

## **CONFIDENTIALITY GUIDANCE**

- A. Pursuant to the Administrative Rules of Montana and Section 18-4-304 of the Montana Code Annotated, all information provided in Restoration Grant applications will be available to the public except for:
1. Trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, Chapter 14, Part 4, MCA;
  2. Confidential matters involving individual safety as determined by the NRDP;
  3. Personal financial information requested by the NRDP to establish an applicant's financial qualifications; and
  4. Other information that is protected as confidential under the Montana constitution.
- B. In order for an applicant to request that material be kept confidential, the following conditions must be met:
1. Information that the applicant seeks to keep confidential must be clearly marked and separated from the rest of the proposal. In addition, the applicant should explain why it believes that the information should be kept by the State as confidential.
  2. An affidavit from an applicant's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, Chapter 14, Part 4, MCA, must be attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" in requesting the trade secret claim. This affidavit form is available at the State Procurement Bureau's website: <http://www.mt.gov/doa/gsd/Downloads/Tradesecretaffidavit.doc> or by calling (406) 444-2575.
  3. Applicants must be prepared to pay all legal costs and fees associated with defending a claim for confidentiality in the event of a "right to know" (open records) request from another party.

Documents not meeting all of the above requirements will be available for public inspection, including copyrighted material. We recommend that applicants consult the NRDP (406-444-0205) before submitting any potentially confidential material as part of an application.

**PROCUREMENT GUIDANCE**  
**Procurement Guidance Summary (revised 1/2009)**  
**Contracting and Procurement for Supplies, Services and Construction**

For the expenditure of UCFRB Restoration Funds, state and local public entities and private entities (including private/public partnerships) are required to comply with Montana contracting and procurement laws applicable to state agencies, counties and municipalities. Title 18 of the Montana Code sets forth the procurement and contracting laws applicable to public agencies. This guide provides a brief outline of these procedures required by law. Most of the legal citations are not included in this summary, but can be provided upon request. Attached to this guide is a table setting forth these procedures.

Different procedures apply depending on whether a grant recipient is procuring supplies, certain types of services, or seeking a contractor for construction purposes. Additionally, the Montana Procurement Act (Title 18, Chapter 4 of the Montana Code) does not apply to counties and municipalities, so contracting and procurement procedures for counties and municipalities differ in a few ways from those prescribed for state agencies.

**Contracting and Procurement Requirements for State Agencies**

**Supplies and services**

- Purchases \$5,000 or less - the grant recipients may purchase the item directly from a vendor who follows good business practices, subject to certain exceptions relating to printing or specific controlled commodities.
- Procurement is between \$5,001 and \$25,000 - grant recipients may utilize a limited solicitation. The limited solicitation procedure employed by the Montana Department of Justice, for example, requires a minimum of three written or oral quotations, if available.
- Procurement greater than \$25,000 - The State of Montana utilizes two formal procedures, an Invitation for Bid (IFB) or a Request for Proposal (RFP). Contracts will be awarded to the lowest responsible and responsive bidder.

**State agency procurement of architectural, engineering and land surveying services**

- For procurement of these estimated services not to exceed \$20,000 - state agencies may contract for such services by direct negotiation, but agencies may not separate service contracts or split projects for the purpose of circumventing the requirements for services exceeding \$20,000.
- For the procurement of these services with fees estimated to exceed \$20,000 - publication of the requirement of services is required with selection of the most qualified applicant.

**State agency contracting for construction**

- If the construction is estimated to cost between \$25,000 and \$75,000, at least three informal bids from contractors registered in Montana are required if reasonably available.
- For construction estimated to cost \$75,000 or above, full advertising, bidding, review and supervision procedures set forth in Chapter 2 are required.

## **Contracting and Procurement Requirements for Local Government**

Title 7, Chapter 5 of the Montana Code sets forth provisions of law for the general operation and conduct of business by Montana counties and municipal governing bodies. Parts 23 and 43 of this chapter provide specific procedures to be employed by counties and municipalities, respectively, for certain large purchases and construction contracts.

### **County Government Contracts**

Title 7, Chapter 1, Section 2121 of the Montana Code sets forth a procedure for the publication of a notice calling for bids that must be followed by counties in contracting for the following supplies and construction:

- The purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies in excess of \$50,000; and
- The construction, repair, or maintenance of any building, road, or bridge in excess of \$50,000.
- Every contract subject to this bidding requirement must be let to the lowest and best responsible bidder.

There are a few exceptions to these requirements.

- In lieu of soliciting bids, the county governing body may purchase at public auction any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies for an amount less than \$60,000 (see Mont. Code Ann. § 7-5-2303).
- Counties are exempt from competitive bidding requirements for public printing (see Part 24 of Chapter 5 for public printing requirements) and for purchases made necessary by an emergency situation as defined in Mont. Code Ann. § 7-5-2304(1,2).

### **Municipal Government Contracts**

Municipal governments are required by law to utilize a competitive, advertised bidding process, set forth at Mont. Code Ann. § 7-5-4302(2) in contracting for the following supplies and construction:

- The purchase of any automobile, truck or other vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies in excess of \$20,000; and
- Construction, repair, or maintenance in excess of \$25,000.

The contract must be awarded to the lowest responsible bidder.

As with counties, municipal governments are required to comply with the procedures set forth at Title 18, Chapter 8 for the procurement of the professional services described in that chapter.

There are also a few exceptions to these requirements.

- In lieu of soliciting bids, the municipal governing body (council) may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for an amount less than \$25,000.
- Municipalities are exempt from competitive bidding requirements for purchases made necessary by an emergency.
- When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies when they may be purchased at a substantial saving.

### **Contracting and Procurement Requirements of Private Entities**

- Private entities are required to adhere to contracting and procurement procedures that are applicable to state agencies bidding out work, with the following exceptions:
  1. The exception provided for in MCA 18-4-133 that allows landowners to perform the work on their land without going through the procurement process (however, if the landowner subcontracts for this work, then the landowner must follow state agency contracting and procurement procedures); and
  2. For grant projects of \$25,000 or less, where the applicant is a non-profit entity, it may perform the work itself, without procurement, if it has qualified staff that can do the work cost-effectively. In such cases, the qualifications and cost-effectiveness of staff proposed to conduct the work will be evaluated as part of the NRDP's evaluation of the project according to the criteria set forth in the *UCFRB Restoration Plan, Procedures, and Criteria*.<sup>1</sup>
- Private-public partnerships are required to adhere to contracting and procurement procedures applicable to the public entity partner.

### **Procurement Documentation Required of Grant Recipients**

Pursuant to the grant agreement between grant recipients and the State governing the implementation of approved grant projects, procurement of labor, services, supplies, materials and equipment shall be conducted according to applicable federal, state and local statutes, and grant recipient shall comply with state procurement and contracting laws for the purchase of goods and professional services and for construction, repair, and public works of all kinds. Attachment A to this guidance provides the Procurement Documentation Form included in every grant agreement that grant recipients must be complete for all contracts and subcontracts.

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<sup>1</sup> The Trustee Restoration Council approved this limited exception at its June 2, 2009 meeting.

## **CONSTRUCTION, Title 18, Chapter 2\***

APPLIES:	Construction <sup>1</sup> of buildings <sup>2</sup>
EXCEPTIONS:	A building owned or to be owned by a county, city, town, school district, or special improvement district; <sup>3</sup> A building used as a component of environmental remediation or an abandoned mine land reclamation project, a highway, or a water conservation project; <sup>4</sup> A building leased or to be leased by a state agency. <sup>5</sup>
PROCEDURES:	A cost of \$75,000 and above requires full advertising, bidding, review and supervision provisions Chapter 2. <sup>6</sup>  A cost of \$25,000 to \$75,000 requires procurement of at least three informal bids from contractors registered in Montana, if reasonably available. <sup>7</sup>  For <b>county</b> construction, repair, or maintenance in excess of \$50,000, see Mont. Code Ann. § 7-1-2121.  For <b>municipal</b> construction in excess of \$25,000, see Mont. Code Ann. § 7-5-4302(2).

## **SERVICES, Title 18, Chapter 8**

APPLIES:	Procurement of architectural, engineering, or land surveying services
EXCEPTIONS:	Architectural, engineering, or land surveying services for which the fees are estimated not to exceed \$20,000, in which case agency may contract by direct negotiation. <sup>8</sup>
PROCEDURES:	For services with fees estimated to exceed \$20,000, publication of the requirements for services and selection of most qualified applicant required. <sup>9</sup>

## **PROCUREMENT, Title 18, Chapter 4\***

APPLIES:	Expenditures of public funds, irrespective of their source, by state acting through a government body, under any contract. <sup>10</sup>
EXCEPTIONS:	Construction contracts, contracts for employment of engineer, surveyor, real estate appraiser, registered architect, health care provider, expert witness for use in litigation. <sup>11</sup> Purchases required by public exigency (applies to counties and municipalities as well). <sup>12</sup> Public utilities, <sup>13</sup> lower catalog price, <sup>14</sup> small purchases that do not exceed \$5,000, <sup>15</sup> sole source procurement <sup>16</sup> <b>County</b> purchases of less than \$60,000 may be made at public auction pursuant to § 7-5-2303. <b>Municipal</b> purchases of less than \$25,000 may be made at public auctions, see § 7-5-4321, or purchases from government agencies pursuant to § 7-5-4303(2).
PROCEDURES:	For purchases exceeding \$25,000, competitive sealed bidding/proposals with award to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, with bid and performance security. <sup>17</sup> Or if a request for proposal process is conducted, the award must be made to the responsible and responsive offerer whose proposal best meets the evaluation criteria § 18-4-305(5).  For purchases between \$5,000 and \$25,000, limited solicitation procedure. <sup>18</sup>  For <b>county</b> purchases in excess of \$50,000, see Mont. Code Ann. § 7-1-2121. For <b>municipal</b> purchases in excess of \$20,000, see Mont Code Ann. § 7-5-4302(2).

\*Please refer to specific Montana Code citations contained in this table for county and municipality procedures

## Footnotes to Table

1 “Construction means the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling. Mont. Code Ann.

2 The definition of the term “building” includes a building, facility, or structure constructed or purchased wholly or in part with state money, at a state institution, owned or to be owned by a state agency, constructed for the use or benefit of the state with federal or private money. Mont. Code Ann. § 18-2-101(1)(a-d).

3 Mont. Code Ann. § 18-2-101(2)(a).

4 Mont. Code Ann. § 18-2-101(2)(b).

5 Mont. Code Ann. § 18-2-101(2)(c).

6 Mont. Code Ann. § 18-2-103(1)(a-d).

7 Mont. Code Ann. § 18-2-103(4).

8 Mont. Code Ann. § 18-8-212.

9 Mont. Code Ann. §§ 18-8-203 – 204.

10 Mont. Code Ann. § 18-4-132(1).

11 Mont. Code Ann. § 18-4-132.

12 Mont. Code Ann. §§ 18-4-133(1), 7-5-2304(2), 7-5-4304(1).

13 Mont. Code Ann. § 18-4-302.

14 Mont. Code Ann. § 18-4-302(2-3).

15 Mont. Code Ann. § 18-4-302(5).

16 Mont. Code Ann. § 18-4-306.

17 Mont. Code Ann. §§ 18-4-302 – 304, 312.

18 See Mont. Code Ann. § 18-4-305 and Rule 2.5.603 ARM.

# ATTACHMENT A

## Procurement Documentation

1. Grant Recipient \_\_\_\_\_  
Grant Agreement No. \_\_\_\_\_

2. Entity
- ☐ City/County Government ☐ Conservation District
- ☐ State Agency ☐ Private/Non-Profit
- ☐ Private partnered with Government Entity

3. Has the overall project been bid?

☐ Yes

Contract	Amount	Procurement Procedure Code (see below)

☐ No. Please explain how you have met applicable procurement guidelines.

\_\_\_\_\_

\_\_\_\_\_

4. Please list any subcontracts associated with the grant using the format below.

Subcontract	Task	Amount	Procurement Procedure Code (see below)

5. List any work and the value of the work to be completed by landowners.

\_\_\_\_\_

6. Will landowner be subcontracting work? If yes, please list using format in question 4.

\_\_\_\_\_

Procurement Procedure Code: For this category, indicate which of the following procurement methods you used to competitively procure supplies or services.

1. No bid
2. Limited Solicitation with phone calls.
3. Limited Solicitation with written bids.
4. Request for Proposal
5. Other (explain)

NRDP Procurement Guidelines can be found at <http://www.doj.mt.gov/lands/naturalresource/resources/grantprocess/guidanceconfidentiality.pdf>

## **EQUIPMENT POLICY**

### **January 2005**

The Grant Recipient is responsible for determining whether it is more cost effective under the grant proposal to either purchase (new or used) or lease equipment required to complete approved project tasks. Equipment is defined as equipment with a purchase price of \$500 or more, and a useful life of more than one year. The budget narrative of the grant application will include a section discussing needed equipment and the determination of either leasing or purchasing.

The costs incurred for purchasing or leasing should be included in the total cost of the grant. It should also be noted in the grant application whether these costs are to be reimbursed in whole or in part from NRDP or if 100% of the costs are part of a match.

If equipment is purchased in whole with NRDP grant funding, the following additional procedures shall apply. Purchases that are purchased in part with NRDP funding will likely be an infrequent occurrence. These will be addressed on a case-by-case basis.

1. Any equipment should be approved as part of the Grant Agreement. However, any equipment not approved at the signing the Grant Agreement must be approved in advance and in writing by NRDP prior to the purchase.
2. The ownership of equipment shall rest with NRDP. The grant recipient agrees to maintain the equipment in good working condition.
3. Supplies and materials with a value less than \$500, purchased for and used in completing the terms of the Grant Agreement, shall be the property of the grant recipient.
4. Invoices or other documents with serial numbers that support expenditures must be submitted to NRDP with the expenditure report.
5. At the conclusion of the Grant Agreement, the purchased equipment shall be returned in good working condition to NRDP unless otherwise authorized in writing by NRDP.
6. These procedures will be outlined in the Grant Agreement signed by the grant recipient for those projects that involve equipment lease or purchase.

For all returned equipment, the NRDP will either maintain the equipment for further use by the State or donate the equipment to public school or surplus equipment via the Surplus Property Bureau, consistent with State law.