bid solicitation is required by § 7-5-2301, for the “purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of \$80,000.” Through the adoption of the Montana Procurement Act, the County must solicit competitive sealed bids (awarded to the lowest responsible bidder) or may solicit competitive sealed proposals (awarded based on the published

solicitation review criteria). The County must additionally solicit for the professional services of architects, engineers, and land surveyors if the services will be in excess of \$20,000.

Whenever using the competitive sealed bids proposal or qualification process, specifications must be appropriate, accurate, reasonable, and fair. "Specification means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery." § 18-4-231. "All specifications shall promote overall economy for the purposes intended and encourage competition...and may not be unduly restrictive." § 18-4-234. Specifications should be for the purpose of generating competitive bids, proposals, and/or qualifications so that the county may obtain the best value and vendors are provided a fair opportunity to consider the project or procurement requirements.

When using the competitive bid process, a selection committee may be formed to review the bids and proposals. The selection committee must be evenly divided between members of the office, department, or board seeking the procurement and members of other County offices or departments. County Commissioners should not be members of the selection committee because Commissioners act on the recommendation of the committee.

All bid, proposal, and qualification procedures will be done in compliance with law, including but not limited to legal procedures for advertising, proposal specifications, opening, and awarding. All formal procedures will be coordinated between the County Commissioners and the County Attorney's Office.

County elected officials, department heads, and applicable boards must be aware of and follow all labor laws, including but not limited to those in relation to hiring of independent contractors, the requirements of public works contracts over \$25,000 to contain prevailing wage language (§ 18-2-422), and Contractors Gross Receipts Tax for public works contracts (§ 15-50-205).

B. Emergency Exception to Competitive Bidding

There are times when competitive bidding is not possible because of emergency, disaster, or other exigencies. Poor planning is not an emergency. Per § 7-5-2304, the emergency exception to competitive bidding requirements applies when a situation is "made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, or riot or insurrection; for the immediate preservation of order or the public health; for the restoration of a condition of usefulness that has been destroyed by accident, wear, tear or mischief; or for relief of a stricken community overtaken by calamity." However, such procurement shall be made with such competition as is practicable under the circumstances to get the lowest price and best value. A written determination

of the emergency and for the selection of the particular contractor shall be maintained in the public record.

C. Prohibition on Division of Contracts

Pricing for routinely purchased goods and services may not be artificially divided so as to constitute a small purchase or remain below a certain purchase threshold (§§ 18-4-305 and 7-5-2305). Supply and output contracts may over time exceed allowable thresholds; therefore, it is advisable to maintain compliance in advance with formal bidding requirements.

D. Rent/Leases with an Option to Purchase

Any rental/lease of machinery, equipment, apparatus, appliances, materials, or supplies of any kind that has the option of purchasing after a fixed amount of time or a certain fixed amount has been paid shall be considered a purchase or contract for sale. If a purchase would otherwise require a bid, proposal, or qualification as set forth above then the rental/lease must comply with the Montana Procurement Act and Title 7, Chapter 5, part 23.

E. Cooperative Purchasing

By adopting the Montana Procurement Act, the County is hereby authorized to participate in cooperative purchasing through federal supply schedules of the United States General Services Administration, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units. § 18-4-401 through 407.

Section III. Purchasing Authority and Required Actions

A. Purchase Orders

All purchases exceeding \$25,000 must be pre-approved by the Commissioners. The use of a purchase order is the means by which pre-approval is documented. Department heads/elected officials will be responsible for filling out the purchase order form with all the proper information in addition to obtaining Commissioner written approval prior to the actual ordering of materials, equipment or services of \$25,000 or more. In the case of competitive bidding, the purchase order will refer to a contract. The accounting office will establish procedures for maintaining and distributing purchase orders.

On occasion, exigent circumstances will require emergency purchases. If no Commissioner is available to approve a purchase of more than \$25,000, the department head/elected official shall notify the Commissioners as soon as possible that the purchase was made and the conditions that existed.

However, an emergency allowing for purchase without a purchase order does not relieve the county from the competitive bidding requirements.

B. Required actions

The following table itemizes required actions in the purchase of goods and/or services at specified levels. Quotes may be verbal with a note indicating who the quote was taken from and the amount quoted.

Amount	Required Actions
0 to \$4,999	Documented competitive pricing is not required; however due diligence shall be given to the County's goal of maximizing the purchasing value of public funds.
\$5,000 to \$24,999	Minimum of 2, preferably 3, quotes. A notation of telephone/written quotes should be attached to claim.
\$25,000 +	PO Required. Minimum of 2, preferably 3, quotes. A notation of telephone/written quotes should be attached to PO.
\$20,000 +	For professional services of architects, engineers, and land surveyors an RFQ is required. Process through County Attorney's Office.
\$80,000 +	Competitive Sealed Proposals or Invitations to Bid are required. Process through County Attorney's Office.

Fergus County's Bid Tabulation Form should be used to document competitive pricing for purchases less than \$80,000.

If, through the exercise of due diligence that is properly documented, the minimum number of quotes cannot be obtained, then the purchase may proceed with a written explanation attached to either the claim or PO.

There is nothing stated in this Policy that prohibits the use of formal competitive practices for procurement of goods and services for any threshold. The decision to use formal practices should be made by the purchasing department head/elected official based on such criteria as market competitiveness, time frame, and complexity of specifications to be used.

Section IV. Policy Considerations

Accountability & Public Trust: All persons involved in the procurement of goods and services or expenditure of County funds are accountable for their actions. All actions must be fair and impartial to avoid any appearance of or actual impropriety. Proper recordkeeping and the avoidance of conflicts, favoritism, and self-dealing are essential to promoting the public trust. Persons with authority to procure goods and services or are involved in the selection committee process must exercise independent judgment and uphold the

highest standards of integrity and fiduciary responsibility.

Competition/Efficiency/Value & Quality: The County seeks to obtain best value at the best price to optimize the use of public funds and resources. The County reserves the right to negotiate with vendors and will make every reasonable effort to acquire the best value and quality through competition. In some cases, the best value may not be the lowest purchase price outside the formal bidding/proposal/qualification process. Consideration should be given to quality, reputation, serviceability, maintenance, costs of operation & ownership, warranty, suitability for particular purpose and other considerations.

County Attorney: The County Attorney's Office will review all contracts for goods or services made pursuant to these rules prior to contract finalization. In addition, all formal bidding/proposal/qualification processes shall be conducted through the County Attorney's Office.

Conflict of interest: Conflicts of interest occur when employees are in a position to influence a decision, policy, or procedure where they might directly or indirectly receive financial benefit or give improper advantage to an associate. Employees in a position to influence a County business decision for which they or their families might receive material benefit shall disclose the nature of the conflict to others involved in the decision. Whenever possible, those with potential conflicts should remove themselves from involvement in the decision.

Gifts and Gratuities: No employee shall accept gifts, personal loans, or any other special consideration from an individual or business organization conducting business with the County, as stated in §§ 2-2-102 and 2-2-104. No employee may accept for individual or personal benefit any gift or gratuity with a value over \$50 from any current or potential vendor to the County. A gift shall be defined as a voluntary transfer of goods or services to the County made gratuitously and without consideration.

Kickbacks: A kickback is defined as a return of a sum of money, goods, or services, often because of a confidential agreement between two parties to transact business together while excluding other qualified parties. The acceptance of kickbacks is not tolerated, and any employee found violating this policy will be subject to disciplinary action. Any vendor offering a kickback must be reported to the Commissioners. Any vendor found to be in violation of this policy shall be suspended from further business dealings with the County.

Local vendor preference: This section only applies if the County is using the formal bidding/proposal/qualification process, and if there are no out-of-state bidders. It is the policy of the County, when making purchases or entering contracts, to give some preference to local vendors and service providers if the price differential meets the following criteria: the bid is no more than \$500 or

3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a County resident.

If the competitive bid is for the construction, repair, or maintenance of a building, road, or bridge that is in excess of \$80,000, the State resident bid preference under § 18-1-102(1), applies.

Disposition of Surplus Goods: Disposition shall be according to Montana Code Annotated Title 7, chapter 8, part 22.

Conflicts: County elected officials, department heads, and County boards must be aware of any applicable resolutions, bylaws, budgets, statutes, or other matters that may apply. This Policy is intended to provide general guidelines and supplements the Montana Procurement Act. In the event of a conflict, the more stringent rule, law, or regulation applies. In the event that any part or provision of this Policy is deemed unenforceable, the remainder shall apply.