

**North Central Montana Regional Authority
(NCMRWA)**

OPERATIONAL POLICIES

Date Approved: 09/27/16

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CHAPTER 1: ORGANIZATION

1.1 NCMRWA Ideals and Objectives

POLICY:

NCMRWA is in existence to provide a necessary and satisfactory service. It strives to meet the following ideals and objectives:

Statement of Ideals

1. NCMRWA does not exist solely for the benefit of any one group, consumer, member-owner, employee, or the public at large. NCMRWA will work to provide a quality water supply balancing financial and technical considerations with the needs of water users.
2. NCMRWA will maintain competent staff that are well-trained and efficient in the performance of their duties.
3. NCMRWA strives to be a good citizen, working to further the best interests of the communities it serves.
4. NCMRWA believes that individual and corporate relationships should be governed by high standards of conduct and ethics.
5. NCMRWA intends to remain engaged in statewide water issues, devoting efforts towards achieving knowledge and leadership in the field of water supply and management.

Statement of Objectives

1. To offer high quality water at the lowest possible cost to its users utilizing sound economic and good management practices.
2. To insure maximum utilization of NCMRWA infrastructure and equipment.
3. To make sure plans are in place to respond appropriately to emergency conditions.
4. To reward, encourage, progress, fully inform, train, develop, and properly assign all employees.
5. To accord prompt, fair, and courteous treatment to customers and vendors.
6. To maintain adequate and reliable sources of materials and equipment at the lowest cost consistent with quality.
7. To engage in necessary study and analysis to determine the future needs of all users and work toward fulfilling water supply needs in the region.

8. To foster NCMRWA's position as a good citizen in the communities where it is located and to encourage employees to take an active part in making the community and the nation a better place in which to live.
9. When in NCMRWA's best interests, cooperate lawfully with similar enterprises and within industry generally for mutual benefit.

Approved: 09/27/16 Board Meeting

1.2 Non-Discrimination

POLICY:

NCMRWA does not discriminate on the basis of race, color, national origin, sex, religion, age, marital status, or disability in the employment or the provision of services.

Approved: 09/27/16 Board Meeting

1.3 Policy Objectives

POLICY:

All policies contained within this handbook are intended to set forth general practices relating to NCMRWA business operations. Policies are subject to change and no policy is intended to create a contractual right or guarantee that the policy will not be altered, changed, or that compliance with a policy will not be waived or excused.

Approved: 09/27/16 Board Meeting

1.4 Policy Origin, Approval, Amendment, and Repeal

POLICY:

Operational and administrative policies may be originated or formulated by the Board of Directors, the Executive Committee, and/or management. The Board and/or Executive Committee, from time to time, amends and revises these policies as it deems necessary to continue the efficient operation and management of NCMRWA.

Approved: 09/27/16 Board Meeting

CHAPTER 2: ETHICS

2.1 Code of Ethical Conduct

POLICY:

The purpose of the conflict of interest policy is to protect NCMRWA's interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, or employee of NCMRWA or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to NCMRWA.

A. Employees:

All employees of NCMRWA shall *avoid* any conflict between their interests and those of NCMRWA, and shall *disclose* promptly any actual or potential conflicts.

The purpose of this policy is to ensure that the name, reputation, and integrity of NCMRWA are not compromised. The fundamental principle guiding its implementation is that no employee should have, or appear to have, any personal interests, relationships, or affiliations that conflict with the best interests of NCMRWA.

It is impossible to give an exhaustive list of situations that might present a conflict. However, among the most common situations that may constitute a conflict are:

- Holding an interest in or accepting free or discounted goods from any company or organization that does, or is seeking to do, business with NCMRWA, by any employee who is in a position to directly or indirectly influence either NCMRWA's decision to do business, or the terms upon which business would be done with such company or organization.
- Holding an interest in an organization that competes with NCMRWA.
- Being employed by (including working as a consultant) or serving on the board of any organization that does, or is seeking to do, business with NCMRWA or which competes with the NCMRWA.
- Gaining personally, e.g., through commissions, loans, expense or travel reimbursements or other compensation, from any company or organization doing, or seeking to do, business with NCMRWA.

A conflict of interest may also exist when a member of an employee's immediate family is involved in situations described above. Subject to any other applicable rules or regulations, this policy is not intended to prohibit the acceptance of modest courtesies, openly given and acknowledged as part of the usual business amenities, e.g., occasional business-related meals or promotional items of nominal or minor value not to exceed \$50 per occurrence. It is the responsibility of the employee to report promptly any actual or potential conflict

that may exist between the employee (and employee's immediate family) and NCMRWA. In the absence of disclosure, violations of the principles and standards contained in this policy statement may be subject to discipline, up to and including employee discharge. *Employees with decision-making authority will be required to acknowledge receipt of this policy and when applicable, disclose any existing or potential conflicts.* The Board or Executive Committee will have the final authority to determine the appropriate penalty for any policy violations.

B. Officers and Board of Directors:

Any director, principal officer, or member of a committee, who has a direct or indirect financial interest, as defined below, is an interested person.

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which NCMRWA has a transaction or arrangement,
- b. A compensation arrangement with NCMRWA or with any entity or individual with which NCMRWA has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which NCMRWA is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. As discussed below, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

1. Duty to Disclose - In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists - After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest -

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the

- possible conflict of interest.
- b. The chairperson of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - c. After exercising due diligence, the board or committee shall determine whether NCMRWA can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
 - d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in NCMRWA's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

- a. If the board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

The minutes of the board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Approved: 09/27/16 Board Meeting

2.2 Member Information

POLICY:

NCMRWA is a public entity to which Montana's public right to know and open government laws apply. Pursuant to applicable law or subject to a person's claimed right to privacy, or information established as a "trade secret," under Montana's trade secret laws, information that NCMRWA obtains and possesses will be available to the public for inspection and copying at a reasonable cost.

Approved: 09/27/16 Board Meeting

CHAPTER 3: OPERATIONS

3.1 Procurement Policy

1. Purpose

The purpose of this policy is to ensure that goods and services purchased for the NCMRWA are obtained in a cost-effective manner and in compliance with federal (*§200.318 General Procurement Standards*) and state regulations.

2. Scope

This policy applies to all employees and Executive Committee Members authorized to initiate purchases for the NCMRWA.

3. Responsibility

The General Manager is responsible for determining whether a purchase is allowable under the terms of any federal or state grants and will ensure purchases are in accordance with this policy. The General Manager will also maintain the purchase transaction records.

4. General Procurement Standards

A. Awarding Contracts

The NCMRWA must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

B. Suspension and debarment

Contracts will not be awarded to vendors that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

C. Record Keeping

The NCMRWA must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

D. Time and Materials Contract

(1) The NCMRWA may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the NCMRWA is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) The NCMRWA also will assert a high degree of oversight over the time and materials contract in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

5. Competition

- A. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- B. The NCMRWA will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- C. All solicitations will be as follows:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent”

description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- D. The NCMRWA will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the NCMRWA must not preclude potential bidders from qualifying during the solicitation period.

6. Methods of Procurement to be followed

The NCMRWA must use one of the following methods of procurement.

- A. Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase currently at \$3,000). To the extent practicable, the NCMRWA must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the NCMRWA considers the price to be reasonable.

- B. (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$80,000 (*exception for architectural/engineering (A/E) professional services with small purchase procedures limited to those services estimated to be under \$20,000; see D.5 regarding procurement of A/E services*). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

- C. Procurement by sealed bids (formal advertising) for purchases in excess of \$80,000 (*with exception of purchases in excess of \$20,000 for A/E professional services; see D.5 regarding procurement of A/E services*) must be let to the lowest responsible bidder after advertisement for bids. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
- ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- iii. The advertisement for bids must be published as provided in MCA 7-1-4127 and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids.
- iv. All bids will be opened at the time and place prescribed in the invitation for bids and open to the public.
- v. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- vi. Any or all bids may be rejected if there is a sound documented reason.

D. Procurement by competitive proposals for purchases in excess of \$80,000 (*with exception of purchases in excess of \$20,000 for architectural/engineering professional services; see 5. below regarding procurement of A/E services*). The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The NCMRWA will document the method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The NCMRWA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to

purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- E. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
- (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the NCMRWA; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.

Contracts may not be divided into several contracts to circumvent the competitive bidding requirements.

7. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- A. The NCMRWA will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- B. Affirmative steps must include:
- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

8. Contract Cost and Price

- A. The NCMRWA must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (currently \$150,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the NCMRWA must make independent estimates before receiving bids or proposals.
- B. The NCMRWA must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- C. Costs or prices based on estimated costs for contracts under Federal awards are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under the Federal Cost Principals.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

9. Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$150,000), the minimum bonding requirements are as follows:

- A. A bid guarantee from each bidder equivalent to ten percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- C. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

10. Contract Provisions

The NCMRWA's contracts must contain the applicable provisions from Appendix II Contract Provisions for non-Federal Entity Contracts Under Federal Awards to Part 200 (*Uniform Administrative Requirements, Cost Principals and Audit Requirements for Federal Awards*).

Approved: 09/27/16 Board Meeting

3.2 Communication Policy

POLICY:

NCMRWA shall endeavor to effectively communicate with members about NCMRWA plans, operations, programs, and industry-related information as relevant.

Any communication on behalf of NCMRWA on any matter or issue should, whenever possible, be approved by the Board of Directors, the Executive Committee, or as appropriate management.

Approved: 09/27/16 Board Meeting

3.3 Acquisition of Property Interests

POLICY:

Federal and State law authorizes NCMRWA to utilize the power of eminent domain to obtain necessary property interests.

While NCMRWA has the power of eminent domain, the Board emphasizes that it hopes to obtain rights of way and pumping, storage, and metering facility sites by voluntary acquisitions if possible. In addition to written requests for easements, NCMRWA will attempt to proactively answer landowner concerns. NCMRWA may consider modifying alignments or locations where reasonable and cost effective. In the absence of an agreement, condemnation will be considered by NCMRWA to facilitate construction.

It is NCMRWA policy to offer a uniform rate for property acquisitions to all property owners for the regional water system infrastructure, except where other rates are warranted based upon appraisals or operation of law.

Approved: 09/27/16 Board Meeting

3.4 Availability of Project Water for Voluntary Acquisition of Right of Way

POLICY:

For property owners who voluntarily enter into easement agreements or sell property to NCMRWA, NCMRWA will assist the property owner in obtaining water service from one of its Member Entities if so requested by those property owners.

Refused Easement: This policy applies to property on which NCMRWA needs an easement to construct its system and on which the owner refuses to grant an easement. For each such parcel, the costs of any eminent domain proceedings, or in the case of a rerouting or realignment of the pipeline the engineering, surveying, construction and cost increases related to any reroute or realignment of the pipeline caused by the refused easement shall be calculated and recorded in the records of NCMRWA. If water service from NCMRWA's system or its Members is later desired on said parcel, or any other property within the service area of NCMRWA that is owned by a person who has refused to grant an easement, the NCMRWA will work with its Members to assess such person, or subsequent owner, those costs described above, prior to providing any water service.

Approved: 09/27/16 Board Meeting

3.5 Water Line Relocation

POLICY:

Requests for relocation of NCMRWA's facilities and pipelines to accommodate the needs of members or others shall be by written request and may be granted by the Executive Committee only if there is an agreement entered into which provides that the cost of such relocation is borne by the requestor.

Approved: 09/27/16 Board Meeting