

RESOLUTION NO. 4148

A RESOLUTION ADOPTING A REVISED PURCHASING POLICY FOR THE CITY OF MILES CITY, MONTANA.

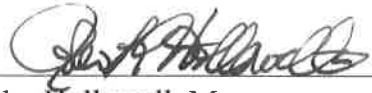
WHEREAS, the City of Miles City wishes to implement a revised policy governing the process relative to all purchases made by the City of Miles City;

AND WHEREAS the City of Miles City has developed an updated policy with regards to the same;

NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:

1. The Purchasing Policy attached hereto as Exhibit "A" is hereby approved and adopted by the Council, effective immediately.

SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, THIS 24TH DAY OF APRIL, 2018.




John Hollowell, Mayor

ATTEST:



Lorrie Pearce, City Clerk

 CITY OF MILES CITY POLICY & PROCEDURE	Effective Date:	02-2003
	Last Revised:	<u>04/24/18</u>
Purchasing Policy		
RESOLUTION # 4148		

Purpose & Scope

This document is intended to describe the policy and process that shall be followed by the City of Miles City relative to all purchases.

A. Authorization to Make Purchases

1. Upon the City Council's acceptance of budgets, all Department Directors are authorized to make purchases required for their departments in accordance with this policy.
2. The Department Director may designate other department staff to make the purchases for the Department; however, the Department Director will acknowledge ALL department purchases through signing off or initialing each transaction.

B. Montana Law References

1. MCA 7-5-4302 (1) requires that any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, materials, supplies, or any construction, repair or maintenance of any kind in excess of \$80,000, must be advertised & let to the lowest responsible bidder.
2. MCA 7-5-4302 (2) and (3) as well as MCA 7-5-4303 and MCA 7-5-4304 provide details on bidding & advertising requirements.
3. MCA 7-5-4305 explains that the bidding process cannot be circumvented by dividing a work or construction project into several contracts or separate work orders or similar device.
4. MCA 7-5-4306 & MCA 7-7-4104 explain limitations placed upon the use of installment purchase contracts.
5. MCA 7-7-4101 explains the purposes for which the City can incur indebtedness.
6. MCA 7-5-4310 explains that the city may make purchases at public auction for any vehicle, machinery, appliance, apparatus, building, or materials and supplies provided the sum is less than \$50,000.
7. MCA 15-70-101 explains that all Gas Tax funds must be disbursed to the lowest responsible bidder for projects set forth in MCA 7-5-2301 and 7-5-4302.

C. City Policy

1. Department Directors will purchase from local vendors when the item is available locally. Written explanation will be provided and retained by the Director when a local vendor is not the provider.
2. All documentation on purchases under Section A, B, C& D above will be kept in retrievable files within the appropriate Department.
3. All documentation on purchases for Section E below will be provided to the City Clerk's office for retention in a central location.

D. Process for Procurement by Purchase Order (PO)

1. The Department Director or designee will obtain an invoice from the vendor.
2. The Department Director or designee will prepare and sign the PO and properly code the Purchase Order.
3. The Department Director will insure delivery of signed & coded Purchase Orders to the City Clerk's office as they occur or insure that outstanding PO's are completed properly & delivered to City Clerk's office by the 25th of each month. PO's are paid **the next day after the first Council meeting** of each month.
4. The City Clerk's office will review the PO for completeness and proper coding.
 - a. Department Directors will be advised on POs that need correction or coding adjustment.
 - b. The City Clerk's office may return the PO for the Department Director to correct, or
 - c. The City Clerk's office may make any adjustments after consultation with the Department Director.
5. The City Clerk's office will make notes on any adjustments made to a PO that was not returned to the Department Director for adjustment.

E. Process for Procurement by Credit Card.

1. Departments will restrict those persons authorized to make purchases with the credit card(s) to as few as needed to meet department needs.
2. Department Directors will sign off on each purchase and code it for budgeting purposes.
3. The Department Director will receive a monthly statement from the credit card company. The Department Director or designee will check that all transactions are theirs; that documentation (charge slips, receipt or invoice) exists for every purchase; and that each purchase is properly coded for budget purposes.
4. The Department Director will insure that the City Clerk's office gets the original of the card statement and the originals of all documentation (charge slips, receipts or invoices) on a timely basis.
5. All disputed items on the monthly credit card statement, or billing errors or credits due are the responsibility of the Department to rectify or verify.
6. Department Directors and/or employees who are issued a card will sign a "Cardholder Agreement".
7. Credit card(s) will be kept in a secure location(s).
8. The credit card numbers should be protected and should not be posted at a desk or in an easily seen location.

9. The card holder will be responsible for reporting the loss/theft of the credit card to the City Clerk and Department Director immediately. The City Clerk will be responsible to report the loss of the credit card to the Credit Card Company.
10. Credit cards may not be used for any personal (non-City) use, such as: cash advances; meals, per diem that exceeds city policy, or any personal health & medical services.

F. Claims review and approval

1. The City Clerk's office will prepare checks to vendors and present the itemized list of reviewed claims to the City Council for approval before payment.
2. Council approval will be obtained at the first council meeting of each month. Each month before claims are approved by the City Council, the Chair of the City's Finance Committee or his/her designee, or the Mayor in the Chair's absence, will:
 - a. Review & approve the journal voucher register & supporting vouchers
 - b. Sign the monthly claims list as evidence of that approval;
 - c. Review and account for the numerical sequence of checks & account for any checks paid but not approved by list and confirm voided checks; and
 - d. Compare the claims register with the claims check register;

Attachments:

- Guide on How to Write Bid Specifications
- Compliance for Audits of Local Government on Procurement, Bid Letting, Contracts
- Purchasing policy guidelines

Purchasing Policy Guidelines for the City of Miles City
April 2018

Amount of Purchase	Policy/Process	Documentation Required
A. Under \$9,999	1. Any manner deemed appropriate by department head manager.	1. Copy of invoice and signed purchase order or credit card receipt 2. Attach documentation to claim
B. \$10,000 to \$14,999	1. Secure telephone quotations from a minimum of three vendors, whenever possible. 2. Document if unable to obtain three quotations.	1. Must use purchase order/claim 2. Record of telephone quotations with name of bidder and name of person submitting quote 3. Attach documentation to claim.
C. \$15,000 to \$49,999	1. Payment by written purchase orders only, unless authorization to use a credit card is approved by the Mayor in advance. 2. Secure written bids/quotes from a minimum of three vendors, whenever possible. 3. Document if unable to secure three quotations. 4. If purchase and amount was not approved in Budget, then the purchase must be approved in advance by City Council	1. Copy of invoice and signed purchase order/claim 2. List of vendors 3. Copy of Request for Quotation (RFQ) form 4. Copies of all memoranda and correspondence concerning the purchase 5. Written record of any phone conversations regarding the purchase with vendors ("Sole Source" documentation) 6. Notification to Finance Committee and the Mayor if purchase is being awarded to someone other than the lowest bidder 7. Attach documentation to claim

D. \$50,000 to \$79,999	<ol style="list-style-type: none"> 1. Payment by written purchase orders only, unless authorization to use a credit card is approved by the Mayor in advance. 2. Secure written bids/quotes from a minimum of three vendors, whenever possible. 3. Document if unable to secure three quotations. 4. If purchase and amount was approved in Budget, it will need to go to Finance Committee for approval. If the purchase was not in the budget the purchase must be approved in advance by the Finance Committee and City Council 	<ol style="list-style-type: none"> 1. Copy of invoice and signed purchase order/claim 2. List of vendors 3. Copy of Request for Quotation (RFQ) form 4. Copies of all memoranda and correspondence concerning the purchase 5. Written record of any phone conversations regarding the purchase with vendors ("Sole Source" documentation) 6. Notification to Finance Committee and the Mayor if purchase is being awarded to someone other than the lowest bidder 7. Attach documentation to claim
E. . Over \$80,000 in equipment, supplies or construction costs	<p>Per appropriate section in Montana Codes Annotated, sealed bids with Public Opening; with legal review on the process prior to letting; followed by City Council approval.</p> <p>Solicitation of bids, only need to go to Finance Committee.</p>	<ol style="list-style-type: none"> 1. All of the above, plus: <ul style="list-style-type: none"> • Copies of all advertisements for bid. • Copies of bid specifications as supplied to vendors, • Copies of certified mail receipts, • Documentation of legal review of the bidding process by the City Attorney

Guide on How to Write Bid Specifications

Specifications provide a precise description of the critical features a supply or service must have to satisfy a need. A specification should be written from the general to the specific. Good procurement practice and Montana law require that specifications not be unduly restrictive (Ref. Mont. Code Ann. § 18-4-234). Restrictive specifications may limit competition and in the end, do not promote the overall economy for the purposes intended. The following outline should be used as a guideline:

1. **Common Title of Supply or Service:** Begin a specification by listing the common name of the product or service sought: "compact sedan," for example, or "photocopier maintenance." Do not list a specific brand name in the title.
2. **Purpose/Use for Supply or Service:** State the intended purpose for which the item will be used. For example, a lawn tractor specification might state: "suitable for daily use (4-6 hours) on a 7-acre complex with several 20 degree slopes." Vendors must know the intended use to assist in determining the specific **supply to bid**.
3. **Description of Supply or Service:** List all the critical features the supply must perform or have to meet your requirements. Use a specification that indicates the necessary **performance** requirements of the end supply or service, or a design specification that details how a product is engineered, if you have a specific physical requirement for the product. However, it is difficult to draft design specifications without being restrictive and limiting competition. A combination of performance and design requirements is often the most ideal specification. Identify the minimum requirements, but make sure the stated minimums will result in a product that will satisfy the needs. If there **are brand name-or-equal** products that are of the appropriate quality level, list several of the acceptable brand names and model numbers. Be careful to not imply that only a certain brand name will be acceptable, unless compatibility is an issue.
4. **List Special Requirements:** Describe any special conditions that the product or vendor must perform. Warranty, service, parts, and training requirements must be included.
5. **Unusual Conditions:** Describe any unusual conditions, such as compatibility, fiscal year funding source, etc.
6. **Delivery Date:** Indicate a specific delivery date, if required. If a delivery time is not specified, it will generally be 30 days after issuance of a purchase order.
7. **Delivery Location:** Be specific about delivery location and any special delivery requirements. Bids must state that supplies are to be shipped F.O.B. Destination – Freight Prepaid, meaning that the title of the supplies remains with the vendor until the supplies are unloaded at the final destination. When supplies are purchased F.O.B. Destination – Freight Prepaid, the vendor is responsible for damage to the supplies while they are in transit and also responsible for filing freight claims if damages are incurred.
8. **Contact Person:** List the name, address, and phone number of the person who should be contacted if questions arise.

<p style="text-align: center;">STATE OF MONTANA</p> <p style="text-align: center;">COMPLIANCE SUPPLEMENT FOR AUDITS OF</p> <p style="text-align: center;">LOCAL GOVERNMENT ENTITIES</p>	REF: C/T-6
	PAGE: 1 of 15
PROGRAM/SUBJECT: Cities and Towns - Procurement, Bid Letting, and Contracts	

INFORMATION CONTACT: Montana Department of Administration
 Local Government Services Bureau
 Phone Number: (406) 841-2909

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1. GENERAL BIDDING REQUIREMENTS

- A contract for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance **in excess of \$80,000** must be let to the lowest responsible bidder after advertisement for bids. (MCA 7-5-4302(1)) (**See exceptions to this bidding requirement, below**)
 - √ **Public Auction:** In lieu of soliciting bids, the council may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials or supplies for which must be paid a sum of \$50,000 or less. (MCA 7-5-4310)
 - √ **Self-Government Powers:** A local government unit with self-government powers cannot supersede by the passage of a resolution or ordinance the competitive bidding requirements set forth in MCA 7-5-4302. (AGO #175, Vol. 37))
- **Publication Requirements:** The advertisement for bids must be published as provided in 7-1-4127 (See C/T-1 – “General Topics” for discussion of these publication requirements), and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids. (MCA 7-5-4302(2))
- **Exceptions to Bidding Requirements:** The following are the exceptions to the bidding requirements of MCA 7-5-4302:
 1. Purchases necessitated by emergencies, as defined in MCA 7-5-4303(1);
 2. Purchases of supplies or equipment from government agencies when the purchase can result in a substantial savings to the city or town, and when there is sufficient budget for the purchase (MCA 7-5-4303(2));
 3. Alternative project delivery contracts, as provided in Title 18, chapter 2, part 5 (MCA 7-5-4302) (See discussion below)
 4. Solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, Chapter 4, Part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract. (MCA 7-5-4315) (See discussion below)

1. GENERAL BIDDING REQUIREMENTS - continued

- **Exceptions to Bidding Requirements - continued:**
 5. Contracts for professional, technical, engineering, or legal services (MCA 7-5-4301(2)(a));

- √ However, contracts in which the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, or legal services must be awarded under the bidding procedures. (MCA 7-5-4301(2)(a))
- √ A contract for the employment of a construction manager that calls only for the application of the contractor's technical expertise and experience in a supervisory capacity and does not involve the procurement of supplies or actual construction is a contract for professional and technical services. (AGO #175, Vol. 37))
- √ A municipality may extend, renew, or amend a contract or series of contracts for the supervision or operation of a physical plant that provides water, sewer, or power services without proceeding under the bidding procedure if:
 - a. one or more of the contracts were awarded to the entity in accordance with the competitive bidding procedures, and
 - b. the entity has provided the services to the municipality for the immediately preceding 5-year period. (**Note:** Other than these situations, supervision over or operation of a physical plant that provides water, sewer, or power services to a municipality does not constitute a service excluded under the provisions of 7-5-4301(2)(a) (above).) (MCA 7-5-4301(2)(b))

2. CERTAIN CONTRACTS TO BE SUBMITTED TO VOTERS

- No contract may be let pursuant to MCA 7-5-4302, pertaining to competitive bidding requirements, (see above) that extends over a period of 5 years or more without first submitting the question to a vote of the electors of the city or town. (MCA 7-5-4304)
- √ **Exceptions:** The following are the exceptions to the requirement that the contract be submitted to the voters:
 1. A contract for solid waste management system as defined in MCA 75-10-103, which may not exceed 10 years; or
 2. Obligations issued pursuant to MCA 7-7-4104, which may include bonded indebtedness, note indebtedness, a lease, a lease-purchase agreement, an installment purchase contract, or other legal forms. These obligations are general obligations of the municipality but are not secured by a pledge of the taxing power of the municipality. See 7-7-4104 for the specific terms and restrictions of this type of obligation. (MCA 7-5-4304))

3. BIDDING - GAS TAX FUNDS

(See TRAN-1 "Gasoline Tax Apportionment" for additional information)

- If a city or town contracts for construction, reconstruction, maintenance or repair of city or town streets or alleys costing **in excess of \$80,000** to be paid with gasoline tax

funds, the funds must be disbursed to the lowest responsible bidder according to applicable bidding procedures. (MCA 15-70-101(5))

4. DIVISION OF CONTRACTS PROHIBITED

- Public work or construction projects for which competitive bidding is required may not be divided into several contracts to circumvent the competitive bidding requirements. (MCA 7-5-4305)

5. INSTALLMENT PURCHASE CONTRACTS – LENGTH OF TERM

- When the amount to be paid under an installment purchase contract **exceeds \$4,000**, the council may provide for the payment of the amount in installments extending over a period of **not more than 10 years** if at the time of entering into the contract, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to pay for the portion of the contract price payable during the then-current fiscal year. The budget for each following year in which any portion of the purchase price is to be paid must contain an appropriation for the purpose of paying that portion. The limitations contained in this section do not apply to installment purchase contracts entered into pursuant to 7-7-4104 (See Requirement #2, above.) (MCA 7-5-4306)

6. LEASE/PURCHASE AGREEMENTS SUBJECT TO BIDDING REQUIREMENTS

- A lease with an option to purchase is subject to the competitive bidding requirement of MCA 7-5-4302 (See above). (AGO #78, Vol. 41)

7. CONFLICT OF INTEREST

- The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office. (MCA 7-5-4109(1))
- √ The governing body of a city or town may waive the application of the above prohibition if in an official capacity the officer or employee does not influence the decision-making process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:
 - (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
 - (b) whether an opportunity was provided for open competitive bidding or negotiation;
 - (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and

(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.(MCA 7-5-4109(2))

- City or town officers; or any deputies or employees of a city or town may not be interested in any contract made by them in their official capacity or by anybody, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the city or town involving matters with which the former employee was directly involved during employment. (MCA 2-2-201(1))

√ As used above:

1. The term “be interested in” does not include a minority interest in a corporation.
2. The term “contract” does not include:
 - a. contracts awarded based on competitive procurement procedures conducted after the date of employment termination;
 - b. merchandise sold to the highest bidder at public auctions;
 - c. investments or deposits in financial institutions that are in the business of loaning or receiving money;
 - d. a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.
3. The term "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract.(MCA 2-2-201(2))

√ The definitions of “be interested in” and “contract” contained in MCA 2-2-201 are incorporated into MCA 7-5-4109. (AGO #28, Vol. 40)

- A public officer or employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information

that is necessary to describe the interest. If the public officer or employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. (MCA 2-2-131) (**Note:** Even though an interest may be permissible under the exceptions listed in MCA 2-2-201 (above), an official who has a substantial interest in the affected business must comply with MCA 2-2-131. (AGO #28, Vol. 40)

8. AWARDING PUBLIC CONTRACTS - PREFERENCES

- Public contracts for construction, repair, or public works must be awarded to the lowest responsible bidder **without regard to residency**. However, a resident bidder must be allowed a preference on a contract against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country. These preferences apply whether the law requires, or does not require, advertisement for bids, and they apply to contracts involving federal funds unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws. (MCA 18-1-102(1)(a) & (2)) [**Note:** Subsection (1)(b), related to public contracts for the purchase of goods, is not applicable to *local governments*.]

8. AWARDING PUBLIC CONTRACTS – PREFERENCES - continued

- The Common Rule* (CFR §_36(c)(2)) prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals **for federally-funded contracts**, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. (**Note:** Government-wide guidance for administering grants and cooperative agreements with States and local governments is contained in the OMB Circular A-102 *Common Rule* (a.k.a. *Grants Management Common Rule*), which was codified by each Federal funding agency in its title of the *Code of Federal Regulations*. The *Common Rule* section numbers are referred to without the Federal agency's part number (e.g., §_.36(c) would refer to the same Procurement/Competition section in all agency regulations). This allows auditors to refer to the same section numbers when discussing administrative issues with different Federal funding agencies. The Codification of Government-wide Grants Requirements by Department can be accessed via this web site: <http://www.whitehouse.gov/omb/grants/chart.html>)

9. BID SECURITY

- The advertisement, request, or solicitation for bids must specify that all bidders shall expressly covenant in any bid that if the bidder is awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract. The advertisement or solicitation shall specify the amount of the bond, whether the amount is set by statute or set by the public authority (not less than 10% of the bid price), and shall specify that a bid bond or other form of security specified in 18-1-203 (see below) constitutes compliance with this requirement. (MCA 18-1-202) (**Note:** For a bid for the purchase of

indebtedness, the bond may not be less than 2% of the principal amount of the indebtedness.)

- Bids for public contracts must be accompanied by bid security in the form of cash; cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally or state-chartered bank insured by the federal deposit insurance corporation; or a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in Montana. (MCA 18-1-203)

10. **CONTRACT PERFORMANCE SECURITY**

(Note: These contract performance security requirements may be waived for building or construction projects that cost less than \$50,000. (MCA 18-2-201(4)))

- Whenever a municipality contracts with a person or corporation to do work, the city/town council shall require that the person or corporation deliver a good and sufficient bond with a surety company, licensed in the state, conditioned that the person or corporation shall (1) faithfully perform all of the provisions of the contract; (2) pay all laborers, mechanics, subcontractors, and material suppliers; and (3) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material or supplies for performing the work. (MCA 18-2-201)
- The municipality may, in lieu of a surety bond, permit the deposit with the municipality of the following securities in an amount at least equal to the contract sum to guarantee the contract performance: cash; cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft or irrevocable letter of credit drawn and issued by a federally or state-chartered bank or S&L association insured by the FDIC or an insured credit union. (MCA 18-2-201)

11. **ACCEPTANCE AND FINAL PAYMENT ON CONSTRUCTION CONTRACTS**

- A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract. (MCA 18-2-306)

12. **RETAINAGE FOR PUBLIC CONTRACTS**

- The maximum retainage applied to construction contracts may not exceed 5% if the contractor is performing by the terms of the contract. (Retainage means the ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity) (MCA 18-2-316)

(Note: In all public works contracts entered into under the provisions of Title 18, Chapter 2, Part 4, MCA, [i.e., Standard Prevailing Rate of Wages – see below] at least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract. (MCA 18-2-404(2)))

13. STATE PREVAILING WAGE RATES (MONTANA'S "LITTLE DAVIS BACON ACT")

- Current State prevailing wage rates established by the Montana Department of Labor and Industry can be found at: <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-information/current-prevailing-wage-rates.html>
- The *State* prevailing wage rates do not apply in those instances in which the standard prevailing rate of wages is determined by *federal* law. (MCA 18-2-402(2))
- "Public works contract" is defined as a contract for **construction services** let by the state, county, municipality, school district, or political subdivision or for **nonconstruction services** let by the state, county, municipality, or political subdivision in which the total cost of the contract is in **excess of \$25,000**. (MCA 18-2-401(11)(a))
 - √ "Construction services" means work performed by an individual in building construction, heavy construction, highway construction, and remodeling work. The term does not include engineering, superintendence, management, office, or clerical work on a public works contract; or consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law. (MCA 18-2-401(3))
 - √ Services that qualify as "nonconstruction services" are listed at MCA 18-2-401(9) and include a wide range of activities, but do not include management, office, or clerical work.
- A public contracting agency must include in the bid specifications and contracts for any public works the following:
 - (a) an unequivocal agreement by the contractor or employer to give preference to employment of bona fide Montana residents (MCA 18-2-403);
 - (b) a statement that any construction project, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, the bid specifications and the contract shall provide that at least 50% of the workers of each contractor working on the project will be bona fide Montana residents (MCA 18-2-409);
 - (c) an unequivocal agreement by the contractor or employer that a worker performing labor on the project will be paid the applicable standard prevailing rate of wages;
 - (d) a listing of standard prevailing wage rates including fringe benefits applicable to the public works contract; (MCA 18-2-422) and
 - (e) the contract provisions must clearly show that the contractor or employer is bound to pay wages at rates determined by the Department of Labor and Industry, and to give required preferences.(ARM 24.17.144)

13. STATE PREVAILING WAGE RATES (MONTANA'S "LITTLE DAVIS BACON ACT") - continued

- All public works contracts and the bid specifications for those contracts must contain:
 - (1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project; (See also MCA 18-2-403)
 - (2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission to the Department of Labor & Industry for not less than 3 years after the contractor's or employer's completion of work on the project; and
 - (3) a provision requiring each contractor to post a statement of all wages and fringe benefits. (MCA 18-2-422)

(Note: Failure to include these provisions in a public works contract relieves the contractor from the obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency. (MCA 18-2-403(9); ARM 24.17.144)

- Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages. (MCA 18-2-403(6))
- All public works contracts under this part must be approved in writing by the legal adviser of the contracting government prior to execution. (MCA 18-2-404(1))
- At least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract. (MCA 18-2-404(2))
- Any public works contract that calls for more than 30 months to fully perform must include a provision to adjust the standard prevailing rate of wages to be paid. The standard prevailing rate of wages must be adjusted 12 months after the date of the award of the contract, and the amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (MCA 18-2-417) **(Note:** Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.)
- When a public works project costing more than \$50,000 is accepted by the public contracting agency, a notice of acceptance and the completion date of the project must be sent to the Department of Labor & Industry. The Department may *request* this information for projects costing less than this amount. (MCA 18-2-421; ARM 24.17.144)

14. ALTERNATIVE PROJECT DELIVERY CONTRACTS

- Alternative project delivery contract means a construction management contract, a general contractor construction management contract, or a design-build contract. (MCA 18-2-501)

- A governing body that uses an alternative project delivery contract shall demonstrate that the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract. (MCA 18-2-502(1))
- Prior to awarding an alternative project delivery contract, the governing body shall make a determination, in writing, that the proposal meets at least two of the sets of criteria described in (a) through (c) below, and that the proposal meets the provisions of (d). (MCA 18-2-502(2) & (3))
 - a. The project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction.
 - b. By using an alternative project delivery contract, the design process will contribute to significant cost savings.
 - c. The project presents significant technical complexities that necessitate the use of an alternative delivery project contract
 - d. Using an alternative project delivery contract will not encourage favoritism or bias in awarding the contract or substantially diminish competition for the contract.
- The governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:
 - (a) the applicant's history and experience with projects similar to the project under consideration; financial health; staff or workforce that is proposed to be committed to the project; approach to the project; and project costs, and
 - (b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals. (MCA 18-2-503(2))
- At the conclusion of the selection process, the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request. The governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably. (MCA 18-2-503(4) & (5))

15. OPTIONAL ADOPTION OF MONTANA PROCUREMENT ACT

- A city or town may adopt any or all parts of the Montana Procurement Act (Title 18, Chapter 4, MCA) and the accompanying rules promulgated by the Montana Department of Administration (ARM Chapter 2.5) (MCA 18-4-124).

16. STATE PROCUREMENT CARD PROGRAM

- **Effective July 2013**, the State of Montana amended its Procurement Card contract with US Bank to allow approved local public procurement units to participate in the Program. Financial controls in place include daily and monthly spending limits. The

Program gives local governments the ability to purchase items from the State's new online eMarket Center: <http://gsd.mt.gov/ProcurementServices/emarketcenter.mcp>

- A participating entity must follow the same terms, conditions and payment terms as outlined in the State's contract with US Bank. A copy of the State contract will be provided to the participating entity upon request. Mandatory requirements for an entity to participate in the Program include blocked merchant codes, including pawn shops, liquor stores, and jewelry stores.
- Optional recommendations to set individualized parameters on procurement cards include:
 - √ \$5,000 per month spending limit per cardholder (may be changed as needed);
 - √ Limitations on the days of the week the card can be used (Monday through Friday);
 - √ Limiting the number of transactions per day; and
 - √ Limiting the dollar amount per transaction.
- Questions? Contact State Procurement Bureau of Department of Administration—406.444.2575.

17. PRINTING CONTRACTS

- The city or town council has power to provide for the city or town printing. The contract for city or town printing must be let annually to the lowest bidder. (MCA 7-5-4108)

18. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES

- Governmental agencies, including cities and towns, must publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices. (MCA 18-8-201)
- Each government shall publish in advance its requirement for professional services. The announcement must state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the government who can provide further details. A government may comply with this section by:
 - (1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the government; or
 - (2) announcing generally to the public its projected requirement for any category or type of professional services. (MCA 18-8-203)
- In the procurement of the above professional services, the government may encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The government shall evaluate current

statements of qualifications and performance data on file with the government, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. The government shall then select, based on criteria established under government procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project. The government procedures and guidelines must be available to the public and include at a minimum the criteria specified in 18-8-204(2)(b) as they relate to each firm.(MCA 18-8-204)

- The government shall negotiate a contract with the most qualified firm for the above professional services at a price which the government determines to be fair and reasonable. In making its determination, the government shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature thereof. If the government is unable to negotiate a satisfactory contract with the firm selected at a price the government determines to be fair and reasonable, negotiations with that firm must be formally terminated and the government shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated. (MCA 18-8-205)
- This part need not be complied with by a government when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.(MCA 18-8-211)
- Cities and towns securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed \$20,000 may contract for those professional services by direct negotiation. (MCA 18-8-212)
- No agency may separate service contracts or split or break projects for the purpose of circumventing the provisions of Title 18, Chapter 8, Part 2, MCA. (MCA 18-8-212)

19. LOCAL GOVERNMENT ENERGY PERFORMANCE CONTRACTS

- Energy performance contracts are a means by which local government units can achieve energy and water conservation without an initial capital outlay. “Energy performance contract” is defined as a contract between a local government unit and a qualified provider for evaluation, recommendation, and implementation of one or more conservation measures, evaluation of conservation-related cost savings, and a guarantee of cost savings. (MCA 90-4-1101 & 1102)
- A local government may solicit requests for qualifications (RFQ) to enter into an energy performance contract and requests for proposals for investment grade energy audits, and negotiate a contract with the most qualified provider by following the process in MCA 90-4-1104. Alternatively, the local government can avoid the RFQ

process by selecting a qualified provider from a pre-qualified list provided by the Montana Department of Environmental Quality's Air, Energy and Pollution Prevention Bureau. (MCA 90-4-1104 & 1105; MACo Newsletter 2/06)

- An investment grade audit serves as a basis for the terms of an energy performance contract. If the local government determines that the energy audit doesn't provide sufficient conservation-related cost savings, it shall pay the cost of the audit and decline to enter into the energy performance contract. If it is determined that the energy audit provides sufficient cost savings, the qualified provider shall provide plans for the proposed conservation measures. The local government may then negotiate the conservation measures to be included in the energy performance contract and enter into the contract. (MCA 90-4-1106)
- The energy performance contract may include the option of payment of the costs of the energy audit and plans provided for proposed conservation measures through project financing. (MCA 90-4-1106)
- The term of an energy performance contract must be a minimum of 3 years and may be up to the useful life of the conservation measures or 20 years, whichever is less. The contract must require the qualified provider to (1) guarantee the cost savings to the extent necessary to pay for the conservation measures, including financing charges incurred over the life of the contract, (2) monitor the costs savings, and (3) prepare an annual report documenting the performance of the conservation measures. (MCA 90-4-1107)
- Payment obligations pursuant to an energy performance contract aren't general obligations of the local government and are collectible only from conservation-related costs savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract. (MCA 90-4-1109)

20. **FEDERAL INFORMATION RETURNS**

- The entity must report on a Federal Information Return, Form 1099-MISC, all payments of \$600 or more which the entity makes during a calendar year to anyone, other than a corporation or tax-exempt organization, who is not an employee. (U.S. Internal Revenue Service Codes)

<http://www.irs.gov/uac/Form-1099-MISC,-Miscellaneous-Income->

(Note: The following are some examples of payments to be reported on Form 1099-MISC. For a complete list, contact the IRS:

Professional service fees, such as fees to attorneys (including corporations), accountants, architects, contractors, subcontractors, etc.

Payments by attorneys to witnesses or experts in legal adjudication.