

**2017 – 2019
STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
LEVEL TWO
PROCUREMENT DELEGATION AGREEMENT**

Department of Corrections

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**PROCUREMENT DELEGATION AGREEMENT
2017-2019**

This Agreement is made and entered into between the State Financial Services Division, Department of Administration (DIVISION), and the **Department of Corrections**, (AGENCY). **April Grady** represents the AGENCY. Meghan Holmlund, Chief Procurement Officer, State Procurement Bureau (SPB), State Financial Services Division, represents the DIVISION.

The AGENCY is granted Level Two delegation purchasing authority effective **October 1, 2017** through **September 30, 2019**, unless terminated earlier under the terms stated in Section 17.0. This delegation of purchasing authority is contingent upon the AGENCY's agreement to perform purchasing activities consistent 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 Montana Operations Manual; and Title 2, chapter 17, part 5, MCA, and its accompanying administrative rules and policies.

1.0 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 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.

2.0 PURPOSE

The DIVISION conducts its purchasing activities through the authority and guidelines of Title 18, MCA, including the Montana Procurement Act, and its accompanying administrative rules in ARM Title 2, chapter 5. The purpose of the Montana Procurement Act is to (1) simplify, clarify, and modernize the law governing procurement by the State of Montana; (2) permit the continued development of procurement policies and practices; (3) make as consistent as possible the procurement laws among the various jurisdictions; (4) provide for increased public confidence in the procedures followed in public procurement; (5) ensure the fair and equitable treatment of all persons who deal with the State's procurement system; (6) provide increased economy in state procurement activities, maximizing the purchasing value of State funds; (7) foster effective, broad-based competition within the free enterprise system; (8) provide safeguards for the maintenance of a procurement system of quality and integrity; and (9) provide the exclusive remedies for unlawful bid solicitations or contract awards.

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 has: (1) a satisfactory performance history exercising similar authority, and (2) employees trained in 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" and 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 under Title 18, chapter 4, MCA, ARM Title 2, chapter 5, and the policies established by 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;
 - ✓ a physician, dentist, pharmacist, or other medical, dental or health care provider;
 - ✓ 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;
 - ✓ a private consultant employed by the Montana State Lottery;
 - ✓ a private investigator licensed by any jurisdiction;
 - ✓ a claims adjuster;
 - ✓ a court reporter appointed as an independent contractor;
- the purchase or commission of art for a museum or public display;
- Montana-produced food products, under 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, 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://emac.mt.gov/ShelteredWorkshops>.

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.

4.5 Remedial Action Contracts. The Montana Procurement Act and therefore this Agreement does not apply to the procurement of supplies or services to implement remedial actions taken by the AGENCY. Under Section 75-10-703(2), MCA, these actions taken by the AGENCY are not subject to the public bidding requirements of Title 18.

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 – Services Purchases between \$5,001 and \$25,000 and Supplies Purchases between \$5,001 and \$50,000. AGENCY may use a limited solicitation procedure when making services purchases with a total contract value between \$5,001 and \$25,000 and supplies purchases between \$5,001 and \$50,000. This requires a documented solicitation from a minimum of three viable sources, if available, either orally or in writing, under the guidelines set forth in ARM 2.5.603. SPB encourages agencies to use the Montana

Acquisition and Contracting System (eMACS) for issuing limited solicitations. eMACS is accessed through the ePass Montana Dashboard, <https://app.mt.gov/epass/>. Training for eMACS is available through the DIVISION, <http://emacs.mt.gov/ProcurementTraining>.

5.3 Formal Competition (Invitation for Bids or Request for Proposals) Services Purchases above \$25,001 and Supplies Purchases above \$50,000.

AGENCY shall use either an invitation for bids (IFB) or request for proposals (RFP) process to purchase services with a total contract value between \$25,001 and \$200,000 and supplies purchases with a total contract value between \$50,001 and \$200,000. AGENCY shall forward any purchase with a Total Contract Value over \$200,000 to SPB 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 \$200,000 or less. For purchases over an AGENCY's level of delegated procurement authority, the DIVISION shall make the sole source/sole brand determination unless specifically authorized in Section 18.0 of this Agreement. In cases of reasonable doubt, competition should be solicited.

5.5 Exigency Purchase. The Montana Procurement Act does not apply if a public exigency exists. An exigency purchase is defined in ARM 2.5.201(16) 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. The AGENCY shall maintain a record of all exigency purchases as required by ARM 2.5.605.

6.0 DELEGATION AUTHORITY

AGENCY may purchase all non-controlled supplies or services (see Section 8.0) with a total contract value up to \$200,000.

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 liaison listed above or their replacement must (a) have at least three years of public procurement experience; (b) attend 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 courses required by the DIVISION. AGENCY agrees that, if required at a later date, the liaison and all other AGENCY procurement staff shall obtain any DIVISION-

required professional certification, either from the DIVISION or through a nationally recognized procurement certification program approved by the DIVISION.

6.4 Attorney. AGENCY shall 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 SPB and a SPB Contracts Officer shall conduct the procurement. The deadline for fiscal year end procurements is April 1 for RFP solicitations and May 1 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 and AGENCY legal counsel before execution, unless AGENCY counsel reviews and determines their signature is not required. Any contract amendment issued against a contract established through 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 contract amendments 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 version 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 IFB Templates; (3) Limited Solicitation; and (4) Sole Source/Sole Brand Justification Forms unless the DIVISION approves any exceptions. 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://emacs.mt.gov/AgencyProcurementForms>.

7.2 Issuing Formal Bids and Proposals. AGENCY shall issue all formal IFBs and RFPs issued under the authority of the Montana Procurement Act in the Montana Acquisition and Contracting System (eMACS). Procedures developed by the DIVISION will be used to issue each solicitation using the commodity code that most accurately describes the supplies and services being sought.

7.3 Posting Evaluation Committee Meetings and Contract Awards. All evaluation committee meetings must be posted on the DIVISION's public meetings website located at the following website address: <http://vendorresources.mt.gov/Meetings>.

Once a month SPB will post all contract awards on the DIVISION's contract awards website located at the following website address: <http://sfsd.mt.gov/SPB/Notifications>.

7.4 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.

7.5 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 in eMACS. 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 this Agreement, AGENCY shall buy "controlled items" through the DIVISION. "Controlled items" are:

8.1 "Exclusive" Statewide Term Contracts. The Division establishes statewide term contracts for the convenience of agencies to be utilized on an as-needed basis. If/when needed, AGENCY shall purchase all supplies and/or services on an "Exclusive" Term Contract from the contract holder unless otherwise specified. If AGENCY fails to do so, it will be financially liable for any payment to the contract holder. 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 to purchase that supply or service.

8.2 Montana eMarket Center. AGENCY shall purchase office supplies, fine and coarse paper, janitorial supplies, and food service and culinary products through the Montana eMarket Center unless it has met the requirements of section 18-4-302(3), MCA. If 18-4-302(3), MCA, applies, AGENCY shall make every effort to notify DIVISION of the price discrepancy before making the purchase.

8.3 Printing. AGENCY shall purchase all printing through the Print and Mail Services Bureau of the General Services Division unless it receives an exemption.

8.4 New or Used Vehicles. AGENCY shall purchase or lease all new vehicles through SPB 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://emacs.mt.gov/AgencyVehiclePurchasing>. AGENCY shall purchase used vehicles in the following manner:

- a. **Contact Surplus Property Program.** AGENCY shall contact the 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 Agreement from the private sector.

- b. **Purchase Price.** AGENCY shall submit a requisition to 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.

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 SPB for the following items:

9.1 Printing-related Equipment. All large scale 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 General Services Division. (ARM 2.5.202) Prior approval is not required for the purchase of office printers and copiers.

9.2 Information Technology Resources and Contracts.

- A. The Montana Information Technology Act (MITA) defines information technology as hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data. § 2-17-506(7), MCA. Under MITA, the State Information Technology Services Division (SITSD) is required to review the use of information technology resources for all state agencies and review and approve state agency specifications and procurement methods for the acquisition of information technology resources. § 2-17-512(1)(j)(k), MCA.
- B. The CIO or designee is required to review, approve and sign all state agency contracts and review and approve other formal agreements (statements of work or amendments to contracts, for example) for information technology resources provided by the private sector and other government entities associated with procurements requiring SITSD's pre-approval. § 2-17-512(1)(l), MCA; ARM 2.12.204. AGENCY shall use SITSD's IT contract for any such information technology resources purchased.
- C. MITA also requires that if the CIO determines that an agency is not in compliance with MITA and applicable IT statutes, rules, policies, plans, standards, and architectures, the CIO may cancel or modify any contract, project, procurement, or activity that is not in compliance. § 2-17-514, MCA.
- D. AGENCY acknowledges that Executive Order No. 09-2016 authorizes only SITSD to buy and deploy servers, storage and cloud services, unless otherwise directed by the Budget Director and the CIO. This Executive Order covers the

Executive Branch and exempts elected official agencies, SITSD, and those entities identified in §2-17-516, MCA.

EXCEPTION: Provided agencies ensure their IT procurements comply with the MITA and other applicable IT statutes, rules, policies, plans, standards, and architectures, CIO prior approval is not needed for IT procurements that meet the requirements detailed in the ITPR Delegated Authority Guidelines, found at <http://sitsd.mt.gov/Portals/77/docs/Procurement-Vendor/ITPR%20documents/ITPRdelegatedauthorityguidelines.pdf>. Agencies may obtain assistance from SITSD to ensure IT procurements comply. This exception does not apply to the servers, storage, and cloud services covered by Executive Order No. 09-2016.

9.3 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 General Services Division. (Section 2-17-301(3), MCA)

9.4 Surplus Property Trade-Ins. Surplus property trade-ins must be approved by the General Services 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 shall provide the DIVISION liaison 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 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 shall 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 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 may reject participation in any cooperative solicitation or contract on the State's behalf. AGENCY shall contact the DIVISION before participating in any cooperative purchasing agreement.

Any exceptions require prior DIVISION approval.

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 consistent with this Agreement shall continue 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

The DIVISION's failure to enforce any of the provisions of this Agreement at any time may 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 any portion of 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 Exempt Procurements. The AGENCY will also continue to utilize authorities exempt from delegation authority and the competitive procedures under the Montana Procurement Act Section 18-4-132, MCA, to procure contracts regardless of costs for supplies and services (e.g, construction contracts and contracts with other agencies), consulting contracts for architectural, engineering, and land surveying services and contracts for supplies and services to implement Remedial Actions. Under Section 75-10-703(2), MCA, the procurement of supplies or services to implement Remedial Actions taken by the AGENCY are not subject to the public bidding requirements of Title 18. Remedial Action and Release are as defined in Section 75-10-701(19) and (20), MCA. The AGENCY will ensure consistency to the extent practicable with the competitive requirements under the Montana Procurement Act and other procurement authorities when appropriate in securing supplies and services under these circumstances.

18.2 Advertising Exempt Procurements. The AGENCY shall issue formal IFBs and RFPs issued under exempt authorities in the Montana Acquisition and Contracting System (eMACS). Procedures developed by the DIVISION (in consultation with the AGENCY) will be used to issue each solicitation using the commodity code (below) that most accurately describes the supplies and services being sought.

18.3 Agency Specific Authority. The AGENCY is delegated unlimited authority for procurement of the following supplies/services:

<u>Commodity Code</u>	<u>Description</u>
0102	Agricultural – Fertilizer
0104	Agricultural - Supplies
0304	Appliances – Laundry Chemicals and Supplies for Montana Correctional Enterprises (MCE)
0508	Building & Construction – Lumber for MCE
0512	Building & Construction – Refinishing Supplies for MCE
0701	Clothing & Shoes - Disposable
0702	Clothing & Shoes – Garment Supplies for Montana Correctional Enterprises
0704	Clothing & Shoes – Specialized
0705	Clothing & Shoes - Supplies
0706	Clothing & Shoes - Uniforms
1102	Containers – Canning Supplies for MCE

<u>Commodity Code</u>	<u>Description</u>
1302	Dry Goods (Textiles, Linens, Etc.) – Upholstery Material/Sewing Material for MCE
2002	Foods – Dairy Product Processing Supplies
2003	Foods - Meats
2004	Foods – Non-Perishable
2005	Foods – Perishable
2105	Forest Related Services – Logging/Cutting/Thinning
2401	Furniture – Chair Frames for MCE
2408	Furniture – Panel and Furniture Systems Components for MCE
3207	Livestock, Fish & Game – Hay and Straw
3209	Livestock, Fish & Game – Livestock Food
3214	Livestock, Fish & Game – Veterinarian Services
3215	Livestock, Fish & Game – Veterinarian Supplies
3811	Printing – Specialty Printing Supplies for MCE
3909	Professional Services – Correctional Facilities and Offender Treatment Programs
4501	Signage - Aluminum Sign Blanks
4507	Signage - Reflective Sheeting
4510	Signage - Sign Materials
5109	Vehicles - Heavy Equipment Repair and Maintenance Parts
5111	Vehicles - Implement, Agriculture, & Accessories
5122	Vehicles - Used Equipment
5202	Vending - Canteen Supplies

SIGNATURES

Approved for AGENCY by:

Reginald D. Michael 10/13/17 Date
Reginald D. Michael, Director
Department of Corrections

Approved for the DIVISION by:

John Lewis 10.22.17 Date
John Lewis, Director
Department of Administration

Reviewed for Legal Content by:

Mike Manion 10/17/2017 Date
Mike Manion, Chief Legal Counsel
Department of Administration