2011 – 2013

STATE OF MONTANA

DEPARTMENT OF ADMINISTRATION

**Level Two**

**PROCUREMENT DELEGATION AGREEMENT**

**Montana State University**

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**1.0 PARTIES**

This Agreement is made and entered into between the General Services Division, Department of Administration (DIVISION), and the Montana State University (AGENCY). Laura Humberger, Assistant Vice President, shall represent the AGENCY in working with this Agreement. Brad Sanders, Bureau Chief, State Procurement Bureau (SPB), General Services Division, shall represent the DIVISION.

**2.0 TERM**

Montana State University is granted Level Two delegation purchasing authority effective October 1, 2011 through September 30, 2013, unless terminated earlier under the terms stated in Section 19.0 of this Agreement. This delegation of purchasing authority is contingent upon the AGENCY's agreement to perform purchasing activities in accordance with this Agreement and the provisions of Title 18, Montana Code Annotated (MCA); its accompanying administrative rules in Administrative Rules of Montana (ARM) Title 2, chapter 5,; the current edition of the Montana Operations Manual, Chapter 1-0700; and Title 2, chapter 17, part 5, MCA and its accompanying administrative rules and policies.

**3.0 OVERVIEW**

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

**4.0 PURPOSE**

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

**5.0 DELEGATION AUTHORITY**

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

**5.1 Further Delegation.** The AGENCY granted delegation authority under this Agreement is authorized to further delegate this procurement authority within their agency as it deems appropriate provided: (1) at least one employee from the program granted procurement authority has completed the "Basic Purchasing Methods and Issues" or attended the "Advanced Purchasing Methods and Issues" training courses offered by the DIVISION or a DIVISION-approved agency procurement training program; (2) these agency employees are capable of exercising authority in accordance with Title 18, chapter 4, MCA, and ARM Title 2, chapter 5, and the policies established by the State Procurement Bureau in Montana Operations Manual, Volume 1, Chapter 1-0700; and (3) all procurements are conducted in accordance with this delegation of procurement authority.

**6.0 PURCHASES EXEMPT FROM DELEGATION AUTHORITY AND COMPETITIVE PROCEDURES**

Delegation authority and competitive procedures are not necessary for the following:

**6.1** In accordance with ARM 2.5.301, delegation 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 Services Commission or other governmental authority; pastoral services; training, training and conference rental space and catering; fresh fruits and vegetables; foods produced in Montana per 18-4-132, MCA, educational instructors; advertising placed in publications or on radio, television, or other electronic means; guidance counselors for inmates under the supervision of the Department of Corrections; and books and periodicals.

**6.2 Sheltered Workshops.** Purchases of supplies or services from Sheltered Workshops as listed on the following website: <http://gsd.mt.gov/ProcurementServices/shelteredworkshops.mcpx>.

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

 **6.4 Surplus Property Program.** Purchases made from the State's Surplus Property Program.

**7.0 PROCUREMENT METHODS**

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

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

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

 **7.3 Formal Competition (Invitation for Bids or Request for Proposals) –**

**Purchases above $25,001.** An AGENCY with Level Two delegated procurement authority may use either an invitation for bids or request for proposals process to purchase supplies and/or services with a "total contract value" between $25,001 and $500,000. A Level Two AGENCY will forward any purchase with a "total contract value" over $500,000 to the State Procurement Bureau for processing.

 **7.4 Sole Source/Sole Brand.** An AGENCY with Level Two delegated procurement authority may make a determination that a purchase is a sole source/sole brand for purchases with a "total contract value" of "$500,000 or less. For purchases over an AGENCY's level of delegated procurement authority, the sole source/sole brand determination shall be made by the DIVISION unless specifically authorized in Section 20.0 of the written delegation Agreement. In cases of reasonable doubt, competition should be solicited.

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

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

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

**8.0 DELEGATION LEVEL**

The DIVISION delegates its procurement authority to individual state agencies on two levels. This applies to the expenditure of public funds irrespective of their source and includes those procurements referenced in Section 3.0 Overview.

 **8.1 Level Two Delegation Authority.** An AGENCY with Level Two Delegation Authority is authorized to purchase all non-controlled supplies or services (see Section 10.0 below) with a "total contract value" up to $500,000.

**a. Written Procedures.** An AGENCY with Level Two Delegation Authority shall have an updated contracting manual approved by the DIVISION during the term of this Agreement or follow the DIVISION's contracting manual, Montana Operations Manual, Chapter 1-0700.

**b. Procurement Delegation Liaison.** The AGENCY and Agreement liaison listed in Section 1.0, or their replacement must (a) have at least three years of public procurement experience; (b) attend any required meetings of the DIVISION; and (c) provide the supervision and management of the AGENCY’S procurement needs as their predominant job duty.

**c. Staff Training Requirements.** The person listed in Section 1.0 as the AGENCY and agreement liaison, or their replacement, and all other AGENCY procurement staff must have attended the "Advanced Purchasing" course offered by the DIVISION through the Professional Development Center of the State Human Resources Division of the Department of Administrationand any other training course required by the DIVISION at a later date.

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

8.2 Purchases above Level of Delegated Authority. An AGENCY requiring the purchase of a supply and/or service above their level of delegated authority must forward a requisition to the State Procurement Bureau and a State Procurement Bureau Contracts Officer will conduct the procurement. The deadline for fiscal year end procurements is April 1st for RFP solicitations and May 1st for IFB solicitations. The AGENCY may seek one-time delegations of authority from the DIVISION for certain purchases as it deems appropriate

**8.3** All contracts established as a result of an invitation for bid or request for proposal through the SPB must have the signature of a SPB Contracts Officer prior to execution, as well as AGENCY legal counsel, unless AGENCY counsel reviews and determines their signature is not required. Any contract amendment issued against a contract established through the SPB must also have a signature or initial of a SPB Contracts Officer prior to execution by either the AGENCY or contractor. A signature block must state “Approved as to Form” with space for the signature of the SPB Contracts Officer. In addition, all contracts must have the signature of AGENCY legal counsel if not using an approved contract template.

8.4 Referral to Division. An AGENCY choosing not to exercise it's approved delegated procurement authority may submit its requisition to the DIVISION for action.

**9.0 GENERAL REQUIREMENTS**

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

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

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

Level II agencies must post all solicitation information (solicitation, procurement meetings, contract award) using the OneStop Administration webpage. Access is provided through DIVISION.

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

 **9.4 Purchasing Vendors List.** The DIVISION maintains a purchasing vendors list for supplies and services typically purchased by state agencies. The purchasing vendors list is available on the DIVISION's website at the following website address: <http://svc.mt.gov/gsd/vendorlistaccess/login.aspx?ReturnUrl=%2fgsd%2fvendorlistaccess%2fvendorlistdefault.aspx>. Agencies agree to use the purchasing vendors list for all formal solicitations. Level II agencies are required to utilize the electronic notification feature tied to the DIVISION’s vendor self-registration website for notification of all formal solicitations issued under this Agreement.

**10.0 CONTROLLED ITEMS – PURCHASES NOT INCLUDED IN DELEGATION AUTHORITY**

Unless specifically addressed elsewhere in this delegation Agreement, AGENCY must buy "controlled items" through the DIVISION. "Controlled items" are as follows:

 **10.1 Requisition Time Schedule (RTS).** Items currently on the RTS are (1) new vehicles as purchased by the State Procurement Bureau and, (2) plastic can liners as purchased by the Central Stores program. The specific due dates when agencies are required to issue requisitions for these items are located on the DIVISION's website at: <http://gsd.mt.gov/ProcurementServices/requisitiontimeschedule.mcpx>.

 **10.2 "Exclusive" Statewide Term Contracts.** Statewide term contracts are established by the DIVISION for the convenience of agencies to be utilized on an "as needed, if needed" basis. AGENCY has the optional use of all "exclusive" statewide term contracts. The DIVISION also establishes "non-exclusive" statewide term contracts. AGENCY is not required to purchase from these contracts, but if it does not, it agrees to follow procurement methods specified in Section 7.0 above to purchase that supply or service.

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

 **10.4 Printing.** AGENCY has the option of using the services of the Print and Mail Services Bureau within the Department of Administration. All contracted printing must be obtained following the provisions of Title 18, MCA, and its accompanying rules of the DIVISION.

 **10.5 New or Used Vehicles.** AGENCY must purchase or lease all new vehicles through the State Procurement Bureau following the deadlines established in the RTS. AGENCY must purchase used vehicles in the following manner:

**a. Contact Surplus Property Program.** AGENCY will contact the State Surplus Property program at (406) 495-6016 to seek information on the availability of used vehicles. If a suitable used vehicle is not available, the State Surplus Property program will give the AGENCY written permission to proceed with the purchase of a used vehicle according to this delegation Agreement from the private sector.

**b. Purchase Price.** AGENCY will submit a requisition to the State Procurement Bureau if it is anticipated that the total purchase price of a used vehicle(s) may exceed AGENCY's delegated procurement authority. If not, AGENCY may solicit competition for the used vehicle following the approved procurement methods referenced in Section 7.0 above.

**10.6** AGENCY has the option of using the services of the State Surplus Property Program on an all-or-none basis. This will apply to the affiliate campuses, subject to AGENCY approval, as well. If the AGENCY or its affiliate campuses choose not to handle their own surplus then the Surplus Property Program will continue to pick up useable, resalable property. However, AGENCY and its affiliate campuses retain the option of purchasing or disposing of used vehicles and heavy equipment through the State Surplus Program, subject to Section 10.5. AGENCY is aware of the requirements of Title 18, Chapter 6, MCA, concerning the sale of surplus property and the distribution of the sale proceeds back to the general fund or the appropriate enterprise or internal service fund or designated subfund

**PRIOR APPROVAL REQUIRED**

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

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

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

**11.3 Filing Systems and Microfilm Equipment.** Filing systems and microfilm equipment must be approved by the Records Management Bureau, Secretary of State's Office. (Section 2-6-203, MCA.)

**11.4 Surplus Property Trade-Ins.** Surplus property trade-ins must be approved by the Property and Supply Bureau of the DIVISION. (Section 18-4-226, MCA)

**12.0 RECORDS**

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

**13.0 TRAINING AND TECHNICAL ASSISTANCE**

The DIVISION will provide training and technical assistance to agencies upon request in addition to the procurement courses offered by the DIVISION through the Professional Development Center of the State Human Resources Division of the Department of Administration. The DIVISION will furnish interpretation of applicable statutes, administrative rules, policy, or this delegation of procurement authority and make on-site visits to assist agencies in complying with this Agreement. In turn, the AGENCY Purchasing Department will provide training to the AGENCY department and affiliated campus’ personnel responsible for procuring supplies and services for their department or campus. The AGENCY Purchasing Department will be available to provide technical assistance, including interpretations of applicable statutes, rules or terms of this Agreement and make on-site visits across campus and the affiliated campuses Agreement.

**14.0 REPORTING REQUIREMENTS**

 **14.1 Summary of Purchases Exceeding Delegated Authority.** AGENCY must provide the DIVISION liaison listed above in Section 1.0 with a summary of purchases that exceed AGENCY's level of delegated authority or AGENCY's specific delegated authority as listed in Section 20.0 below within 30 days of the purchase. This summary must include an explanation of the circumstances surrounding the purchase.

**15.0 DISPUTES**

 **15.1 Written Complaints, Disputes or Protests.** AGENCY shall maintain, as part of a permanent file, all written complaints, disputes or protests concerning solicitations, awards, or the administration of a contract under their delegated authority, along with AGENCY's responses. AGENCY shall investigate and respond in writing to all such disputes and protests in compliance with sections 18-1-402 and 18-4-242, MCA, and ARM 2.5.406. AGENCY shall report all formal protests to the DIVISION liaison listed above in Section 1.0.

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

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

1. **Documentation Required.** AGENCY agrees to document complaints and performance issues against a contractor and notify the DIVISION's liaison as listed in Section 1.0 of the complaints as soon as possible.

**16.0 COOPERATIVE PURCHASING**

The DIVISION is authorized to make any decisions to participate in cooperative purchasing agreements per section 18-4-402, MCA. Cooperative purchasing may include purchasing through, joint or multiparty contracts between public procurement units, open-ended state public procurement unit contracts that are made available to local public procurement units, and competitive contracts established by for-profit, not-for-profit, or nonprofit cooperative entities.

AGENCY must contact the DIVISION prior to issuing any solicitation or establishing any new cooperative purchasing agreement, aside from inter-governmental agreement for research purposes. The DIVISION will approve any language concerning cooperative purchasing in any solicitation document.

**17.0 MODIFICATION**

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

**18.0 FAILURE OF ENFORCEMENT NOT A WAIVER**

Failure by the DIVISION to enforce any of the provisions of this Agreement at any time shall not be construed to be a waiver of such provision nor affect the validity of any part of this Agreement or the right of the DIVISION to thereafter enforce such provision.

**19.0 TERMINATION**

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

**20.0 AGENCY SPECIFIC DELEGATED AUTHORITY**

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

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

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

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

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

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

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

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

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

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

**20.6 Information Technology Purchases.** The AGENCY is authorized to purchase all information technology, including hardware, software, and systems, regardless of delegation amount, following the requirements of Title 18, MCA and Title 2, chapter 5, ARM.

**20.7 Further Delegation to Campuses and Departments.** All AGENCY departments, MSU College of Technology of Great Falls, and Montana State University-Northern are delegated the authority to make required purchases of up to $25,000 following the requirements of this Agreement. For purchases between $25,001 and $500,000, all purchases will be made by the AGENCY Purchasing Office, unless specifically authorized by the person listed in Section 1.0 or as further delegated below in this Section 20.7. At the discretion of the AGENCY Purchasing Director, such delegation may be revoked for failure to adhere to state purchasing regulations.

The following campus and departments are delegated the authority to make required purchases of up to $150,000 following the requirements of this Agreement:

* Montana State University-Billings, represented by Barb Shafer or her replacement
* Montana State University-Bozeman Facilities Services Department, represented by Brian O’Connor or his replacement
* Montana State University-Bozeman Auxiliary Services Department, represented by Mary Lou Wilson or her replacement
* Montana State University-Bozeman Information Technology Center, represented by Brad Garnick or their replacement

At the discretion of the AGENCY Purchasing Director, such delegation may be revoked for failure to adhere to state purchasing regulations.

For purchases between $50,001 and $500,000, all purchases will be made by the AGENCY Purchasing Office. For purchases over $500,000, AGENCY will submit a requisition to the DIVISION, unless purchasing authority is delegated herein. AGENCY may seek one-time delegation from the DIVISION as deemed appropriate.

**21.0 SIGNATURES**

Approved for the AGENCY by:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Laura Humberger, Assistant Vice President Date

Montana State University

Approved for the DIVISION by:

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Brad Sanders, Bureau Chief Date

State Procurement Bureau

Reviewed for Legal Content by:

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Mike Manion, Chief Legal Counsel Date

Department of Administration