Contracts & Contract Management
The first contract that you will enter into is with the sponsor. This contract is very important so you should read it over very carefully. You need to have a good understanding of what is expected of you and your company.

Be sure you note:

- When you can start work or when the contract term starts
- How to submit an invoice for payment
- How they make their payments
- What type of supporting documentation they will need
- What type and when reports are due to the sponsor
- Contract expiration date
- If modifications are needed who is the contact person
Now that your contract with the sponsor is initiated you can start to develop your procurement plan.

- Is your project under $5,000? You can do an informal solicitation over the phone or in writing; these do not need to be competitive or require documentation.
- Can you use Cooperative Purchasing with State or Federal Agencies.
- Can you do a limited solicitation (purchases between $5,001 and $25,000)
  - Solicitation over the phone or in writing requires at least 3 different vendor’s quotations and documentation.
- Will you have to put it out for a Formal Bid/Proposal (purchases over $25,000)
  - RFP – Request for Proposals
    - Problems/Solution specifications
    - Evaluated on state criteria (costs being only one)
    - Proposal responses may be modified
    - Evaluated by team and not opened publicly.
  - IFB – Invitation for Bids
    - Defined specifications
    - Award made to lowest responsive and responsible bidder
    - Opened publicly
  - Formal Solicitations need to be noticed in local paper that has been in production for at least 12 months prior. Needs to be published at least once per week twice with at least 6 days in between notices.
- Can you sole source – This type must have documentation justifying that the item or service is available from only one known capable vendor. Does not apply to purchases under $5,000.
- Direct Negotiation - Can only be used if the formal solicitation process did not provide a responsible or responsive bidder/offeror. This requires State Procurement Board (SPB) approval.
What’s in an Invitation for Bid (IFB)

Section 1: General
Requirements
- Provides an overview of the project
- Contact for all communications
- Bidders are responsible for reviewing the document
- Pre-Bid conference (optional) but remember that 1 conference is mandatory
- When/where bids are due
- No late bids are excepted

Section 2: Delivery Requirements
- Requested or required delivery date
- Shipping information
  - No PO boxes
- Delivery locations
  - Physical Address

Section 3: Special Terms & Conditions
- Contract requirements – examples: insurance, bonding, background checks
- Special Conditions – examples: freight door is in the back/trucks over said size use back
- Acceptance testing/criteria - what testing methods will be used/what criteria was used example: background checks – contractor pays for
- Mandatory requirements examples: proof of licenses, previous related experience this is part of responsibility checking

Section 4: Specifications & Pricing Schedule
What you want & when you want it
- Fixed pricing or adjustable – is it firm fixed, cost plus or hourly wage and do you want it to be adjustable.
- Award Basis – are you doing multiple awards (phases) and how you are awarding is it item based, all or nothing, or shipping requirement,
- Detailed Specifications – on items or services
What’s in an Invitation for Bid (IFB) cont..

What you have to do:
1. Send to adequate number of viable bidders – this can be done by mail, posting to a website, emailing, faxing. (Good rule of thumb is 3 viable bidders is adequate)
2. Public Notice – this can be done by posting to your website, mailing out to bidders list, newspapers
3. Counties must publish a newspaper notice – this notice must include date time and place, brief statement of what bid is for, address/ telephone number of person to contact for more information.

Opening & Awarding an IFB

Must be received at the location listed by the date/ time specified
- once received you should note date & time on the outside of the package and initial it.

Need to be open publicly
- You do not need to put a notice of public meeting or take minutes
- Need to announce who it is from, what amount is (item by item), make & model of item, date of delivery or service.
- Can not accept faxed bids if no one is there to seal them.
- IFB’s can be opened within the same day of due date unless there is no public in attendance.
- Remember that it is public information as soon as its opened and that you DO NOT say the low bidder or bid awarded to. At the end of the opening ALWAYS state that you will contact the winning bidder.

You need to
- prepare a bid tabulation sheet needs to include detail of who, price, delivery date, make & model. Also include if disqualifying or awarded and why disqualified.
- Need to determine if the low bidder is “responsive” & “responsible” – not on debarred list and submitted all information required in specifications
- Apply preferences
  - Blind Vendor Preferences 18-5-502 MCA
  - Reciprocal Preference  18-1-102 MCA
  - County Resident  7-5-2309 MCA
- Send request for Documents Notice (if necessary)
  - This would be bond documents, insurance documents etc.
- Issue a Purchase order or Contract
What’s in a Request for Proposals (RFP)

RFP Format:
- Cover Page
- Template Instructions
- Table of Contents
- Instructions to Offerors
- Schedule of Events

Section 1:
Project Overview & Instructions
- Provides a brief overview of project, expected contract term, and who the contact person is.
- Tells the potential offerors when and where to send questions, and attend pre-proposal conference or conference call.
- Instructions on date, time and location for submitting a response and the number of copies required.

Section 2:
Standard Information
- Notifies the potential offerors the organization’s rules regarding confidential materials.
  - Recognizes trade secrets – with trade secret law the offeror has to have a lawyer sign a statement that the information is a trade secret and they have to tell why it’s a trade secret.
  - If the information is found to be a trade secret then that is confidential but the rest of the materials are not.
- Describes the evaluation process

Section 3:
Scope of Project
- Core of the RFP. The detailed overview of the purpose of the project should include description of the contractor’s duties and responsibilities.
  - What exactly do you want them to do.
Section 4:
Offeror Qualifications
- Sets out what qualifications the Offeror must possess to fulfill the needs of the project.
  - What do you need to know from offeror
    - Executive Summary
    - Resumes of Employees
    - Past work history
    - Have them tell you what risks they see and how they are going to mitigate those risks such as permitting, labor strikes, weather.

Section 5:
Cost Proposal
- Includes information on how the costs are to be presented for this proposal
  - Should include a maximum budget amount/ceiling award
  - Can ask for a detailed budget with a cost breakdown

Section 6:
Evaluation Criteria
- Include those factors which will be used to appraise and measure an offeror’s response to the RFP.
  - The state requires that the evaluation criteria and their weight be included in the solicitation.

Appendix A:
Standard Terms & Conditions

Appendix B:
Standard Contract

Appendix C:
RFP Response Form (optional)
Opening & Awarding RFP’s

- RFP’s are not publicly opened
  - Procurement Officer must first review them for confidential information
  - Verify Trade Secret Affidavit is included.
  - Verify that all information claimed as confidential is valid as such by Montana Law.
  - Must remove confidential materials from public’s copies
- Copies are given to evaluation committee.
  - Must have evaluation sheet & criteria
- Evaluation
  - Usually done by committee but can be an individual
    - Conflict of Interest – Have members or individual sign a conflict of interest and confidentiality form.
  - Meetings are public
    - Post the meeting – 72 hours
    - ADA accessible location
    - All members of the public are welcome
    - Must allow for public comment for any matter not on the agenda that is within the jurisdiction of the agency/organization. (but remember it cannot influence committee)
  - Quorum of Committee members required
  - Keep Minutes of the Meeting
What if the committee has questions
- Send out written clarification questions
- Conduct oral interviews and/or demonstrations
- Site visits – if there is a quorum then it becomes a public meeting and has to follow rules.
- Seek best & final offer
- Remember there is a 14 working day window after proposal is executed that it can be protested.

Finalize the Evaluation
- Submit to procurement officer:
  - Completed scoring matrix with scoring justifications
  - Committee meeting minutes
  - Committee recommendations

Send Notices
- Request for Documents
  - Insurance certificates, bond documents, etc.
- Selection Notice
  - Send to all responders with evaluations included

Post to Website
- Notice of Award

Contract Negotiation/ Execution

Opening & Awarding RFP’s cont...

Becomes an add on to RFP
1. Purchase Orders – these are single signature contracts which formalized a purchase transaction and defines the agreement between the parties,
   ➢ Should include all pertinent information such as description of item or service, quantity, prices, payment terms, discounts if applicable, dates of performance, acceptance criteria and if there are any ramifications.
2. Dually Signed Contracts (White Paper) – most work with negotiations and are signed by both parties.
3. Information Technology – such as a contract on website these include patent, copyright, limitation of liability, owner of software and source codes
4. Term Contracts – these are dually signed and commonly used for items or services.
5. Construction – these are usually for county roads, bridges, FWP access, etc. And are a white paper with more attachments and terms.
6. Memorandum of Agreement/Understanding – these are generally used between governmental entities and are much shorter.

Note: Districts generally use 1, 4, 5 & 6 but occasionally will use 2 & 3
A. Fixed Price – District should have minimal risk
   a. Contractor is responsible for managing costs
   b. Payment is for end result of the contract (usually payments are made at the end but can make progress payments)

B. Cost Reimbursement – Risk resides with District
   a. Contractor is reimbursed for all allowable and allocable costs
   b. Total amount is not fixed at outset of contract

C. Other pricing types
   a. These are usually hybrids of A & B
**Forming & Writing Specifications**

- Description of supply or service being sought
- Purpose is not solely to obtain the lease expensive items, but the desired quality at the most competitive price.
- Should do 4 things
  - Identify minimum requirements
  - Allow for Competitive Bids
  - List evaluation Criteria & Test methods
  - Provides for a Fair Award at lowest possible costs

**How to write specifications**

- Name of Supply or Service
- Purpose/Use for supply or service
- Description of supply or service/desired outcome
  - Design specification or performance specification
- List of special requirements.
- Unusual conditions
- Delivery Date
- Delivery Location
- Point of Contact
  - For answering questions
- Receiving Procedures
Specific Questions to Ask/Answer

1. Why do you need this service? Background
2. What work is to be performed?
   a) Volumes, dimensions, sizes, number, etc.
   b) Type of work (repairs, construction, sampling, electrical, engineering)
3. What is the final product we expect when work is completed? Or
4. What do you expect as an outcome of the project?
5. Who is the point of contact?
6. Who will do the work?
   a) Will the contracting entity take responsibility for some parts of the project (preparations, permits, traffic control, etc.)?
7. What is the contractor going to provide?
8. What is the contracting entity going to provide?
9. Where is the work going to be performed?
   a) Is there more than one location?
10. What hours or days are we required work to be performed?
11. How do you want the work accomplished?
   a) Task Order, specific order of events, etc.
   b) Remember there is no direct control
12. Are there any unusual conditions?
   a) Hazard Materials – who will remediate that?
13. When do we want the work performed or completed? Is there more than one deadline?
14. If reports are required, when do you want them, what format, etc.
15. How will you administer the contract?
16. How will you know when the work is done?
   a) Monthly check ins or monitoring
17. What will be the method of acceptance?
18. How do you want the costs presented?
   a) Total project costs
   b) Task Order basis (hourly costs)
19. How do you want to be invoiced?
   a) How often, where to send
20. Is there a maximum amount you cannot exceed?
Thoughtfully review specifications before beginning a procurement process.

Things to consider are:
- Who developed the specifications?
- Did they come from vendor?
- When was the last time they were updated?
- Do they always seem to lead to the same brand?
- Are the requirements still true?
- Are they drawn from a professional standard?
- Are they getting the best product?
- Are the requirements necessary?
- Is there a reason for eliminating certain products?
- Are the specifications too narrow?
Supporting Statements & Requirements

Use Standard Statements

○ What are they?
  • Common policy or procedure statements
  • Used in bids, proposals, & contracts

○ What is their purpose?
  • Tells vendors the requirements for conducting business with the organization.
  • Alerts them to special conditions or requirements.
Indemnity & Insurance Requirements

- Used in solicitations and contracts/ PO as appropriate.

- Purpose of Indemnity Agreements
  - To allocate risk among parties to a contract, and
  - To provide a contractual right to pursue recovery.

- Objective of Insurance Requirements
  - Fairly allocate risk, and
  - Clearly delineate the types and levels of coverage.

- Used in bids, proposals & contracts to transfer risk of loss from the organization to the contractor.

- Five types of insurance that may be required are:
  - (CGL) Commercial General Liability
  - (Auto) Automobile – owned or leased
  - (PL) Professional Liability – licensed professional
  - Property – Building/ renovation/ leasing
  - Worker’s Compensation – All contractors
Recommended limits:

- **Low Risk** –
  - CGL & PL - $300,000/ occurrence & $600,000/ aggregate
  - Auto - $500,000 per person (personal injury)/ $1,000,000 per accident occurrence (personal injury) $100,000 per accident occurrence (property damage) OR combined single limits of $1,000,000 per occurrence

- **Moderate Risk** –
  - CGL & PL - $500,000/ occurrence & $1,000,000/ aggregate
  - Auto - $500,000 per person (personal injury)/ $1,000,000 per accident occurrence (personal injury) $100,000 per accident occurrence (property damage)

- **High Risk** –
  - CGL & PL - $1,000,000/ occurrence & $5,000,000/ aggregate
  - Auto - $500,000 per person (personal injury)/ $1,000,000 per accident occurrence (personal injury) $100,000 per accident occurrence (property damage)

- **Property – Replacement Costs**

- **Workers Compensation - Statutorily Defined**
Supporting Statements & Requirements Cont..

- **General Insurance Provisions**
  - Evidence of Insurance
    - According to form or claim
  - Certificates with specified attachments & amendments
  - Primary Coverage
    - Named as additional insured for duration of contract
  - Acceptability of Insurer
    - Needs to have an AM Best Rating of A- or better
  - Deductibles & retentions
    - Bonds or deductibles
  - Additional Insured Status
    - Riders watch contracts for contractor numbers
  - Notice of Cancellation
    - Added on certificate

- **Insurance Concerns**
  - CGL excludes supervisory acts of the organization (let the contractor be the expert)
  - Contractor purchases the wrong coverage
  - Coverage is in excess of the organization's
  - “Claims made” vs. “Occurrence”
  - Fails to name the organization as additional insured
  - Coverage lapses – remember to track expiration date

- **Compliance with Workers’ Compensation Act**
  - Model language and guidelines can be found on State Procurement Board (SPB)
  - Independent Contractors do not have to have Workers’ Compensation but do need to have a Department of Labor Certificate as Independent Contractor.
Contractor Registration
- Construction Contractors must be registered with DLI
- Required for all construction like projects over $2,500
  - combined value of labor and materials
  - Included in the contract
- Must confirm prior to contract award
- Questions? Call DLI at 444-7734

Public Contractor’s Gross Receipts Tax
- “Public Construction Work” over $5,000 must withhold 1%
  - Withhold the 1% and send to the Department of Revenue however it needs to be in
    the solicitation even on Federal funds.
- Applies to all public contracts at every level of jurisdiction

Prevailing Wage
- Required for all “public works” contracts over $25,000
- Included construction & non-construction services
- Rates must be included on the solicitation and the contract
- The Department of Labor and Industry must be notified when a project is complete
- Failure to include this language could result in penalties being assessed against the issuing
  entity.

Special Circumstances
- Organization special requirements
  - Federal Funding
- Buy “Green”, use Energy Star” Program
- Text in RFP or IFB Must be consistent with “boilerplate” language and contract
With all three suppliers evenly matched on price, quality and technical expertise, Mark resorts to his last remaining selection tool.
Bid/Proposal Security & Contract Performance Security

- Bid or Proposal security guarantees vendor will honor bid or proposal and enter into the contract if selected.
  - Usually only with highway or construction
  - Ends when the contract is signed
  - Just a reminder that the vendor has 30 days to return

- Contract Performance security is provided for the fulfillment of contract obligations
  - Starts when the contract is signed but be sure the vendor has it prior to signing contract.

- Contract performance security is required for construction projects over $50,000

- Contract security provides for
  - Faithfull performance of the contract (completion)
  - Payment of workers and suppliers
Types of Security

- Surety Bonds
  - 100% of contract value
  - Have to be licensed with the State

- Irrevocable Letters of Credit

- CD’s or money market certificates assigned to the contracting entity
  - These should be only from the bank to the entity

- Certified Checks, money orders, or cash
  - No personal checks or business checks

Decision to require contract performance security

- Nature of contract
- Potential cost of completing contract
- Past history of similar contracts
- Can the organization afford to self-insure?
- Number of workers, suppliers involved
- Are subcontractors involved?
- Are there other contract management tools in place?
  - Routine monitoring
  - Liquidated damages, penalties or incentives in place
  - Withhold final payment until contract is complete (~20-25% of contract)
Contract Enforcement

- **Receipt & Inspection of Supplies**
  - **“Let the Buyer Beware”** Do not pay the invoice until everything is complete and acceptable.
  - All organizations must inspect and receive supplies shipped directly to them
    - Is the item broken or damaged?
    - Not on the packing slip?
    - Does it meet the written expectations?
    - Is it the correct item?
    - Correct quantity?
    - Does it meet the specifications?

- **Contract Monitoring** – track contract information
  - Vendor name
  - Description
  - Duration
  - Renewals
  - Insurance requirements
  - Contact information
  - Special requirements – such as prevailing wage or gross tax withholding
Contract Enforcement cont..

Contract Enforcement means paying attention to things like:

- Are deadlines being met?
- Are deliverables coming in at the level of standard in the contract?
- Are payments being made according to contract provisions?
- Are contract modifications being made that are well documented and comprehensive?
  - Who has this authority?
  - It is stated in the contract who authorizes.
- Are problems being addressed as soon as they are perceived?
  - Are you documenting?
- Is the organization meeting regularly with the contractor to assure good communication?
- Does the contractor understand exactly what is expected?
  - Is it time to terminate the contract?
- Is work being verified as to its completeness?
- Are checklists being used to communicate contract progress?
- Are progress reports coming in as required?
- Is it time to get an attorney involved?
  - Nature of issue
  - Serious = right away
- Is the organization meeting its contractual obligations?
- It is the contracting organization’s responsibility to ensure that all contract requirements are being met.

Remember: the contract is only as good as the enforcement!!
File Management

- Files must be complete enough to facilitate auditing and should include:
  - Requisition from ordering entity
    - may or may not apply
  - Solicitation with specifications and agenda
    - Q & A
    - Anything that changed
    - Correspondence
- List of vendors and advertised notice
  - This proves that it was advertised to adequate # of vendors
- All bid/proposal responses
- Tabulation/Offeror Registry
  - List of who responded
- All pertinent correspondence
  - Clarifications
  - Best & Final Offers
  - Letter requesting documents
- Explanation if awarded to other than low bidder (IFB)
- Evaluation Score sheets, minutes, attendance sheets, committee recommendation (RFP)
- Evidence of insurance documents and bonds
  - From Contractor (but remember that these documents need to be update during the project to always be current)
- Signed purchase order or contract
  - Amendments
  - Change orders
Use a 6 part classification folder as a grant/project folder. I have found that this style works the best.
First Section = Applications and Contracts with grantor (if contracts with grantor are modified those also go here) I separate out with post it notes or colored paper.

Second Section = Contracts with independent contractors and insurance documents, bond documents, W-9 Forms need to be obtained from the contractor but put in a secured folder. (if contracts with contractors are modified those also go here)
Third Section = Financial documents and billing information (also in-kind match can be put here)

Fourth Section = Reporting to the Grantor (I personally don’t use this section as well as I should as I keep my in a separate folder based on Fiscal Year, and my financial report and progress reports get put together) You do what is best for you.
Fifth Section = Product and services information

Sixth Section = Correspondence in regards to the project
You can also use a tri-fold folder with fasteners and use colored paper and post it flags to separate the sections.
- **Section One** = **Contracts** Applications/Contracts with grantor (if contracts with grantor are modified those also go here) separated out with post it notes. Then a piece of colored paper the to separate out the contracts with independent contractors and insurance documents (if contracts with contractors are modified those also go here)

- **Section Two** = **Reporting** Financial documents and billing information (also in-kind match can be put here) Progress reports to the Grantor or any other reporting go here and are separated with post it flags.

- **Section Three** = **Products/Correspondence** Product and services information then a post it flag or colored paper and Correspondence in regards to the project.
"I have some paperwork to catch up. If I’m not back in two days, organize a search and rescue team!"
Grant Reports Folder

If you are contracting a lot a “Grant Reports Folder” might be needed so that you have your reporting at your finger tips if needed. This is especially useful in district operations audits and when talking with a grant sponsor that you have for several grants.

These folders can be ran through a fiscal year to help with reports
On the left side is any documentation for any advance funds that you get at the beginning of the year.

On the right side the 1st quarter reports are stacked one on top of another and are labeled with grant number information/ name to separate.
On the left side the 2nd quarter reports are staked one on top of another and are labeled with grant number information/ name to separate.

On the right side the 3rd quarter reports are staked one on top of another and are labeled with grant number information/ name to separate.
On the left side the 4th quarter reports are staked one on top of another and are labeled with grant number information/name to separate.

On the right side any final reports are staked one on top of another and are labeled with grant number information/name to separate.
Using some form of tracking keeps all of the need information at your finger tips.
Include pages with the different grants that you use and the contact/program manager’s name and phone number.

<table>
<thead>
<tr>
<th>Name</th>
<th>Submit to</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>225 Grants</td>
<td>Linda Branden</td>
<td>406-444-0520</td>
</tr>
<tr>
<td>WAPF Grants</td>
<td>Dave Martin</td>
<td>406-444-4733</td>
</tr>
<tr>
<td>M2E Education grants</td>
<td>Linda Branden</td>
<td>406-444-0520</td>
</tr>
<tr>
<td>Air Grant</td>
<td>Abby Stickley</td>
<td>406-444-0647</td>
</tr>
<tr>
<td>Planning grants</td>
<td>Bob Fischer</td>
<td>406-444-6648</td>
</tr>
<tr>
<td>Capacity Grants</td>
<td>Lindsey Vollrath</td>
<td>406-444-9666</td>
</tr>
<tr>
<td>Administrative Grant</td>
<td>Karl Christians</td>
<td>406-444-3072</td>
</tr>
<tr>
<td>DLE</td>
<td>Don Lalich</td>
<td>406-283-5002</td>
</tr>
<tr>
<td>District Dir.</td>
<td>Linda Branden</td>
<td>406-444-3072</td>
</tr>
</tbody>
</table>
Use divider pages to separate out the years or if you would like to do have one binder a year use the divider pages to separate out the grants.
This page is used for quarterly tracking. If your grant also requires monthly tracking the next slide will show you that additional page.

- Grant information on the top section.
- Reporting information in the middle section.
- Payment information in the bottom section.
The monthly page does not have the same columns but it is made to use with the quarterly page to have all of your tracking information.

<table>
<thead>
<tr>
<th>Month</th>
<th>Date submitted</th>
<th>Payment Date</th>
<th>Warrant #</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>July</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quarter total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quarter total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>January</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quarter total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quarter total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>