



STATE PROCUREMENT 101

Joint Appropriations Subcommittee B

February 5, 2025

WHAT IS STATE PROCUREMENT?

- State procurement refers to the process by which the government selects goods, services, and construction projects.
- Allows for economies of scale, better coordination between state agencies, and ensures fairness and transparency in the contractual expenditure of taxpayer dollars.



MONTANA PROCUREMENT ACT

Title 18, Chapter 4

- Designates the Department of Administration as the sole contracting officer for the state of Montana for all branches, agencies, divisions and subparts unless an agency has a specific exception
- All statewide contracts, except infrastructure, must follow the Procurement Act
- DOA delegates contracting authority to entities, in good standing, up to \$200,000
- All contracting above \$200,000 must come through DOA



STATE PROCUREMENT STRUCTURE

DOA

State Procurement

Statewide Contracting

Procurement Support

Procurement Operations

Complex
Procurements

Strategic
Sourcing

Special
Projects

Contract
Tracking &
Advising

Policy
Management

Training &
Certification

Delegation
Management

Systems
Support

Agency
Reviews



ROLES & RESPONSIBILITIES

DOA

- ✓ Ensure all entities comply with the Montana Procurement Act
- ✓ Issue policies and procedures for contracting
- ✓ Create statewide contract templates
- ✓ Conduct compliance reviews
- ✓ Lead all procurement actions above the \$200K threshold
- ✓ Lead all sole source actions for the enterprise
- ✓ Issue and manage delegated agreements
- ✓ Provide technical assistance to agencies on all contracts and contracting actions
- ✓ Manage the statewide vendor system
- ✓ Oversee all evaluation committees, ensure fairness, transparency, and compliance with all laws
- ✓ Document retention
- ✓ Manage protests and litigation
- ✓ Statewide sourcing for enterprise contracts

AGENCIES

- ✓ Comply with the Montana Procurement Act and the DOA Delegation Agreement
- ✓ Comply with all policies and procedures as required by DOA
- ✓ Participate in compliance reviews
- ✓ Purchase goods and services under \$200K in accordance with the procurement act
- ✓ Maintain records of all procurement actions
- ✓ Submit any contracting actions above \$200K to DOA for review and management through the procurement process
- ✓ Payment of all invoices to vendors
- ✓ Management of contracts and vendors, report any contract issues to DOA
- ✓ Submit any sole source requests to DOA for consideration
- ✓ Manage contract renewals in compliance with the law and DOA policies



PROCUREMENT METHODS

- Exigency purchase
- Alternative procurement method
- Competitive sealed bidding/Invitation to bid
- Competitive sealed proposals/Request for proposals
- Small purchase
- Limited solicitation
- Sole source procurement
- Cooperative purchase
- Direct purchase
- Purchase from sheltered workshop
- Strategic Sourcing



CONTRACT RENEWAL OR AMENDMENT

Don't presume you can simply renew; all state renewal laws vary and often vary by “type” of contract or service.

LEGAL CONSIDERATIONS:

- **NO** automatic renewals
- Is a new solicitation required?
- Beyond original duration of initial contract (10-year max for IT)
- State and contractor continued ability to perform
- Continuation in State's best interest
- Document basis for renewal



LEGAL INVOLVEMENT IN PROCUREMENT

Agencies should involve an attorney when:

- Selecting a procurement method;
- Applying an exemption;
- A trade secret affidavit is needed;
- Contract drafting is needed;
- Reviewing offerors' contract exceptions are requested;
- Contracts are being negotiated;
- Contracts are being signed;
- Contract management is needed;
- Contracts renew;
- A protest has been filed.



CONTRACT MANAGEMENT

Important things to remember when managing a contract:

- Use Contract Liaison and Contract Manager language;
- Require a project plan and compliance with the project plan
- Use the Meetings clauses in the contract – Technical/Contractual problems;
- Have progress Meetings;
- Acknowledge the State's Failure or Delay;
- Define performance in your contract (performance monitoring requirements) with the following functions:
 - Ensure required obligations in the contract are fulfilled;
 - Ensure acceptable levels of services or product quality levels are provided.



CONTRACT MANAGEMENT (continued)

Contract Management duties include:

- Knowing the contract (all requirement, terms and conditions);
- Inspecting and Approving/Rejecting work;
- Determining and documenting modifications amendments;
- Reviewing and approving invoices;
- Approving subcontractors;
- Providing notices;
- Documenting milestones
- Documenting technical/contractual and progress meetings;
- Documenting contract complaints, disputes, potential terminations;
- Completing contract close-out when appropriate;
- Working with your legal staff when needed.

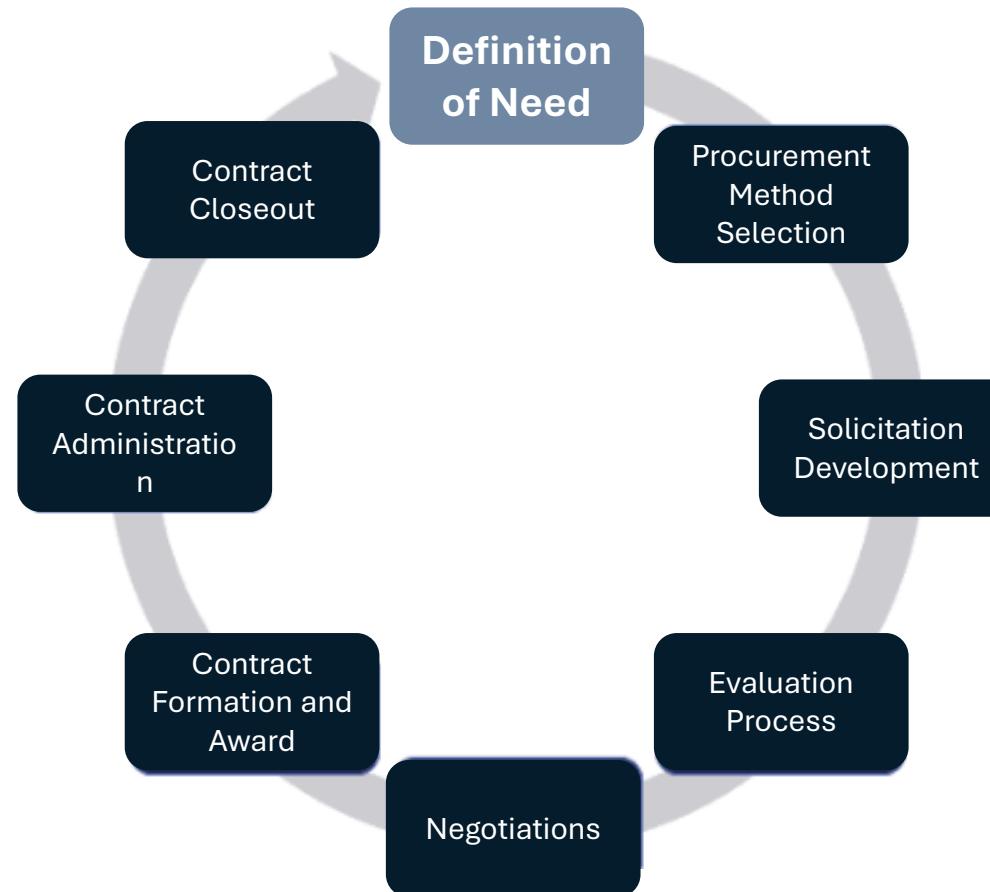


PROCUREMENT CYCLE

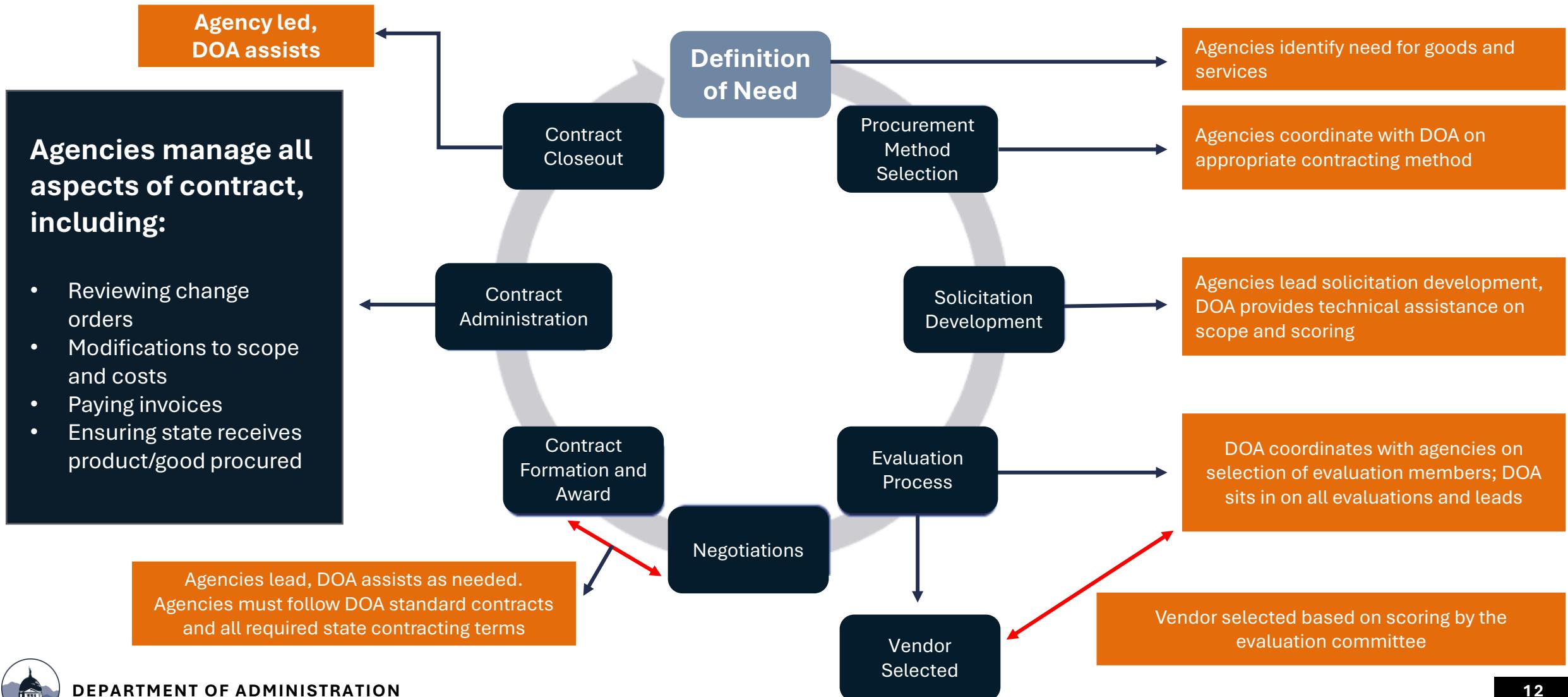
Before engaging in public procurement activities, it is important to understand:

- There are common characteristics between procurements, and that following each of the processes outlined here ensures procurements are conducted transparently and efficiently.

The steps of the Procurement Cycle are generally identified as:



EXAMPLE PROCESS: DOA VS. AGENCIES



COOPERATIVES & “BRIDGES”

- States may choose to utilize a cooperative service for procurement, these actions can include:
 - Release of a “mini-RFP” to the cooperative for participating companies to bid.
 - Bids available usually only 14 days, proposals reviewed more informally, vendor selected.
 - Follow the same “rules of the road” for engagement during this process to ensure fairness and transparency and avoid negative perception
 - Direct “draw-down” off an available vendor for contracting
 - Usually smaller, more limited services, however, it is up to the state
- Bridge Contracting
 - States may utilize another state’s contract for services if the hosting state’s contract allows and the services are 1:1
 - Usually done during an emergency or exigent circumstance, however, sometimes used to avoid lengthy contract negotiations even after an RFP (***not ideal for a state to use***).



COOPERATIVE CONTRACTS

COMMON COOPERATIVE PLATFORMS

- NASPO
 - Montana is the current lead for 3 NASPO portfolios – MMIS Provider Services, MMIS Claim Processing, and Data Communications
- OMNIA
- TEXAS
- SOURCEWELL

THINGS TO KEEP IN MIND

- Vendors must participate in a cooperative association like NASPO, vendors must pay to participate
- State must have an agreement on file, in that respective portfolio and master agreement to participate
- States must PAY a fee to utilize a cooperative, usually a 1.5 - 5% mark-up

IT UTILIZING RESELLERS – IT'S COMPLICATED

- Intent to participate (must be completed by State Procurement Services Division)
- Master agreement through platform process
- Participating addendum terms and conditions
- Flow down of Agreed Terms and Conditions with Reseller to Vendor
- Vendor terms and conditions



IT COOPERATIVE CONTRACTS

(Process usually differs from traditional procurement actions)

SAMPLE PROCESS FOR MONTANA:

- IT procurements must comply with BOTH the Montana Procurement Act and the Montana Information Technology Act
- Agency Determines Need and Solution
- Procurement Mechanism Identified
- IT request submitted to the state CIO
- Review committee in IT considers (Questions/Answers Cycle)
- Procurement Process (Contract/PO)
- Security Assessment



PROCUREMENT MODERNIZATION

Our procurement modernization initiative is intended to improve our processes, create efficiencies, and enhance our procurement teams' knowledge across all agencies.

GOALS / STRATEGIES

- Eliminate or streamline duplicative contracts.
- Evaluate current processes and procedures for IT Procurement and identify efficiencies and potential cost savings.
- Procurement Certification Program will develop expertise across the enterprise
- Finalize solicitation and contract templates and utilize enterprise-wide.
- Procurement Planning – agencies must submit a procurement plan by September 15th of each year

BENEFITS

- Leverage strategic sourcing and contracting, resulting in efficiencies and cost savings.
- Improved overall contract management.
- Enhance procurement skills and knowledge across the enterprise to drive consistency and compliance.
- Opportunities for staff to develop skills and knowledge in the area of procurement as part of a larger community of procurement professionals.
- Build consistency across the enterprise



PROCUREMENT MODERNIZATION

The planning and solicitation development phase helps ensure a successful outcome by:

- **Identifying the business need;**
 - Is there a need across the enterprise for same or similar goods/services?
 - Is there a cooperative contract already available?
- **Establishing a timeline and budget;**
 - Planning includes approvals are in place, subject matter experts are engaged, and resources allocated.
- **Requesting information** – a Request for Information (RFI) is a great tool to assist agencies in identifying requirements, selecting the appropriate process, and identifying potential vendors;
- **Determining if the need is complex or detailed;**
- **Determining if cost is the driving factor** or if there are other factors necessary to make an award;
- **Determining if there will be a need to clarify** proposals or seek revisions;
- **Discussing the project with legal** – create a draft contract with their input;
- **Submitting ITPR requests** (when applicable) as early as possible.



LEGISLATIVE CHANGES – SB 51

The procurement process in Montana was unique in that businesses competing for government contracts could access the full details of their competitors' proposals, even before the formal evaluation process had begun. In State Procurement surveys completed prior to the last legislative session, vendors viewed our process and requirements as an advantage to incumbent contractors. Respondents stated the statutory requirements created barriers and disincentives when seeking contracted work in Montana.

The intent of Senate Bill 51 was to improve opportunities for Montana citizens and businesses to compete for public contracts, ultimately drive better pricing, reduce risk to the State by better protecting proprietary and confidential information, and increase transparency in the Montana procurement process. The bill modernized our processes and procedures to reflect industry standards and ensure Montana works in the best interest of its taxpayers and citizens.



FORMER AND SB 51 PROCESS COMPARISON

PHASE 1: Solicitation preparation phase

- Market research
- Stakeholder input
- Public posting of Request for information (RFI)
- Opportunity for public input
- Quarterly procurement forecast posted on website

NO PROPOSED CHANGES

PHASE 2: Open solicitation phase

- Solicitation posted to bids.mt.gov
- Open Q&A forum on bids.mt.gov
- Pre-bid/proposal call

NO PROPOSED CHANGES

PHASE 3: Solicitation evaluation

FORMER PROCESS

- IFB/RFP responses available for release ✓
- Open bid proposal review ✓
- Open technical scoring ✓
- Open vendor oral presentation/interview/product demo ✓
- Negotiate contract
- Award ✓

✓ Indicates a step in the process where competitors may observe

SB 51 PROCESS

- Closed bid proposal review
- Closed technical scoring
- Closed vendor oral presentation/interview/product demo
- Negotiate contract
- Post intent to award 7 days for public comment ✓
- IFB/RFP responses released ✓
- Review public comment, if applicable ✓
- Award ✓

PROPOSED CHANGES

Access is the same but shifted to later in the process.

Montana is the only state where businesses competing for government contracts can access the full details of their competitors' proposals and presentations, even before the agency begins evaluating them. In recent State Procurement surveys, vendors view the current procurement processes and requirements as an advantage to incumbent contractors. Respondents stated current statutory requirements create barriers and disincentives when seeking contracted work in Montana.

The intent of Senate Bill 51 is to improve opportunities for Montana citizens and businesses to compete for public contracts, ultimately drive better pricing, reduce risk to the State by better protecting proprietary and confidential information, and increase transparency in the Montana procurement process. This bill will modernize procurement processes and procedures to reflect industry standards and ensure Montana is working in the best interest of its taxpayers and citizens.



DEPARTMENT OF
ADMINISTRATION

CHANGES IN LAW

- **HB 356** – established firearms industry non-discrimination requirements for state contracts;
- **SB 51** – improve opportunities for Montana citizens and businesses to compete fairly;
- **ARM 2.5.303 Enforcing the Contract** – updated to remove an outdated link in policy;
- **ARM 2.5.510 NEW** – a rule that defined the Intent to Award required in SB 51;
- **ARM 2.5.601 Competitive Sealed Bids** – removed language for public meetings;
- **ARM 2.5.602 Competitive Sealed Proposals** – removed language for public meetings;
- **ARM 2.5.603 Small Purchases or Limited Solicitations of Supplies and Services** – updated to rename Small Purchases/Limited Solicitations to Informal Purchases;
- **ARM 2.5.604 Sole Source Procurement** – updated to include a requirement for an Intent to Sole Source be posted for any request over \$100,000 and clarify that any modification, extension, or renewal to an existing Sole Source must have a new approval;
- **ARM 2.5.609 Alternative Procurement Methods** – added new language providing SPSD an option to delegate authority back to the agency to use the method proposed.





QUESTIONS?

