



**Montana Legislative Services Division**  
**Legal Services Office**

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**TO:** State Administration and Veterans' Affairs Interim Committee

**FROM:** K. Virginia Aldrich

**DATE:** January 27, 2014

**RE:** Legislative Administrative Rule Review Report

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Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

**MAR NOTICE NUMBER:** 2-5-488

**AGENCY/BOARD:** Department of Administration

**RULE CLASSIFICATION:** (e.g. substantive/interpretative/emergency/temporary):  
Substantive

**SUBJECT:** State Procurement of Supplies and Services

**NOTICE DESCRIPTION:** (e.g. proposal notice/adoption notice):

Notice of proposed amendment

**SUMMARY OF RULE(S):**

The Department of Administration (Department) proposes to amend 13 rules concerning state procurement of supplies and services.

As a result of a funding decrease within House Bill 2 from the 2013 session, the central stores warehouse was closed, creating a direct delivery office supply system (the "Central Stores Program"). This change required several definitions to be created or amended. Three additional rules require amendments to comport with the new procedures and terminology. In addition, the Department proposes to add or amend definitions to reflect industry standards with respect to computer maintenance agreements. The Department also proposes to add definitions for "noncontrolled items" and "term contract", previously used in rule but undefined.

The Department proposes to amend a rule concerning the delegation of purchasing authority to clarify that fees for placing advertisements are exempt from competitive solicitations while fees for developing advertisements are not exempt. The Department also modified this rule for grammatical changes and to delete unnecessarily repeated statutory language.

Because of a computer system upgrade in a rule concerning agency requisitions, the Department proposes to delete a requirement that agency requisitions be combined on one form.

In a rule concerning bid proposal preparation, the Department proposes to clarify that exceptions to specifications must be identified and communicated to a procurement officer pursuant to the instructions in the solicitation for bids.

The Department proposes to clarify that a rule concerning protests is applicable to bidders, offerors, and contractors, not just vendors. In addition, the Department requires protestors to submit their protests to both the General Services Division and the agency that issued the solicitation.

Because most term contracts involve agencies that receive federal funds (and federal law prohibits the use of reciprocal preferences with respect to federal funds), the Department proposes to amend a rule to state that reciprocal preferences do not apply to term contracts. However, because statutory language requires reciprocal preferences where federal law does not prohibit them, the Department has clarified that in the adoption notice, it will modify the language to state that reciprocal preferences do not apply to term contracts unless the contract is applicable only to agencies that do not receive federal funding.

In a rule concerning contract security, the Department proposes to amend the rule concerning contracts established by the General Services Division on behalf of an agency to require the agency to notify the General Services Division within 30 calendar days of the end a contract that the contract has been successfully performed, that no claims are pending under any warranties, and that the agency waives rights and claims to the security. If a contract is established by the agency itself, the agency must provide the notification to the agency's contracting office. In addition, the proposed changes clarify that one of the requirements for contract security being returned to the contractor is the expiration of the warranty period.

In a rule concerning competitive sealed proposals, the Department proposes to replace language concerning contract negotiation with contract refinement to reflect an internal policy shift away from material negotiation toward nonmaterial refinement of contract terms prior to the execution of the contract.

The Department proposes to amend a rule concerning sole source procurement to require the submission of a justification form if a sole source contract is extended or renewed, not just at the commencement of a new sole source procurement contract.

The Department proposes to define several terms in the Montana Procurement Act. The new definitions clarify what entities are eligible to participate in the procurement system, including new definitions for "public authority", "educational institution", "health institution", "other institution", and "any other entity that expends public funds for the procurement of supplies and services". The Department proposes that within the statutory definition of "local public procurement unit", the term "any other entity that expends public funds for the procurement of supplies and services" means a 501(c)(3) organization that also expends public funds for the procurement of supplies and services. The proposed amendments also allow the General Services Division to limit participation in cooperative solicitations or contracts if the Division cannot provide adequate public notice to interested vendors or if the contract does not include all statutorily required terms and conditions.

The Department also amended rules for clarity, to delete redundant statutory language, and to correct grammatical errors.

**NOTES:** (e.g. hearing dates)

A public hearing is scheduled on the above-referenced rules on March 6, 2014, at 2 p.m. in Room 53, 125 North Roberts Street, Helena, Montana. The public comment period ends on March 6, 2014.

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