

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
2.5.201, 2.5.301, 2.5.302, 2.5.303, ) PROPOSED AMENDMENT  
2.5.404, 2.5.406, 2.5.408, 2.5.502, )  
2.5.601, 2.5.602, 2.5.604, 2.5.610, and )  
2.5.701 pertaining to state procurement )  
of supplies and services )

TO: All Concerned Persons

1. On Friday, February 21, 2014, at 9:00 a.m., the Department of Administration will hold a public hearing in Room 53 of the Mitchell Building, 125 North Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Jodi Gollehon, Department of Administration, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-7210; fax (406) 444-2529; or e-mail [jgollehon@mt.gov](mailto:jgollehon@mt.gov).

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.5.201 DEFINITIONS ~~In these rules this chapter,~~ words and terms shall have the same meaning as defined in Title 18, chapter 4, MCA, and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular rule, the following definitions apply:

(1) through (6) remain the same.

(7) "Central Stores Program" means the program within the State Procurement Bureau ~~proprietary program operated by the division's Property and Supply Bureau which that~~ develops standard specifications, and ~~procures,~~ warehouses, and delivers certain supplies for state agencies.

(8) "Controlled items" means those supplies and services ~~identified by the division as commonly used items which, when consolidated for purchasing purposes, result in volume adequate to obtain discounted prices.~~ an agency must purchase through the division, unless exempted via an agency delegation agreement. These include items from the "requisition time schedule," supplies and services available through exclusive term contracts, printing, and new vehicles.

(9) through (17) remain the same.

(18) "Hardware maintenance" means repairs, upgrades, or installation of hardware required for the hardware to continue to operate as originally specified in the contract or purchase order ~~necessary or to perform enhanced functions.~~

(19) and (20) remain the same.

(21) "Noncontrolled items" means all supplies and services that do not fall under the definition of "controlled items."

(21) through (23) remain the same, but are renumbered (22) through (24).

~~(24) "Property and Supply Bureau" means the bureau of the division which is responsible for the Central Stores Program and for operating the state and federal surplus programs for eligible donees.~~

(25) through (33) remain the same.

(34) "Software" means the collection of computer programs and related data that provide the instructions telling a computer what to do. Program software performs the function of the program it implements, either by directly providing instructions to the computer hardware or by serving as input to another piece of software.

~~(34)(35) "Software maintenance" means patches, enhancements, fixes, support, or upgrades that will allowing the software to continue to function as originally specified in the statement of work, or to perform enhanced functions within the original scope of the system.~~

(35) and (36) remain the same, but are renumbered (36) and (37).

~~(37)(38) "State Procurement Bureau" means the bureau of the division's bureau responsible for procuring or supervising the procurement of all supplies and services needed by the state, excluding those services procured by the Property and Supply Bureau and Print and Mail Services Bureau.~~

(39) "Surplus Property Program" means the program within the State Procurement Bureau that is responsible for managing the state and federal surplus property.

(38) and (39) remain the same, but are renumbered (40) and (41).

(42) "Term contract" means a contract in which supplies or services may be purchased through a list of prequalified vendors or at a predetermined unit price or discount for a specific period of time.

(40) and (41) remain the same, but are renumbered (43) and (44).

(45) "Upgrade" means a replacement of hardware, software, or firmware with a newer version in order to bring the system up to date or to improve its characteristics.

(42) and (43) remain the same, but are renumbered (46) and (47).

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: During a 2011 Legislative Audit, the auditors recommended to the General Services Division (division) the closing of the central stores warehouse and replacing it with a direct delivery office supply system. Following that recommendation, the division proposed to reduce the office supply administrative fee from 20 percent to 2 percent within House Bill 2, which was passed in the 2013 legislative session. This rate change effectively closed the central stores warehouse and created the Central Stores Program. Additionally, the Property and Supply Bureau, which included the central stores warehouse, has transitioned into the smaller, restructured Surplus Property

Program. Consequently, both the Central Stores Program and the Surplus Property Program were transferred to the State Procurement Bureau. The proposed deletion of (24), the proposed changes to (7), and the proposed addition of the new (39) reflect the effects of these transitions.

The changes to (18) and (35) and the addition of (34) and (45) are being proposed by the division to ensure that all computer maintenance agreements procured pursuant to ARM 2.5.604(6)(d) fall within the scope of the original contract. The division has faced situations where the previous definition of maintenance did not adequately describe what can or cannot be included in a maintenance agreement. The proposed changes will resolve that confusion. Specifically, the definitions of "software" and "upgrade" are industry-standard definitions. The division saw no need to deviate from these standard definitions. For the definition of "software maintenance," the proposed use of the word "patches" reflects how the industry refers to enhancements and fixes of software.

The division proposes to add the definitions of "noncontrolled items" and "term contract" under new (21) and (42), respectively. The division believes these definitions are necessary because both terms are found within ARM, but their definitions are not self-evident. Specifically, "noncontrolled items" is referenced in ARM 2.5.301(1) and "term contract" is referenced in ARM 2.5.603(4). The term "term contract" is well-established within the state and is an industry-standard term commonly used to describe indefinite government contracts. The proposed changes to (8) simplify the definition and update it to reflect the division's current list of items that state agencies must purchase through the division.

All other proposed changes are grammatical.

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) remains the same.

(2) Delegation and competitive procedures are not necessary for goods and services listed in 18-4-132(3), MCA. Additional exempted ~~the following purchases include:~~

(a) remains the same.

(b) fees for those professions exempted by statute 18-4-132, MCA;

(c) through (i) remain the same.

(j) ~~training and~~ conference space rental and catering;

(k) remains the same.

~~(l) food products produced in Montana, subject to the provisions of 18-4-132, MCA;~~

~~(m)(l) fees for placing an advertisement advertising placed in a publications or on radio, television, or other electronic means. media sources; fees for the development, design, and distribution of the advertisement advertising~~ are not included in this exception;

(n) and (o) remain the same, but are renumbered (m) and (n).

AUTH: 18-4-221, MCA

IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

STATEMENT OF REASONABLE NECESSITY: Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. The "training" language in (2)(j) is being removed as it is already specified as an exemption under (2)(i). The language in (2)(l) being removed is already specified by statute.

The changes to (2)(m) are being proposed by the division to ensure that agencies understand which advertising costs are exempt from competitive solicitations and which are not. While fees for placing an advertisement are exempt, the costs associated with the development of the advertisement are not exempt under this proposed rule. The proposed changes clarify this distinction.

All other proposed changes are grammatical.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION (1) All agencies ~~must~~ shall complete the division's requisition form when a state purchase order or contract is required from the division. The requisition must be signed or electronically approved by an authorized agency official, ~~and it. Only items of a like nature (items ordinarily procurable from the same single vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for:~~

~~(a) coarse paper, computer paper, computer software supported by Information Technology Services Division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the Property and Supply Bureau;~~

~~(b)(2) Requisitions for printing shall~~ must be forwarded to the Print and Mail Services Bureau; ~~and.~~

~~(c)(3) Requisitions for all supplies and services not listed above shall~~ falling outside an agency's delegated authority must be forwarded to the State Procurement Bureau.

(2) and (3) remain the same, but are renumbered (4) and (5).

~~(4)(6)~~ The division may cancel a requisition if deemed appropriate for reasons such as, but not limited to, the following. The requisition:

(a) and (b) remain the same.

(c) has no evidence of approvals required in ~~(2)(4)~~; or

(d) remains the same.

(5) remains the same, but is renumbered (7).

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: Requisitions are no longer required to be combined on one form. This was a requirement from a prior computer system that was recently upgraded. The new system is not dependent upon the separation of billing and shipping addresses for each purchase order. The proposed changes to (1) represent that change in internal procedure.

As detailed in the reasonable necessity statement explaining the proposed changes to ARM 2.5.201, the Property and Supply Bureau has transitioned into the smaller, restructured Surplus Property Program. The proposed deletion of (1)(a)

reflects that transition.

All other proposed changes are grammatical.

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's Surplus Property Program ~~Property and Supply Bureau~~, agencies are responsible for receiving supplies and services procured on their behalf by the ~~department~~ division. "Receiving" means inspecting the supply or service and checking it against the contract to ensure that it is acceptable, complete, and in compliance with the terms of the contract.

(2) and (3) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: As detailed in the reasonable necessity statement explaining the proposed changes to ARM 2.5.201, the Property and Supply Bureau has transitioned into the smaller, restructured Surplus Property Program. The proposed changes reflect that transition.

2.5.404 BID AND PROPOSAL PREPARATION (1) Any exceptions to the specifications on the part of the bidder or offeror must be clearly indicated identified and communicated to the procurement officer consistent with the instructions listed within the solicitation. Exceptions may be rejected.

(2) remains the same.

(3) The price for each item must be stated and ~~shall be clearly shown~~ clearly listed in the ~~space provided on the form included as part of the bid~~. Only one unit price ~~shall~~ may be shown for each item unless ~~a specific provision is made in the form~~ for an optional figure is provided. The price of each item ~~shall~~ must be extended to show the total price for the quantity requested. In case of error in extension, the unit price ~~shall~~ prevails.

(4) Alternate bids may be accepted if the bidder ~~submitting an alternate~~ is the lowest responsive bidder on its primary bid and the bids are clearly marked "primary" or "alternate."

(5) Item-by-item unit price bids must be submitted and will receive primary consideration for award. All-or-none bids may be submitted as alternatives and will be considered if ~~clearly~~ in the best interest of the state.

(6) Unless stated otherwise in the solicitation, payment will be due 30 calendar days from:

(a) and (b) remain the same.

(7) Vendors may quote a cash discount based on early payment; ~~however,~~ Such discounts will may not be considered; however, in determination of low bid or contract award, ~~and~~ payment terms will remain as stated in (6); unless the bid or proposal ~~specified~~ provided otherwise.

(8) Vendors ~~must offer a firm price~~ shall guarantee their bid price for 30 calendar days after a bid opening; ~~or~~ 120 calendar days after a proposal opening, pending award; ~~unless otherwise provided for in the solicitation invitation for bids or request for proposals.~~

(9) Unless otherwise specified in the solicitation invitation for bids or request for proposals, all bids and proposals shall must show the delivered price FOB destination to the agency, including all transportation and handling charges.

AUTH: 18-4-221, MCA

IMP: 18-4-221, 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: The changes proposed in (1) are necessary to clarify to vendors when and to whom they must notify of any exceptions to the solicitation they are disputing. The division has experienced situations in which vendors have taken exception to a solicitation only after the solicitation has closed and evaluations are in progress. This has resulted in numerous setbacks within the procurement process, causing contracts to be postponed and/or solicitations to be reissued to the detriment of the contracting agency.

All other proposed changes are grammatical or provide clearer or simpler language.

2.5.406 ~~VENDOR BIDDER, OFFEROR, OR CONTRACTOR PROTEST~~

~~(1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA. The All protests must be in writing and state in detail all of the protestor's objections and allegations of violations of the Montana Procurement Act. The complete protest must be submitted to the General Services Division, P.O. Box 200135, Helena, MT 59620-0135, and to the agency that issued the solicitation, if different, no later than the close of business 14 calendar days after the execution of the contract in question.~~

~~(2) The department may exercise its discretion when it decides in deciding what is in the best interest of the state.~~

~~(2) 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 action, question, or dispute has arisen. If the protest is not resolved by mutual agreement, the department shall 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 department with regard to the contract; and~~

~~(b) inform the aggrieved party of the party's right to pursue judicial review under Title 18, chapter 1, part 4, MCA.~~

~~(3) remains the same.~~

AUTH: 18-4-221, 18-4-242, MCA

IMP: 18-1-402, 18-4-242, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of "Bidder, Offeror, or Contractor" to the rule catchphrase is necessary because the rule applies to more than just vendors; the rule also applies to bidders, offerors, and contractors. The division also proposes to strike the repetitive language from the rule. Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. The language that is being proposed for removal is already specified by statute.

The proposed additional language in (1) provides clarification to protestors that they must submit their protest to both the division and the issuing agency, if different. If the division does not handle the protest, the division believes that the issuing agency should receive its own copy of the protest to allow for greater efficiency and quicker processing.

All other proposed changes provide clearer language.

2.5.408 RECIPROCAL PREFERENCE (1) through (5) remain the same.  
(6) Reciprocal preferences do not apply to term contracts.

AUTH: 18-1-114, 18-4-221, MCA  
IMP: 18-1-102, 18-7-107, MCA

STATEMENT OF REASONABLE NECESSITY: Federal statute prohibits the use of reciprocal preferences when federal funding is involved. Term contracts are contracts entered into on behalf of all state agencies, the majority of which receive federal funds. It is impractical to apply reciprocal preferences to a solicitation in which agencies that receive federal funding may or may not use the term contract at some point during the contract term. The proposed addition of (6) will prevent the division from having to separate term contracts that will be utilizing federal funds from those that could potentially be utilizing federal funds, a virtually impossible undertaking.

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) through (7) remain the same.

~~(8) The division shall timely return to the contractor a~~All contract performance security, except bonds, must be returned to the contractor following notification to the division that:

(a) upon completion of the contract was satisfactorily completed; and

(b) if a warranty period is specified in the contract and no claims are pending under the warranty, then upon expiration of the warranty period; and

~~(b)(c)~~ if the agency waives all rights and claims to the performance security as described in ARM 2.5.305.

(9) If the contract was established by the division, agencies requiring contract security shall provide written notification to the division within 30 calendar days from the expiration of the contract stating that:

(a) the contract has been successfully performed;

(b) if a warranty period is specified in the contract, that no claims are pending under the warranty; and

(c) the agency waives all rights and claims to the contract security.

(10) If the contract was established within an agency's delegated authority,

the notification must be provided to the agency's contracting office.

AUTH: 18-4-221, 18-4-312, MCA

IMP: 18-1-201, 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of (8)(b) is intended to provide a comprehensive list of those situations in which security would expire outside of the contract end date. The division believes this is important because state agencies are in need of clarification as to what their duties are when closing out contract security. The proposed addition of (9) is intended to provide agencies with a deadline for providing notification of contract security expiration. The proposed deadline will allow the division to promptly return all negotiable contract securities (cashier's checks, CDs, etc.) at the conclusion of the contract. It is critical that the division return those negotiable securities in which it no longer has a financial interest.

All other proposed changes are grammatical.

2.5.601 COMPETITIVE SEALED BIDS (1) through (11) remain the same.

(12) In the case if of a tie bid, the discretion of the division or the head of a purchasing agency will be used to resolve such bids, except that a bidder offering American-made products or supplies must be given preference.

(13) through (15) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed change to this rule is necessary to make a grammatical correction.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) and (2) remain the same.

(3) The request for proposals must be prepared in accordance with ARM 2.5.601 and must ~~also~~ include:

(a) a statement ~~that~~ allowing for optional discussions ~~may be conducted~~ with one or more offerors who submit proposals, ~~but that proposals may be accepted and a contract issued without such discussions;~~ and

(b) and (4) remain the same.

(5) Facsimile transmission of a proposal is only acceptable on an exception basis with prior approval ~~of~~ from the procurement officer.

(6) remains the same.

(7) After the time established for receipt of proposals, a procurement officer shall open ~~the proposals~~ and inspect the proposals for material not available for public inspection pursuant to 18-4-304 and 18-4-308, MCA. The procurement officer ~~will~~ shall remove this material and ~~then make release~~ the remainder of the proposal available for public inspection. Offerors submitting a proposal containing a claim ~~to shield of confidentiality information~~ pursuant to 18-4-304, MCA, ~~must~~ shall include a statement that attests to the offeror's acceptance of the legal and financial

responsibility for defending the claim. ~~In addition, any~~ A claim to shield trade secret material must be made by an offeror's legal counsel using the affidavit form prescribed by the division.

(8) For the purpose of conducting discussions, proposals ~~shall~~ must be initially classified as responsive or nonresponsive.

(a) Proposals may be found nonresponsive at any time during the procurement process if:

(i) and (ii) remain the same.

(iii) the proposal ~~is~~ does not conform to within the plans and specifications described and required in the request for proposal.

(b) remains the same.

(9) Discussions including oral presentations, interviews, demonstrations, responses to specific questions, modifications, and ~~negotiations~~ contract refinement may be held with one or more offerors to:

(a) through (11) remain the same.

(12) The evaluation ~~shall~~ must be based on the evaluation criteria set forth in the request for proposals. ~~The evaluators shall exercise discretion in~~ In assigning points or value to a proposal, the evaluation requires the exercise of the evaluators' discretion, involving which involves a judgmental assessment of the evaluation criteria. If an award is made, it must be made to the responsive and responsible offeror whose proposal best meets the evaluation criteria.

(13) The department reserves the right to refine a contract before execution if doing so is ~~negotiate with one or more offerors for the award of a contract that is most advantageous to the state.~~ The department reserves the right to ~~award a contract without negotiations or to reject any or all proposals.~~

(14) through (16) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed changes to (13) are the result of an internal policy shift away from contract negotiations to the more objective approach of contract refinement. The difference between contract refinement and negotiation is one of materiality. To negotiate a contract implies that substantial changes are being made to the contract, and the scope of contract has been affected. Refining a contract, however, implies minor, nonmaterial changes to the terms of the contract, such as a change in delivery dates or acceptance criteria. The department's experience in the past has been that the term "negotiating" is too broad and could undermine the procurement process by allowing contractors the opportunity to negotiate costs or additional work not included in the original bid or proposal. All requirements listed within a solicitation must remain neutral throughout the solicitation process in order to keep it fair and equitable.

All other proposed changes provide clearer or simpler language.

2.5.604 SOLE SOURCE PROCUREMENT (1) ~~The provisions of this~~ This rule ~~apply~~ applies to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) remains the same.

(3) For purchases with a total contract value greater than \$5,000, the determination ~~as to~~ whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification using the "Sole Source Procurement Justification" form referenced in (5).

(4) remains the same.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the ~~department~~ division.

(6) remains the same.

(7) If an extension or renewal of a sole source contract is required, the agency shall provide the division with a justification form as provided in (5).

AUTH: 18-4-221, MCA

IMP: 18-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: The addition of proposed new (7) is to clarify the requirement that state agencies provide justification for all sole source contract extensions and renewals, not just new sole source requests. The division has experienced issues with sole source requests no longer meeting the justification requirements at the time of renewal or extension. Requiring agencies to provide new justification for all sole source contract renewals and extensions allows the division to review each request relative to the current market for the good or service. It will provide for a more fair and open procurement process, which is required under the Montana Procurement Act. 18-4-122, et seq., MCA.

All other proposed changes are grammatical or provide minor clarifications.

2.5.610 COOPERATIVE PURCHASING (1) remains the same.

(2) For the purposes of complying with 18-4-221, MCA, the following definitions apply:

(a) "public authority" means an entity of a political subdivision of the state that is authorized to spend or receive public funds to further public interests;

(b) "educational institution" means any school system operating within the state that expends public funds for the procurement of supplies and services;

(c) "health institution" means an entity of a political subdivision of the state organized for the purpose of providing health care and related services and that expends public funds for the procurement of supplies and services;

(d) "other institution" means an entity of a political subdivision of the state that operates for a particular public purpose and that expends public funds for the procurement of supplies and services; and

(e) "any other entity that expends public funds for the procurement of supplies and services" means an Internal Revenue Code 501(c)(3) organization that expends public funds for the procurement of supplies and services.

(3) Nonprofit corporations that wish to enter into an agreement with the state for the cooperative use of supplies or services shall provide the division with documentation that they are or will be lawfully authorized to spend or receive public funds.

(4) Participation in any cooperative solicitation or contract is permitted if the following conditions are met:

(a) the division is able to provide adequate public notice of the solicitation to interested vendors; and

(b) any contract that the division opts to participate in must include all the statutorily required terms and conditions.

(5) If the conditions of (4)(a) and (4)(b) are not met, the division may reject participation in the cooperative solicitation or contract.

AUTH: 18-4-221, MCA

IMP: 18-4-401, 18-4-402, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to update the cooperative purchasing rule to ensure fair and equitable treatment of entities that participate in the procurement system while providing increased economy in contract pricing. To meet these goals, the division is proposing to more clearly define the types of organizations that are allowed to purchase from state contracts. State contracts are entered into with the specific purpose of saving taxpayer money. The division is proposing to clarify the statutory definition of "local procurement unit" as those organizations that are affiliated with the political subdivisions of the state (e.g., counties, cities, and towns) and that expend public funds. Only those organizations that fit the proposed definitions will be allowed to benefit from state contracts. The division is proposing this clarification because it is currently unclear and ambiguous as to which entities are permitted to participate in cooperative purchasing. For example, the statutory definition of "local public procurement unit" includes an "educational, health, or other institution." The phrase "other institution" is not defined, leaving both the division and prospective entities uncertain who would qualify under this phrase. In arriving at the definition of "other institution," the division reviewed the Montana Procurement Act's legislative history and accepted definitions of the word "institution." The legislative history did not shine light on the term.

The Montana Procurement Act was modeled after the American Bar Association's Model Procurement Code for State and Local Governments. The commentary for that part of the model code that addresses cooperative purchasing does not explain the meaning of "other institution." Under Montana law, words and phrases used in a statute are construed according to the context and the approved usage of the language. 1-2-106, MCA. Therefore, the division researched the definition of "institution." Generally, "institution" is defined as an organization, foundation, or the like devoted to the promotion of a particular cause or program, especially one of a public, charitable, or educational nature. See, e.g., Black's Law Dictionary; Dictionary.com. The division bases its proposed definition of "other institution" on the accepted definition of institution.

The Montana Procurement Act also includes as a local public procurement unit "any other entity that expends public funds for the procurement of supplies and services." 18-4-401, MCA. The division is proposing to define the phrase "any other entity" as an Internal Revenue Code 501(c)(3) organization. Such an organization is exempt from federal taxation if it exists for exempt purposes. These exempt purposes are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. To qualify as a "local public procurement unit" the 501(c)(3) organization must also expend public funds for the procurement of supplies and services. The division is proposing to use the 501(c)(3) organization as the exemplar entity because generally these organizations fit well within the scope of the other listed entities that exist to promote the public interest and welfare and that expend public funds for services and supplies to accomplish their missions. The proposed addition of (3) will ensure that the division is complying with the statute's public funding requirement.

Finally, the division is proposing to limit the type and volume of cooperative contracts in which the state may participate. Broad-based competition must be balanced with a fair promotion of Montana and tribal businesses, large and small, to ensure the quality and integrity of the state's procurement system and that all statutorily required terms and conditions are included in any resulting contract. The decision to cooperatively purchase from/with a public procurement unit must be made after the state is assured that these purposes have been met.

If the proposed rule change is adopted, it will not affect any entity already admitted into the cooperative purchasing program nor will it affect any cooperative contract currently being utilized by the state.

The proposed amendments will implement 18-4-401, MCA, so it is necessary to add that as an implemented statute.

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) State agencies may not transfer, sell, trade, or otherwise dispose of supplies owned by the state without written authorization of the Surplus Property Program ~~Property and Supply Bureau~~. A department or legislative or judicial entity may transfer surplus supplies between the various units of that department or legislative or judicial entity.

(2) remains the same.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

STATEMENT OF REASONABLE NECESSITY: As previously explained, the Property and Supply Bureau has transitioned into the smaller, restructured Surplus Property Program, necessitating this rule change.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jodi Gollehon, Department of Administration, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-7210; fax (406) 444-2529; or e-

mail jgollehon@mt.gov, and must be received no later than 5:00 p.m., February 21, 2014.

5. Jodi Gollehon, Department of Administration, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that these proposed rule amendments will not significantly and directly impact small businesses.

By: /s/ Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State December 16, 2013.