



DEPARTMENT OF MILITARY AFFAIRS

DMA Policy: 67010-2011-1

Name: CONTRACT/PURCHASING POLICY

Reference: TITLE 18 M.C.A; TITLE 2 CH 5 ARM; MOM
1-0700

Approval Signature: 

Effective Date: JULY 1, 2013

I. POLICY

The Department of Military Affairs will administer all contracts in compliance with Montana Code Annotated, Administrative Rules of Montana, Montana Operations Manual, the Department of Administration Procurement Procedures, the Department of Administration Risk Management Policies and Procedures Manual and the Department of Administration Procurement Delegation Agreement.

II. APPLICABILITY

All Department Divisions and Programs.

III. DEFINITIONS

Authorized Signatory: Department employees given authority to sign contracts on behalf of the Department.

Contract: A written or verbal agreement between a Department of Military Affairs division/program and any other governmental, public, or private entity for the procurement of goods or services of any type.

Contract Amendment: An alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by a signed, written agreement by all parties to the contract. "Contract amendment" includes renewals and change orders.

Contract Liaison: The staff member designated to oversee contract terms and compliance and serve as the primary contact between the department and the contracted service provider.

Contractor: An individual, corporation, company, partnership, association, or the like having a contract with the Department.

Contract Management: Planned, ongoing, or periodic activity that measures and ensures contractor compliance with the contract terms and conditions.

CPO: For the purposes of this policy, means the Centralized Services Division (CSD) Contracts/Procurement Officer.

Delegation Agreement: The agreement entered into by the Department of Military Affairs and the Department of Administration, State Procurement CPO, authorizing the Department to perform procurement activities in accordance with the delegation agreement, *Title 18, MCA*, and *Title 2, Chapter 5, ARM*.

Executed Contract: A contract signed by all parties.

Interagency Agreement: A contract or agreement, including a memorandum of understanding (MOU), established between agencies of Montana state government, or with other political subdivisions or governments.

Mutual Aid Agreement: Written agreement between agencies and/or jurisdictions in which they agree to assist one another upon request, by furnishing personnel and equipment.

Scope of Work: A scope of work describes the work to be performed or the services to be provided. It describes tasks, directs methodologies to be used, and sets forth the period of performance. It should contain only qualitative and quantitative design and performance requirements

Solicitation Documentation: All records associated with a procurement including, but not limited to the requisition, solicitation form (e.g., request for proposals [RFP], invitation for bids [IFB], limited solicitation form, sole source/sole brand form), vendors' responses, and evaluation materials.

Term Contract: A contract for commonly used supplies or services which, when consolidated for purchasing purposes, results in volume adequate to obtain discounted prices. An "exclusive" term contract requires purchase of a supply or service from a contractor holding a term contract for that supply or service. A "nonexclusive" term contract allows purchase of a supply or service from either a contractor holding a term contract or from a different source.

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 [Ref. *ARM 2.5.201(41)*].

IV. DEPARTMENT DIRECTIVES

The CPO will coordinate the routing and approval process of all contracts for services with a total contract value over \$5,000 and all MOU's, Letters of Agreement, inter-agency agreements, and inter-governmental agreements regardless of dollar amount; maintain a centralized database of all department contracts identified herein; and facilitate an effective contract management process intended to minimize risk and liability and maximize efficiency.

A. New Contracts

1. Each division/program that requires a contract or purchase order with a total contract value over \$5,000 must submit a fully completed Purchase Requisition that includes all appropriate signatures and a comprehensive scope of work or specification to the CPO a minimum of 90 days in advance for IFBs and 120 days for RFPs of the requested contract start date. This time period will be shorter for limited solicitations. The division/program is responsible for establishing its own unique requisition number and cost estimate and placing that on the Purchase Requisition form prior to sending to CPO.

Each program is responsible for obtaining the Adjutant General signature on the purchase requisition prior to submitting to CPO for procurements that will exceed \$100K but are less than \$200K. Procurements over \$200K will require OBPP approval prior to obtaining TAG signature; this will be coordinated through CSD.

2. The CPO will:
 - a. work with the requesting party to draft a document that will comply with all applicable state laws and rules to meet the division/program needs;
 - b. assign each request a unique solicitation and contract number;
 - c. maintain the original contract and provide a copy to the division/program and the contract holder;
 - d. route each contract request to the appropriate unit (i.e., DOA/State Procurement, Budget, Accounting, Information Technology, etc.) for approval;
 - e. submit the final contract to an attorney for legal review, approval, and attorney signature as deemed necessary; and
 - f. acquire appropriate signatures on the final, approved contract.

B. Amendments

All requests for contract amendments that involve funds other than renewals will be submitted to the CPO on a fully completed Purchase Requisition form that includes all appropriate signatures. Amendments for contract renewal must be submitted on the renewal template letter with a current Contract Monitor Semiannual Report and renewal justification in accordance with 18-4-313(2) MCA and ARM 2.5.304 a minimum of 90 days in advance of the requested/required effective date of the renewal. Renewal amendments that only extend time shall be completed by the contract liaison and submitted to the CPO for review and approval prior to being issued to the contractor.

C. Delegation of Contracting Authority

1. The Centralized Services Division (CSD) may, on a case-by-case basis, delegate contracting authority to the division/program for contracts with a total contract value over \$5,000. This delegation will be in written form with specific delegation instructions.
2. The division/program administrator may request to sub-delegate contract authority within their program/division.
3. The division/program shall submit a written request to CSD for each individual, for which it seeks a sub-delegation of authority.
4. CSD's delegation approval must be in writing and shall not exceed \$99,999.99.
5. The division/program may directly enter into contracts with a total contract value of less than \$5,000 at the discretion of the division/program administrator. These contracts must follow department format and comply with *Title 18, MCA, ARM 2.5.101 through 2.5.801, MOM 1-0700* and DMA Procurement Step Process & Requirements Guide which does not require review or approval from the CPO.
6. The division/program must maintain a contract log, contract copies on-site, and provide the CPO upon request with a signed copy of each contract.
7. Delegation is not need to handle exigency procurement actions. The Montana Procurement Act does not apply in the event of a public exigency. An exigency purchase is defined by 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. A record and written justification of all exigency purchases must be maintained by the program as required by ARM 2.5.605. That record must be submitted to CSD in a reasonable amount of time after the exigency.

D. Contract Signing Authority

With the exception of construction and construction services contracts under Title 18, chapter 2 and chapter 8, MCA, these management positions are named as authorized signatories under the following requirements:

1. Only program administrators or those they have delegated authority shall review and sign all contracts and contract amendments with a total contract value \$5,000 or greater for their respective programs. Contracts with a total contract value \$100,000 or greater must be signed by the Adjutant General.
2. The Adjutant General shall review and sign:
 - a. All interagency agreements and memoranda of understanding;
 - b. All building leases and renewals; and
 - c. With the exception of printing, term contracts and contract renewal amendments in which he/she has already signed the original contract, all contracts and contract amendments with a total contract value \$100,000 or greater, unless otherwise delegated.

NOTE: The Department's authorized signatory should always be the last to sign a contract or agreement and amendments to either.

E. Contract Liaison

The program administrator and/or contract signatory are ultimately responsible for managing contracts from the beginning to the end of the contract term. The designated contract liaison is the employee that serves as the primary contact person for all communications between the program and the contractor. The program administrator and/or contract signatory shall designate a Contract Liaison based on the individual's knowledge, skills, and abilities to effectively carry out the responsibilities of this position. A department Contract Liaison can be a state or federal employee within the Adjutants General's chain of command.

1. The primary functions and responsibilities of the contract liaison are:
 - a. serve as primary contact for the contractor;
 - b. monitor day-to-day operations and provision of services by the contractor;
 - c. be intimately familiar with and fully understand the contract language, amendments to the contract including the specific contract obligations, and determine the performance indicators by which performance will be monitored;
 - d. determine the best methods to be used to measure and track contractor performance and levels of performance acceptable to the division/program;
 - e. assess the risks related to the project before and during solicitation development to determine the extent of monitoring appropriate for the future contract;
 - f. ensure the contractor has a clear understanding of how the contract will be managed and monitored;
 - g. provide the contractor with guidance and technical assistance, as needed, to promote effective contract performance;
 - h. monitor the contractor's activities through a variety of means to ensure quality service delivery;
 - i. resolve performance issues that arise during the contract;
 - j. identify potential contract inefficiencies and risks that, if eliminated, would result in a cost savings to the department and communicate those to the program administrator;
 - k. review invoices and verify that the department is being billed in accordance with the contract terms, ensure the contract number is identified on the invoice and that the billed

- services were provided;
- l. notify and document all communications with the contractor for discrepancies in billing and/or contract compliance issues;
 - m. share contractor performance information with appropriate department staff;
 - n. document all contract monitoring activities to validate consistent and effective contract management.
 - o. determine necessary contract changes and notify the program administrator and/or contract signatory of requested changes;
 - p. ensure that all contract insurance and security documentation is correct and current.
 - q. ensure products ordered are received and accepted prior to authorizing payment. Send an email to CPO when products ordered through a state contract or purchase order have been accepted;
 - r. monitor contract end dates to allow sufficient lead time for renewal or resolicitation;
 - s. if applicable to a contract, be aware of potential impacts of prevailing wage requirements. (Information regarding prevailing wages is available at the following web page: <http://gsd.mt.gov/content/procurement/prevailingwageQA.>);

F. Evaluation of Contractor Performance

1. Program/Division Administrators shall ensure that the performance of all service contractors is evaluated prior to entering into contract negotiations and prior to requesting renewal of a contract, but not less than semiannual. Contract monitoring shall be documented using the Contract Monitor Semiannual Reporting Form located on the DMA website under CSD/Purchasing and Procurement. Contracts will not be renewed with contractors that fail to achieve an overall satisfactory performance rating as determined by an evaluation of the information provided on the Contract Monitor Semiannual Reporting Forms.
2. Documentation of contractor performance shall be kept by the Contract Liaison in a designated contract file and shall include, at a minimum: a copy of the contract, all contract amendments; invoices; acceptance documentation, memos to the contractor; a log of discussions with the contractor; a copy of the Contract Monitoring Semiannual Report(s); actions taken by the contractor; and other documents necessary to support contract monitoring activities.

G. Semiannual Contract Monitoring Reporting

Contract Liaisons shall submit semiannual contract monitoring reports to the CPO using the authorized reporting form. Reports shall be submitted by the time and date identified on the Contract Monitor Semiannual Reporting Form.

H. Records and Documentation

The following documentation is the minimum required to be maintained for each contract by the contract liaison. This documentation may be electronic, hard-copy, or both, and should be maintained as a single file:

1. Signed contract (electronic scanned copy is acceptable);
2. Contractor's response to solicitation (electronic version, e.g., on a thumb drive or scanned copy, is acceptable);
3. Solicitation documentation or location of solicitation documentation. (Note: CSD retains solicitation documentation for solicitations it conducts.);
4. Record of contract amendments;
5. Record of invoices received and paid;
6. Complaint or dispute history; and
7. Relevant correspondence including letters, emails, and records of key phone conversations

8. Contract records must be retained according to the minimum requirements of the Secretary of State's General Records Retention Schedule 4, typically for eight years after contract expiration.

I. Contract Amendments and Renewals

If allowed in the original contract, contracts may be amended and/or renewed, including cost adjustments, and reasonable and appropriate revisions to the contract scope. By performing regular contract monitoring, documentation justifying contract amendments and renewals will already be part of the contract record.

Legal counsel may need to review and sign contract amendments that include substantive changes. Simple renewals or amendments addressing minor revisions, such as address or contract representative changes, do not require legal review.

Proof of current insurance and/or performance security, if applicable, must be on file prior to each renewal

J. Contract Compliance

Each program/division administrator is responsible for establishing program/division specific processes and procedures to ensure compliance with all contracting rules and requirements. These processes and procedures should be based in part on the DMA Procurement Step Process & Requirements Guide and other laws, rules and policy mentioned in this policy.

V. CLOSING

Questions concerning this policy should be directed to the Centralized Services Division Administrator.