

# MONTANA

Topic	Sub-topic	Yes/No	Statutory Requirements x x x Montana Administrative Rules ("MAR") Montana Code Annotated ("MCA")	Notes/Comments
Pre-Qualification Requirements	1. Is There a State Licensing Requirement for: a. General Contractors	Yes	MCA § 39-9-204	<ul style="list-style-type: none"> <li>Contractors must have a certificate of registration to do business in Montana.</li> </ul>
	b. Construction Managers	No, but see comment		<ul style="list-style-type: none"> <li>Contractors must have a certificate of registration to do business in Montana.</li> </ul>
	c. Architects and Engineers	Yes	MCA §§ 37-65-301 – 37-65-323; 18-2-113 (architects) MCA §§ 37-67-301 – 37-67-332 (engineers)	<ul style="list-style-type: none"> <li>Unlicensed practice of architecture and engineering is prohibited in Montana. Architects on public buildings must be certified.</li> </ul>
	d. Subcontractors & Others	Yes	MCA §§ 37-66-301 – 37-66-322 (landscape architects) MCA §§ 37-68-301 – 37-68-322 (electricians) MCA §§ 37-69-301 – 37-69-324 (plumbers) MCA § 37-71-911 (asbestos abatement) MCA §§ 37-72-301 – 37-72-322 (construction blasting) MCA § 37-73-302 (water well contractors)	<ul style="list-style-type: none"> <li>Landscape architects, electricians and plumbers must be licensed to do business in Montana.</li> <li>Asbestos abatement contractors must be "accredited" by the State.</li> </ul>
	2. Is There a Foreign Corporation Registration Requirement?	Yes	MCA §§ 35-1-226 – 35-1-1040	<ul style="list-style-type: none"> <li>A foreign corporation must apply for a certificate of authority to transact business in Montana.</li> </ul>
	3. Must a Non-resident Contractor Post Bond as Part of the Process of Qualifying to do Business?	Yes	MCA § 18-2-201	<ul style="list-style-type: none"> <li>Any contractor working on a public project must deliver to the board a sufficient bond.</li> </ul>
	4. Sales/Use Tax Obligations	Yes	MCA §§ 15-50-205 – 15-50-207	
Lien Law Requirements	1. Lien Statute	Yes	MCA §§ 71-3-522 – 71-3-563	<ul style="list-style-type: none"> <li>Any person who provides services or materials pursuant to a construction contract may claim a lien.</li> </ul>
	2. Notice Requirements	Yes	MCA §§ 71-3-531 – 71-3-536	<ul style="list-style-type: none"> <li>The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.</li> <li>The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.</li> </ul>
Public Procurement Laws	1. Is Competitive Bidding the Principal Vehicle for Public Construction?	Yes, but see comments	MCA § 7-5-2301 (county contracts); MCA § 7-5-4302 (municipal projects); MCA § 18-1-102 (public works); MCA § 60-2-112 (highway contracts)	<ul style="list-style-type: none"> <li>As a basic rule, bids are required on construction projects in excess of \$50,000 with the contract awarded to the lowest responsible bidder. However, effective October 1, 2005, Montana law was amended to authorize the use of alternative project delivery</li> </ul>

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				contracts on state, county, and municipal construction projects. The alternative project delivery systems include design-build, and construction management delivery systems. In those cases, award is based on criteria, set forth on the request for proposals. Highway contracts in excess of \$50,000 are to be awarded to lowest responsive and responsible bidder.
2. Is Negotiation an Available Delivery Vehicle for Public Construction?	Yes, in limited circumstances – See Comment	MCA § 7-5-2301 (county projects); MCA § 7-5-4302 (municipal projects); MCA § 18-1-102 (public works); MCA § 60-2-112 (highway contracts)		<ul style="list-style-type: none"> <li>As a basic rule, bids are required on construction projects in excess of \$50,000 with the contract awarded to the lowest responsible bidder. However, effective October 1, 2005, Montana law was amended to authorize the use of alternative project delivery contracts on state, county, and municipal construction projects. The alternative project delivery systems include design-build, and construction management delivery systems. In those cases, award is based on criteria set forth on the request for proposals.</li> <li>Competitive bidding not required for contracts of \$50,000 or less or if Transportation Commission determines that "special circumstances" apply.</li> </ul>
3. Is Construction Management an Available Delivery Vehicle for Public Construction?	See comments	MCA § 7-5-2301 (county projects); MCA § 7-5-4302 (municipal projects); MCA § 18-1-102 (public works)		<ul style="list-style-type: none"> <li>Both agency construction management and construction management constructor acts authorized per Senate Bill No. 342 effective 10/1/05.</li> </ul>
4. On Public Projects, Does Any Statute Distinguish Between CM Agency and CM/GC (CM at Risk)?	Yes	MCA § 7-5-2301 (county projects); MCA § 7-5-4302 (municipal projects); MCA § 18-1-102 (public works)		<ul style="list-style-type: none"> <li>Both agency construction management and construction management constructor acts authorized per Senate Bill No. 342 effective 10/1/05.</li> </ul>
5. Does Any Statute Authorize Electronic Bidding ("E-Bids")?	No, but see comments			<ul style="list-style-type: none"> <li>Requires use of electronic access to request for bids or proposals.</li> </ul>
6. Does Any Statute Authorize the Use of Reverse Auctions in the Award of Public Construction Contracts?	No			
7. Is There any Statutory Preference for In-State Contractors?	Yes	MCA §§ 18-1-102; 18-2-403; 18-2-409		<ul style="list-style-type: none"> <li>On State construction projects, at least 50% of the work must be done by Montana residents.</li> <li>In every public works contract, there must be inserted in the bid specifications requiring the contractor to give preference to the employment of Montana residents.</li> <li>While contracts are generally awarded without regard to residency, a resident of Montana must be allowed a preference on a contract against the bid of a non-resident if the state of the non-resident gives a preference for residents.</li> </ul>
8. Are there any Statutory Preference for MDE, DBE, WBE or Other Identified Groups?	Yes	MCA § 18-1-110 MCA § 18-5-502		<ul style="list-style-type: none"> <li>Montana has hiring preferences for residents of Indian reservations for state construction projects within reservations.</li> <li>When state property is to be used as a vending facility and one of two or more substantially equal responsible bidders is blind, the contract must be awarded to the blind person.</li> </ul>
9. Is There any Statute Expressly Prohibiting Preferences for Identified Classes of Contractors?	Yes	MCA § 18-1-111		<ul style="list-style-type: none"> <li>The state may not show partiality not provided for by law in the award of contracts.</li> </ul>
10. Is There any Statutory Requirement	No, but see			<ul style="list-style-type: none"> <li>Senate Bill authorizes use of agency construction</li> </ul>

	for the Use of a Multi-Prime Delivery Vehicle on Public Projects?	comment		managers which may result in use of multi-prime contracts.
Design-Build Contracting	1. Is Design-Build Contracting Permitted on Public Projects?	Yes	MCA §§ 7-5-2301; 7-5-9302; 18-8-204; 18-8-205; 60-2-111 - 60-2-112; 60-2-135 - 60-2-137	<ul style="list-style-type: none"> <li>In 2003, the DOT established a design-build contracting pilot program. The total cost of projects under this program cannot exceed \$20 million.</li> <li>The legislature recently passed a bill authorizing the use of Design-Build Contracting on public projects. See Senate Bill 342.</li> </ul>
	2. Is Design-Build Contracting Permitted on Private Projects?	Yes		
	3. Is Design-Build expressly Prohibited by Statute?	No		
	a. Public Projects	No, see comment	MCA §§ 7-5-2301; 7-5-4302; 18-1-102; 60-2-135	<ul style="list-style-type: none"> <li>In 2003, the DOT established a design-build contracting pilot program. The total cost of projects under this program cannot exceed \$20 million.</li> <li>The legislature recently passed a bill authorizing the use of Design-Build Contracting on public projects. See Senate Bill 342.</li> </ul>
	b. Private Projects	No		
	4. Is There any Statute Requiring that the Design-Build Contractor Hold Either an Architect's or Engineer's License?	See comments		<ul style="list-style-type: none"> <li>Under any alternative Project Delivery Contract, architectural and engineering services must be performed by a professional in those fields. See Senate Bill 342.</li> </ul>
Bond Requirements on Public Projects	1. Bid Bonds	Yes	MCA §§ 18-2-201, 18-1-206, 18-4-312	<ul style="list-style-type: none"> <li>Bid bonds are required in all cases where a public authority is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind.</li> </ul>
	2. Performance Bonds	Yes	MCA § 18-2-201, 18-4-312	<ul style="list-style-type: none"> <li>A contractor must post a performance bond that assures that the contractor will faithfully perform the provisions of the contract, pay all laborers, mechanics, subcontractors, and material suppliers, and pay all persons who supply the contractor with provisions, provender, material, or supplies for performing the work.</li> </ul>
	3. Payment Bonds	Yes	MCA § 18-2-201	<ul style="list-style-type: none"> <li>Public works projects must be secured by a payment bond.</li> </ul>
Bid Mistake Relief on Public Projects	1. Is Bid Mistake Relief Available per Statute for Public Projects?	Yes	MAR § 2.5.505 MCA § 18-4-303	<ul style="list-style-type: none"> <li>Correction or withdrawal of inadvertently erroneous bids, before or after an award, based on bid mistakes may be permitted in accordance with the rules adopted by the department.</li> <li>The procurement officer may allow a bidder to correct a minor mistake if the mistake is clearly evident on the form of the document.</li> </ul>
	2. Is There any Statutory Provision Addressing the Consequences for Seeking Bid Mistake Relief?	No		
	3. Is Bid Mistake Relief Available per any Court Decision?	Yes		<ul style="list-style-type: none"> <li>Generally, Montana courts have held that an agency has discretion to waive minor irregularities contained in a low bid.</li> </ul>
Is There any Statutory	1. Is There any Statutory Restriction on Sole Source or Closed Specifications?	Yes	MCA § 18-4-306	<ul style="list-style-type: none"> <li>A contract may be awarded for a supply or service item without competition when there is only one</li> </ul>

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Restriction on Sole Source or Closed Specifications?				source of the item, only one source is acceptable or due to compatibility requirements.
Bid Protests	1. Is There any Administrative Body that Addresses Bid Protests?	Yes	MCA § 18-4-242	When a solicitation or award for a contract is determined to be in violation of the law, an aggrieved party may protest to the Department of Administration.
	2. Who May Assert a Bid Protest?	See comments	MCA § 18-4-242	In the event of an unlawful solicitation or award, a bidder, offeror, or contractor aggrieved may protest.
	3. Is Recovery of Bid Preparation Costs the Exclusive Remedy?	No	MCA § 18-4-242	<p>Before the actual award of a contract, a proposed award or solicitation may be cancelled or revised to comply with the law.</p> <p>After the award of a contract, a contract in violation of the law may be ratified and affirmed, terminated, or declared null and void.</p> <p>Montana courts have held that an unsuccessful bidder who succeeds in setting aside an irregular low bid cannot recover from the bidder or the government entity.</p>

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Subcontracting	1. Listing requirements	No		<ul style="list-style-type: none"> <li>• Listing is generally not required on public projects.</li> </ul>
	2. MBE/DBE/WBE Set Asides	No		
	3. Is There a Statute Addressing Prompt Payment?	Yes	MCA § 28-2-2103	<ul style="list-style-type: none"> <li>• Contractor to pay subcontractor within 7 days after receipt of payment from owner.</li> <li>• A contractor's request for payment is considered approved by the owner 21 days after receipt of the request unless otherwise informed in writing.</li> </ul>
	4. Is There a Statute Addressing Pay-When-Paid or Pay-If-Paid Clauses?	Yes	MCA §§ 28-2-2103 - 28-2-2104	<ul style="list-style-type: none"> <li>• Contractors must pay subcontractors within 30 days after receipt by the owner in accordance with the contract.</li> <li>• Montana courts have voided pay-when-paid clauses. If a periodic or final payment is delayed by more than 30 days from the date the payment is due by contract, the subcontractor is entitled to interest on the amount at a rate of 1½% a month.</li> </ul>
	5. Is There a Statute Addressing No Damages For Delay Clauses?	No, but see comments		<ul style="list-style-type: none"> <li>• State contracts may be permitted or required to contain clauses that address specified excuses for delay or nonperformance. MCA § 18-4-224.</li> <li>• A contractor on a public project is not working beyond contract time when the delay is due to an accident or an "Act of God." MCA § 18-2-312.</li> </ul>
	6. Is There a Statute Addressing Choice of Law Provisions in Subcontracts?	Yes	MCA § 28-2-2116	<ul style="list-style-type: none"> <li>• A provision in a construction contract that makes the contract subject to the laws of another state is void and unenforceable.</li> </ul>
Indemnity	7. Is There a Statute Addressing Forum or Venue Selection Clauses in Subcontracts?	Yes	MCA § 28-2-2116	<ul style="list-style-type: none"> <li>• A provision in a construction contract that requires litigation, arbitration, or other dispute resolution proceedings to take place in another state is void and unenforceable.</li> </ul>
	1. Are There Statutes Limiting the Scope of Permissible Indemnity Clauses as a Matter of Public Policy?	Yes	MCA § 28-2-2116	<ul style="list-style-type: none"> <li>• With narrow exceptions, indemnity clauses in construction contracts are generally void as against public policy.</li> </ul>
	2. Are There Statutes Establishing Certain Conditions Precedent to Enforcement of Certain Indemnity Clauses?	No, but see comments	MCA § 28-11-314	<ul style="list-style-type: none"> <li>• Upon an indemnity against liability, the person indemnified is entitled to recover upon becoming liable.</li> </ul>
Payment	1. Are There Statutes Addressing Escrow or Retainage?	Yes	MCA §§ 18-1-301; 18-2-316; 28-2-2110	<ul style="list-style-type: none"> <li>• The maximum retainage applied to construction contracts administered by Montana may not exceed 5%.</li> <li>• The maximum retainage applied to a construction contract may not exceed 5%.</li> </ul>
	2. Is There a "Trust Fund" Statute Addressing Payment to the General Contractor for Subcontractors' Work?	No		
Claims	1. Is Sovereign Immunity Waived?	Yes	MCA § 18-1-404	<ul style="list-style-type: none"> <li>• The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual except the state is not liable for punitive damages.</li> </ul>
	2. Is There a Designated Forum for the resolution of Disputes/Claims on Public Projects?	No	MCA §§ 18-1-401 - 18-1-404	<ul style="list-style-type: none"> <li>• A contractor must exhaust all administrative procedures and remedies available through the agency's rules before filing an action.</li> </ul>

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				<ul style="list-style-type: none"> <li>• These remedies must be exhausted within the time allotted in the contract or within ninety days of the dispute.</li> <li>• A suit must be commenced within one year of the arising of the cause of action or the rendering of a final decision by the agency.</li> </ul>
	3. Is There a Statutory Provision Requiring the Use of an ADR Process to Resolve Claims on Public Projects?	No		
Public Records Access	1. Public Records Access	Yes	MCA §§ 2-6-102; 18-4-126	<ul style="list-style-type: none"> <li>• Every citizen has a right to inspect and copy any public document.</li> <li>• Procurement information must be available to the public.</li> </ul>
Other Statutes Governing Public Contracts	1. Has the American Bar Association Model Procurement Code with Local Variations Been Adopted?	Yes	MCA §§ 18-4-121 - 18-4-407	<ul style="list-style-type: none"> <li>• The model procurement code was adopted in 1983.</li> </ul>
State Occupational Safety & Health Plans	1. Has a State OSHA Plan Been Approved?	No		
State Web Site				<a href="http://www.legis.mt.us">www.legis.mt.us</a>
AGC Chapter(s) Web Site				<a href="http://www.mtag.org">www.mtag.org</a>
Queries for the Editor				<a href="mailto:matrixinfo@smithcurrie.com">matrixinfo@smithcurrie.com</a>

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