

HOUSE BILL NO. 741

INTRODUCED BY B. MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING STATE PROCUREMENT LAWS; PROVIDING AND REVISING DEFINITIONS; REVISING EXCEPTIONS TO PROCUREMENT LAWS; AMENDING SECTIONS 18-4-123, 18-4-132, 53-21-1007, AND 90-14-110, MCA; REPEALING SECTION 80-11-225, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 18-4-123, MCA, is amended to read:

**"18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means an authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

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(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

~~(11)~~ "Facility" means a contracted medical provider that offers services to beneficiaries, such as a hospital, nursing facility, or home health agency, for the department of public health and human services.

~~(11)~~ (12) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

~~(12)~~ (13) (a) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

~~(13)~~ (14) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

~~(14)~~ (15) (a) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

~~(15)~~ (16) (a) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

~~(16)~~ (17) "Procurement officer" means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term includes an authorized representative acting within the limits of the representative's authority.

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(17) (18) "Purchasing agency" means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (19) (a) "Services" means the furnishing of labor, time, or effort by a contractor.

(b) ~~Services~~ The term does not include employment agreements or collective bargaining agreements, ~~the provision of human services administered by the department of public health and human services facility contracts~~, or services related to construction contracts.

(19) (20) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) (21) "Using agency" means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) (22) "Vendor" means a person who offers or may offer supplies or services to a public agency."

**Section 2.** Section 18-4-132, MCA, is amended to read:

**"18-4-132. Application.** (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments,

except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

~~(d) contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;~~

~~(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;~~

(d) contracts entered into by the state compensation insurance fund to procure insurance-related services;

~~(f)~~(d)(e) contracts with:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) 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;

~~(iv) consulting actuaries;~~

~~(v)~~ (iv) a private person contracted by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

~~(vi) a private person contracted by the Montana state lottery;~~

~~(vii)~~ (v) a private investigator licensed by any jurisdiction;

~~(viii)~~ (vi) a claims adjuster; or

~~(ix)~~ (vii) a court reporter appointed as an independent contractor under 3-5-601;

~~(g)~~(e)(f) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

~~(h)~~(f)(g) the purchase or commission of art for a museum or public display;

(i)(g)(h) contracting under 47-1-121 of the Montana Public Defender Act, if the amount of the contract  
does not exceed \$50,000;

(j)(h)(i) contracting under Title 90, chapter 4, part 11; or

(k)(i)(i) contracting under Title 90, chapter 14, part 1; or

(j)(k) emergency procurement by the department of public health and human services related to the  
following:

(i) placement of a client with a residential service provider; or

(ii) provision of medical services for a client.

(4) (a) Food products produced in Montana may be procured by either standard procurement  
procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

(i) the quality of available Montana-produced food products is substantially equivalent to the  
quality of similar food products produced outside the state;

(ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and

(iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the  
lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the  
lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food  
products for a governmental body, the higher bid is reasonable and capable of being paid out of that  
governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement  
exception established in this subsection (4).

(5) As used in this section, the following definitions apply:

(a) "Food" means articles normally used by humans as food or drink, including articles used for  
components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or  
manufactured."

**Section 3.** Section 53-21-1007, MCA, is amended to read:

**"53-21-1007. Mental health services contracts.** (1) The department shall provide for public mental

health services for the purposes of the prevention, diagnosis, and treatment of mental illness to the extent funded by the legislature.

(2) The department may administer the provision of services for prevention, diagnosis, and treatment of mental illness directly or indirectly through contract with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers.

(3) The department is directed to encourage and create incentives for the use of funding generated by local governments to provide mental health services to participate in federal cost-sharing programs.

(4) The department shall promote the rights of persons with mental illness who are eligible for services to have a choice among qualified providers of mental health services or support services that are administered or funded by the department.

(5) The department shall develop contracts to be bid competitively under the Montana Procurement Act for any service administered or funded by the department that will limit a client's choice of a provider of that service in order to ensure accountability and that necessary services are delivered in all areas of the state. The exception for human services facilities as provided in ~~18-4-123(18)~~ 18-4-123(19) does not apply."

**Section 4.** Section 90-14-110, MCA, is amended to read:

**"90-14-110. Contracts and cooperative agreements authorized under part.** A contract or cooperative agreement may be authorized under this part for the purposes of an exemption from the Montana Procurement Act pursuant to ~~18-4-132(3)(k)~~ 18-4-132(3)(i)-18-4-132(3)(j) only if:

(1) the contract implements a community service project consistent with the provisions of 90-14-105; and

(2) the contract does not involve an activity prohibited under 90-14-106."

**NEW SECTION. Section 5. Repealer.** The following section of the Montana Code Annotated is repealed:

80-11-225. Committee procurement -- rulemaking.

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2        NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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AMENDED