

Montana University System – Procurement Delegation Agreement

January 1, 2020 through December 31, 2021

This Agreement is made and entered into between the Montana University System, Office of the Commissioner of Higher Education (MUS-OCHE) and Montana State University (MSU). Brian O'Connor, Chief Procurement Officer represents MUS-OCHE, and Brian O'Connor, Director of Procurement represents MSU.

For purposes of this agreement, Montana State University encompasses the flagship campus located in Bozeman, MT and three affiliate campuses: Montana State University-Billings, Great Falls College-MSU, and Montana State University-Northern.

1.0 DEFINITIONS

“University Compliance Review”: An Agency conducted review of University compliance with this Agreement as further described in Section 18.

“University Procurement Officer (UPO)”: The designated person listed in this Agreement who is responsible for ensuring compliance with this Agreement. The UPO responsibilities are described in Attachment A.

“University Procurement Staff”: Any university employee authorized to procure goods and services under the Montana Procurement Act (Title 18, Chapter 4, MCA) in excess of \$5,000.

“Montana Acquisition and Contracting System (eMACS)”: The State of Montana’s enterprise eProcurement system. eMACS is accessed through the ePass Montana Dashboard, <https://app.mt.gov/epass/>. Training for eMACS is available through the Division, <https://spb.mt.gov/eMACS-Resources>.

“Satisfactory Performance History”: University compliance with delegated procurement authority as measured (i) during an agency compliance review and (ii) Division review of Agency reports required under Section 13.

“Suspension”: A prohibition preventing the University from procuring any goods and services under the Montana Procurement Act until Agency and/or Division required corrective measures have been met.

"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.

2.0 AGENCY AUTHORITY

The State Financial Services Division, Department of Administration (DIVISION) has entered into a procurement delegation agreement with MUS-OCHE (AGENCY). This agreement authorizes the agency to procure or supervise the procurement of all supplies and services

needed by the State of Montana under section 18-4-221, MCA, with certain exceptions. See 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.

3.0 GRANT OF AUTHORITY/TERM

3.1 Delegation Criteria. The Agency delegates procurement authority to the University, based on a determination that University has: (a) a satisfactory performance history exercising similar authority, and (b) employees trained in procurement policies and procedures.

3.2 University Delegation. Based on University's satisfactory performance history, the Agency grants University delegation purchasing authority effective January 1, 2020 through December 31, 2021, unless terminated earlier under the terms stated in Section 18.

4.0 FURTHER DELEGATION AUTHORITY

The University may further delegate this procurement authority within the University as it deems appropriate provided: (a) at least one employee from the program granted procurement authority meets the training requirements under Section 7.2.2; (b) these University employees are capable of exercising authority under Title 18, chapter 4, MCA, ARM Title 2, chapter 5, and the policies established by the Division in the Montana Operations Manual; and (c) all procurements are conducted consistent with this delegation of procurement authority. Further delegation must be documented in writing either in a University sub-delegation agreement or in the University procurement policy.

5.0 PURCHASES EXEMPT FROM DELEGATION AUTHORITY AND COMPETITIVE PROCEDURES

5.1 Exemptions. Under 18-4-132, MCA and ARM 2.5.301, delegation and competitive procedures are not necessary for the following purchases:

- either grants or contracts between the State and its political subdivisions or other governments;
- construction contracts;
- contracts entered into by the Montana State Lottery that have an aggregate value of less than \$250,000;
- contracts entered into by the State Compensation Insurance Fund to procure insurance-related services;
- employment of:
 - ✓ a registered professional engineer, surveyor, real estate appraiser, or registered architect;
 - ✓ a physician, dentist, pharmacist, or other medical, dental or health care provider;
 - ✓ an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;
 - ✓ consulting actuaries;
 - ✓ a private consultant employed by the Montana State Lottery;
 - ✓ a private investigator licensed by any jurisdiction;
 - ✓ a claims adjuster;

- ✓ a court reporter appointed as an independent contractor;
- the purchase or commission of art for a museum or public display;
- Montana-produced food products, under 18-4-132(4), MCA;
- contracting under 47-1-216, MCA, of the Montana Public Defender Act;
- contracting under Title 90, chapter 4, part 11, MCA;
- contracting under Title 90, chapter 14, part 1, when the total contract value is \$12,501 or less;
- salaries;
- travel and per diem;
- retirement and social security payments;
- freight;
- landfill charges;
- supplies or services whose prices are regulated by the Public Services Commission or other governmental authority;
- pastoral services;
- training;
- conference rental space and catering;
- fresh fruits and vegetables;
- fees for placing an advertisement in a publication or on radio, television, or electronic media sources;
- educational instructors and guidance counselors for inmates under the supervision of the Department of Corrections; and
- books and periodicals.

5.2 Sheltered Workshops. Purchases of supplies or services from Sheltered Workshops as listed on the following website: <https://spb.mt.gov/Agency-Resources/Sheltered-Workshops>.

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

5.4 Surplus Property Program. Purchases made from the State's Surplus Property Program.

5.5 University Statutory Exemptions. None.

6.0 PROCUREMENT METHODS

University shall utilize the following procurement methods when purchasing supplies and services:

6.1 Small Purchases – Purchases of \$5,000 or less. University may choose a purchasing technique that best meets its needs for all purchases with a total contract value of \$5,000 or less. University is encouraged to use the State Purchasing Card for all small purchases.

6.2 Limited Solicitations – Services Purchases between \$5,000.01 and \$25,000 and Supplies Purchases between \$5,000.01 and \$50,000. University may use a limited solicitation procedure when making services purchases with a total contract value between \$5,000.01 and \$25,000 and supplies purchases between \$5,000.01 and \$50,000. A limited

solicitation requires a solicitation from a minimum of three viable sources, if available, either orally or in writing, under the guidelines set forth in ARM 2.5.603. The Agency encourages Universities to use eMACS for issuing limited solicitations. If eMACS is not used, the University shall use the limited solicitation form available on the State Procurement Bureau's website <https://spb.mt.gov/Procurement-Guide> to document the procurement, and keep the form consistent with records retention requirements.

6.3 Formal Competition (Invitation for Bids or Request for Proposals) Services Purchases above \$25,000 and Supplies Purchases above \$50,000. University shall use either an invitation for bids (IFB) or request for proposals (RFP) process to purchase services with a total contract value between \$25,000.01 and \$500,000 and supplies purchases with a total contract value between \$50,000.01 and \$500,000. Unless otherwise delegated, the University shall forward any purchase with a Total Contract Value over \$500,000 to the State Procurement Bureau for processing.

6.4 Sole Source/Sole Brand. A University Procurement Officer may determine that a purchase is a sole source/sole brand for purchases with a total contract value within the University delegated procurement authority. For purchases **over** a University's level of delegated procurement authority, the State Procurement Bureau shall make the sole source/sole brand determination unless specifically authorized in Section 20.0 of this Agreement. In cases of reasonable doubt, competition should be solicited.

- a. **Exemptions.** Under ARM 2.5.604, the following items do not require competition or sole source justification and may 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.** University 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 available on the State Procurement Bureau's website <https://spb.mt.gov/Procurement-Guide>.
- c. **Extension or Renewal.** If an extension or renewal of a sole source contract issued by the State Procurement Bureau is required, University shall provide the State Procurement Bureau with an updated "Sole Source Procurement Justification" form or a "Sole Brand Procurement Justification" form.

6.5 Exigency Purchase. The Montana Procurement Act does not apply if a public exigency exists. An exigency purchase is defined in ARM 2.5.201(16) as "a purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action." An exigency purchase of \$5,000 or greater is limited to those supplies or services necessary to meet the exigency. Where statutorily allowed, University may declare an exigency without MUS-OCHE's approval. The University shall maintain a record of all exigency purchases as required by ARM 2.5.605.

7.0 PROCEDURES/REQUIRED TRAINING

7.1 Written Procedures. University shall maintain written procedures for handling all purchases and follow the Division's Montana Operations Manual Policies. The University shall review written procedures every two years and update written procedures as necessary. The University shall provide copies of its written procedures during the Agency's compliance review or upon the Agency's request.

7.2 Staff Training Requirements.

7.2.1 UPO Training Requirements. All required training under this section is valid for four years. After four years, the UPO, or their replacement, must provide documentation that training has been retaken or the requirement has otherwise been satisfied.

Universities: The person listed as the UPO, or their replacement, must have completed the "Advanced Procurement Methods and Issues" and "Contract Management" courses offered by the Division or another Division approved training course or certification; attend required meetings of the Agency; and provide the supervision and management of the University's procurement needs as their predominant job duty. University agrees that if required at a later date, the UPO and any University procurement staff completing formal solicitations shall obtain any Division required professional certification, either from the Division or through a nationally recognized procurement certification program approved by the Division.

7.2.2 University Procurement Staff Training Requirements. All university procurement staff, including those who have been further delegated procurement authority under Section 4.0 must have completed the "Basic Procurement Methods and Issues"; "Advanced Procurement Methods and Issues"; another Division-approved training course; or a Division-approved agency/university procurement training program. All required training under this section is valid for four years. After four years, all University procurement staff must provide documentation that training has been retaken or the requirement has otherwise been satisfied.

7.2.3 University Contract Managers. All university contract managers (as defined in State Policy) shall complete "Contract Management" training offered by the Division, or another Division-approved training course. All required training under this section is valid for four years. After four years, all university contract managers must provide documentation that training has been retaken or the requirement has otherwise been satisfied.

7.3 Purchases above Level of Delegated Authority. If University requires the purchase of a supply and/or service above its level of delegated authority, it shall work with Agency Procurement Official to submit a requisition in eMACS to the Division, and a SPB Contracts Officer shall conduct the procurement. The deadlines for submitting requisitions for fiscal year end procurements are: (a) April 1 of that FY for an RFP and (b) May 1 of that FY for an IFB. See ARM 2.5.302(7).

7.4 Division Signature. All contracts established through the Division on the Agency's behalf must have the signature of a SPB Contracts Officer and Agency legal counsel before execution, unless Agency counsel reviews and determines their signature is not required. Any contract amendment issued against a contract established through the Division must also have a signature or initial of an SPB Contracts Officer before execution. A signature block must

state "Approved as to Form" with space for the signature of the SPB Contracts Officer. In addition, all contract amendments must have the signature of Agency legal counsel if not using an approved contract template. All contracts and contract amendments established through the Division on the Agency's behalf must be signed using an electronic signature process in eMACS, initiated by the SPB Contracts Officer.

7.5 Referral to Agency. If University chooses not to exercise its approved delegated procurement authority, it may submit its requisition to the Agency for action.

7.6 Attorney. University shall provide the services of an attorney to review all contracts or contract templates issued within the University's delegated procurement authority.

8.0 GENERAL REQUIREMENTS

8.1 Procurement Documents. University shall use the most current version of the Division's procurement forms and standard terms and conditions in their entirety, including, but not limited to the following: (1) Standard Terms and Conditions; (2) Limited Solicitation; and (3) Sole Source/Sole Brand Justification Forms unless the Division approves any exceptions. Requests for exceptions or changes to existing approved forms must be submitted to the Division for approval. Forms are posted on the procurement forms site located at the following website address: <https://spb.mt.gov/Procurement-Guide>.

8.2 Requests for Exceptions to Standard Terms and Conditions and Contracts. University 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.

8.3 Purchasing Vendors List. The Division maintains a purchasing vendor list for supplies and services typically purchased by state agencies. The purchasing vendors list is available in eMACS.

8.4 Issuing Formal Bids and Proposals. University shall issue all formal IFBs and RFPs issued under the authority of the Montana Procurement Act in eMACS. Procedures developed by the Division will be used to issue each solicitation using the commodity code that most accurately describes the supplies and services being sought.

8.5 Posting Evaluation Committee Meetings and Contract Awards. All evaluation committee meetings must be posted on the Division's public meetings website located at the following website address: <https://spb.mt.gov/Vendor-Resources/Public-Meetings>.

Once a month, SPB will post all contract awards on the Division's contract awards website located at the following website address: <https://spb.mt.gov/Vendor-Resources/Contract-Awards>

9.0 CONTROLLED ITEMS: PURCHASES EXCLUDED FROM DELEGATED AUTHORITY

Unless specifically addressed elsewhere in this Agreement, University shall buy "controlled items" through the Division. "Controlled items" are:

9.1 "Exclusive" Statewide Term Contracts. The Division establishes statewide term contracts for the convenience of agencies to be utilized on an as-needed basis. Individual educational units of the Montana University System are not required to purchase supplies

and/or services from “Exclusive” or “Non-exclusive” statewide term contracts, but if it does not, it agrees to follow procurement methods specified in Section 6.0 to purchase that supply or service.

9.2 eMACS Marketplace. The University is encouraged to purchase office supplies, fine and coarse paper, janitorial supplies, and food service and culinary products through the eMACS Marketplace.

9.3 Printing. University has the option to purchase printing through the Print and Mail Services Bureau of the General Services Division, Department of Administration.

9.4 New or Used Vehicles. University shall purchase or lease all new vehicles through SPB following the deadlines established in the Requisition Time Schedule. The specific due dates when agencies are required to issue requisitions for vehicles are located on the Division's website at: <https://spb.mt.gov/Cooperative-Purchasing/Vehicle-Purchasing>. University shall purchase used vehicles in the following manner:

- a. Contact Surplus Property Program.** University shall contact the Surplus Property program at (406) 444-9921 to seek information on the availability of used vehicles. If a suitable used vehicle is not available, the Surplus Property Program shall provide University with written permission to proceed with the purchase of a used vehicle according to this Agreement from the private sector.
- b. Purchase Price.** University shall submit a requisition to SPB if it is anticipated that the total purchase price of a used vehicle(s) may exceed University's delegated procurement authority. If not, University may solicit competition for the used vehicle following the approved procurement methods referenced in Section 6.0.

10.0 RECORDS

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

11.0 TRAINING AND TECHNICAL ASSISTANCE

The Division and Agency shall provide training and technical assistance to University upon request in addition to the procurement courses offered by the Division through the State Professional Development Center. The Division and Agency shall furnish interpretation of applicable statutes, administrative rules, policy, or this delegation of procurement authority and make on-site visits to assist universities in complying with this Agreement.

12.0 REPORTING REQUIREMENTS

12.1 Annual Reporting Requirements. University shall submit annual reports by state fiscal year to the Agency no later than the due date established by the Division. Division shall notify the Agency of required reports and due dates no later than the first week of July each year.

12.2 Summary of Purchases Exceeding Delegated Authority. If University erroneously completes a purchase exceeding or outside of its delegated authority, University shall provide the Agency a summary of the purchase within 30 days from either the purchase date, or the date the error was found. This summary must include an explanation of the circumstances surrounding the purchase.

12.3 Other Reports as Required by the Division and/or Agency. University shall comply with any additional reporting requirements set by the Division and/or Agency.

13.0 DISPUTES

13.1 Written Complaints, Disputes, or Protests. University shall maintain, as part of its solicitation or contract file, all written complaints, disputes, or protests concerning solicitations, awards, or the administration of a contract under its delegated authority, along with University's responses. University shall investigate and respond in writing to all such disputes and protests, following sections 18-1-402 and 18-4-242, MCA, and ARM 2.5.406. University shall report all formal protests to the Agency Procurement Officer.

- a. **Responsibility for Costs.** University shall pay any costs or damages associated with any dispute within its delegated authority.
 - i. Responsibility for costs associated with protests, contested case hearings, and judicial action involving a solicitation issued by the Agency and/or Division on University's behalf will be handled on a case-by-case basis.
- b. **Mediation of Disputes.** The Division and/or Agency may informally mediate disputes between bidders, offerors, or contractors and University as requested by either party.
- c. **Documentation Required.** University shall document complaints and performance issues against a contractor and notify the Agency Procurement Officer of the complaints as soon as possible.

14.0 COOPERATIVE PURCHASING

The Division may make decisions to participate in cooperative purchasing agreements with Montana political subdivisions or other state or local governments under section 18-4-402, MCA and ARM 2.5.610. The Division may reject participation in any cooperative solicitation or contract on the State's behalf. University shall contact the Agency Procurement Officer before participating in any cooperative purchasing agreement. Any exceptions require prior Division approval.

15.0 MODIFICATION

University may request a change to this Agreement by submitting a written request and justification to the Agency Procurement Officer within 30 days before the desired effective date. Performance consistent with this Agreement shall continue until University receives written approval from the Agency. The Agency may modify any part of this Agreement upon 30 days' advance written notice.

16.0 FAILURE OF ENFORCEMENT NOT A WAIVER

The Agency’s failure to enforce any of the provisions of this Agreement at any time may not be construed to be a waiver of such provision and shall not affect the validity of any part of the Agreement or the right of the Agency to thereafter enforce such provision.

17.0 TERMINATION

If University fails to follow any material term or provision of this Agreement, the Agency may terminate this Agreement or any portion of it by giving written notice to the University specifying the effective date of termination. Termination of this Agreement does not relieve University of liability for damages it causes while acting under this Agreement. If University fails to fulfill its obligations required by a suspension order, the Agency may terminate this Agreement or any portion of it.

18.0 UNIVERSITY COMPLIANCE REVIEWS

Under this agreement the Agency may audit and monitor the implementation of its rules and the requirements of the Montana Procurement Act. The Agency may conduct a university compliance review program to monitor compliance with this Agreement. University shall cooperate with the Agency during on-site reviews or by providing timely reports and documentation as required.

18.1 Review Frequency. A University compliance review will be completed on an as needed basis. Additionally, the Agency shall review University reports as needed for compliance.

18.2 Access to Records. University shall provide the Agency access to procurement records during the compliance review.

18.3 Review Report. The Agency shall summarize findings of the University compliance review in a report to the UPO and University Director.

18.4 Corrective Action. If non-compliance or unsatisfactory performance is documented in the University compliance review report, the University shall provide the Agency a corrective action plan addressing issues identified, including dates the corrective measure will be implemented. The Agency shall provide guidance as needed for University to return to compliance.

19.0 UNIVERSITY SPECIFIC DELEGATED AUTHORITY

20.1 Unlimited Authority. The University is delegated unlimited authority for procurement of the following supplies/services:

<u>Commodity Code</u>	<u>Description</u>
0101	Agricultural - Chemicals

- 0104 Agricultural - Supplies
- 0405 Books – On-Line Library Subscription Services
- 0406 Books – Publications, Subscriptions & Textbooks from Single Supplier
- 0901 Computing Equipment & Software – Data Center Equipment
- 0904 Computing Equipment & Software – ISO Base Platforms
- 0905 Computing Equipment & Software - Mainframe Computers
- 0906 Computing Equipment & Software - Mid-Tier Computers
- 0907 Computing Equipment & Software - PCs & Peripherals
- 0909 Computing Equipment & Software - Printers
- 0910 Computing Equipment & Software – Software
- 0911 Computing Equipment & Software - Software as a Service (SaaS)
- 0912 Computing Equipment & Software - Software Reseller
- 0913 Computing Equipment & Software - Storage & Backup Software/Hardware
- 1001 Computing Services - Advisory & Research Services
- 1002 Computing Services - Analysis, Design & Planning Services
- 1003 Computing Services - Cloud Services
- 1004 Computing Services - Data Center Services
- 1005 Computing Services - Disaster Recovery & Business Continuity Services
- 1006 Computing Services - Document Management & Imaging Services
- 1007 Computing Services - GIS Services


- 1008 Computing Services - Internet & Electronic Commerce Services
- 1009 Computing Services - IT Staff Augmentation
- 1010 Computing Services - IT Training Services
- 1011 Computing Services - Mainframe Analysis & Programming
- 1012 Computing Services - Maintenance Services
- 1013 Computing Services - Microcomputer Analysis & Programming
- 1014 Computing Services - Mid-tier Analysis & Programming
- 1015 Computing Services - Network Services
- 1016 Computing Services - Oracle Analysis & Programming
- 1017 Computing Services - PeopleSoft Analysis & Programming
- 1018 Computing Services - Project Management Services
- 1019 Computing Services - Quality Assurance Service
- 2003 Foods - Meats
- 2004 Foods - Non-Perishable
- 2005 Foods - Perishable
- 3201 Livestock, Fish & Game - Animals/Fish
- 3301 Media Communications - Advertising
- 5005 Transportation Goods & Services - Bus Transportation

SIGNATURES

Approved for University by:


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Brian O'Connor, UPO Date
Montana State University


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Aaron Mitchell, Date
Assistant Vice President, Financial Services

Approved for Agency by:


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Brian O'Connor, Date
Chief Procurement Officer,
Montana University System

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Clayton Christian, Commissioner Date
Of Higher Education

Reviewed for Legal Content by:

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Vivian Hammill, Chief Legal Counsel Date
Montana University System

ATTACHMENT A -University Delegation Liaison—Roles and Responsibilities

The delegation liaison identified in each university procurement delegation agreement serves as the “University Procurement Officer” (UPO) for the agency. Roles and responsibilities of the UPO include:

1.0 General

- Responsible for agency compliance with procurement delegated authority, Title 18 and its associated rules and policies
- UPO shall establish & maintain an agency procurement & contract management policy which will be reviewed/updated no less than every two years
- Identifies and approves “University Procurement Staff” and “University Contract Managers” and ensures compliance with required training/certification as required in the University Procurement Delegation Agreement
- Review/update the university procurement delegation agreement every two years with Agency
- Ensures agency procurement and contract records are complete in accordance with laws/rules/policies
- UPO is the point of contact for University Compliance Reviews conducted by the Agency
- Attends SPB and/or agency procurement meetings and any other SPB or Agency required meetings

2.0 Communication

- Serves as Agency’s main point of contact for the university
- Responsible for distribution of information related to procurement & contracting activities within their university as necessary (e.g. new/updated policies, reports, training opportunities, etc.)
- Serves as procurement resource for university’s procurement personnel and vendors

3.0 University Approval Authority

- The UPO, or their designated backup, is required to review and approve in eMACS all requisitions and sole source procurement requests to Agency and/or SPB for processing on behalf of the university
- The UPO or designee is responsible for assisting with agency approval of users in all modules of eMACS.
- The UPO or designee is the agency approval authority in all workflow steps within eMACS sourcing module for university approvals

4.0 Reporting

- The UPO is responsible for ensuring timely submittals of all required reporting, including but not limited to:
 - Quarterly Procurement Forecast
 - Annual Contract Reports
 - Annual Sole Source Reports
 - Annual Exigency Reports
 - Annual report of written complaints, disputes, or protests
 - Reporting on procurement staff and contract manager training compliance

- Any other reporting as requested by Agency and/or SPB or required at a later date