

Montana Department of Corrections

Purchasing Manual



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SECTION 1 – INTRODUCTION/OVERVIEW

1.1 Introduction

The Department of Corrections (DOC) utilizes a centralized procurement/contracting function to support all DOC facilities/programs/divisions with the acquisition of supplies and services. The Business Management Services (BMS) Bureau is tasked with maintaining a centralized database of all DOC contracts, and facilitating an effective contract management process intended to minimize risk and maximize efficiency.

1.2 Purpose

This purchasing manual is intended for use by all employees at all facilities/locations within the DOC. The purpose of this manual is to provide DOC employees with step-by-step instructions and general assistance when obtaining supplies and/or services. Employees responsible for purchasing supplies and obtaining services are encouraged to refer to this manual and/or contact the DOC BMS Bureau contracts/purchasing staff for assistance (reference page i. for a list of contacts).

1.3 Procurement Ethics

As employees involved in the expenditure of public funds, we are called upon to avoid even the appearance of impropriety, and to conduct our business in a manner above reproach in every respect. To assist employees involved in procurement decisions in making good choices concerning ethics, the State Procurement Bureau (SPB) has addressed several frequently asked questions, which are included as Attachment A. For additional specific information on this topic, please refer to Title 2, chapter 2, MCA.

1.4 Definitions

The words defined herein are commonly used procurement terms. These definitions are intended to describe the meaning of these words in daily use - they are not intended to be legal definitions.

Business Management Services (BMS): A division within the DOC with responsibility for accounts payable/receivable, payroll, budgeting, grants, restitution collection, contracting, and purchasing.

Agency: An administrative unit of state government, including the executive branch, legislative branch, judiciary, and university system.

All-or-None Bid: A bid submitted for a number of different items, services, etc., in which the bidder or department states it will not accept a partial award, but will accept only an award for all of the items, included in the invitation for bid. Such bids are acceptable only if provided for in the invitation for bid or if the bidder quoted an individual price for each of the bid items as listed.

Alternate Procurement Method: A method of procuring supplies or services in a manner not specifically described in law, but instead authorized by GSD under section 18-4-302, MCA, following the requirements of section 18-4-122, MCA.

Award: The presentation of a purchase order and/or contract to a vendor.

Best Interest of the State: The rationale granting a procurement official discretion in taking action most advantageous to the State when it is impossible to delineate adequately a specific response to law or rule.

Bid: A competitive pricing offer made by a bidder in response to an Invitation for Bid (IFB).

Bidder: A party submitting a bid in response to an IFB.

Bid Opening: The formal process through which bids are opened and the contents revealed for the first time to the State, other vendors, and to the public.

Boilerplate: Standard clauses and requirements [incorporated into bid and contract documents] that are derived from statutes and/or administrative procedures of state government.

Competition: The process by which two or more vendors vie to secure the business of a purchaser by submitting the most favorable bid or offer for the requested supplies or services.

Competitive Sealed Bidding: The submission of sealed prices by a party competing for the right or privilege to supply goods or services.

Competitive Sealed Proposal: See Invitation for Bid or Request for Proposal.

Contract Performance Security: A financial guarantee that is available to the State should a contractor fail to faithfully perform a contract or pay workers, subcontractors or material suppliers who have worked on the contract.

Controlled Item: Supplies and services that must be purchased through a Requisition Time Schedule, Exclusive Term Contract, Print Services, Central Stores, or cooperative purchasing.

Department: Department of Corrections (DOC).

Design Specification: A purchase specification setting forth the essential characteristics that an item must possess to be considered for award, including details as to how the product is to be manufactured.

DOC Business Management Services (BMS) Bureau Chief: The position within the Administrative & Financial Services Division, assigned the responsibility to supervise Budgeting, Fleet Management, and Contracting and Purchasing activities within the DOC.

DOC Business Management Services (BMS) Grants Contracts Coordinator: The position within the DOC BMS assigned the responsibility to assist in the contracting process for the DOC; and the overall research, completion and review of all department grant requests and applications.

DOC Business Management Services Purchasing Agent: The position within the DOC BMS Bureau, assigned the responsibility to assist with the cellular telephone program, procard program, and assist with the procurement process within the DOC.

Also, the position within the DOC BMS assigned the responsibility for all contract routing, contract notifications, contractor documents (i.e. Insurance, Workers Compensation), fuel cards, and fleet management reporting.

Exclusive Term Contract: An award made by the Department of Administration, GSD, on behalf of all state agencies, for a specific product or service that must be purchased [exclusively] from the contract holder(s).

Exigency Purchase: A purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence/condition that requires immediate action.

Free on Board (F.O.B.) Destination - Freight Prepaid: A shipping term defining the point at which time legal title to the supplies is transferred to the buyer. This term indicates that the seller pays the freight charges, owns the supplies in transit, and files all claims for damages as necessary.

General Services Division (GSD): A Division within the Department of Administration, generally responsible for statewide oversight of procurement, surplus property, printing services, office space leasing, and the Central Stores Program.

Invitation for Bid: All documents, whether attached or incorporated by reference, utilized for soliciting formal, sealed bids.

Late Bid/Proposal: A bid or proposal that is received by the agency after the deadline established by the IFB or RFP.

Limited Solicitation: An informal method of purchasing that does not require sealed bids or proposals but does require documented competition.

Non-Exclusive Term Contract: An award made by the Department of Administration, GSD, on behalf of all state agencies, for a specific product or service that may be purchased from the contract holder(s) or may be obtained from another source.

Non-Resident Bidder: A bidder whose residence is not in this state as determined by GSD in accordance with Section 18-1-103, MCA.

Non-Responsive Bid/Offer: A bid or offer that does not conform to the essential requirements of the Invitation for Bid or Request for Proposal.

Offer: A response to an RFP.

Offeror: A seller who is offering a response to a RFP.

Performance Specification: A specification describing the functional and performance characteristics of a product or service.

Procurement: The acquisition of supplies or services (with or without cost) via outright purchase, rent, lease, trade, or other method. It does not include the acquisition of supplies or services by gift.

Proposal: The document submitted by an offeror in response to an RFP.

Protest: A formal complaint brought about by a bidder/offeror, regarding a procurement action or decision of the State, with the intention of achieving a remedial result.

Purchase Order (PO): A document issued by a State agency to formalize a purchase transaction with a vendor. A purchase order confirms the quantity, description, and price of the supplies or services to be provided and applicable terms and conditions that govern the transaction.

Reciprocal Preference: Montana law requires application of a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved.

Request for Information: An informal document requesting information from vendors regarding a product, service, or solution to a problem.

Request for Proposal (RFP): A formal document requesting that vendors submit a proposal to provide a solution to a problem or a need that an agency has identified. An RFP is a procurement process where the State has the ability to evaluate an offeror's response in accordance with established or stated criteria.

Requisition: A form used to request the purchase of supplies or services.

Requisition Time Schedule (RTS): A schedule issued by the State Procurement Bureau and the Central Stores Program each year that designates the dates that requisitions for various controlled items must be submitted during the next calendar year.

Resident Bidder: A bidder who meets the residency requirements of section 18-1-103, MCA.

Responsible Bidder/Offeror: A person who has the capability in all respects to fully perform the contract requirements and the integrity and reliability to assure good faith performance.

Responsive Bidder/Offeror: Means a person who has submitted a bid or offer that conforms in all material respects to the Invitation for Bid or Requests for Proposal.

Restrictive Specification: A specification that unduly limits supplies or services that would be capable of satisfactorily meeting actual needs.

Salvage: Property that is no longer useful in its present condition but has some value in addition to its value as scrap.

Scrap: Property that has no reasonable prospect of being sold except for the value of its basic material content.

Sealed Bid: A bid submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; or a facsimile submission in response to an Invitation for Bid that will meet the criterion of “sealed” in a legal sense if the transmission is secured by the procurement office.

Small Purchase: A procurement of \$5,000.00 or less made in accordance with ARM 2.5.603.

Sole Source: The only known source with the ability to supply the necessary supplies or services due to the unique nature of the requirement, the vendor, or market conditions.

Specification: A physical or functional description of the desired supplies or services.

State Procurement Bureau (SPB): A unit within GSD, specifically responsible for statewide oversight of procurement.

Supplies: All property, except as otherwise provided by law, including but not limited to: equipment, materials, printing, commodities, and excluding land or any interest in land.

Surplus Property: Property (excluding books) no longer needed by an agency for use in the discharge of its duties and responsibilities.

Tabulation of Bids: A document used to record bid prices and bid related data for the purpose of comparison, analysis, and record keeping.

Term Contract: A contract in which a source or sources of supply are established for a specific period of time at a predetermined price.

Total Contract Value: The entire potential monetary worth of the project from beginning to completion, including the initial contract period and any options to renew.

Trade-In: The process of using an owned item of merchandise as payment or partial payment for the purchase of other merchandise.

Unit Price: The price of a selected unit of good or service (e.g., price per each, foot, or pound, etc.).

Vendor: A party who offers or may offer supplies or services to a public agency.

SECTION 2 – DELEGATED PURCHASING AUTHORITY

2.1 Authorization

The authority to procure or supervise the procurement of all supplies and services needed by the State is conferred upon the Department of Administration by section 18-4-221, MCA. Title 18, MCA, authorizes the Department of Administration to:

- Procure or supervise the procurement of all supplies and services needed by the State;
- Sell, trade, or otherwise dispose of surplus property belonging to the State.

Title 18, chapter 4, MCA establishes statutory parameters for purchasing supplies, equipment, and certain services. Title 18, chapter 5, part 2, and chapter 6, MCA, establish statutory parameters for disposing of surplus property. The Administrative Rules of Montana (ARM) (Title 2, chapter 5) provide procedural requirements for purchasing as outlined by statute.

2.2 Delegation from the Department of Administration

While the direction and authority for purchasing remains with the Department of Administration, section 18-4-222, MCA allows the Department of Administration to delegate much of the day-to-day practice of public purchasing through the use of a "Procurement Delegation Agreement. In general, the Procurement Delegation Agreement between the Department of Administration and the Department of Corrections (DOC) authorizes the DOC to purchase all non-controlled services with a "total contract value" of not more than \$200,000.00 and supplies with a "total contract value" of not more than \$200,000.00 and includes exceptions for specific procurement needs of the Department. This agreement is established, in writing, every two years. In accordance with this agreement, the DOC is required to:

1. Maintain written procedures for handling all purchases;
2. Follow the procurement procedures provided by the Department of Administration.
3. The DOC shall use the most current version of the Department of Administration'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 Department of Administration approves any exceptions. Requests for exceptions or changes to existing approved forms must be submitted to the Department of Administration for approval. Forms are posted on the procurement forms site located at the following website address:
<http://emacs.mt.gov/AgencyProcurementForms>
4. The DOC shall issue all formal IFBs and RFPs under the authority of the Montana Procurement Act in the Montana Acquisition and Contracting System (eMACS). Procedures developed by the Department of

Administration will be used to issue each solicitation using the commodity code that most accurately describes the supplies and services being sought.

5. DOC agrees that all vendor requests for exceptions to the Department of Administration's Standard Terms and Conditions and the Department of Administration's standard contract either be (1) approved by the Department of Administration, or (2) approved in writing by the DOC's legal counsel.
6. The Department of Administration maintains a purchasing vendors list for supplies and services typically purchased by state agencies. The purchasing vendors list is available in eMACS. The DOC shall use the purchasing vendors list for all formal solicitations.
7. The DOC liaison listed in the Procurement Delegation Agreement, or their replacement, must; (a) have at least three years of public procurement experience; (b) attend required meeting of the Department of Administration; and (c) provide the supervision and management of the DOC's procurement needs as their predominant job duty.
8. The DOC liaison listed in the Procurement Delegation Agreement, or their replacement, and all other Department procurement staff must have completed the "Advanced Procurement Methods and Issues" course offered by the Department of Administration and any other training courses required by the Department of Administration or through a nationally recognized precertification program approved by the Department of Administration.

2.3 Facility/Program/Division Delegation

Through the Procurement Delegation Agreement with the Department of Administration, the DOC has delegated each facility/program/division up to \$5,000.00 of purchasing authority, with exceptions as noted herein:

- Montana State Prison (MSP) up to \$25,000.00 - with exceptions (see Delegation Agreement)
- Montana Correctional Enterprises (MCE) up to \$25,000.00 - with exceptions (see Delegation Agreement)
- MSP/MWP Canteen unlimited delegation (in accordance with Title 18, MCA)
- Food Purchases at all facilities unlimited delegation (in accordance with Title 18, MCA)
- Inmate Clothing is exempt from the bidding requirements of Title 18, MCA and can be purchased at all facilities – regardless of cost (see Delegation Agreement)

When a facility/program/division desires to purchase supplies or services that are not "controlled" items and the expenditure is within their delegated purchasing authority, the facility/program/division may proceed to procure the supplies or services according to Title 18, MCA and the procedures outlined in this manual. However, facilities/programs/divisions may request the assistance of the Contracts Management Bureau with any purchase – regardless of their delegated authority.

(*Controlled items are further identified and addressed within Section 4 of this Manual)

SECTION 3 – PURCHASING METHODS AND PROCEDURES

3.1 Procurement Methods

The DOC has several methods available for purchasing supplies and services. These methods are based on the "total contract value" of the item or service desired. A description of each method is further detailed herein. Questions should be directed to the DOC BMS Bureau Chief or DOC BMS Purchasing Agent.

3.2 Purchases of \$5,000.00 or Less: Small Purchases

Supplies or services with a "total contract value" of \$5,000.00 or less may be purchased without obtaining competitive quotations or bids. Designated staff may choose a purchasing technique that best meets the needs of their facility/program/division for allowable purchases of \$5,000.00 or less.

3.2.1 Procedure

Verify that the purchase is not a "controlled item" and make arrangements to obtain the good or service. Supplies or services in this category can be obtained directly by telephone, fax, e-mail, written quotations, etc. Documentation is not required. However, the DOC encourages prudent purchasing practices and obtaining competitive quotations whenever practical.

3.2.2 Award

DOC staff may issue a Purchase Order (PO) to the vendor in order to confirm the prices, terms, and conditions of the purchase, but it's not required. Payment should be made using the State issued Procurement Card. (See Section 8 – Purchasing Card or DOC Procard Manual).

3.3 Purchases between \$5,000.00 and \$25,000 for Services and \$50,000.00 for Supplies: Limited Solicitations

A Limited Solicitation is designed for one-time purchases that do not exceed a total contract value of \$25,000.00 for services and \$50,000.00 for supplies. "Non-controlled" items with a total contract value between \$5,000.00 and \$25,000.00 for services and \$50,000.00 for supplies may be purchased by procurement staff at those facilities/programs/divisions with the appropriate level of delegated authority using a limited solicitation procedure. This procedure requires a minimum of three written or oral quotations, if available. The limited solicitation procedure must be documented using the DOC "Limited Solicitation form" (see "Forms"). This procurement method does not apply to the purchase of "controlled items", such as those offered through Term Contracts and Central Stores, or to purchases exempt from bidding requirements.

3.3.1 Procedure

3.3.1.1 Staff at a facility/program/division without delegated purchasing authority shall prepare a DOC Purchasing Request form (see "Forms") describing the requested supplies or services and obtain the appropriate signatures authorizing the expenditure. Forward all documentation to the DOC

purchasing agent. Include all pertinent information (e.g., manufacturer's literature, product/service brochures) and a list of potential vendors.

The DOC purchasing agent will work with the facility/program/division and process the request in accordance with delegated procurement procedures.

3.3.1.2 Staff at a facility/program/division with delegated purchasing authority shall use a Limited Solicitation form to obtain a minimum of three viable quotes, if available. Quotes can be oral, written, faxed, or e-mailed. Documentation is required, including vendors contacted, quotes received, complete product description and/or service requirements, and all award conditions (e.g., delivery requirements, specific brand, and packaging). The award must be made to the vendor providing the lowest acceptable quote if cost is the only consideration. It is allowable to use criteria other than cost in making an award. However, vendors must be provided with all award criteria and their relative importance.

3.3.2 Award

Award shall be made to the vendor offering the lowest acceptable quotation if cost is the only stated criteria for award. Procurement staff shall issue a PO to the vendor in order to confirm the prices, terms, and conditions of the purchase.

3.4 Purchases over \$25,001.00 for Services and \$50,001.00 for Supplies

Unless exempt from procurement requirements, supplies or services with a Total Contract Value greater than \$25,001.00, the DOC shall use either an Invitation for Bids (IFB) or a Request for Proposal (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. The DOC shall forward any purchase with a total contract value over \$200,000 to the State Procurement Bureau (SPB) for processing.

3.4.1 Procedure

3.4.1.1 A facility/program/division without appropriate purchasing authority shall prepare a DOC Purchasing Request form, describing the requested supplies or services, and obtain the appropriate signatures authorizing the expenditure. Forward all documentation to the DOC purchasing agent. Include all pertinent information (e.g., manufacturer's literature, product/service brochures) and a list of potential vendors. The DOC purchasing agent will work with the facility/program/division and process the request in accordance with delegated procurement procedures.

Purchases in this category may require the request be submitted to the (SPB) for processing if the total contract value exceeds the DOC's delegated purchasing authority. If so, a state requisition will be prepared by the DOC purchasing agent and forwarded to SPB. The SPB will issue a IFB or a RFP based on information presented in the requisition and attached documentation. SPB will solicit bids and proposals, evaluate the bids or monitor the evaluation of proposals, and issue a purchase order to the successful vendor. The DOC requestor will receive copies of the IFB

or RFP from the SPB as the documents are generated. These documents must be reviewed immediately so the SPB can be notified of corrections as necessary.

3.4.1.2 A facility/program/division with appropriate purchasing authority shall prepare a Competitive Sealed Bid/Proposal in accordance with the procedures listed herein.

3.5 Writing Specifications

Specifications provide a precise description of the critical features a product or service must have to satisfy a need. A specification should be written from the general to the specific. Good procurement practice and Montana law require that specifications not be unduly restrictive (Ref. Mont. Code Ann. § 18-4-234). Restrictive specifications may limit competition and in the end, do not promote the overall economy for the purposes intended. The following outline should be used as a guideline:

1. Common Title of Product or Service: Begin a specification by listing the common name of the product or service sought: "compact sedan," for example, or "photocopier maintenance." Do not list a specific brand name in the title.
2. Purpose/Use for Product or Service: State the intended purpose for which the item will be used. For example, a lawn tractor specification might state: "suitable for daily use (4-6 hours) on a 7-acre complex with several 20 degree slopes." Vendors must know the intended use to assist in determining the specific product to bid.
3. Description of Product or Service: List all the critical features the product must perform or have to meet your requirements. Use a specification that indicates the necessary performance requirements of the end product or service, or a design specification that details how a product is engineered, if you have a specific physical requirement for the product. However, it is difficult to draft design specifications without being restrictive and limiting competition. A combination of performance and design requirements is often the most ideal specification.

Identify the minimum requirements, but make sure the stated minimums will result in a product that will satisfy the needs. If there are brand name-or-equal products that are of the appropriate quality level, list several of the acceptable brand names and model numbers. Be careful to not imply that only a certain brand name will be acceptable, unless compatibility is an issue.

4. List Special Requirements: Describe any special conditions that the product or vendor must perform. Warranty, service, parts, and training requirements must be included.
5. Unusual Conditions: Describe any unusual conditions, such as compatibility, fiscal year funding source, etc.
6. Delivery Date: Indicate a specific delivery date, if required. If a delivery time is not specified, it will generally be 30 days after issuance of a purchase order.

7. Delivery Location: Be specific about delivery location and any special delivery requirements. Bids must state that supplies are to be shipped F.O.B. Destination – Freight Prepaid, meaning that the title of the supplies remains with the vendor until the supplies are unloaded at the final destination. When supplies are purchased F.O.B. Destination – Freight Prepaid, the vendor is responsible for damage to the supplies while they are in transit and also responsible for filing freight claims if damages are incurred.
8. Contact Person: List the name, address, and phone number of the person who should be contacted if questions arise.

3.6 Sole Source Procurement

Under limited circumstances, a facility/program/division may need to consider a sole source procurement because this acquisition takes place without the benefit of competition, staff should be extremely cautious when pursuing this procurement method. Sole source procurement is not permissible unless a required item is available only from a single vendor.

The DOC may make a determination and document a purchase is a legitimate sole source/sole brand for purchases with a total contract value of \$200,000 or less. For purchases over the DOC's level of delegated purchasing authority, the Department of Administration shall make the sole source/sole brand determination. In cases of reasonable doubt, competition should be solicited.

Circumstances that might necessitate "sole source" procurement could include:

- Compatibility with current services, equipment, accessories, or replacement parts;
- The vendor is also the manufacturer and only sells the product/service direct; or
- The only acceptable or suitable source for the supply or service.

3.6.1 Procedure

The initial determination to purchase an item as a sole source must be made by the facility/program/division for those purchases within their delegated authority.

3.6.1.1 Sole Source purchases of \$5,000.00 or less

Sole source procedures do not apply if the purchase is \$5,000.00 or less. Follow Small Purchase procedures.

3.6.1.2 Sole Source purchases greater than \$5,000.00

Written justification is required for sole source purchases greater than \$5,000.00. A DOC Purchasing Request must be completed and submitted to the purchasing agent, along with the justification. The purchasing agent will work with the requestor and process the purchase in accordance with delegated procurement procedures.

The purchasing agent may conduct negotiations with the vendor as to price, delivery, and terms. A purchase order or contract must be issued to communicate prices, terms, and conditions reached through negotiations.

3.6.2 Sole Source Exceptions

The following items do not require sole source justification (Ref. ARM 2.5.604) and may be purchased directly by the program/facility/division in accordance with their delegated authority, DOC policy, and this manual:

- Professional licenses;
- Dues to associations;
- Renewal of software license agreements;
- Purchase or renewal of maintenance agreements for software or hardware; or
- Publications available from a single provider.

3.7 Competitive Sealed Bidding

A competitive sealed bid calls for bids, firm prices, and conditions, which may not be changed once they are opened (except for correction of errors as specified by law). This process involves the use of an IFB which must contain detailed specifications of the supplies/services sought, statements alerting bidders to any special requirements, shipping and billing instructions, and “boilerplate” provisions that alert bidders to standard requirements or conditions for doing business with the DOC.

The IFB must be sent to an adequate number of bidders to ensure competition. Sealed bids must be received at the location before the time/date specified in the IFB and must be time stamped upon receipt and stored by someone other than the procurement official until publicly opened at the time and place designated in the IFB. Facsimile submissions of bids must be transmitted and completely received [by someone other than the procurement official] prior to the time/date set for receipt of bids. The facsimile bid submission must be similarly time stamped, placed in an envelope, and stored by someone other than the procurement official.

Bid files shall contain sufficient information to facilitate auditing of the procurement process. The facility/program/division must maintain a record of the following documents:

- Approved/Authorized purchase requisition from the requesting party;
- Invitation for Bid, including any addenda;
- Advertised notice to vendors and/or list of vendors;
- All bids received;
- Tabulation of bids;
- Correspondence concerning the purchase, including a recommendation for award from the end user, if appropriate;
- An explanation by the procurement officer if the contract is awarded to anyone other than the low bidder;
- Evidence of a performance bond, insurance, and other certifications, if required; and
- Signed purchase order.

3.7.1 Bid Tabulations

A “bid tabulation sheet” must be prepared once bids have been opened. This tabulation provides a summary document for persons interested in reviewing the bid prices and other pertinent information from each vendor responding to the IFB. The tabulation sheet is also used to determine the acceptable low bid. The bid tabulation sheet should contain the following information:

- Name of vendor;
- Unit price of each item bid;
- Notation if the vendor is “not bidding as specified”;
- Notation of who received award; and
- Brand/model of awarded item.

3.7.2 Award Procedures

In an IFB situation, the award must be made to the lowest "responsible and responsive" bidder whose bid meets the requirements and criteria set forth in the invitation for bid, including application of the reciprocal preference required by section 18-1-102, MCA. Bids should be awarded after a period of evaluation and not at the bid opening. Bids are considered “awarded” upon issuance of a written PO from the DOC or upon issuance of a contract that is signed by all parties. The PO should include the unit and extension prices, total price, pertinent specifications, and the terms and conditions.

3.7.3 Reciprocal Preference

Montana law requires the DOC to apply a reciprocal preference to the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state or country in which the bidder is a resident. This type of preference is only applied against bidders whose resident states apply resident preferences. Very few states fit in this category. A reciprocal or "retaliatory" preference is applied only to an invitation for bid for products or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, and only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in section 18-1-103, MCA. According to section 18-1-102, MCA, a public agency shall award:

- A public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.
- A public contract for the purchase of supplies to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces

a preference for residents. The preference must be equal to the preference given in the other state or country.

3.7.3.1 How to Determine if Reciprocal Preference Applies

- The reciprocal preference, as required in section 18-1-102, MCA, is applied only to an invitation for bid for supplies or an invitation for bid for non-construction services for public works as defined in section 18-2-401(9), MCA, but only in the event that federal funds are not involved in the anticipated purchase.
- The reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in section 18-1-103, MCA.

3.7.3.2 How to Apply the Reciprocal Preference

If it is determined that the lowest responsive and responsible bidder would receive a preference in its resident state, that same preference is added to the bid of the nonresident bidder. If the nonresident bidder is still the lowest responsive and responsible bidder after the preference adjustment has been made, the nonresident bidder is awarded the bid at the price bid, not the adjusted price. For example, if a bid were received from a Wyoming company, we would add 5% to that bidder's price when evaluating the bid because that is the general percentage Montana bidders are penalized when bidding on contracts in Wyoming. A list of states that apply preferences and more detailed explanation of the application of the reciprocal preference are available from the SPB.

A Montana bidder must have a bidder affidavit on file with the Department of Administration to verify resident eligibility before the bidder can benefit from an award based upon the preference. Whether or not a bidder qualifies as a Montana resident is determined by GSD. The determination as to whether or not the vendor qualifies for residency status is based on section 18-1-103, MCA.

Questions concerning the application of the reciprocal preference can be addressed by the State Procurement Bureau staff at (406) 444-2575.

3.8 Competitive Sealed Proposals

Competitive sealed bidding cannot adequately address procurements where specific or generic specifications are difficult or impossible to draft and conventional evaluation cannot be made on absolute criteria. In these instances, a competitive sealed proposal, more commonly known as a "Request for Proposal (RFP)" can be used.

Whereas the evaluation criteria in competitive bidding is limited to a determination as to whether a bid meets the specifications and conditions specified in the IFB, the RFP process takes the bid evaluation one step further. Not only is the RFP evaluation criteria

used to determine if the proposal meets the intended use, but it is also used to evaluate competing offers and as a basis for further negotiation. The evaluation is limited to the criteria specified in the RFP, but this usually permits more discretion, since it is an evaluation process. RFP's may be practical when one or more of the following conditions exist:

- The contract needs to be other than a fixed-price type;
- Oral or written discussions may be necessary concerning the technical and price aspects of a proposal;
- Offerors may need to be afforded the opportunity to revise their proposals, including prices;
- Award may need to be based upon a comparative evaluation of price, quality, and contractual factors in order to determine the most advantageous offering to the DOC. Quality factors include technical and performance capability and the content of the technical proposal; or
- Price will not be the only criteria considered in determining the most advantageous offering.

The evaluation criteria used in the RFP format allows greater flexibility in determining award of a contract. Additionally, it allows the DOC and offerors an opportunity to modify their respective request or offer as a greater understanding of the need is gained. As a result, this process is usually a multi-step procedure requiring a significantly greater amount of time and effort than a competitive bid process. An RFP is generally divided into six main parts, as follows:

- Section 1 - Project Overview and Instructions, gives a brief overview of the project, names a single point of contact, and includes specific instructions on how to submit a response.
- Section 2 - Standard RFP Information, contains information that covers the legal as well as the RFP process issues.
- Section 3 - Scope of Project, is the core of the RFP. This is where the "scope" of the project and the specifications are detailed.
- Section 4 - Offeror Qualifications, is where the specific qualifications necessary for the project are set out.
- Section 5 - Cost Proposal, contains information on how much money is available for the project and/or sets out how the offeror must present its cost proposal.
- Section 6 - Evaluation Criteria, states the evaluation criteria and their relative importance. The cost proposal must constitute 20% or more of the total available points. Exceptions to this must be documented in writing and approved by the Purchasing Agent.

RFP files shall contain sufficient information to facilitate auditing of the procurement process. The facility/program/division must maintain a record of the following documents:

- Record of public notice of the RFP request and mailing list;
- Request for proposal;
- All proposals received;
- A determination of award, detailing the basis on which the award was made;
- Notes, recordings or minutes of any discussions with the offerors; and
- The purchase order or contract.

3.8.1 Opening and Awarding Proposals

3.8.1.1 No Public Opening

In contrast to an IFB, proposals received in response to an RFP are not available for public inspection until they have been opened and reviewed by a procurement official for the presence of certain documents. Items protected from public inspection are bona fide trade secrets pursuant to Title 30, chapter 14, part 4, MCA; matters involving individual safety; and company financial information provided to establish vendor responsibility. Once these items have been removed from the public copy of a proposal, the document is made available for public inspection.

3.8.1.2 Late Proposals

Regardless of cause, late proposals must not be accepted and must automatically be disqualified from further consideration. Late proposals should not be opened and may be returned to the offeror (at their expense) or destroyed, as requested by the offeror.

3.8.1.3 Trade Secrets

In order to protect information identified as “trade secrets” from public inspection, the “trade secrets” must be clearly marked and separated from the rest of the proposal by the offeror. An “Affidavit for Trade Secret Confidentiality” must be attached to each proposal containing trade secrets. This affidavit is available from the State Procurement Bureau. The proposal may not contain trade secret matter in the cost or pricing data. (MCA 4-14-30)

3.8.1.4 Scoring of Stated Criteria

The award must be made to the responsible and responsive offeror whose proposal best meets the established or stated evaluation criteria. Other factors may not be used in the evaluation.

After receipt and opening, proposals must be examined for several considerations including responsiveness, qualifications, competitiveness, suitability of the product or service offered, cost and economy for the

taxpayer, ability of the vendor to perform, and so on. Specific evaluation factors will depend upon the intended product or service.

3.8.1.5 Public Notice Requirements

Notice of public meetings conducted must be posted to the no less than 72 hours in advance of the meeting to DOC or SPB website. The location must be ADA accessible in conformity with the Americans with Disabilities Act.

3.8.2 Evaluation Resources

The SPB has several resources available to assist evaluation committees in their task of evaluating and scoring the proposals received in response to a Request for Proposal. The following information is available from SPB:

- RFP Evaluation Process – Instructions. This document provides direction to the agency RFP evaluation committee.
- RFP Sample Scoring Guide. This document provides a sample method for scoring the evaluation criteria set out in the RFP.
- Non-Conflict of Interest Statement. Each member of the RFP evaluation committee is required to review the responses and determine if they have a conflict of interest. This form must be signed prior to the evaluation of the RFP and becomes a permanent part of RFP solicitation file.
- Confidentiality Statement. Evaluation members use this form when offers contain confidential information protected under sections 18-4-304 and 18-4-308, MCA. It provides a means to notify the committee members of their responsibility to keep the information confidential and the consequences if they do not.
- Attendance Sheet. This sheet is used when an evaluation committee meets to evaluate the proposals. All members of the evaluation committee should sign it. Other persons attending the meeting may sign the sheet if they wish, but they are not required to sign it.
- Reference Check Questions. Oftentimes an evaluation committee will decide to check references for its top scoring offeror. This form provides some basic questions that may be asked of an offeror's references.

3.9 Selection of Vendors

There is no specific number of vendors who must receive a limited solicitation, bid, or proposal request, but the number must be sufficient to ensure a competitive process. This number may vary according to the supply or service being purchased. However, in order to obtain a reasonable response and invite competition, notice of solicitations should be sent to as many vendors as practical.

IFB's and RFP's can be mailed, faxed, posted electronically, or otherwise furnished to a sufficient number of bidders/offerors to secure competition.

3.10 Public Opening

Montana law requires that bids in response to an invitation for bid must be opened publicly at the time and place designated in the IFB.

Each vendor has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The name of each vendor, the bid price, and other information, as deemed appropriate by the procurement officer, must be recorded. This record is available for public inspection.

3.11 Late Bids

Regardless of cause, late bids shall not be accepted and must automatically be disqualified from further consideration. Late bids should not be opened and may be returned to the vendor (at their expense) or destroyed, as requested by the vendor.

3.12 Issuing Purchase Orders

A purchase order is a document that formalizes a purchase transaction with another party. It sets out the agreement between the parties as to the terms of the purchase. It contains statements as to the quantity, description, and price of the supplies/services, applicable terms for payments, discounts, dates of performance, transportation terms, and all other factors pertinent to the purchase and its execution by the vendor.

3.13 Mistakes in Bids

The procurement officer may allow a vendor to correct minor mistakes in a bid or offer if the mistake is clearly not attributed to an error in judgment and the mistake and the intended correct bid or offer is clearly evident on the form of the document. Examples of correctable mistakes include, but are not limited to:

- Typographical errors;
- Errors in extending unit prices;
- Transposition errors;
- Arithmetical errors; and
- Signature omitted.

In addition, the procurement officer may permit a bidder or offeror to withdraw a bid or proposal if:

- A mistake is clearly evident on the face of the document but the intended correct information is not similarly evident; or
- The bidder or offeror submits proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made.

3.14 Prequalification of Vendors

Prequalification of vendors is an option available to the Department. It is a process allowed by ARM 2.5.507 under the following circumstances:

- A need exists to limit a solicitation to those vendors who meet statutory or licensing requirements applicable to the solicitation; or
- A need exists to minimize the time necessary to verify vendor qualifications which otherwise would jeopardize the timely award of contracts.

When pursuing this option, we must provide documentation that reflects the capability of the selected vendor to adequately perform the contract. The criteria for prequalification may include: compatibility, technical expertise, experience, quality of performance, location, availability, rates, prices, financial stability, past performance, catalogs, or other criteria relevant to a particular procurement. This method must be approved by GSD and does not necessarily represent product or service acceptability or a finding of responsibility.

3.15 Request for Information (RFI)

A “Request for Information” is another option available to the DOC. This process is used to obtain preliminary information about a market, product, or service when there is not enough information readily available to write an adequate specification or work statement. An RFI is simply a document used to informally solicit this type of information. It may not be used as a source selection method to procure a product or service (Ref. ARM 2.5.508).

3.16 Used Equipment

At times, it may be in the best interest of the DOC to purchase used equipment. However, used equipment must be purchased in accordance with Title 18, MCA, just as new equipment is, unless purchased from the Property and Supply Bureau.

3.17.1 Procedures

Facilities/Programs/Divisions should first check for used equipment at Property and Supply Bureau.

Criteria to consider in making the determination to purchase used equipment include:

1. The type, use, and life expectancy of new versus used;
2. The purchase price of new versus used;
3. The price and general condition of similar equipment among several vendors;
4. The freight charges and FOB point; and
5. The brand/model and availability of service and parts.

3.17 Receipt of Supplies

All facilities/programs/divisions must inspect received supplies. It is not uncommon to receive supplies not meeting specifications (e.g., wood handled shovels in lieu of fiberglass handles, as specified). The guidelines listed below will provide a basis for inspection/receiving.

When supplies are delivered, the receiving agency generally does not have time to inspect all items while the delivery person is there, nor is it absolutely necessary. There are two steps involved in inspecting supplies: the external inspection and the internal inspection.

3.17.1 External Inspection

When supplies are delivered, the person receiving the supplies should carefully check the external appearance of each package for signs of damage. Any scratches, dents, watermarks, etc., should be noted on the delivery slip. This is the only occasion the agency will have to report external shipping damages. The person receiving the supplies should also note the quantity of items or containers received. The delivery slip should be signed only for the number of items actually received from the carrier. All discrepancies should be noted on the delivery slip, signed, and dated.

3.17.2 Internal Inspection

Once supplies have been received and externally checked, an internal inspection should be performed as soon as possible.

1. **Packing Slips.** Each container or shipment should contain a shipping document supplied by the manufacturer or vendor. The shipping document should list all the items and quantities shipped. The shipping document should be checked against the items received by type and quantity. Any discrepancies, defects or damages should be noted on the shipping document and the inspector should initial and date the shipping document.
2. **Checking receipts against orders.** When all items have been checked against the shipping document, the inspector should check it against what was ordered on the purchase order. The inspector should check that the items delivered were actually ordered and meet the specifications as listed on the purchase order. The inspector may need assistance in determining if the supplies meet specifications from a person who is familiar with those supplies.
3. **Problems.** After inspection, any problems discovered should be referred to the vendor. An agency may wish to contact a vendor by phone, but a written statement of the problem should always be sent to the vendor.

3.18 Purchase Order Renewal/Extension

When the time comes for PO renewal, several factors must be considered, such as:

- Are the terms of the extension or renewal included in the current PO?

- Will the total term, including any extension or renewal, exceed the total time allowed by law? (With few exceptions, purchase orders cannot exceed seven (7) years in duration, including renewals (Ref. 18-4-313 MCA).
- Are funds available for continuation of the PO?
- Does the current PO serve the best interests of the DOC?

In addition, the required insurance and/or contract security (if applicable) must remain in effect for the entire renewal period. PO renewals shall be processed in accordance with the delegated purchasing authority and procedures listed within Section 3 of this manual.

3.19 Vendor Protests

On occasion, facilities/programs/divisions may be required to respond to a vendor protest concerning the solicitation, award, or administration of a contract within their authority. How the dispute is handled depends on the dollar amount involved and the status of the procurement.

Pursuant to section 18-4-242, MCA, small purchases and limited solicitations, as defined in ARM 2.5.603, are not subject to protest. If the protest involves a solicitation or award of a contract over the amounts established in ARM 2.5.603 for small purchase or limited solicitation, the agency must follow the protest procedure established in section 18-4-242, MCA. Attorneys are generally involved at this level and the protest may be taken through the contested case hearing process of the Montana Administrative Procedure Act and ultimately through judicial review.

In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of the action, question, or dispute has arisen.

If the protest of a bid or proposal is not resolved by mutual agreement, the agency must issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must: (a) state the reason for the action taken by the agency with regard to the contract; and (b) inform the aggrieved party of the party's right to pursue judicial action under Title 18, chapter 1, part 4, MCA.

According to section 18-4-242, MCA, the DOC is under no obligation to delay, halt, or modify an award or contract pending the result of a protest, contested case proceeding, or judicial review.

All protests received by a facility/program/division must be reported to the DOC Purchasing Agent who will in turn notify the SPB, as stipulated in our delegation agreement.

3.20 Records Management – Retention Schedules

Section 18-4-126, MCA, requires that all procurement records be retained, managed, and disposed of in accordance with the state records management program, found in Title 2, chapter 6, MCA. Each facility/program/division must retain the written procurement

DOCUMENT	RETENTION SCHEDULE
Solicitation Files: RFP's, IFB's	4 years after completion of the procurement process.
Purchase Order Purchase Order Adjustment	4 years after PO/POA termination.
Contract	4 years after contract termination.
Sole Source Files	4 years after PO/contract termination.
Vendor Contract	4 years after termination.
Insurance/Workers' Compensation Certificates	Until PO/contract termination.
Contract Security – other than surety bond	Until PO/contract termination.
Surety Bond	8 years after PO/contract termination.

documentation for the procurements it conducts and administers. The SPB retains the procurement records for the procurements it conducts and administers. The SPB, in conjunction with the Secretary of State, Records Management Bureau, has established the following retention schedule for its procurement records:

SECTION 4 - CONTROLLED PURCHASES

4.1 Overview

The General Services Division (GSD) retains control of specific purchases (controlled items) and the Department is required to purchase these items through GSD. Controlled items may be obtained through GSD in these ways: (1) Requisition Time Schedule; (2) Exclusive or Non-Exclusive Term Contracts; (3) Central Stores; (4) Printing; (5) Vehicles; or (6) Cooperative Purchasing.

In addition to the items listed above, the Department has also identified other purchases that require specific approval and/or assistance by designated individuals or programs. These include Cellular Telephone service, Computer Hardware and Software, Telecommunications systems, and Photocopiers. Procurement and approval of these items are further addressed within this section.

4.2 Prior Approvals

By statute, the DOC is required to obtain approval on certain supplies/services before they can be purchased. Approvals are required whether these supplies/services are purchased through GSD or at the agency level. For purchases made through GSD, these approvals must be obtained before the requisition is sent to the State Procurement Bureau. For purchases made at the agency level, these approvals must be obtained before a purchase is made or a solicitation is sent to vendors.

4.2.1 Printing Equipment

All printing-related equipment (duplicating, printing, bindery, and graphic arts) to be used within a 10-mile radius of the capitol area must be approved by Print and Mail Services, GSD, Department of Administration (Ref. Mont. Code Ann. § 2-17-301.).

4.2.2 Information Technology Hardware/Software

Information technology resources, including hardware, software, voice (excluding headsets and related accessories), video, electronic data, and associated services and infrastructure used to store or transmit information in any form requires approval from the Department of Administration, Information Technology Services Division (Ref. Mont. Code Ann. § 2-17-512.) and the DOC Information and Business Technology Bureau (Ref. DOC Policy 1.7.2).

Questions concerning a hardware or software purchase should be directed to the IT Service Desk at 444-4234.

4.2.3 Records Management Equipment/Systems

Records management equipment/systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods require approval by the Information Technology Services Division, Department of Administration (Ref. Mont. Code Ann. § 2-6-214).

4.2.4 Mailing Equipment

All mailing equipment to be used within a 10-mile radius of the capitol area must be approved by Print and Mail Services, GSD, Department of Administration (Ref. Mont. Code Ann. § 2-17-301).

4.2.5 Filing System Equipment and Microfilm Equipment

Filing system equipment and microfilm equipment purchases require approval by the Secretary of State, Records Management Bureau (Ref. Mont. Code Ann. § 2-6-203).

4.2.6 Equipment/Property Trade-in

All equipment/property trade-ins (except photocopiers per 1-0750.40 MOM) require approval by the Property and Supply Bureau, GSD, Department of Administration (Ref. Mont. Code Ann. § 18-6-101, ARM 2.5.701 and 2.5.702.)

4.3 Requisition Time Schedule

The Requisition Time Schedule (RTS) is a calendar of dates when certain items are coordinated for purchase by the SPB. These RTS items include: passenger cars, patrol vehicles, and light duty trucks; and the renewal of current janitorial contracts.

4.3.1 Procedures

To request the purchase of an RTS item, submit a DOC Purchasing Request to the DOC purchasing agent five working days prior to the date indicated on the RTS. The request will then be reviewed and delivered to SPB on a State requisition.

4.4 Exclusive or Non-exclusive Term Contracts

Term contracts are established by the SPB to allow State agencies to efficiently purchase supplies and services at a predetermined price for a specific period of time. Term contracts are issued as "exclusive" or "non-exclusive."

If a term contract is issued as "exclusive," the DOC is required to purchase the contract item from the listed term contract holder(s). With an exclusive term contract, the contract holder has the exclusive right to sell the item or service to all State agencies at the established contract price for the term of the contract. Failure to purchase the item from an exclusive contract holder may subject the DOC to contract default and, subsequently, the contract holder may seek reimbursement of lost revenue for not purchasing the product from them as required by contract.

If the term contract is "non-exclusive," then the DOC is not required to purchase the item from the contract holder, but often times the prices are very reasonable and the terms and conditions are favorable because the purchase already went through a competitive bidding process.

Examples of Term Contract items commonly used by the DOC include:

Photocopiers

Printed Envelopes
Color Photocopying
Temporary Service Agencies
Electronic Monitoring

Copies of Term Contracts are available from the DOC purchasing agent.

4.4.1 Procedures

With the exception of photocopiers, each facility/program/division can purchase Term Contract items on an "as needed" basis. To order a term contract item, follow the procedures listed within the applicable Term Contract. This may require the issuance of a PO or other written communication with the contract holder. Generally, the Term Contract items should be purchased using the State issued Procurement Card (Visa). The Term Contract number should be referenced on all correspondence related to the purchase.

4.5 Photocopiers

All requests to purchase/lease a photocopier shall be submitted to the DOC purchasing agent for processing.

4.6 Central Stores Products

The Property and Supply Bureau of GSD operates a Central Stores program on behalf of the State. The Central Stores program develops standard specifications and then procures, warehouses, and delivers certain common use items (office supplies, fine paper, coarse paper, computer paper, janitorial supplies) to state agencies. Like term contracts, the Central Stores program allows state agencies to take advantage of volume pricing while avoiding the need to stockpile items.

State Agencies are required by law (18-4-302, MCA) to purchase office supplies from Central Stores. However, there is an exception to this Statute, providing that: "an agency may purchase an "office supply" directly from a vendor whose publicly advertised price, established catalog price, or discount price offered to the purchasing agency is less than the price offered by the Central Stores program, and the office supply conforms in all material respects to the terms, conditions, and quality offered by the Central Stores program." In other words, if you can find a better price on a statutorily defined "office supply" at a local store, you can buy it there. However, the pricing, selection, and convenience offered by the Central Stores Program is very reasonable and allows you to fulfill your office supply needs without ever leaving the office.

4.6.1 Procedures

Each facility/program/division may order office supplies directly from Central Stores. Ordering instructions/procedures for the eMarket Center are detailed on the General Services Division website.

4.7 Leased Office Space

The Department of Administration is responsible for approving all office space lease agreements. GSD must be contacted as soon as possible upon determination that a need for space exists.

4.7.1 Procedures

Regardless of cost, each facility/program/division must first contact the DOC BMS Bureau Chief whenever a need for leased office space is anticipated. The DOC BMS Bureau Chief will assist with preparation of a lease agreement and will coordinate the process through the leasing officer designated by the Department of Administration, as necessary. Lease agreements will generally be negotiated by the leasing officer, with assistance from the requesting party.

4.8 Cellular Services

Cellular services (cell phones, aircards, and data devices) are managed and maintained by the DOC BMS Bureau. The DOC BMS Bureau maintains a record of cellular assignments, calling plans, usage history, etc. All cellular plan/telephone changes must be coordinated through the designated DOC purchasing agent.

4.8.1 Procedures

Complete a Cellular Telephone Request & Authorization form (see “Forms”) and submit to the purchasing agent for processing. Requests must be approved by the DOC director, division administrator, or warden, as appropriate. (Ref. DOC Policy 1.3.51, attached)

4.9 Personal Service Contracts

Contracting for personal services is specifically addressed in DOC Policy 1.2.9 (Attached) and requires coordination with the DOC contracts management bureau chief if the “total contract value” is greater than \$5,000.00. Refer to Section 6 of this manual for further detail.

4.10 Printing

All printing shall be obtained through MCE or GSD, Print Services Bureau in accordance with DOC Policy 5.2.3 (attached) and 18-7-101, MCA.

4.10.1 Procedures

4.10.1.1 MCE

Contact the MCE Print Shop for details on how to submit your request for printing services and obtain a quote.

4.10.1.2 Print Services

Submit a print Services Request form (see “Forms”) directly to Print Services for processing. Print Services will produce the required printing at one of their print facilities or contract with a private printer. The requestor will have the opportunity to review any bid documents and the subsequent PO. Actual samples of the requested document are extremely valuable in the specification writing process and should be included

whenever possible. For more detailed information regarding this subject, contact the Print Services Bureau and request a copy of their “Getting it Printed” manual.

4.11 Montana Correctional Enterprises

DOC Policy 5.2.3 (Attached) requires that products manufactured by Montana Correctional Enterprises (MCE) must be purchased from MCE unless it is determined, in writing, that purchase from MCE is not feasible due to one of the following reasons: 1) The MCE product can't be delivered by MCE within a reasonable time frame; 2) The MCE product doesn't meet agency needs; or 3) The price offered from MCE is not competitive with that of a comparable product available from another source.

4.11.1 Procedures

Prior to purchasing MCE manufactured items from another vendor, an Outside Vendor Authorization form (see “Forms”) must be completed by the appropriate procurement staff and then submitted to the MCE Administrator.

SECTION 5 – PURCHASING EXCEPTIONS

5.1 Background

Exceptions are supplies and services purchased outside standard procedures due to unique requirements or unusual circumstances. By definition, they are few in number and may require additional justification and documentation.

5.2 Salaries/Fees/Professions/Training/Other

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.

5.3 Sheltered Workshops

Delegated authority and competitive procedures are not required for purchases from Sheltered Workshops. Sheltered workshops are located throughout Montana. These workshops are non-profit businesses incorporated under the laws of the State for the purpose of providing vocational services to disadvantaged individuals. Numerous supplies and services are available to state agencies from these workshops. Available services include bulk mailing, janitorial, and manufacturing includes products like pallets and duffle bags. A list of Sheltered Workshops located in Montana, including the products and services provided by each, can be obtained by contacting the State Procurement Bureau or <http://gsd.mt.gov/content/Docs/MontanaShelteredWorkshops>

5.4 Interagency Agreements

Delegated authority and competitive procedures are not required for purchases through interagency agreements, unless otherwise prohibited by law.

5.5 Exigencies

Under very limited circumstances, staff may need to make an "exigency" purchase. Exigency purchases are typically made outside of the normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition that requires immediate action. It does not include a situation created by poor planning.

Need is fundamental to justifying an exigency procurement. An exigency must not be used to satisfy personal preferences or convenience; for preventing funds from reverting at the end of the fiscal year; or, for any reason that seeks to circumvent regular procurement methods.

The following procedures must be considered when considering an exigency purchase:

- Exigency procurement in excess of \$5,000.00 is limited to those supplies and services necessary to meet the exigency.

- Staff of the procuring facility/program/division shall make an exigency determination. The determination must be in writing and must state the basis for exigency procurement and for the selection of the particular vendor. An exigency may exist if:
 1. Human life is in danger;
 2. A natural disaster or act of God requires immediate action;
 3. An unanticipated circumstance poses a threat to DOC property;
 4. A situation exists where work on a specific project will stop or be adversely affected unless immediate action is taken; or

5.5.1 Procedure

The purchase procedure used shall be selected to assure that the required supplies or services are procured in time to meet the exigency. However, such competition as is practicable shall be obtained. A record of each exigency procurement must be submitted to the DOC BMS Bureau staff within two (2) weeks of the exigency and shall include:

1. The vendor's name;
2. The amount and type of the contract;
3. A list of supplies and services purchased under the contract; and
4. Written documentation justifying the exigency procurement and the basis for the selection of a particular vendor.

5.6 Inmate Clothing

Regardless of cost, each facility/program/division is authorized to purchase suitable clothing for inmates housed in a DOC facility or community-based program. These purchases are exempt from competitive bidding requirements, as noted in the Procurement Delegation Agreement.

SECTION 6 - CONTRACTS

6.1 Introduction

This section of the manual is intended to guide you through the appropriate contracting procedures, help you generally understand the DOC contracting/purchasing process, and allow you to perform those related functions of your job more effectively.

Contracting and purchasing are basically one in the same. The terminology may be transparent. We generally consider “contracting” as a method of obtaining services and “purchasing” as a method of obtaining goods. Likewise, “contracting” can mistakenly be confused as a method used to obtain goods/services without a competitive bid process and “purchasing” as a method commonly linked to a competitive process. Despite the terminology or methods used to get you there, the goal of each one is basically the same - to obtain an agreement between two or more parties that details the duties, responsibilities, and compensation terms for all parties involved.

The only method of contracting with the DOC is by written agreement. Accordingly, the DOC has developed a standard contract shell that is designed to promote efficiency and reduce risk exposure to the DOC. This shell is used primarily to obtain services. However, it may also be utilized to procure goods and/or services. Normally, a PO is sufficient to obtain goods or services. A PO is simply another form of a contract.

Regardless of the method used, the DOC must obtain all goods and services in accordance with our Procurement Delegation Agreement (see attached) and applicable statutes, which are generally found under Title 18, MCA. The DOC has the authority to enter directly into contracts with certain service providers, such as those exempted under 18-4-132, MCA. This can be done regardless of the costs involved. Many of the DOC’s contracted service providers, but certainly not all, fall into one of these categories. Those that don’t, generally require some form of competitive procurement in order to obtain the requested service. The appropriate methods are provided within this manual. Questions should be directed to the DOC BMS Bureau Chief.

6.2 Frequently Asked Contract Questions

1. Can I enter into a service contract without review and approval of an attorney and/or the DOC BMS Bureau?

Yes. However, contracts over \$5,000 should be handled by the by the DOC BMS Bureau. The bureau will create a contract document using the department’s contract shell. A copy of the contract will be forwarded to the requesting liaison for approval. The DOC BMS Bureau will route the contract for signatures, track the location of the contract during the signature process, and post the fully signed contract on the department’s internet site. All contract requests shall be submitted to either the DOC BMS Bureau Chief or the DOC BMS Grants/Contracts Coordinator for processing in accordance with DOC Policy 1.2.9.

2. Who's responsible for writing a contract?

The requesting party is responsible for providing a detailed description of the contract requirements by filling out a Contract Justification form and submitting the form to

the DOC BMS Bureau Chief or the DOC Grants Contracts Coordinator. The DOC BMS Bureau staff will use the DOC standard contract shell, to complete the applicable fields and will submit the completed draft contract to the contract requestor for approval. The BMS Bureau Chief or the DOC BMS Grants/Contracts Coordinator will oversee the contract signature and routing process and ensure all related documents are received and maintained by the DOC BMS Bureau.

3. Is the “standard contract” shell available electronically?

Yes. It's located on the intranet at

http://cor.mine.mt.gov/Divisions/Admin_Financial/Contracts/forms.mcp and is titled "Contract Shell." If you don't have access to this site, contact the DOC BMS Bureau, and an electronic version will be provided.

4. Who approves contract payments?

Approval of contractor payments is made by the contract liaison assigned to the contract or someone at the appropriate facility/program/division. It is the duty of the contract liaison to be responsible for insuring that services were provided, and invoicing submitted, in accordance with the contract terms and conditions. Once approved, invoices should be sent to the DOC Business Management Services - Attn: Accounts Payable.

5. Can services be provided by the contracting party prior to signing a contract?

Yes, but only in an emergent situation. A determination by appropriate personnel that failure to allow the contractor to immediately provide the necessary services will result in harm, liability, or a breach of security to the DOC. However, allowing a contractor to provide services without a written agreement places the DOC into a position of increased liability. In the absence of a signed contract that specifies the terms and conditions, the rights and obligations of each party is not defined. This could lead the DOC into a litigation process whereby both parties rely upon recollection and interpretation of earlier verbal discussions. Unless an emergent situation is present, all contracts shall be processed in advance of the contracted start of service.

6. Is the standard contract terms and conditions negotiable?

Yes and no. Refer to section 6.5 of this chapter. The standard contract shell has been reviewed and approved by the Legal Services Bureau and meets the contractual requirements of the DOC and the State. Contracts that incorporate changes to the standard language may take longer to process due to the additional time necessary for review of the proposed changes.

6.3 Liaison Duties

Contract Liaisons serve as the primary contact person for all communications between the DOC and the contractor. The Contract Liaison will also provide the principal contract management, administration and monitoring functions. The primary functions of the Contract Liaison include:

- serve as primary contact for the contractor;
- oversee day-to-day operations and provision of services by the contractor;

- identify potential contract changes and notify the DOC Contract Management Bureau of observations;
-
- review invoiced services [per contract] and approve for payment, as appropriate;
- contract monitoring to ensure contractor compliance with contract terms;
- evaluation of contractor performance [annually] or more often, as necessary;
- submission of Contract Justification for new contracts or renewal of existing contracts;
- submission of quarterly contract reports; and
- submission of annual contractor performance evaluation reports.

6.4 Contract Justification and Contractor Performance Evolution

A copy of the Contract Justification form and Contractor Performance Evaluation form (for renewing contracts) must be submitted to the DOC BMS Bureau to initiate the contract routing process. The requestor must complete all information requested on the Contract Justification form. Processing may be delayed if information is incomplete. Electronic versions of the contract justification form and contractor performance evaluation should be emailed to corcontracts@mt.gov.

6.5 Contract Shells

Each facility/program/division is responsible for referencing the standard contract language in the department's contract shell to draft language describing the required duties and responsibilities of the contractor and the relative compensation for services. Draft language shall be submitted via Contract Justification form to the DOC Contracts Bureau for processing. (Ref. DOC Policy 1.2.9)

The DOC contract shells can be accessed via the intranet at http://cor.mine.mt.gov/Divisions/Admin_Financial/Contracts/forms.mcpx. For those not able to download these documents, the DOC BMS Bureau can provide them via email, upon request.

With assistance from the Legal Services Bureau, the DOC has standardized a contract shell for "services" and "amendments." Each shell is intended to bring consistency and efficiency to the contracting process, as well as to save drafting time. Standard contract terms and conditions are used; some of which are not to be altered. More detailed instructions are contained herein.

The following instructions provide guidance regarding each shell. The "Contract Shell" should be used for ALL service and training contracts - regardless of dollar amount.

6.6 Standard Contract Shell

1. PARTIES

The opening paragraph specifies the Parties to the contract. Contracts are in the name of the DOC followed by the name of the facility/division. The address and phone number for the DOC shall not be altered. Please note on the Contract Justification form, the contractors name, address, and telephone number.

2. DUTIES/RESPONSIBILITIES OF THE CONTRACTOR

Be specific as to the required duties and/or expectations of the contractor, including appropriate interaction with staff. The scope of work must demonstrate that the contractor is free from control by the DOC; independent of direct supervision; in an independently established trade/occupation; and, providing their own equipment/tools necessary to accomplish the duties. Failure of any portion of these requirements may infer that the contractor is an employee and not an independent contractor. The result could mean benefits, wages, and/or employee liabilities are the responsibility of the DOC. The scope of work should include required performance goals/timelines, type and date of inspections or reports, patient/DOC contacts, location of work-site, etc. List each required duty as a separate statement.

This section establishes the duties and performance expectations of the contractor and is used to determine contract compliance of all parties to the contract.

3. COMPENSATION/BILLING

Compensation rates for Subsection "A" must be specified on the Contract Justification form. The remaining subsections will remain as written. Additional compensation to be covered by the DOC, such as motel expenses, per diem, travel expenses, etc., not specifically included in Subsection "A" must be listed accordingly.

4. AGENCY ASSISTANCE

Can be modified, as necessary.

5. TIME OF PERFORMANCE

The initial term of the contract is normally 1 or 2 years. With few exceptions, contracts can't exceed seven (7) years in duration, including renewals (Ref. 18-4-313 MCA). The contractor may start work prior to signing the contract and the effective date must not occur before receipt of all contract signatures.

6. LIAISON AND NOTICE

Please include the mailing address and phone number for the liaison for the DOC and the contractor.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

Standard language. May be modified as necessary.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Standard language. Do not modify without prior approval from Legal.

Prior approval is required from the Department of Administration in order for an independent contractor to be covered by the Tort Claims Act. Please contact the DOC

Contracts Bureau Chief if considering this action. Written documentation provided to the Contracts Bureau Chief must substantiate the following criteria.

- A. The service proposed under contract must fulfill or further state purposes and be funded and/or supported by the participant.
- B. The proposed service to be provided under contract is unique and difficult to obtain in the absence of state indemnification.
- C. The independent contractor is unable to obtain insurance (for reasons other than poor loss record and/or insurance is cost prohibitive and generally not available for the type of risk exposure proposed under contract).

If State indemnification is approved, Section 8 will read: "It is the intent of the parties that the Contractor shall be provided the immunization, defense, and indemnification provided all public officers and employees for civil liability pursuant to Title 2, Chapter 9, Parts 103, MCA."

9. HOLD HARMLESS AND INDEMNIFICATION

Standard language. Do not modify without prior approval from Legal.

10. INSURANCE

There are three general types of insurance coverage that may be required - General Liability, Automobile Liability, and Professional Liability. General Liability is required on all contracts. Depending on the duties/responsibilities of the Contractor, there may also be a need for Automobile and Professional Liability.

General Liability - When contracting for services that have heightened or limited risk, the coverage limits can be adjusted to appropriate levels. The annual aggregate single limit per occurrence is twice the amount of the combined single limit per occurrence. Low-risk limits are \$300,000/\$600,000; medium-risk is \$500,000/\$1,000,000; and high risk is not less than \$1,000,000/\$2,000,000. However, the ceiling on high-risk contracts is dependent upon the service and the contractor. In some cases, it may be as high as \$50,000,000.

Automobile Liability –Required when the contractor is using a vehicle in performance of the contracted services. In most cases, a limit of \$300,000/\$600,000 is appropriate.

Professional Liability - This will be required whenever a Contractor provides a service that is considered "professional" by trade. These are services that require the Contractor to obtain a professional license from the State of Montana prior to providing services. These professions include, but are not limited to, physicians, dentists, psychologists, psychiatrists, engineers, architects, attorneys, and other licensed professionals.

SECTIONS 11. through Contract Signature.

Standard language. Do not modify.

6.7 Standard Contract Amendment

Submit the requested contract changes to the DOC BMS Bureau via email along with a Contract Justification form, and Annual Evaluation of Contractor Performance form. The

DOC BMS Bureau will then prepare a draft amendment and return for review/comment prior to routing for signatures. The amendment method used by the DOC allows all parties and approving staff to track the proposed changes. The amendment will display the current contract language, and then show the new language using an underline and the language to be removed using a strikethrough.

(Example)

Section 5 is amended to read (new language underlined, old language interlined):

5. TIME OF PERFORMANCE

This contract shall take effect on January 1, 2015 and shall terminate on December 31, ~~2014~~ 2015, unless terminated earlier in accordance with the terms of this contract. This contract may, upon mutual agreement and according to the terms of the existing contract, be renewed for a period not to exceed a total of seven (7) years.

Upon expiration of this contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new contract is signed.

For additional clarification or assistance concerning the contract shells or these instructions, please contact the DOC BMS Bureau Chief or, the DOC BMS Grant Contracts Coordinator.

SECTION 7 - SPECIAL CIRCUMSTANCES

7.1 Overview

Some solicitations, particularly those that involve construction services, may require that language be inserted into the solicitation and resulting purchase order/contract that addresses the payment of prevailing wages, contractor registration requirements, and/or contractor withholding requirements. This information is provided as an informational resource only and not as a detailed list of procedures. All facilities/programs/divisions are encouraged to coordinate these types of contracts with the DOC BMS Bureau Chief or the DOC BMS Grants Contracts Coordinator and/or Legal Unit prior to obtaining services of this nature. For additional information on Prevailing Wages, refer to Section 7.2.

7.2 Notice of Prevailing Wages

Under current law (Mont. Code Ann. § 18-2-403), all “public works contracts” over \$25,000 for “construction” and “non-construction” services must require the payment of prevailing wages. The provision requiring the payment of the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, must be included in the bid document and the resulting contract (Ref. Mont. Code Ann. § 18-2-422.) The terms “construction” and “non-construction” are defined in section 18-2-401, MCA.

“Non-construction services” means work performed by an individual, not including management, office, or clerical work, for:

1. The maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;
2. Custodial or security services for publicly owned buildings and facilities;
3. Grounds maintenance for publicly owned property;
4. The operation of public drinking water supply, waste collection, and waste disposal systems;
5. Law enforcement, including janitors and prison guards;
6. Fire protection;
7. Public or school transportation driving;
8. Nursing, nurse's aide services, and medical laboratory technician services;
9. Material and mail handling;
10. Food service and cooking;
11. Motor vehicle and construction equipment repair and servicing; and
12. Appliance and office machine repair and servicing.

For assistance concerning prevailing wage language, contact the DOC Contract Management Bureau, State Procurement Bureau or the Department of Labor and Industry, Labor Standards Bureau..

7.3 Contractor Registration Requirements

Construction contracts in excess of \$2,500.00 require contractors to be registered with the Montana Department of Labor and Industry pursuant to section 39-9-201, MCA. The DOC BMS Bureau will confirm this registration prior to contract award. .

7.4 Contractor Withholding Requirements

When using the services of a public contractor, the DOC is required to withhold 1% of all payments for any "public construction work" over \$5,000 (Mont. Code Ann. § 15-50-206).

7.4.1 Procedures

The DOC BMS Bureau is responsible for notifying the Department of Revenue (DOR) that the 1% withholding requirement will apply to the project and also completes the "Contract Award Report."

SECTION 8 – PURCHASING CARD PROGRAM

8.1 Background

The Purchasing Card Program is a method of managing low-dollar purchases that offers numerous and significant benefits to the DOC. The purchasing card is a credit card (Visa) issued to DOC employees. The purchasing card can be used to purchase supplies from any vendor that accepts Visa, depending upon the spending limit of the cardholder. The purchasing card must not be used for personal purchases.

The advantage of using a credit card is that the vendor receives their money within 48 hours and the DOC doesn't have to handle invoices multiple times, which results in the issuance of multiple warrants and subsequent mailing costs of warrants to the vendors. Instead, the DOC creates one inter-agency journal payment to the Department of Administration for the entire amount charged by all DOC cardholders each month. A list of program requirements and details is provided in the purchasing card manual.

8.2 Transaction Procedures

To purchase supplies or services with the purchasing card, inform the merchant that you will be paying by credit card, and then proceed with the transaction as follows:

- If you are making the purchase in person, present the purchasing card to the merchant and proceed as directed. If it is a telephone transaction, provide the merchant with your purchasing card account number and the expiration date.
- Retain all , invoices, and purchasing card transaction receipts.
- Follow the procedures for filling out a monthly procard log or printing out a monthly statement and attain supervisor approval for your charges.

Internet purchases should be made on secure websites whenever possible. Pay close attention to your web browser security settings and security warnings. With telephone and mail order transactions, inform the merchant to:

- Avoid writing the credit card number on the shipping slip.
- Note on the packing slip that the merchandise was paid for by credit card.
- Include the credit card slip inside the package.

8.3 Transaction Log

Purchasing card holders must record each card transaction on a purchasing card transaction log or printed monthly statement and submit the log to the DOC Business Management Services Accounting Bureau, along with associated receipts and invoices. All log sheets and/or statements shall be submitted monthly by the date designated by an accounting technician. Cardholders who have three or more instances of failing to provide receipts will have their purchasing card suspended or cancelled.

SECTION 9 - PROPERTY MANAGEMENT

9.1 Overview

Property management is a function of the DOC Accounting Bureau, but requires assistance and coordination from personnel in the field.

9.2 Electronic or Sensitive Equipment (i.e., Computers, Printers, TV's, Digital Cameras, etc.)

Electronic equipment and items determined to be of a sensitive nature shall be tagged. A copy of the Property Identification Tagging Form (PUR-6) will be sent to the facility/program/division, upon request, with a property tag and instructions on where to affix the tag. After tagging the item, list the applicable information on your Property Hand Receipt.

9.3 Minor Equipment

Under \$5,000.00 and not categorized as electronic or sensitive (i.e., office furnishings, weapons, body armor, etc.)

Does not need to be tagged, but needs to be logged on the Property Hand Receipt, along with all other equipment.

9.4 Major Equipment/Asset (\$5,000.00 and over)

All equipment/property with an acquisition cost over \$5,000.00 must be assigned an asset tag number.

Step 1

Send a copy of the invoice to the designated the DOC Accounting Bureau Chief.

Step 2

A copy of the tracking number assigned to the asset will be sent to your office, along with a completed Property Identification Tagging form (PUR-6, see "Forms"). You will receive instructions on where to affix the tag to the property.

Step 3

The designated asset manager will add the asset to the SABHRS Asset module.

Step 4

Add this asset to your property hand receipt form.

9.5 Property Hand Receipt

Each facility/program/division shall maintain a current list of property through use of a Property Hand Receipt process (see "Forms"). Property shall be logged on this form and updated by designated staff, as necessary. Contact the designated asset manager for assistance with this process.

SECTION 10 - REFERENCED ATTACHMENTS

- A. Ethics – Questions and Answers
- B. Delegation Agreement
- C. Questions and Answers regarding Prevailing Wage requirements
- D. DOC Purchasing Card Manual
- E. Purchasing Card Transaction Log

<http://www.cor.mt.gov/content/Resources/Policy/Forms/ProcardManual.pdf>

SECTION 11 - REFERENCED FORMS

- A. DOC Limited Solicitation
- B. DOC Purchasing Request
- C. DOC Purchase Order
- D. Cellular Telephone Request & Authorization 1.3.51
- E. Outside Vendor Authorization
- F. Hand Property Receipt
- G. Contract Justification Form

http://cor.mine.mt.gov/Divisions/Admin_Financial/Contracts/default.mcp

SECTION 12 - REFERENCED POLICIES

- A. DOC Policy 1.7.2, IT Hardware, Software and Contracted Service Standards
- B. DOC Policy 1.3.51, Cellular Telephone Usage
- C. DOC Policy 1.2.9, Contracts
- D. DOC Policy 5.2.3, Department MCE Product Sales
- E. DOC Policy 1.2.8, Procurement

http://cor.mine.mt.gov/Divisions/Admin_Financial/Contracts/default.mcp