

**2003-2005  
PROCUREMENT DELEGATION AGREEMENT  
Between The  
  
Department of Administration  
&  
The University of Montana**

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## **1.0 PARTIES**

This agreement is made and entered into between the General Services Division, Department of Administration (DIVISION), and The University of Montana, herein referred to as UM-MISSOULA. Lu Terry shall represent UM-MISSOULA in executing this Agreement. Sheryl Olson, Deputy Administrator, General Services Division, shall represent the DIVISION.

## **2.0 AUTHORITY AND PURPOSE**

- 2.1** The purpose of the Montana Procurement Act is to ensure fair, broad-based competition of state purchases to maximize the purchasing value of public funds. Legal authority is granted in Title 18, Montana Code Annotated (MCA), and Title 2, chapter 5, Administrative Rules of Montana (ARM).
- 2.2** The Montana Procurement Act according to Section 18-4- 132. MCA applies to the expenditure of public funds irrespective of their source, including federal assistance money, under any contract, except a contract exempted from the Act by a statute that provides that the Act does not apply to the contract. This Act applies to all procurements of supplies or services, regardless if the procurement is at no cost to the State; from which income may be derived by the vendor; generates revenue for the State, or provides the State a more advantageous business position.
- 2.3** The DIVISION is required by Title 18, chapter 4, MCA, to procure or supervise the procurement of supplies and services for the State. Further, the DIVISION may delegate purchasing authority to state agencies per section 18-4-222, MCA.
- 2.4** This agreement applies to the delegation of purchasing authority for supplies and services, except for certain supplies and services described in Section 11.0 of this agreement.

## **3.0 TERM OF AGREEMENT**

- 3.1** This agreement is effective **October 1, 2003**, and will continue in effect until **September 30, 2005**, unless terminated earlier under the terms stated in Section 5.0 of this agreement.
- 3.2** UM-MISSOULA agrees to perform purchasing activities in accordance with this agreement; Title 18, MCA; Title 2, chapter 5, ARM; and the 2003 edition of the Montana Operations Manual, Chapter 1-0700.

## **4.0 MODIFICATION**

- 4.1** UM-MISSOULA may request a change to this agreement by submitting a written request and justification to the DIVISION. The request must be submitted at least 30 days prior to the desired effective date. Performance in accordance with this agreement shall continue until UM-MISSOULA receives written approval from the DIVISION.

4.2 The DIVISION reserves the right to modify any part of this agreement upon 30 days advance written notice.

## **5.0 TERMINATION OF AGREEMENT**

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

## **6.0 FAILURE OF ENFORCEMENT IS NOT A WAIVER**

Failure of 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 nor affect the validity of any part of this agreement or the right of the DIVISION to thereafter enforce such provision.

## **7.0 TRAINING AND TECHNICAL ASSISTANCE**

The DIVISION will provide training and technical assistance to UM– MISSOULA upon request, in addition to the procurement courses provided by the DIVISION through the Professional Development Center. The DIVISION will furnish interpretations of applicable statutes, rules, or this agreement and make on-site visits to assist UM– MISSOULA in complying with this agreement. In turn, the Purchasing Department at UM– MISSOULA will provide training to UM-MISSOULA department personnel responsible for procuring supplies and services for their department. The Purchasing Department will also provide technical assistance, including interpretations of applicable statutes, rules or this agreement and make on-site visits across campus, upon request.

## **8.0 VENDORS LIST**

8.1 The DIVISION will maintain an updated state vendors list for supplies and services typically purchased by state agencies. UM– MISSOULA can access the state vendors list through the PeopleSoft Purchasing module or by contacting the State Procurement Bureau (SPB). UM- MISSOULA may add to this list by submitting additions to the DIVISION.

## **9.0 DISPUTES**

9.1 UM– MISSOULA agrees to 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 and the UM– MISSOULA responses. UM– MISSOULA 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. UM– MISSOULA shall report all formal protests to the Deputy Administrator of the DIVISION.

- 9.2 As required by ARM 2.5.406(4), UM– MISSOULA is responsible for responding to a protest or contested case hearing concerning the solicitation or award of a contract within its delegated authority, including paying any costs or damages associated with the dispute.
- 9.3 Responsibility for costs associated with protests, contested case hearings, and judicial action involving a solicitation issued by the DIVISION on behalf of UM– MISSOULA will be handled on a case-by-case basis.
- 9.4 The DIVISION agrees to informally mediate disputes between vendors and UM- MISSOULA as requested by either party.
- 9.5 UM– MISSOULA agrees to document complaints against a vendor and notify the DIVISION of the complaints as soon as possible.

## 10.0 DELEGATED AUTHORITY

### 10.1 Delegation amounts.

#### 10.1.1 University Delegation Authority.

The UM– MISSOULA Purchasing Department is authorized to purchase all non-controlled supplies or services (see Section 11.0) with a "total contract value" not-to-exceed **\$250,000**. This includes contracts that are revenue generating, or at no cost to the state, in addition to payment contracts pursuant to section 18-4-132, MCA. "Total contract value" means the initial contract period, plus any options to renew.

To obtain and retain this delegation authority, the following conditions must be met and approved by the DIVISION:

1. The person listed as liaison in Section 1.0, or their replacement, and all other UM– MISSOULA procurement staff must have attended the "Advanced Purchasing Methods and Issues" course offered by the DIVISION through the Professional Development Center within the last two years and any other training course required by the DIVISION at a later date.
2. All procurement staff in the UM– MISSOULA Purchasing Department must attend the one-half day "2003 Purchasing Update" class offered through the Professional Development Center.
3. The predominate duty of the person listed in Section 1.0 must be to provide the supervision or management of THE UNIVERSITY OF MONTANA'S procurement needs.

4. The person listed in Section 1.0, or their replacement, must have at least five years of experience in public procurement.
5. The person listed in Section 1.0, or their replacement, must attend the quarterly meetings of the Purchasing Users Group.
6. UM– MISSOULA must have an updated contracting manual approved by the DIVISION or adopt the DIVISION'S contracting manual (2003 edition of the Montana Operations Manual, Chapter 1-0700).
7. UM– MISSOULA must post all formal bids and proposals issued under the Montana Procurement Act to the State's one-stop website (<http://discoveringmontana.com/doa/GSD/osbs/solhome.asp>) according to procedures developed by the DIVISION, including posting each bid and proposal to the subject category most accurately descriptive of the supplies or services being sought.
8. UM– MISSOULA must provide the services of an attorney to review all contracts or contract templates issued within The University of Montana's delegated authority.
9. UM– MISSOULA, including departments and satellite campuses, must use the most current form of UM– MISSOULA's boilerplate, IFB forms, RFP templates, Limited Solicitation forms, Sole Source/Sole Brand Justification forms, and all pertinent standard statements and standard forms in their entirety unless exceptions are approved by the DIVISION. The Purchasing Department at UM– MISSOULA will update UM– MISSOULA's forms to ensure compliance with the most current form of the DIVISION'S boilerplate, IFB forms, RFP templates, Limited Solicitation forms, Sole Source/Sole Brand Justification forms, and all pertinent standard statements and standard forms.
10. UM– MISSOULA agrees that all requests for exceptions by vendors to SPB's standard statement requirements either be: (1) approved by SPB, or (2) approved in writing by UM– MISSOULA legal counsel.

**10.1.2** If UM– MISSOULA chooses to not exercise its approved delegated authority, it may submit its requisitions to the DIVISION for action.

## **10.2 Further delegation.**

The UM– MISSOULA Purchasing Department is authorized to further delegate the purchasing authority established in 10.1 to programs within its agency as it deems appropriate. This delegation must be in writing and a copy of the agreement provided to the DIVISION. Prior to receiving this delegation or retaining the current level of delegated purchasing authority, at least one representative from the department receiving further delegation must have attended either the "Basic Course" or "What's

New” course offered by the UM-MISSOULA Purchasing Department within the past year. The DIVISION training requirement to attend courses offered by the Professional Development Center will be waived if the DIVISION approves a UM– MISSOULA procurement training program and the agency representatives, with delegated purchasing authority, attend the procurement training provided by the UM– MISSOULA.

**10.3 Reporting of purchases exceeding delegated authority.**

- 10.3.1** By September 1, 2005, UM– MISSOULA must provide a list of any anticipated UM- MISSOULA purchases over \$1 million for the next biennium to the Deputy Administrator, General Services Division.
- 10.3.2** UM– MISSOULA agrees to submit a summary of the purchases that exceed the delegated authority listed in Section 10.1 or in an UM– MISSOULA specific delegation agreement. The summary must include an explanation of the circumstances surrounding the purchase. This summary must be submitted for review to the Deputy Administrator, General Services Division, within 30 days of the purchase.

**10.4 Purchases exempt from delegation authority and competitive procedures.**

- 10.4.1** As established in ARM 2.5.301, delegation authority and competitive procedures are not necessary for the following purchases: salaries; those services exempted by section 18-4-132, MCA; travel and per diem; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the Public Service Commission or other governmental authority; pastoral services; training; training and conference space rental and catering; and fresh fruits and vegetables.
- 10.4.2** Delegated authority and competitive procedures are not required for purchases of supplies or services from Sheltered Workshops. A list of supplies and services offered by the Workshops is available from the DIVISION or can be found at the DIVISION website at <http://www.discoveringmontana.com/doa/gsd>.
- 10.4.3** Delegated authority and competitive procedures are not required for inter-government agreements, unless otherwise prohibited by law.
- 10.4.4** Delegated authority and competitive procedures are not required for any purchase made from the State Surplus Property Program.

**11.0 UNIVERSITY EXCEPTIONS TO CONTROLLED ITEMS:**

For the Montana University System, "Controlled items" are identified as follows: (a) Requisition Time Schedule items; (b) Exclusive Statewide Term Contracts; (c) Supplies provided by the Central Stores program; (d) any printing projects, aside from business cards; (e) vehicles; or (f) cooperative purchasing.

UM-MISSOULA agrees to purchase controlled items as follows:

### **11.1 Requisition Time Schedule (RTS).**

Except for the purchase of new vehicles, UM-MISSOULA has the option of sending in requisitions to the State Procurement Bureau for any RTS items. The specific due dates for vehicle requisitions can be found at the DIVISION'S website at <http://www.discoveringmontana.com/doa/gsd> under "Requisition Time Schedule."

### **11.2 "Exclusive" Statewide Term Contracts.**

Unless UM- MISSOULA is specifically exempted, UM-MISSOULA- MISSOULA agrees to purchase all "exclusive" Statewide Term Contracts supplies or services from the Term Contract supplier. UM-MISSOULA is financially liable for any payment to an "exclusive" Statewide Term Contract holder for violation of an "exclusive" Statewide Term Contract terms and conditions.

The DIVISION also awards "non-exclusive" Statewide Term Contracts. UM-MISSOULA is not required to purchase from these contracts. However, if the contract is not used for the specified supply or service, UM-MISSOULA agrees to follow approved procurement methods outlined in this agreement to purchase that supply or service.

### **11.3 Central Stores.**

UM-MISSOULA has the option of purchasing from the Central Stores Program within the Property and Supply Bureau. Supplies available through the Central Stores program include all office and computer supplies, fine and coarse paper, custodial supplies and chemicals, plastic can liners and food service items.

### **11.4 Printing.**

UM-MISSOULA has the option of using the services of the Print and Mail Services Bureau within the Department of Administration. All contracted printing must be obtained following the provisions of Title 18, MCA, and its accompanying rules.

### **11.5 Surplus Property.**

UM- MISSOULA has the option of using the services of the State Surplus Property program, including the purchase of used vehicles. UM-MISSOULA is aware of the requirements of Title 18, chapter 6, MCA, concerning the sale of surplus property and the distribution of the sale proceeds back to the general fund or the appropriate enterprise or internal service fund or designated subfund account.

### **11.6 Purchases Made through Cooperative Agreements**

The DIVISION is responsible for making any decisions to participate in cooperative purchasing agreements with Montana political subdivisions or other state or local

governments. UM-MISSOULA agrees to contact the DIVISION prior to any participation in a cooperative purchasing agreement, aside from inter-governmental agreements for research purposes. (Mont. Code Ann. § 18-4-402.)

## **12.0 PURCHASES ABOVE DELEGATED AUTHORITY**

**12.1** The DIVISION will conduct the procurement for all supplies and services for purchases with an expected total contract value of more than \$250,000 for agencies with University Delegated Authority.

**12.2** All contracts established as a result of an invitation for bid or request for proposal through the SPB must have the signature or initial of a SPB Contracts Officer. A signature block must state "Approved As To Form" with space for a signature or initial of the SPB Contracts Officer. In addition, all contracts must have the signature of UM-MISSOULA legal counsel if not using an approved contract template.

## **13.0 PROCUREMENT METHODS**

### **13.1 Purchases of \$5,000 or less (Small Purchases).**

UM-MISSOULA may choose a purchasing technique that best meets its needs for all purchases with a "total contract value" up to \$5,000. Agencies are advised to use the state procurement card for all small purchases.

### **13.2 Purchases of \$25,000 or less (Limited Solicitation).**

UM-MISSOULA may use a limited solicitation procedure for purchases when the "total contract value" is expected to be between \$5,000.01 and \$25,000. This procedure requires agencies to solicit documented competition from, if available, a minimum of three viable sources, either in writing or orally. The award must be made to the lowest responsive and responsible bidder if cost is the only consideration and it is so stated in the solicitation. If cost is not the only consideration in a decision, all selection criteria must be stated in the solicitation and the award decision justified. UM-MISSOULA agrees to use the Limited Solicitation Forms template provided by the SPB to document the competition using this procurement method. Wherever possible, agencies should use the state vendors list for these purchases. Further guidance on the limited solicitation process can be found in the 2003 edition of the Montana Operations Manual, Chapter 1-0700.

### **13.3 Purchases greater than \$25,000 (Formal Competitive Methods).**

For agencies with University Delegation Authority, if the "total contract value" of a purchase is expected to be between \$25,000.01 and \$250,000, UM-MISSOULA agrees to issue an Invitation for Bid or Request for Proposal following the requirements of Title 18, chapter 4, MCA; Title 2, chapter 5, ARM; and the 2003 edition of the of the Montana Operations Manual, Chapter 1-0700. For purchases with an expected "total contract value" greater than \$250,000, UM-MISSOULA will submit a requisition to the SPB

unless the supply or service is identified in paragraph 18.0 herein. The SPB and UM-MISSOULA will determine the most appropriate solicitation method (Invitation for Bid or a Request for Proposal) for the supply or service.

## **14.0 SOLE SOURCE/SOLE BRAND PROCUREMENT**

### **14.1 Sole Source/Sole Brand Procurement.**

The determination to make procurements on a sole source/sole brand basis may be made by UM-MISSOULA for purchases with an expected "total contract value" of \$250,000 or less, in accordance with Section 18-5-306, MCA. For purchases over the level of delegation, the DIVISION shall make the sole source/sole brand determination, unless specifically authorized in Section 18 of the written delegation agreement. In cases of reasonable doubt, competition should be solicited. The person listed in Section 1.0 will approve procurements on a sole source/sole brand basis, with a Total Contract Value over \$5,000 and up to \$250,000, prior to purchase.

### **14.2 Sole Source Exemptions.**

The following items do not require competition or sole source justification and shall be purchased directly by UM-MISSOULA regardless of delegated authority: professional licenses; dues to associations; renewal of software license agreements; purchase or renewal of software maintenance agreements; or the purchase or renewal of hardware maintenance agreements.

### **14.3 Sole Source/Sole Brand Records.**

UM-MISSOULA shall maintain records of sole source procurements over \$5,000 as required in ARM 2.5.604(5) by using the "Sole Source Procurement Justification" form provided by the Division.

## **15.0 EXIGENCY PROCUREMENTS**

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 procurement of \$5,000 or greater shall be limited to those supplies or services necessary to meet the exigency. An exigency may be declared by UM-MISSOULA and does not require the approval of the DIVISION. A record of all exigency procurements shall be maintained by UM-MISSOULA as required in ARM 2.5.605.

## **16.0 RECORDS**

Adequate records shall be maintained by UM-MISSOULA to document the procurement process. When purchasing authority is further delegated to campus departments or satellite campuses, those departments are responsible for maintaining adequate records to document the procurement process. Training in purchasing documentation methods and retention

schedules is available through the DIVISION. Per section 18-4-221, MCA, the DIVISION may audit and monitor the implementation of its rules and the requirements of the statute.

**17.0 THIS SECTION INTENTIONALLY LEFT BLANK.**

**18.0 UM-MISSOULA SPECIFIC DELEGATED SUPPLIES OR SERVICES**

**18.1 Food.**

UM-MISSOULA is authorized to make all food purchases necessary for the operation of its facilities, regardless of dollar amount, following the requirements of Title 18, MCA, and Title 2, chapter 5, ARM.

**18.2 Bus transportation.**

UM-MISSOULA 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.**

UM-MISSOULA is authorized to purchase animals, regardless of dollar amount, following the requirements of Title 18, MCA, and Title 2, chapter 5, ARM.

**18.4 Agricultural items.**

UM-MISSOULA 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:

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

**18.5.2** Purchasing of specific brand name items for resale to the public.

**18.5.3** Subcontractors associated with specific research grant programs, if the subcontractors are specifically named therein.

**18.5.4** Advertising placed in publications or on radio, television, or other electronic

means. Development, design, and distribution of advertising is not included in this exception.

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

## **18.6 Information technology purchases.**

UM-MISSOULA is authorized to purchase all information technology, including hardware, software, and systems, regardless of delegation amount, following the requirements of Title 18, MCA, 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.**

### **Further Delegation to Campuses and Departments.**

The University of Montana -- Missoula departments are delegated the authority to make required purchases of up to \$15,000 following the requirements of this Agreement. For purchases between \$15,000 and \$250,000, all purchases will be made by the Business Services – Purchasing Office, unless specifically authorized by the person listed in Section 1.0.

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

Helena College of Technology – The University of Montana  
Montana Tech of The University of Montana  
Western Montana College of The University of Montana

For purchases between \$50,000 and \$250,000, all purchases will be made by the Business Services – Purchasing Office. The Central Purchasing offices on each campus may delegate purchasing authority up to \$15,000 to individual campus departments.

At the discretion of the person listed in Section 1.0, such delegation may be revoked for failure to adhere to state purchasing regulations.

For purchases over \$250,000, UM-MISSOULA will submit a requisition to the DIVISION, unless purchasing authority is delegated herein. UM-MISSOULA may seek one-time delegation from the DIVISION as deemed appropriate.

**Approved for UM-MISSOULA by:**

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\_\_\_\_\_

Date

**Approved for the DIVISION by:**

\_\_\_\_\_  
Sheryl Olson, Deputy Administrator

\_\_\_\_\_

Date

**Reviewed for Legal Content by:**

\_\_\_\_\_  
DAL SMILIE, Chief Legal Counsel  
Department of Administration

\_\_\_\_\_

Date