2013-2015
STATE OF MONTANA
LEVEL TWO
PROCUREMENT DELEGATION AGREEMENT

University of Montana

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PROCUREMENT DELEGATION AGREEMENT
2013-2015

This Agreement is made and entered into between the General Services Division, Department of Administration (DIVISION), and the University of Montana, (AGENCY). Ian Robbins, Director of Procurement Services shall represent the AGENCY. Brad Sanders, Bureau Chief, State Procurement Bureau (SPB), General Services Division, represents the DIVISION.

1.0 TERM

The AGENCY is granted Level Two delegation purchasing authority effective October 1, 2013 through September 30, 2015, unless terminated earlier under the terms stated in Section 17.0 below. This delegation of purchasing authority is contingent upon the AGENCY’s agreement to perform purchasing activities in accordance with this Agreement and the provisions of Title 18, Montana Code Annotated (MCA), its accompanying administrative rules in Administrative Rules of Montana (ARM) Title 2, chapter 5, the 2012 edition of the Montana Operations Manual, and Title 2, chapter 17, part 5, MCA and its accompanying administrative rules and policies.

2.0 OVERVIEW

The DIVISION is authorized to procure or supervise the procurement of all supplies and services needed by the State of Montana under section 18-4-221, MCA, with certain exceptions as set forth in section 18-4-132, MCA. This Agreement applies to the expenditure of public funds irrespective of their source and includes supplies or services that are of no cost to the State and from which income may be derived by the vendor and from which income or a more advantageous business position may be derived by the State.

3.0 DELEGATION AUTHORITY

The DIVISION delegates procurement authority to state departments, agencies, or officials, including the state university system, based on a determination that AGENCY: (1) has a satisfactory performance history exercising similar authority, and (2) has employees trained in procurement matters and procurement policies and procedures.

3.1 Further Delegation. The AGENCY may further delegate this procurement authority within its agency as it deems appropriate provided: (1) at least one employee from the program granted procurement authority has completed the "Basic Procurement Methods and Issues" or attended the "Advanced Procurement Methods and Issues" training courses offered by the DIVISION or a DIVISION-approved agency procurement training program; (2) these agency employees are capable of exercising authority in accordance with Title 18, chapter 4, MCA, and ARM Title 2, chapter 5, and the policies established by the SPB in the Montana Operations Manual; and (3) all procurements are conducted consistent with this delegation of procurement authority.

4.0 PURCHASES EXEMPT FROM DELEGATION AUTHORITY AND COMPETITIVE PROCEDURES

4.1 Exemptions. Under 18-4-132, MCA and ARM 2.5.301, delegation and competitive procedures are not necessary for the following purchases: either grants or contracts between the State and its political subdivisions or other governments; construction contracts; contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000; contracts entered into by the state compensation insurance fund to procure insurance-related services; employment of a registered professional engineer, surveyor, real
estate appraiser, or registered architect; employment of a physician, dentist, pharmacist, or other medical, dental or health care provider; employment of an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor; consulting actuaries; employment of a private consultant employed by the Montana state lottery; employment of a private investigator licensed by any jurisdiction; employment of a claims adjuster; employment of a court reporter appointed as an independent contractor; the purchase or commission of art for a museum or public display; Montana-produced food products, pursuant to 18-4-132(4), MCA; contracting under 47-1-216, MCA of the Montana Public Defender Act; contracting under Title 90, chapter 4, part 11 of the MCA; expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system; a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations; electrical energy purchase contracts, as defined in 20-25-201; salaries; travel and per diem; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the Public Services Commission or other governmental authority; pastoral services; training; conference rental space and catering; fresh fruits and vegetables; fees for placing an advertisement in a publication or on radio, television, or electronic media sources; educational instructors and guidance counselors for inmates under the supervision of the Department of Corrections; and books and periodicals.

4.2 Sheltered Workshops. Purchases of supplies or services from Sheltered Workshops as listed on the following website: http://gsd.mt.gov/ProcurementServices/shelteredworkshops.mepx.

4.3 Interagency Agreements. Purchases made through interagency agreements within Montana state government, or other political subdivisions or governments, unless otherwise prohibited by law.

4.4 Surplus Property Program. Purchases made from the State's Surplus Property Program.

5.0 PROCUREMENT METHODS

AGENCY shall utilize the following procurement methods when purchasing supplies and services:

5.1 Small Purchases – Purchases of $5,000 or less. AGENCY may choose a purchasing technique that best meets its needs for all purchases with a total contract value of $5,000 or less. AGENCY is encouraged to use the State Purchasing Card for all small purchases. "Total contract value" means the entire potential monetary worth of the project from beginning to completion, including the initial contract period and any options to renew.

5.2 Limited Solicitations – Purchases between $5,001 to $25,000. AGENCY shall use a limited solicitation procedure when making purchases with a total contract value of between $5,001 and $25,000. This requires a documented solicitation from a minimum of three viable sources, if available, either orally or in writing, per the guidelines set forth in ARM 2.5.603.

5.3 Formal Competition (Invitation for Bids or Request for Proposals) - Purchases above $25,001. AGENCY shall use either an invitation for bids or request for proposals process to purchase supplies and/or services with a total contract value between $25,001 and $500,000. AGENCY shall forward any purchase with a total contract value over $500,000 to the State Procurement Bureau for processing.

5.4 Sole Source/Sole Brand. AGENCY may make a determination that a purchase is a sole source/sole brand for purchases with a total contract value of $500,000 or less. For purchases over an AGENCY's level of delegated procurement authority, the sole source/sole brand determination shall be made by
the DIVISION unless specifically authorized in Section 18.0 of the written delegation agreement. In cases of reasonable doubt, competition should be solicited.

a. **Exemptions.** Under ARM 2.5.604, the following items do not require competition or sole source justification and can be purchased directly by agencies regardless of delegated authority: (1) professional licenses; (2) dues to associations; (3) renewal of software license agreements; (4) purchase or renewal of maintenance agreements for software or hardware; and (5) publications available only from a single supplier.

b. **Records.** AGENCY shall maintain records of sole source/sole brand purchases over $5,000 as required by ARM 2.5.604(5) by using the "Sole Source Procurement Justification" form or "Sole Brand Procurement Justification" form provided by the SPB.

c. **Extension or Renewal.** If an extension or renewal of a sole source contract is required, AGENCY shall provide the DIVISION with either an updated "Sole Source Procurement Justification" form or an updated "Sole Brand Procurement Justification" form.

5.5 **Exigency Purchase.** The Montana Procurement Act does not apply in the event of a public exigency. An exigency purchase is defined in ARM 2.5.201 as "a purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action." An exigency purchase of $5,000 or greater is limited to those supplies or services necessary to meet the exigency. Where statutorily allowed, AGENCY may declare an exigency. It does not require the DIVISION'S approval. A record of all exigency purchases must be maintained by the AGENCY as required by ARM 2.5.605.

6.0 **DELEGATION AUTHORITY**

AGENCY may purchase all non-controlled supplies or services (see Section 8.0 below) with a total contract value up to $500,000.

6.1 **Written Procedures.** AGENCY shall maintain written procedures for handling all purchases and follow the DIVISION's Montana Operations Manual.

6.2 **Procurement Delegation Liaison.** AGENCY and liaison listed above, or their replacement must (a) have at least three years of public procurement experience; (b) attend any required meetings of the DIVISION; and (c) provide the supervision and management of the agency's procurement needs as their predominant job duty.

6.3 **Staff Training Requirements.** The person listed as the AGENCY and Agreement liaison, or their replacement, and all other AGENCY procurement staff must have completed the "Advanced Procurement Methods and Issues" course offered by the DIVISION and any other training course required by the DIVISION at a later date.

6.4 **Attorney.** AGENCY must provide the services of an attorney to review all contracts or contract templates issued within the AGENCY's delegated procurement authority.

6.5 **Purchases above Level of Delegated Authority.** AGENCY requiring the purchase of a supply and/or service above their level of delegated authority shall forward a requisition to the SPB. A SPB Contracts Officer shall conduct the procurement. The deadline for fiscal year end procurements is April 1st for RFP solicitations and May 1st for IFB solicitations.
6.6 **SPB Signature.** All contracts established through SPB, including but not limited to IFB, RFP, Sole Source, and Exigency, must have the signature of a SPB Contracts Officer before execution, as well as AGENCY legal counsel, unless AGENCY counsel reviews and determines their signature is not required. Any contract amendment issued against a contract established through the SPB must also have a signature or initial of a SPB Contracts Officer before execution by either the agency or contractor. A signature block must state "Approved as to Form" with space for the signature of the SPB Contracts Officer. In addition, all contracts must have the signature of AGENCY legal counsel if not using an approved contract template.

6.7 **Referral to Division.** If AGENCY chooses not to exercise its approved delegated procurement authority, it may submit its requisition to the DIVISION for action.

7.0 **GENERAL REQUIREMENTS**

7.1 **Procurement Documents.** AGENCY shall use the most current form of the DIVISION’s procurement forms and standard terms and conditions in their entirety, including, but not limited to the following: (1) Standard Terms and Conditions; (2) RFP and/or IFB Templates; (3) Limited Solicitation; and (4) Sole Source/Sole Brand Justification Forms unless exceptions are approved by the DIVISION. Requests for exceptions or changes to existing approved forms must be submitted to the DIVISION for approval. Forms are posted on the procurement forms site located at the following website address: [http://gsd.mt.gov/ProcurementServices/procurementforms.mcpx](http://gsd.mt.gov/ProcurementServices/procurementforms.mcpx).

7.2 **Posting of Formal Bids and Proposals, Evaluation Committee Meetings, and Contract Awards.** AGENCY shall post all formal invitations for bid and requests for proposals issued under the authority of the Montana Procurement Act on the DIVISION’s bids and proposals website located at the following website address: [http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx](http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx). Procedures developed by the DIVISION will be used to post each bid and proposal to the subject category most accurately descriptive of the supplies and services being sought.

Any scheduled evaluation committee meetings must be posted on the DIVISION’s evaluation committee meetings website located at the following website address: [http://svc.mt.gov/gsd/OneStop/MeetingDefault.aspx](http://svc.mt.gov/gsd/OneStop/MeetingDefault.aspx). In addition, any contract award must be posted on the DIVISION’s contract awards website located at the following website address: [http://svc.mt.gov/gsd/OneStop/ContractAwardDefault.aspx](http://svc.mt.gov/gsd/OneStop/ContractAwardDefault.aspx).

AGENCY agrees to follow web-posting procedures developed by the DIVISION to post solicitations and related information. The DIVISION has developed a web-posting application, OneStop Administration. AGENCY agrees to use all applicable features of the OneStop Administration application when posting solicitations and related information.

7.3 **Requests for Exceptions to Standard Terms and Conditions and Contracts.** AGENCY agrees that all vendor requests for exceptions to the DIVISION’s Standard Terms and Conditions and the DIVISION’S standard contract either be (1) approved by the DIVISION, or (2) approved in writing by AGENCY’s legal counsel.

7.4 **Purchasing Vendors List.** The DIVISION maintains a purchasing vendors list for supplies and services typically purchased by state agencies. The purchasing vendors list is available from the DIVISION upon request. AGENCY shall use the purchasing vendors list for all formal solicitations.
8.0 CONTROLLED ITEMS: PURCHASES EXCLUDED FROM DELEGATED AUTHORITY

Unless specifically addressed elsewhere in the delegation agreement, AGENCY shall buy "controlled items" through the DIVISION. "Controlled items" are:

8.1 "Exclusive" Statewide Term Contracts. Statewide term contracts are established by the DIVISION for the convenience of agencies to be utilized on an as-needed basis. AGENCY has optional use of all "Exclusive" Term Contracts from the contract holder unless otherwise specified. The DIVISION also establishes "Non-exclusive" Term Contracts. AGENCY is not required to purchase from these contracts, but if it does not, it agrees to follow procurement methods specified in Section 5.0 above to purchase that supply or service.

8.2 Central Stores Program. AGENCY has the option of purchasing office supplies, fine and coarse paper, janitorial supplies, and food service and culinary products through the Central Stores Program. The majority of Central Stores items are available to purchase through the online purchasing portal, the Montana eMarketCenter.

8.3 New or Used Vehicles. AGENCY shall purchase or lease all new vehicles through the State Procurement Bureau following the deadlines established in the Requisition Time Schedule (RTS.) The specific due dates when agencies are required to issue requisitions for vehicles are located on the DIVISION's website at: http://gsd.mt.gov/ProcurementServices/requisitiontimeschedule.mepx. AGENCY shall purchase used vehicles in the following manner:

a. Contact Surplus Property Program. AGENCY shall contact the State Surplus Property program at (406) 444-9921 to seek information on the availability of used vehicles. If a suitable used vehicle is not available, the Surplus Property Program shall provide AGENCY with written permission to proceed with the purchase of a used vehicle according to this delegation agreement from the private sector.

b. Purchase Price. AGENCY shall submit a requisition to the SPB if it is anticipated that the total purchase price of a used vehicle(s) may exceed AGENCY's delegated procurement authority. If not, AGENCY may solicit competition for the used vehicle following the approved procurement methods referenced in Section 5.0 above.

9.0 PRIOR APPROVAL REQUIRED

As required by law, AGENCY shall obtain prior approval to purchase certain supplies and services, regardless of AGENCY's delegated procurement authority. AGENCY shall obtain prior approval from the appropriate state agency before submitting a requisition to the State Procurement Bureau for the following items:

9.1 Printing-related Equipment. All printing-related equipment involving duplicating, printing, bindery, and graphic arts equipment for state agencies within a 10-mile radius of the capitol area must be approved by the Print and Mail Services Bureau of the DIVISION. (ARM 2.5.202)

9.2 Mail Equipment. Mail equipment to be used within a 10-mile radius of the capitol area must be approved by the Print and Mail Services Bureau of the DIVISION. (Section 2-6-203, MCA)

9.3 Filing Systems and Microfilm Equipment. Filing systems and microfilm equipment must be approved by the Records and Information Management Division, Secretary of State's Office. (Section 2-6-203, MCA)
9.4 **Surplus Property Trade-Ins.** Surplus property trade-ins must be approved by the DIVISION’S Surplus Property Program. (Section 18-4-226, MCA)

10.0 **RECORDS**

AGENCY shall maintain adequate records to document the procurement process. Training in procurement documentation methods and retention schedules is available through the DIVISION. Under section 18-4-221, MCA, the DIVISION may audit and monitor the implementation of its rules and the requirements of the Montana Procurement Act.

11.0 **TRAINING AND TECHNICAL ASSISTANCE**

The DIVISION shall provide training and technical assistance to agencies upon request in addition to the procurement courses offered by the DIVISION through the Professional Development Center of the State Human Resources Division of the Department of Administration. The DIVISION shall furnish interpretation of applicable statutes, administrative rules, policy, or this delegation of procurement authority and make on-site visits to assist agencies in complying with this Agreement.

12.0 **REPORTING REQUIREMENTS**

12.1 **Summary of Purchases Exceeding Delegated Authority.** AGENCY must provide the DIVISION liaison listed above with a summary of purchases that exceed AGENCY's level of delegated authority or AGENCY's specific delegated authority as listed in Section 18.0 below within 30 days of the purchase. This summary must include an explanation of the circumstances surrounding the purchase.

13.0 **DISPUTES**

13.1 **Written Complaints, Disputes or Protests.** AGENCY shall maintain, as part of a permanent file, all written complaints, disputes or protests concerning solicitations, awards, or the administration of a contract under its delegated authority, along with AGENCY's responses. AGENCY shall investigate and respond in writing to all such disputes and protests in compliance with sections 18-1-402 and 18-4-242, MCA, and ARM 2.5.406. AGENCY shall report all formal protests to the DIVISION liaison.

a. **Responsibility for Costs.** AGENCY shall pay any costs or damages associated with any dispute within its delegated authority.
   i. Responsibility for costs associated with protests, contested case hearings, and judicial action involving a solicitation issued by the DIVISION on behalf of AGENCY will be handled on a case-by-case basis.

b. **Mediation of Disputes.** The DIVISION will informally mediate disputes between vendors and AGENCY as requested by either party.

c. **Documentation Required.** AGENCY agrees to document complaints and performance issues against a contractor and notify the DIVISION's liaison of the complaints as soon as possible.

14.0 **COOPERATIVE PURCHASING**

The DIVISION may make any decisions to participate in cooperative purchasing agreements with Montana political subdivisions or other state or local governments under section 18-4-402, MCA and ARM 2.5.610. The
DIVISION shall approve any language concerning cooperative purchases in solicitations. DIVISION may reject participation in any cooperative solicitation or contract on the State's behalf.

Any exceptions require prior approval by the DIVISION.

15.0 MODIFICATION

AGENCY may request a change to this Agreement by submitting a written request and justification to the DIVISION within 30 days before the desired effective date. Performance in accordance with this Agreement continues until AGENCY receives written approval from the DIVISION. The DIVISION may modify any part of this Agreement upon 30 days advance written notice.

16.0 FAILURE OF ENFORCEMENT NOT A WAIVER

Failure by the DIVISION to enforce any of the provisions of this Agreement at any time shall not be construed to be a waiver of such provision and shall not affect the validity of any part of the Agreement or the right of the DIVISION to thereafter enforce such provision.

17.0 TERMINATION

If AGENCY fails to fulfill its obligations in a timely and proper manner, or violates any term or provision of this Agreement, the DIVISION may terminate this Agreement by giving written notice to the AGENCY specifying the effective date of termination. Termination of this Agreement does not relieve AGENCY of liability for damages sustained by it while acting under this Agreement.

18.0 AGENCY SPECIFIC DELEGATED AUTHORITY

18.1 Food. The AGENCY is authorized to make all food purchases necessary for the operation of its facilities, regardless of dollar amount, following the requirements of Titles 18, MCA, and Title 2, chapter 5, ARM.

18.2 Bus Transportation. The AGENCY is authorized to purchase the necessary bus transportation services, regardless of dollar amount, following the requirements of Title 18, MCA, and Title 2, chapter 5, ARM.

18.3 Animals. The AGENCY is authorized to purchase animals, regardless of dollar amount, following the requirement of Title 18, MCA, and Title 2, chapter 5, ARM.

18.4 Agricultural Items. The AGENCY is authorized to purchase livestock feed, machine hire for agricultural field work, and fertilizer, regardless of dollar amount, following the requirements of Title 18, MCA, and Title 2, chapter 5, ARM.

18.5 Exceptions to Competitive Procedures. The DIVISION agrees that the following items do not require competitive procedures or submission to the DIVISION:

a. Subscriptions, publications, and textbooks only available from a single supplier (for example: published videos, movies, recordings, and serial subscriptions for periodicals and journals).

b. Purchasing of specific brand name items for resale to the public.
e. Subcontractors associated with specific research grant programs, if the subcontractors are specifically named therein.

d. Advertising placed in publications or on radio, television, or other electronic means. Development, design, and distribution of advertising is not included in this exception.

e. License Agreements of electronic publications including licensed library materials, journals (scientific, technical or medical) journal articles, periodicals, and course packs.

18.6 Information Technology Purchases. The AGENCY is authorized to purchase all information technology, including hardware, software, and systems, regardless of delegation amount, following the requirements of Title 18, Section 2-17-516, MCA, and Title 2, chapter 5, ARM. Information technology resources are defined as hardware, software and associated services and infrastructure used to store or transmit information in any form, including voice, video, or electronic data from one device to another.

18.7 Further Delegation to Campuses and Departments. The AGENCY’s departments are delegated the authority to make required purchases of up to $25,000 following the requirements of this Agreement. For purchases between $25,000 and $500,000, all purchases will be made by the Business Services-Procurement Office, unless specifically authorized by the person listed above.

The following campuses are delegated the authority to make required purchases of up to $50,000 following the requirements of this Agreement:

- Helena College University of Montana
- Montana Tech of the University of Montana
- University of Montana Western

For purchases between $50,000 and $500,000, all purchases will be made by the Business Services-Procurement Office. The Central Purchasing offices on each campus may delegate purchasing authority of up to $25,000 to the individual campus departments.

At the discretion of the person listed above, such delegation may be revoked for failure to adhere to state purchasing regulations.

For purchases over $500,000, the AGENCY will submit a requisition to the DIVISION, unless purchasing authority is delegated herein. The AGENCY may seek one-time delegation from the DIVISION as deemed appropriate.

18.8 Reverse Auctions. AGENCY may utilize Reverse Auction procurement methods under the provision of 18-4-302 (4), MCA. AGENCY agrees to provide annual reports on all solicitations utilizing this method.
19.0 SIGNATURES

Approved for AGENCY by:

Ian Robbins
Director of Procurement Services
University of Montana

Date 12/11/2013

Approved for the DIVISION by:

Brad Sanders, Bureau Chief
State Procurement Bureau

Date 12/17/13

Reviewed for Legal Content by:

Mike Marion, Chief Legal Counsel
Department of Administration

Date 1/2/14