

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, 2.5.303, 2.5.401, 2.5.502, and ) PROPOSED AMENDMENT  
2.5.603 pertaining to definitions and )  
changes within the State Procurement )  
Bureau and Central Stores Program )

TO: All Concerned Persons

1. On May 19, 2016, at 2:00 p.m., the Department of Administration, State Financial Services Division will hold a public hearing in Room 165 of the Mitchell Building, at 125 North Roberts, 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 rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 4:00 p.m. on May 10, 2016, to advise us of the nature of the accommodation that you need. Please contact Penny Moon, Department of Administration, P.O. Box 200135, Helena, Montana, 59620-0135; telephone (406) 444-3313; fax (406) 444-2529; Montana Relay Service 711; or e-mail pmoon@mt.gov.

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

2.5.201 DEFINITIONS In 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 that develops standard specifications and procures certain supplies for state agencies.~~

(7) "Commodity code" means a number designated to include a specific type of supply or service. The commodity codes provide a means for vendors registered with State Procurement Bureau to easily define the supplies and/or services they offer and for agencies to target specific vendors when issuing solicitations.

(8) through (13) remain the same.

~~(14) "Division" means the General Services Division~~ State Financial Services Division of the Department of Administration.

(15) through (24) remain the same.

(25) "Office supply" means a consumable product or supply used on a recurring basis in general business and office operations. An office supply under this definition includes, but is not limited to, fax and copy paper, writing tools,

erasers, toner, fasteners (paper clips, rubber bands, binding clips, etc.), calculators, staplers, adhesives (tape, glue, etc.), scissors, rulers, tape dispensers, pencil sharpeners, notepads and sticky notes, nonprinted envelopes, calendars and planners, rubber stamps, disposable batteries, clocks, portable shredders, desk accessories and organizational aids, data processing and storage media (CDs, USBs, etc.), minor computer peripherals (monitors, individual external hard drives, keyboards, etc.), document filing and organizers (binders, clipboards, dividers, file folders, file labels, storage boxes, etc.), bulletin boards, marker and chalk boards, office mats (chair, antifatique, etc.), cleaning equipment and supplies, first aid supplies, individual hand sanitizer, dish soap, disposable gloves, coarse paper products, trash can liners, and disposable food service products. An office supply does not include office furniture, computer equipment (except as noted above), items available through State Print and Mail, facility and industrial supplies and tools, lab equipment, photocopiers, software, or food and beverage items.

(25) remains the same, but is renumbered (26).

~~(26)~~(40) "State Print and Mail Services" means ~~that the~~ the General Services Division bureau ~~of the division~~ responsible for ~~supervising and attending to~~ all public printing ~~of the~~ for state agencies, and handling and processing of state mail for the capitol complex.

(27) remains the same.

(28) "Receiving" means inspecting the supply or service and checking it against the contract to ensure it is acceptable, complete, and complies with the contract terms.

(28) through (38) remain the same, but are renumbered (29) through (39).

~~(39)~~(41) "State Procurement Bureau" means 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~~ the State Print and Mail Services Bureau.

~~(40)~~(42) "Surplus Property Program" means ~~the~~ the General Services Division program ~~within the State Procurement Bureau that is~~ responsible for managing the state and federal surplus property.

(41) through (48) remain the same, but are renumbered (43) through (50).

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

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: SB 94 of the 2015 Legislature removed the definition of office supplies and the Central Stores program from 18-4-301 and 18-4-302, MCA, respectively. The State Procurement Bureau worked with office supply vendors from across the state to develop a new definition of office supplies to clarify for vendors and purchasers alike what is included as an office supply and to assist the state in developing and administering office supply contracts. Because the Central Stores Program no longer exists, all references must be removed from this and other rules included in this notice. In addition, the name of Print and Mail Services is changed to reflect its current name.

In 2015, the State Procurement Bureau implemented an electronic procurement (eProcurement) system to facilitate vendor registration and submission

of bids and proposals. It is necessary to add a definition for "commodity code" to match terminology used by the new eProcurement system.

In June 2015, the State Procurement Bureau transitioned from the General Services Division to the State Financial Services Division; therefore, references to General Services Division are being changed to State Financial Services Division throughout the rules in this notice.

Moving the definition of "receiving" from ARM 2.5.303 to this rule enhances readability by placing all definitions in the same rule. Additional amendments are included to simplify the rule language.

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the ~~division's~~ department's Surplus Property Program, agencies are responsible for receiving supplies and services and documenting acceptance or rejection. ~~procured on their behalf by the 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) ~~Agencies should submit complaints about vendor performance to the division.~~ shall comply with the provisions of the Contract Management policy regarding documentation of "significant contract complaints, disputes, and terminations." ~~The department adopts and incorporates by reference the Contract Management policy effective November 25, 2015. The policy may be found on the Montana Operations Manual web site at~~ <https://montana.policytech.com/docview/?docid=692&public=true&fileonly=true>.

(3) ~~For contracts established by the division on behalf of an agency, the~~ The ~~division will~~ shall investigate complaints and attempt to resolve the problem to the agency's satisfaction. ~~The division will~~ shall notify the complaining agency of any action taken as a result of the complaint.

(3) remains the same, but is renumbered (4).

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: See the reasonable necessity statement for ARM 2.5.201. In addition, the department believes it appropriate to move the definition of "receiving" to the definition rule to keep all terms defined in this chapter in a single rule. It is necessary to incorporate by reference the requirements of the Contract Management policy to clarify roles and responsibilities regarding contract enforcement.

2.5.401 VENDORS LIST (1) ~~The General Services Division~~ State Financial Services Division maintains an online vendors list for all supply and service commodities. Names and addresses on the vendors list ~~shall be~~ are available for public inspection, ~~but, however,~~ this list shall may not be used for private promotional, commercial, or marketing purposes as ~~per 2-6-109~~ described in 2-6-1017, MCA.

(2) To be placed on the vendors list, a vendor must register with the division online at ~~<http://www.vendor.mt.gov/>~~ <http://vendorresources.mt.gov/>. Each vendor is

responsible for keeping their information current, including selection of the ~~categories, quote groups, and items~~ commodity codes to which identify the supplies or services the vendor ~~wishes to provide~~s.

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

STATEMENT OF REASONABLE NECESSITY: See the reasonable necessity statement for ARM 2.5.201. Also, additional amendments are included to simplify the rule language and improve readability. HB 123 of the 2015 Legislature repealed 2-6-109, replacing it with 2-6-1017, MCA, thus necessitating the change to the correct statute. The new eProcurement web site replaced the division's previous web site, requiring update of the web address.

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) and (2) remain the same.

(3) Facsimile, ~~electronic~~, or photocopy copies of bid or contract security are not acceptable.

(4) through (10) remain the same.

AUTH: 18-4-221, 18-4-312, MCA  
IMP: 18-1-201, 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is necessary to remove the prohibition of electronic submission of bid and contract security. This amendment will align the rule with practices prescribed by the Commissioner of Securities and Insurance, and facilitate use of the eProcurement system.

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) through (3) remain the same.

(4) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, ~~the Central Stores Program~~, or the State Print and Mail Services Bureau unless specifically delegated in a written delegation agreement to the agency.

(5) through (6)(d) remain the same.

AUTH: 18-4-221, MCA  
IMP: 18-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: See necessity statement for ARM 2.5.201.

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 Penny Moon, Department of Administration, State Procurement Bureau, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-

3313; Montana Relay Service 711; fax (406) 444-2529; or e-mail pmoon@mt.gov and must be received no later than 5:00 p.m., May 20, 2016.

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

6. The State Financial Services Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. 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>. 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, apply and have been fulfilled. The primary bill sponsor, Senator Edward Buttrey, was contacted on February 23, 2016, by e-mail.

9. The department has determined that under 2-4-111, MCA, the proposed amendment will not significantly and directly affect 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 April 11, 2016.