

	Montana Operations Manual Policy	Category	Procurement
		Effective Date	9/1/2018
		Last Revised	
Issuing Authority	Department of Administration State Financial Services Division		
Disclosure of Dark Money Spending Requirements in Procurement			

I. Purpose

This policy establishes the requirements necessary to implement [Executive Order No. 15-2018 Requiring Disclosure of Dark Money Spending for Entities Doing Business with the State](#).

II. Scope

This policy applies to all Executive Branch agencies soliciting and contracting for state procurement contracts with a Total Contract Value over \$25,000 for services or \$50,000 for goods. The disclosure requirements apply to bids/proposals received on or after October 1, 2018. New contracts awarded with a contract term of 24 months or longer (or the potential to have a term of 24 months or longer) affected by this policy must include a requirement for annual disclosure by the contractor. This policy does not apply to solicitations issued and contracts executed under Title 18, Chapter 2- Construction Contracts, or Title 18, Chapter 8- Architectural, Engineering, and Land Surveying Services.

III. Definitions

Electioneering Communication: A paid communication that is publicly distributed by radio, television, cable, satellite, internet website, mobile device, newspaper, periodical, billboard, mail, or any other distribution of printed or electronic materials, that is made within 60 days of the initiation of voting in an election in Montana, that can be received by more than 100 recipients in the district in Montana voting on the candidate or ballot issue, and that:

- a. refers to one or more clearly identified candidates in that election in Montana;
- b. depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election in Montana; or
- c. refers to a political party, ballot issue, or other question submitted to the voters in that election in Montana.

The term does not mean:

- a. a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;

- b. a communication by any membership organization or corporation to its members, stockholders, or employees;
- c. a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy; or
- d. a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

In this definition, the phrase "made within 60 days of the initiation of voting in an election" means:

(a) in the case of mail ballot elections, the initiation of voting occurs when official ballot packets are mailed to qualified electors pursuant to [13-19-206](#), MCA;

(b) in other elections the initiation of voting occurs when absentee ballot packets are mailed to or otherwise delivered to qualified electors pursuant to [13-13-214](#), MCA.

Contracting Entity: A bidder, offeror, or contractor.

Covered Expenditure:

- a. A contribution, expenditure, or transfer made by the Contracting Entity, any of its parent entities, or any affiliates or subsidiaries within the entity's control, that:
 - i. is to or on behalf of a candidate for office, a political party, or a party committee in Montana; or
 - ii. is to another entity, regardless of the entity's tax status, that pays for an Electioneering Communication, or that makes contributions, transfers, or expenditures to another entity, regardless of its tax status, that pays for Electioneering Communication; and
- b. The term excludes an expenditure made by the Contracting Entity, any of its parent entities, or any affiliates or subsidiaries within the entity's control made in the ordinary course of business conducted by the entity making the expenditure; investments; or expenditures or contributions where the entity making the expenditure or contribution and the recipient agree that it will not be used to contribute to candidates, parties, or Electioneering Communication.

Executive Branch: The departments and agencies subject to the Governor's executive authority as described in Article VI, Section 4 of the Montana Constitution and 2-15-103, MCA.

Procurement officer: Any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term includes an authorized representative acting within the limits of the representative's authority (18-4-123(16), MCA).

Total Contract Value: The entire potential monetary worth of the contract, purchase order, or project from beginning to completion, including the initial contract period and any options to renew or additional quantities. See ARM 2.5.201(40).

IV. Requirements

A. Procurement Officer Requirements

1. When soliciting for state contracts, the procurement officer shall require all bidders/offerors submitting bids/proposals for contracts with a total contract value over \$25,000 for services or \$50,000 for goods to disclose Covered Expenditures that the bidder/offeror made within two years prior to submission of its bid or offer.

The bidder/offeror shall provide the disclosure of Covered Expenditures whenever the aggregate amount of Covered Expenditures made within a 24-month period by the bidder/offeror, any parent entities, or any affiliates or subsidiaries within the bidder/offeror's control exceeds \$2,500.

The disclosure form appended as Attachment A includes the following fields to complete and submit with the bid/offer if the bidder/offeror meets the disclosure requirements:

- a. the full name and address of the person or entity to whom each Covered Expenditure is made;
 - b. the date and amount of each Covered Expenditure;
 - c. the purpose and description of each Covered Expenditure;
 - d. in the case of a Covered Expenditure made for a direct campaign expenditure for express advocacy, if known at the time that the expenditure is reported, the name of each candidate, including the office held and office sought as applicable, whose election or defeat the expenditure advocates, or each ballot measure the passage or defeat of which the expenditure advocates; and
 - e. in the case of a Covered Expenditure made to an entity that purchases electioneering communications, if known at the time that the expenditure is reported, the name of each candidate, including the office held and office sought as applicable, to whom the communication refers or each ballot measure to which the communication refers.
2. Any disclosure under this policy must be made to the Department of Administration (DOA) or to the contracting department or agency, at the time of the contract bid or offer. If the disclosure is made to a department or agency other than the DOA, the recipient department or agency shall forward the disclosure to the DOA in accordance with procedures established by DOA. The DOA shall compile this information and make it available in a searchable database on transparency.mt.gov.
 3. For any new contracts that are 24 months or longer (or the potential to have a term of 24 months or longer) and executed from solicitations affected by this policy, the DOA or the contracting department or agency shall require an updated disclosure form from the awarded contractor every 12 months from the contract's start date.
 4. No contracting department or agency may discriminate between or among contracting entities because of the content of an entity's expenditures or

contributions disclosed under this policy; however, departments or agencies may not award a contract with a total contract value of more than \$25,000 for services or \$50,000 for goods to any entity that does not complete the required certification.

B. Solicitation and Contract Requirements

1. The following requirements for solicitations and contracts apply:
 - a. All solicitations requiring the disclosure must include a question from the DOA's State Procurement Bureau (SPB) Standard Solicitation Library titled "Dark Money Disclosures" (see Appendix A) and the declaration and disclosure forms (see Appendix B) requiring each bidder/offeror to certify it has read and understands the disclosure requirements and has submitted its disclosure form, if required. A contract may not be awarded without a signed disclosure form from the bidder/offeror.
 - b. The language included in Appendix C must be included in all new state contracts affected by this policy. Any modifications to this standard language must be approved in writing by the SPB.
 - c. Sole source procurements with a Total Contract Value of more than \$25,000 for services or \$50,000 for goods require a signed declaration form and disclosure form, if applicable, prior to contract execution. If applicable, the contract must include the required annual disclosure language in Appendix C. Any exceptions to this part must be approved in writing by the SPB.
 - d. Contracts for goods and services specifically exempted by the Montana Procurement Act with a Total Contract Value of more than \$25,000 for services or \$50,000 for goods require a signed declaration form and disclosure form, if applicable, prior to contract execution. If applicable, the contract must include the required annual disclosure language in Appendix C. Any exceptions to this part must be approved in writing by the SPB.

V. Enforcement

Non-compliance with this policy may result in either or both of the following actions being taken:

- A.** Termination of a contract if a Contractor fails to report; and
- B.** DOA rescinding the Agency's Procurement Delegation Agreement.

VI. References

[Executive Order No. 15-2018](#)

APPENDIX A - Required Solicitation Language

The following conditional question must be included in all solicitations issued by Executive Branch state agencies closing on or after October 1, 2018, with a Total Contract Value over \$25,000 for services and \$50,000 for goods.

Note: The questions are in the "SPB Standard Solicitation" eMACS Library. The first question requires a response ("Yes" or "No"). If "No" is selected, the vendor shall upload the signed declaration form under question 1.2 and nothing further is needed. If "Yes" is selected, the vendor shall upload the signed declaration form, and then question 1.3 will appear and will require the vendor to upload the disclosure template.

Group 1: Disclosure of Dark Money		Manage Group	Delete Selected Questions
#	Question Text	Conditional Upon	Response Type
1.1	By responding to this question, the Bidder/Offeror acknowledges it has read and understands the disclosure requirements of the State of Montana Executive Order No. 15-2018-Disclosure of Dark Money Spending attached to this question. By answering "No" to this question, the Bidder/Offeror certifies it does not meet the disclosure requirements. By answering "Yes" to this question, the Bidder/Offeror certifies it does meet the disclosure requirements. ★	-	Yes/No
1.2	Download, complete, and upload the attached Dark Money Declaration form in response to this question. ★	-	File Upload
1.3	The Bidder/Offeror has indicated it meets the disclosure requirements of the State of Montana Executive Order No. 15-2018-Disclosure of Dark Money Spending. Download, complete, and upload the attached Disclosure template in response to this question. Failure to upload a fully completed Disclosure template may result in disqualification of Bidder/Offeror's response. Do not modify the Disclosure template in any way.	By responding to this question, the Bidder/Offeror acknowledges it has read and understands the disclosure requirements of the State of Montana Executive Order No. 15-2018-Disclosure of Dark Money Spending attached to this question. By answering "No" to this question, the Bidder/Offeror certifies it does not meet the disclosure requirements. By answering "Yes" to this question, the Bidder/Offeror certifies it does meet the disclosure requirements.	File Upload

Add Question

APPENDIX B - Declaration and Disclosure Forms

Declaration:

http://vendorresources.mt.gov/Portals/121/vendor_resources/EO_DECLARATION%20FORM.pdf?ver=2018-09-12-153918-910

Disclosure:

http://vendorresources.mt.gov/Portals/121/vendor_resources/Dark_Money_Disclosure_Template.xlsm

APPENDIX C - Required Contract Language

To be included in all contracts that are 24 months or longer (or the potential to be 24 months or longer) with a Total Contract Value over \$25,000 for services and \$50,000 for goods:

COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS.

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a disclosure form http://vendorresources.mt.gov/Portals/121/vendor_resources/Dark_Money_Disclosure_Template.xlsm to the contract liaison. All disclosures must be submitted to (insert agency contact information), for reporting on transparency.mt.gov. Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.