

HOUSE BILL NO. 493

INTRODUCED BY YARDLEY

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

IN THE HOUSE

January 25, 1983	Introduced and referred to Committee on State Administration.
January 27, 1983	On motion by chief sponsor Senator Dover was added as a sponsor to the bill.
February 11, 1983	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
February 14, 1983	Bill printed and placed on members' desks.
February 15, 1983	Second reading, do pass.
February 16, 1983	Considered correctly engrossed.
February 17, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 18, 1983	Introduced and referred to Committee on State Administration.
March 25, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in.

March 28, 1983

Third reading, concurred in.
Ayes, 45; Noes, 2.

IN THE HOUSE

March 28, 1983

Returned to House with
amendments.

April 1, 1983

Second reading, pass
consideration.

April 4, 1983

Second reading, amendments
concurred in.

April 5, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly
enrolled.

1 House BILL NO. 493
 2 INTRODUCED BY Gardley
 3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR
 7 STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE
 8 DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104,
 9 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING
 10 SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203,
 11 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111
 12 THROUGH 18-7-113, MCA; AND PROVIDING A DELAYED EFFECTIVE
 13 DATE."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 NEW SECTION. Section 1. Short title. [Sections 1
 17 through 46] may be cited as the "Montana Procurement Act".
 18 NEW SECTION. Section 2. Purpose. The underlying
 19 purposes and policies of [sections 1 through 46] are to:
 20 (1) simplify, clarify, and modernize the law governing
 21 procurement by the state of Montana;
 22 (2) permit the continued development of procurement
 23 policies and practices;
 24 (3) make as consistent as possible the procurement
 25 laws among the various jurisdictions;

1 (4) provide for increased public confidence in the
 2 procedures followed in public procurement;
 3 (5) ensure the fair and equitable treatment of all
 4 persons who deal with the procurement system of the state;
 5 (6) provide increased economy in state procurement
 6 activities and maximize to the fullest extent practicable
 7 the purchasing value of public funds of the state;
 8 (7) foster effective, broad-based competition within
 9 the free enterprise system; and
 10 (8) provide safeguards for the maintenance of a
 11 procurement system of quality and integrity.
 12 NEW SECTION. Section 3. Definitions. In [sections 1
 13 through 46], unless the context clearly requires otherwise
 14 or a different meaning is prescribed for a particular
 15 section, the following definitions apply:
 16 (1) "Business" means a corporation, partnership,
 17 individual, sole proprietorship, joint-stock company, joint
 18 venture, or other private legal entity.
 19 (2) "Change order" means a written order, signed by an
 20 authorized department representative, directing the
 21 contractor to make changes which the changes clause of the
 22 contract authorizes the department to order without the
 23 consent of the contractor.
 24 (3) "Contract" means all types of state agreements,
 25 regardless of what they may be called, for the procurement

1 or disposal of supplies or services.

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

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

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

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

13 (8) "Designee" means a duly authorized representative
14 of a person holding a superior position.

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

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

21 (11) "Governmental body" means a department,
22 commission, council, board, bureau, committee, institution,
23 legislative body, agency, government corporation, or other
24 entity, instrumentality, or official of the executive,
25 legislative, or judicial branch of this state, including the

1 board of regents and the Montana university system.

2 (12) "Grant" means the furnishing by the federal
3 government of assistance, whether financial or otherwise, to
4 a person or agency to support a program authorized by law.
5 It does not include an award whose primary purpose is to
6 procure an end product, whether in the form of supplies or
7 services. A contract resulting from such an award is not a
8 grant but a procurement contract.

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

12 (14) "Printing" means the reproduction of an image from
13 a printing surface generally made by a contact impression
14 that causes a transfer of ink or the reproduction of an
15 impression by a photographic process and includes graphic
16 arts, typesetting, binding, and other operations necessary
17 to produce a finished printed product. Printing does not
18 include rebinding or repair by a library or an office,
19 department, board, or commission thereof of books, journals,
20 pamphlets, magazines, and literary articles held as a part
21 of its library collection.

22 (15) "Procurement" means buying, purchasing, renting,
23 leasing, or otherwise acquiring any supplies or services. It
24 also includes all functions that pertain to the obtaining of
25 any supply or service, including description of

1 requirements, selection and solicitation of sources,
2 preparation and award of contract, and all phases of
3 contract administration.

4 (16) "Procurement officer" means any person duly
5 authorized to enter into and administer contracts and make
6 written determinations with respect thereto. The term also
7 includes an authorized representative acting within the
8 limits of his authority.

9 (17) "Purchasing agency" means any governmental body,
10 other than the department, which is authorized by [sections
11 1 through 46] or its implementing rules or by way of
12 delegation from the director to enter into contracts.

13 (18) "Services" means the furnishing of labor, time, or
14 effort by a contractor, not involving the delivery of a
15 specific end product other than reports which are merely
16 incidental to the required performance. The term does not
17 include consulting services as defined in 18-8-102, those
18 services listed in 18-8-103, employment agreements or
19 collective bargaining agreements, the provision by private
20 providers of human services regulated by a state agency, or
21 services related to construction contracts.

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

1 (20) "Using agency" means any governmental body of the
2 state which utilizes any supplies or services procured under
3 [sections 1 through 46].

4 NEW SECTION. Section 4. Supplementary general
5 principles of law applicable -- requirement of good faith.
6 (1) Unless displaced by the particular provisions of
7 [sections 1 through 46], the principles of law and equity,
8 including the Uniform Commercial Code, the law merchant, and
9 law relative to capacity to contract, agency, fraud,
10 misrepresentation, duress, coercion, mistake, or bankruptcy,
11 supplement the provisions of [sections 1 through 46], except
12 that writs of mandamus and prohibition issued pursuant to
13 Title 27, chapters 26 and 27, may not be used as a remedy
14 for violations of [sections 1 through 46].

15 (2) [Sections 1 through 46] require all parties
16 involved in the negotiation, performance, or administration
17 of state contracts to act in good faith.

18 NEW SECTION. Section 5. Public access to procurement
19 information -- records -- retention. (1) Procurement
20 information is a public writing and must be available to the
21 public as provided in 2-6-102.

22 (2) All procurement records shall be retained and
23 disposed of in accordance with the state records management
24 program.

25 (3) Written determinations required by [sections 1

1 through 46] must be retained in the appropriate official
 2 contract file of the department or the purchasing agency
 3 administering the procurement in accordance with the state
 4 records management program.

5 **NEW SECTION.** Section 6. General procurement authority
 6 and duties of department -- rules. (1) Except as otherwise
 7 provided in [sections 1 through 46], the department shall
 8 adopt rules, consistent with [sections 1 through 46],
 9 governing the procurement and disposal of any and all
 10 supplies and services to be procured by the state. The
 11 department shall consider and decide matters of policy
 12 within the provisions of [sections 1 through 46]. The
 13 department may audit and monitor the implementation of its
 14 rules and the requirements of [sections 1 through 46].

15 (2) Except as otherwise specifically provided by law,
 16 the department shall, in accordance with its rules:

17 (a) procure or supervise the procurement of all
 18 supplies and services needed by the state;

19 (b) sell, trade, or otherwise dispose of surplus
 20 supplies belonging to the state; and

21 (c) establish and maintain programs for the
 22 inspection, testing, acceptance, and inventory of supplies
 23 and services.

24 (3) Nothing contained herein shall preclude the state
 25 from doing its own printing on its own printing facilities.

1 **NEW SECTION.** Section 7. Delegation of authority by
 2 department. Subject to the rules of the department, the
 3 director may delegate procurement authority to designees or
 4 to any state department, agency, or official.

5 **NEW SECTION.** Section 8. State procurement rules --
 6 delegation -- existing rights. (1) Rules shall be adopted by
 7 the department in accordance with the applicable provisions
 8 of Title 2, chapter 4.

9 (2) The department may not delegate its power to adopt
 10 rules.

11 (3) No rule may change a commitment, right, or
 12 obligation of the state or of a contractor under a contract
 13 in existence on the effective date of such rule.

14 **NEW SECTION.** Section 9. Authority to remove or
 15 suspend from vendors' list. (1) The department may remove a
 16 person for cause from consideration for award of contracts.
 17 The removal may not be for a period of more than 3 years.

18 (2) The department may suspend a person from
 19 consideration for award of contracts if there is probable
 20 cause to believe that the person has engaged in activities
 21 that may lead to removal. The suspension may not be for a
 22 period exceeding 3 months unless an indictment has been
 23 issued for an offense that would be a cause for removal
 24 under subsection (3), in which case the suspension must, at
 25 the request of the attorney general, remain in effect until

after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) violation of contract provisions, as set forth in subsection (3)(d)(i) and (3)(d)(ii), of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of

unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal; and

(e) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

NEW SECTION. Section 10. Remedies prior to and after award. (1) The provisions of this section apply whenever it is determined administratively or upon judicial review that a solicitation or award of a contract is in violation of law.

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law

1 and the person awarded the contract has not acted
2 fraudulently or in bad faith, the contract may be:

3 (i) ratified and affirmed, provided it is determined
4 that doing so is in the best interests of the state; or

5 (ii) terminated, and the person awarded the contract
6 must be compensated for the actual expenses reasonably
7 incurred under the contract, plus a reasonable profit, prior
8 to the termination.

9 (b) If after an award it is determined that a
10 solicitation or award of a contract is in violation of law
11 and the person awarded the contract has acted fraudulently
12 or in bad faith, the contract may be:

13 (i) declared void; or

14 (ii) ratified and affirmed if such action is in the
15 best interests of the state, without prejudice to the
16 state's rights to appropriate damages.

17 NEW SECTION. Section 11. Collection of data
18 concerning public procurement. All using agencies shall
19 cooperate with the department in the preparation of
20 statistical data concerning the procurement, usage, and
21 disposition of all supplies and services, and the department
22 may employ trained personnel as necessary to carry out this
23 function. All using agencies shall furnish such reports as
24 the department may require concerning usage, needs, and
25 stocks on hand, and the department may prescribe forms to be

1 used by the using agencies in requisitioning, ordering, and
2 reporting of supplies and services.

3 NEW SECTION. Section 12. Definitions. As used in
4 [sections 12 through 29], the following definitions apply:

5 (1) "Cost-reimbursement contract" means a contract
6 under which a contractor is reimbursed for costs which are
7 allowable and allocable in accordance with the contract
8 terms and the provisions of [sections 1 through 46], and a
9 fee, if any.

10 (2) "Established catalog price" means the price
11 included in a catalog, price list, schedule, or other form
12 that:

13 (a) is regularly maintained by a manufacturer or
14 contractor;

15 (b) is either published or otherwise available for
16 inspection by customers; and

17 (c) states prices at which sales are currently or were
18 last made to a significant number of any category of buyers
19 or buyers constituting the general buying public for the
20 supplies or services involved.

21 (3) "Invitation for bids" means all documents, whether
22 attached or incorporated by reference, utilized for
23 soliciting bids.

24 (4) "Purchase description" means the words used in a
25 solicitation to describe the supplies or services to be

1 purchased and includes specifications attached to or made a
2 part of the solicitation.

3 (5) "Request for proposals" means all documents,
4 whether attached or incorporated by reference, utilized for
5 soliciting proposals.

6 (6) "Responsible bidder or offeror" means a person who
7 has the capability in all respects to perform fully the
8 contract requirements and the integrity and reliability
9 which will assure good faith performance.

10 (7) "Responsive bidder" means a person who has
11 submitted a bid which conforms in all material respects to
12 the invitation for bids.

13 NEW SECTION. Section 13. Methods of source selection.
14 Unless otherwise authorized by law, all state contracts for
15 supplies and services must be awarded by competitive sealed
16 bidding, pursuant to [section 14], except as provided in
17 18-4-104; Title 18, chapter 5; Title 18, chapter 6; and
18 [sections 15 through 17]. Supplies or services offered for
19 sale, lease, or rental by public utilities are exempt from
20 this requirement if the prices of the supplies or services
21 are regulated by the public service commission or other
22 governmental authority.

23 NEW SECTION. Section 14. Competitive sealed bidding.
24 (1) An invitation for bids must be issued and must include a
25 purchase description and conditions applicable to the

1 procurement.

2 (2) Adequate public notice of the invitation for bids
3 must be given a reasonable time prior to the date set forth
4 therein for the opening of bids, in accordance with rules
5 adopted by the department. Notice may include publication in
6 a newspaper of general circulation at a reasonable time
7 prior to bid opening.

8 (3) Bids must be opened publicly in the presence of
9 one or more witnesses at the time and place designated in
10 the invitation for bids. The amount of each bid and such
11 other relevant information as may be specified by rule,
12 together with the name of each bidder, must be recorded. The
13 record must be open to public inspection. After the time of
14 award, all bids and bid documents must be open to public
15 inspection in accordance with the provisions of 2-6-102.

16 (4) Bids must be unconditionally accepted without
17 alteration or correction, except as authorized in [sections
18 1 through 45]. Bids must be evaluated based on the
19 requirements set forth in the invitation for bids, which may
20 include criteria to determine acceptability, such as
21 inspection, testing, quality, workmanship, delivery, and
22 suitability for a particular purpose. Those criteria that
23 will affect the bid price and be considered in evaluation
24 for award must be objectively measurable, such as discounts,
25 transportation costs, and total or life-cycle costs. The

1 Invitation for bids shall set forth the evaluation criteria
2 to be used. Only criteria set forth in the invitation for
3 bids may be used in bid evaluation.

4 (5) Correction or withdrawal of inadvertently
5 erroneous bids, before or after award, or cancellation of
6 awards or contracts based on such bid mistakes may be
7 permitted in accordance with rules adopted by the
8 department. After bid opening no changes in bid prices or
9 other provisions of bids prejudicial to the interest of the
10 state or fair competition may be permitted. Except as
11 otherwise provided by rule, all decisions to permit the
12 correction or withdrawal of bids or to cancel awards or
13 contracts based on bid mistakes must be supported by a
14 written determination made by the department.

15 (6) The contract must be awarded with reasonable
16 promptness by written notice to the lowest responsible and
17 responsive bidder whose bid meets the requirements and
18 criteria set forth in the invitation for bids, including the
19 preferences established by Title 18, chapter 1, part 1. If
20 all bids exceed available funds as certified by the
21 appropriate fiscal officer and the low responsive and
22 responsible bid does not exceed such funds by more than 5%,
23 the director or the head of a purchasing agency is
24 authorized, in situations where time or economic
25 considerations preclude resolicitation of a reduced scope,

1 to negotiate an adjustment of the bid price, including
2 changes in the bid requirements, with the low responsive and
3 responsible bidder in order to bring the bid within the
4 amount of available funds.

5 (7) When it is considered impractical to initially
6 prepare a purchase description to support an award based on
7 price, an invitation for bids may be issued requesting the
8 submission of unpriced offers, to be followed by an
9 invitation for bids limited to those bidders whose offers
10 have been qualified under the criteria set forth in the
11 first solicitation.

12 NEW SECTION. Section 15. Competitive sealed
13 proposals. (1) When, under rules adopted by the department,
14 the director, the head of a purchasing agency, or a designee
15 of either officer above the level of the procurement officer
16 determines in writing that the use of competitive sealed
17 bidding is either not practicable or not advantageous to the
18 state, a contract may be entered into by competitive sealed
19 proposals. The department may provide by rule that it is
20 either not practicable or not advantageous to the state to
21 procure specified types of supplies and services by
22 competitive sealed bidding.

23 (2) Proposals must be solicited through a request for
24 proposals.

25 (3) Adequate public notice of the request for

1 proposals must be given in the same manner as provided in
2 [section 14(2)].

3 (4) Proposals must be opened so as to avoid disclosure
4 of contents to competing offerors during the process of
5 negotiation. A register of proposals must be prepared in
6 accordance with rules adopted by the department and must be
7 open for public inspection after contract award.

8 (5) The request for proposals must state the relative
9 importance of price and other evaluation factors.

10 (6) As provided in the request for proposals and under
11 rules adopted by the department, discussions may be
12 conducted with responsible offerors who submit apparently
13 responsive proposals for the purpose of clarification, to
14 assure full understanding of and responsiveness to the
15 solicitation requirements. Offerors must be accorded fair
16 and equal treatment with respect to any opportunity for
17 discussion and revision of proposals, and such revisions may
18 be permitted, after submissions and prior to award, for the
19 purpose of obtaining best and final offers. In conducting
20 discussions, there may be no disclosure of any information
21 derived from proposals submitted by competing offerors. The
22 department may require the submission of cost or pricing
23 data in connection with an award under this section.

24 (7) The award must be made to the responsible offeror
25 whose proposal is determined in writing to be the most

1 advantageous to the state, taking into consideration price,
2 including the preference in 18-1-102, and the evaluation
3 factors set forth in the request for proposals. No other
4 factors or criteria may be used in the evaluation. The
5 contract file shall contain the basis on which the award is
6 made.

7 NEW SECTION. Section 16. Small purchases. Any
8 procurement not exceeding the amount established by rule may
9 be made in accordance with small purchase procedures
10 established by the department. Procurement requirements may
11 not be artificially divided so as to constitute a small
12 purchase under this section.

13 NEW SECTION. Section 17. Sole source procurement. A
14 contract may be awarded for a supply or service item without
15 competition when, under rules adopted by the department, the
16 director, the head of a purchasing agency, or a designee of
17 either officer above the level of the procurement officer
18 determines in writing that there is only one source for the
19 required supply or service item. The department may require
20 the submission of cost or pricing data in connection with an
21 award under this section.

22 NEW SECTION. Section 18. Cancellation of invitations
23 for bids or requests for proposals. An invitation for bids,
24 a request for proposals, or other solicitation may be
25 canceled or any or all bids or proposals may be rejected in

1 whole or in part, as may be specified in the solicitation,
2 when it is in the best interests of the state. The reasons
3 therefor must be made part of the contract file.

4 **NEW SECTION.** Section 19. Nonresponsibility of bidders
5 and offerors -- nondisclosure. (1) A written determination
6 of nonresponsibility of a bidder or offeror must be made in
7 accordance with rules adopted by the department. The
8 unreasonable failure of a bidder or offeror to promptly
9 supply information in connection with an inquiry with
10 respect to responsibility may be grounds for a determination
11 of nonresponsibility with respect to such bidder or offeror.

12 (2) Information furnished by a bidder or offeror
13 pursuant to this section may not be disclosed outside of the
14 department or the purchasing agency without prior written
15 consent by the bidder or offeror.

16 **NEW SECTION.** Section 20. Prequalification of
17 suppliers. Prospective suppliers may be prequalified for
18 particular types of supplies and services. Solicitation
19 mailing lists of potential contractors must include but not
20 be limited to such prequalified suppliers.

21 **NEW SECTION.** Section 21. Types of contracts. Subject
22 to the limitations of this section, any type of contract
23 that will promote the best interests of the state may be
24 used, except that the use of a cost-plus-percentage-of-cost
25 contract is prohibited. A cost-reimbursement contract may be

1 used only when a determination is made in writing that such
2 contract is likely to be less costly to the state than any
3 other type or that it is impracticable to obtain the
4 supplies or services required except under such a contract.

5 **NEW SECTION.** Section 22. Approval of accounting
6 system. Except with respect to firm fixed-price contracts,
7 no contract type may be used unless it has been determined
8 in writing by the department that:

9 (1) the proposed contractor's accounting system will
10 permit timely development of all necessary cost data in the
11 form required by the specific contract type contemplated;
12 and

13 (2) the proposed contractor's accounting system is
14 adequate to allocate costs in accordance with generally
15 accepted accounting principles.

16 **NEW SECTION.** Section 23. Contract performance
17 security. (1) For state contracts for the procurement of
18 supplies and services, the department may in its discretion
19 require the filing of security to guarantee the faithful
20 performance of the contract and the payment of all laborers,
21 suppliers, materialmen, mechanics, and subcontractors.

22 (2) If contract performance security is required under
23 subsection (1), the following types of security may be
24 deposited with the state:

25 (a) a good and sufficient bond with a licensed surety

company as surety;

(b) an irrevocable letter of credit in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(3) The amount of the security mentioned above must be set in an amount considered by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 25% of the total contract price, and must be payable to the state of Montana. Any contract security requirements must be included in the invitations for bids or requests for proposals.

(4) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to procurements under [sections 1 through 46].

NEW SECTION. Section 24. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years;

however, the department may contract for the lease or purchase of telecommunications equipment and systems and data processing equipment for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

NEW SECTION. Section 25. Right to inspect plant. The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any

1 contract awarded or to be awarded by the state.

2 **NEW SECTION.** Section 26. Finality of determinations.
3 The determinations required by [sections 14(5), 15(1),
4 15(7), 17, 18, 19, 21, 22, and 24(2)] are final and
5 conclusive unless they are clearly erroneous, arbitrary,
6 capricious, or contrary to law.

7 **NEW SECTION.** Section 27. Reporting of anticompetitive
8 practices. If for any reason collusion or other
9 anticompetitive practices are suspected among any bidders or
10 offerors, a notice of the relevant facts shall be
11 transmitted to the attorney general by the department.

12 **NEW SECTION.** Section 28. Retention of procurement
13 records. All procurement records must be retained, managed,
14 and disposed of in accordance with Title 2, chapter 6.

15 **NEW SECTION.** Section 29. Records of sole source
16 procurements. (1) The department shall maintain or shall
17 require the head of a purchasing agency to maintain a record
18 listing all contracts made under [section 17] for a minimum
19 of 4 years. The record must contain:

- 20 (a) each contractor's name;
- 21 (b) the amount and type of each contract; and
- 22 (c) a listing of the supplies or services procured
- 23 under each contract.

24 (2) The record must be available for public
25 inspection.

1 **NEW SECTION.** Section 30. Definition. As used in
2 [sections 30 through 33], "specification" means any
3 description of the physical or functional characteristics or
4 of the nature of a supply or service. It may include a
5 description of any requirement for inspecting, testing, or
6 preparing a supply or service for delivery.

7 **NEW SECTION.** Section 31. Duties of the department --
8 rules. (1) The department shall adopt rules governing the
9 preparation, maintenance, and content of specifications for
10 supplies and services required by the state.

11 (2) The department shall prepare, issue, revise,
12 maintain, and monitor the use of specifications for supplies
13 and services required by the state.

14 **NEW SECTION.** Section 32. Using agencies' advice. The
15 director may obtain expert advice and assistance from
16 personnel of using agencies in the development of
17 specifications and may delegate in writing to a using agency
18 the authority to prepare and utilize its own specifications.

19 **NEW SECTION.** Section 33. Competition. All
20 specifications shall promote overall economy for the
21 purposes intended and encourage competition in satisfying
22 the state's needs and may not be unduly restrictive.

23 **NEW SECTION.** Section 34. Contract clauses --
24 rules. (1) The department may adopt rules permitting or
25 requiring the inclusion of clauses providing for adjustments

in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the contracting parties may mutually agree; or

(e) in the absence of agreement by the parties, by a

unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under [section 35].

(3) The department may adopt rules, including but not limited to rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

NEW SECTION. Section 35. Cost principles -- rules.

The department shall adopt rules setting forth cost principles which must be used to determine the allowability

1 of incurred costs for the purpose of reimbursing costs under
 2 contract provisions that provide for the reimbursement of
 3 costs. However, if a written determination is approved at a
 4 level above the procurement officer, such cost principles
 5 may be modified by contract.

6 NEW SECTION. Section 36. Definitions. As used in
 7 [sections 36 through 38], the following definitions apply:

8 (1) "Supplies" means supplies owned by the state.

9 (2) "Surplus supplies" means any supplies having a
 10 remaining useful life but that are no longer required by the
 11 using agency in possession of them. This includes obsolete
 12 supplies, scrap materials, and supplies that have completed
 13 their useful life cycle.

14 NEW SECTION. Section 37. Supply management rules. (1)
 15 The department shall adopt rules governing:

16 (a) the management of supplies during their entire
 17 life cycle;

18 (b) the sale, lease, or disposal of surplus supplies
 19 by public auction, competitive sealed bidding, or other
 20 appropriate method designated by rule;

21 (c) transfer of surplus supplies.

22 (2) No employee of the owning or disposing agency
 23 directly involved with the disposal may purchase supplies
 24 sold by his agency.

25 NEW SECTION. Section 38. Allocation of proceeds.

1 Proceeds from the sale, lease, or disposal of surplus
 2 supplies must be allocated as provided by 18-6-101, less a
 3 reasonable handling fee.

4 NEW SECTION. Section 39. Definitions. As used in
 5 [sections 39 through 45], the following definitions apply:

6 (1) "Cooperative purchasing" means procurement
 7 conducted by or on behalf of more than one public
 8 procurement unit.

9 (2) "Local public procurement unit" means a county,
 10 city, town, or other subdivision of the state or a public
 11 agency of any such subdivision; public authority;
 12 educational, health, or other institution; to the extent
 13 provided by law, any other entity that expends public funds
 14 for the procurement of supplies and services; and any
 15 nonprofit corporation operating a charitable hospital.

16 (3) "Public procurement unit" means a local or state
 17 public procurement unit of this or any other state,
 18 including an agency of the United States.

19 (4) "State public procurement unit" means a state
 20 department, agency, or official that expends public funds
 21 for the procurement of supplies and services.

22 NEW SECTION. Section 40. Cooperative purchasing
 23 authorized. The department may participate in, sponsor,
 24 conduct, or administer a cooperative purchasing agreement
 25 for the procurement of any supplies or services with one or

more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

NEW SECTION. Section 41. Sale, acquisition, or use of supplies by a public procurement unit. The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of [sections 12 through 29 and 36 through 38].

NEW SECTION. Section 42. Cooperative use of supplies or services. The department may enter into an agreement, independent of the requirements of [sections 12 through 29 and 36 through 38], with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

NEW SECTION. Section 43. Joint use of facilities. The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

NEW SECTION. Section 44. Information and services -- fees. (1) Upon request, the director may make available to public procurement units certain services, including but not

limited to the following:

- (a) standard forms;
 - (b) printed manuals;
 - (c) product specifications and standards;
 - (d) quality assurance testing services and methods;
 - (e) qualified products lists;
 - (f) source information;
 - (g) common use commodities listings;
 - (h) supplier prequalification information;
 - (i) supplier performance ratings;
 - (j) debarred and suspended bidders lists;
 - (k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;
 - (l) contracts or published summaries thereof, including price and time of delivery information; and
 - (m) cooperative purchasing.
- (2) The state, through the director, may provide technical services, including but not limited to the following:
- (a) development of product specifications;
 - (b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
 - (c) use of product testing and inspection facilities;
- and

(d) use of personnel training programs.

(3) The director may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

NEW SECTION. Section 45. Review of procurement requirements. To the extent possible, the director may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The director may also collect such information from local public procurement units. The director may make available all such information to any public procurement unit upon request.

NEW SECTION. Section 46. Application. (1) Except as provided in [section 24], which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, [sections 1 through 46] apply only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) [Sections 1 through 46] apply to expenditure of public funds irrespective of their source, including federal

assistance money, by this state acting through a governmental body, as defined in [section 3], under any contract; but [sections 1 through 46] do not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in [sections 39 through 45]. [Sections 1 through 46] also apply to the disposal of state supplies. Nothing in [sections 1 through 46] or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) [Sections 1 through 46] do not apply to the construction of public works.

NEW SECTION. Section 47. Performance within state of public printing, binding, and stationery work -- exceptions. (1) Except as provided in subsections (2) and (5), all printing, binding, and stationery work for the state of Montana must be performed within the state. All invitations for bids, requests for proposals, and contracts for such work must so stipulate.

(2) The work referred to in subsection (1) may be performed outside the state if it is established that:

(a) the work cannot be performed within the state;

(b) the lowest price for which the work can be procured within the state exceeds the charge usually and

1 customarily made to private individuals and corporations for
2 work of similar character and quality; or

3 (c) all bids or proposals for the work or any part
4 thereof are excessive and not reasonably competitive.

5 (3) No payment may be made by the state for printing,
6 binding, or stationery work unless the work is done within
7 the state or is authorized to be done outside the state
8 pursuant to subsection (2).

9 (4) All contracts for work to be performed outside the
10 state under subsection (2) must require that such work be
11 performed under conditions which substantially conform to
12 the laws of this state regarding conditions of employment,
13 hours of labor, and minimum wages. Violation of the
14 provisions of this subsection is cause for cancellation of
15 the contract.

16 (5) The publication of the Montana Code Annotated, as
17 provided in 1-11-301 through 1-11-304, as amended, is exempt
18 from the requirements of this section.

19 Section 49. Section 18-4-104, MCA, is amended to read:

20 "18-4-104. Purchases exempt from general requirements.

21 (1) Fresh fruits and vegetables (other than potatoes) shall
22 not be included in the supplies to be purchased as provided
23 in ~~this chapter [sections 1 through 46]~~. The department may
24 allow a state agency or institution to purchase fresh fruits
25 and vegetables. An itemized account shall be kept of these

1 purchases and the account shall be furnished to the
2 department.

3 (2) Likewise, when immediate delivery of articles or
4 performance of service is required by the public exigencies,
5 the articles or service so required may be procured by open
6 purchase or contract at the place and in the manner in which
7 the articles are usually bought and sold or the services
8 engaged between individuals but under the direction of the
9 department.

10 (3) The department of administration may exempt the
11 department of institutions from the provisions of ~~part 2~~ of
12 ~~this chapter [sections 1 through 46]~~ for the purchase of
13 suitable clothing by the department of institutions for
14 residents of its institutions and community-based programs.

15 (4) As used in this section, "suitable clothing" means
16 styled, seasonable clothing, which will allow the resident
17 to make a normal appearance in the community."

18 Section 49. Section 18-7-104, MCA, is amended to read:

19 "18-7-104. Union label. All printing for which the
20 state of Montana is chargeable shall bear the label of the
21 branch of the international typographical union, the allied
22 printing trades council, or the amalgamated lithographers of
23 America of the locality in which it is printed, except under
24 the following conditions. Printing firms not having the use
25 of the labels and who are desirous of presenting bids for

printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104, but nothing in these provisions shall be construed as exempting such bidders from any provisions of ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104, and such bidders shall also be required to conform to all provisions thereof."

Section 50. Section 18-7-105, MCA, is amended to read:

"18-7-105. Penalty. Any officer of the state who shall accept any printed matter--except--certificates--named--in ~~18-7-103~~, for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in ~~18-7-103~~ [sections 1 through 46], [section 47], or 18-7-104 shall be subject to a fine of \$50 for each and every offense."

Section 51. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters.

(1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing

1 animals needed for propagation or stocking purposes or to
2 exercise control measures of undesirable species;

3 (e) for state parks and outdoor recreation;

4 (f) to extend and consolidate by exchange, lands or
5 waters suitable for these purposes.

6 (2) The department, with the consent of the
7 commission, may acquire by condemnation lands or structures
8 for the preservation of historical or archaeological sites
9 that are threatened with destruction or alteration.

10 (3) (a) The department, with the consent of the
11 commission, may dispose of lands and waters acquired by it
12 on those terms after that public notice, without regard to
13 other laws which provide for sale or disposal of state lands
14 and with or without reservation, as it considers necessary
15 and advisable.

16 (b) Notice of sale describing the lands or waters to
17 be disposed of shall be published once a week for 3
18 successive weeks in a newspaper with general circulation
19 printed and published in the county where the lands or
20 waters are situated or, if no newspaper is published in that
21 county, then in any newspaper with general circulation in
22 that county.

23 (c) The notice shall advertise for cash bids to be
24 presented to the director within 30 days from the date of
25 the first publication. Each bid must be accompanied by a

1 cashier's check or cash deposit in an amount equal to 10% of
2 the amount bid. The highest bid shall be accepted upon
3 payment of the balance due within 10 days after mailing
4 notice by registered or certified mail to the highest
5 bidder. If that bidder defaults on payment of the balance
6 due, then the next highest bidders shall be similarly
7 notified in succession until a sale is completed. Deposits
8 shall be returned to the unsuccessful bidders except bidders
9 defaulting after notification.

10 (d) The department shall reserve the right to reject
11 any bids which do not equal or exceed the full market value
12 of the lands and waters as determined by the department. The
13 department shall convey the lands and waters without
14 covenants of warranty by deed executed by the governor or in
15 his absence or disability by the lieutenant governor,
16 attested by the secretary of state and further countersigned
17 by the director.

18 ~~(4) Notwithstanding the provisions of 18-4-102, the~~
19 The department, with the consent of the commission, is
20 authorized to utilize the installment contract method to
21 facilitate the acquisition of wildlife management areas, in
22 which game and nongame fur-bearing animals and game and
23 nongame birds may breed and replenish, and areas which
24 provide access to fishing sites for the public. In no case
25 may the total cost of such installment contracts exceed the

1 cost of purchases authorized by the department and
2 appropriated by the legislature."

3 NEW SECTION. Section 52. Codification instruction.
4 Sections 1 through 46 are intended to be codified as an
5 integral part of Title 18, and the provisions of Title 18
6 apply to sections 1 through 46. Section 47 is intended to
7 be codified as an integral part of Title 18, chapter 7, and
8 the provisions of Title 18, chapter 7, apply to section 47.

9 NEW SECTION. Section 53. Severability. If a part of
10 this act is invalid, all valid parts that are severable from
11 the invalid part remain in effect. If a part of this act is
12 invalid in one or more of its applications, the part remains
13 in effect in all valid applications that are severable from
14 the invalid applications.

15 NEW SECTION. Section 54. Repealer. Sections 18-4-101,
16 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through
17 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113,
18 MCA, are repealed.

19 NEW SECTION. Section 55. Effective date. This act is
20 effective January 1, 1984.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 493

3 House State Administration Committee
4

5 A statement of intent is required for this bill because
6 it grants rulemaking authority to the Department of
7 Administration for the purpose of implementing the
8 procurement procedures established by the bill. The bill is
9 based upon the American Bar Association Model Procurement
10 Code for State and Local Governments. The Model Code was
11 drafted on the concept that it should be a short statute
12 providing the fundamentals of sound procurement that should
13 be implemented by rules consistent with the statutory
14 framework.

15 It is intended that the Department look to the
16 Recommended Regulations for the Model Procurement Code for
17 State and Local Governments adopted by the American Bar
18 Association for guidance in adopting rules implementing the
19 provisions of this bill.

SECOND READING

HB 493

Approved by Committee
on State Administration

HOUSE BILL NO. 493

INTRODUCED BY YARDLEY, DOVER

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104, 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111 THROUGH 18-7-113, MCA; AND PROVIDING A--DELETED--EFFECTIVE DATE EFFECTIVE DATES."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 46 ~~48~~] may be cited as the "Montana Procurement Act".

NEW SECTION. Section 2. Purpose. The underlying purposes and policies of [sections 1 through 46 ~~48~~] are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement

laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

NEW SECTION. Section 3. Definitions. In [sections 1 through 46 ~~48~~], 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 which 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.

1 regardless of what they may be called, for the procurement
2 or disposal of supplies or services.

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

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

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

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

14 (8) "Designee" means a duly authorized representative
15 of a person holding a superior position.

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

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

22 (11) "Governmental body" means a department,
23 commission, council, board, bureau, committee, institution,
24 legislative body, agency, government corporation, or other
25 entity, instrumentality, or official of the executive,

1 legislative, or judicial branch of this state, including the
2 board of regents and the Montana university system.

3 (12) "Grant" means the furnishing by the federal
4 government of assistance, whether financial or otherwise, to
5 a person or agency to support a program authorized by law.
6 It does not include an award whose primary purpose is to
7 procure an end product, whether in the form of supplies or
8 services. A contract resulting from such an award is not a
9 grant but a procurement contract.

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

13 (14) "Printing" means the reproduction of an image from
14 a printing surface generally made by a contact impression
15 that causes a transfer of ink or the reproduction of an
16 impression by a photographic process and includes graphic
17 arts, typesetting, binding, and other operations necessary
18 to produce a finished printed product. Printing does not
19 include rebinding or repair by a library or an office,
20 department, board, or commission thereof of books, journals,
21 pamphlets, magazines, and literary articles held as a part
22 of its library collection.

23 (15) "Procurement" means buying, purchasing, renting,
24 leasing, or otherwise acquiring any supplies or services. It
25 also includes all functions that pertain to the obtaining of

1 any supply or service, including description of
2 requirements, selection and solicitation of sources,
3 preparation and award of contract, and all phases of
4 contract administration.

5 (16) "Procurement officer" means any person duly
6 authorized to enter into and administer contracts and make
7 written determinations with respect thereto. The term also
8 includes an authorized representative acting within the
9 limits of his authority.

10 (17) "Purchasing agency" means any governmental body,
11 other than the department, which is authorized by [sections
12 1 through 46 48] or its implementing rules or by way of
13 delegation from the director to enter into contracts.

14 (18) "Services" means the furnishing of labor, time, or
15 effort by a contractor, not involving the delivery of a
16 specific end product other than reports which are merely
17 incidental to the required performance. The term does not
18 include consulting services as defined in 18-8-102, those
19 services listed in 18-8-103, employment agreements or
20 collective bargaining agreements, the provision by private
21 providers of human services regulated by a state agency, or
22 services related to construction contracts.

23 (19) "Supplies" means all property except as otherwise
24 provided by law, including but not limited to equipment,
25 materials, printing, and commodities, and excluding land or

1 any interest in land.

2 (20) "Using agency" means any governmental body of the
3 state which utilizes any supplies or services procured under
4 [sections 1 through 46 48].

5 ~~NEW_SECTION.~~ Section 4. Supplementary general
6 principles of law applicable -- requirement of good faith.
7 (1) Unless displaced by the particular provisions of
8 [sections 1 through 46 48], the principles of law and
9 equity, including the Uniform Commercial Code, the law
10 merchant, and law relative to capacity to contract, agency,
11 fraud, misrepresentation, duress, coercion, mistake, or
12 bankruptcy, supplement the provisions of [sections 1 through
13 46 48], except that writs of mandamus and prohibition issued
14 pursuant to Title 27, chapters 26 and 27, may not be used as
15 a remedy for violations of [sections 1 through 46 48].

16 (2) [Sections 1 through 46 48] require all parties
17 involved in the negotiation, performance, or administration
18 of state contracts to act in good faith.

19 ~~NEW_SECTION.~~ Section 5. Public access to procurement
20 information -- records -- retention. (1) Procurement
21 information is a public writing and must be available to the
22 public as provided in 2-6-102.

23 (2) All procurement records shall be retained and
24 disposed of in accordance with the state records management
25 program.

(3) Written determinations required by [sections 1 through 46 48] must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

NEW_SECTION. Section 6. General procurement authority and duties of department -- rules. (1) Except as otherwise provided in [sections 1 through 46 48], the department shall adopt rules, consistent with [sections 1 through 46 48], governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of [sections 1 through 46 48]. The department may audit and monitor the implementation of its rules and the requirements of [sections 1 through 46 48].

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state;

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state; and

(c) establish and maintain programs for the inspection, testing, acceptance, and inventory of supplies and services.

(3) Nothing contained herein shall preclude the state

from doing its own printing on its own printing facilities.

NEW_SECTION. Section 7. Delegation of authority by department. Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

NEW_SECTION. Section 8. State procurement rules -- delegation -- existing rights. (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

NEW_SECTION. Section 9. Authority to remove or suspend from vendors' list. (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been issued for an offense that would be a cause for removal under subsection (3), in which case the suspension must, at

the request of the attorney general, remain in effect until after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) violation of contract provisions, as set forth in subsection (3)(d)(i) and (3)(d)(ii), of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal; and

(e) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

NEW SECTION. Section 10. Remedies prior to and after award. (1) The provisions of this section apply whenever it is determined administratively or upon judicial review that a solicitation or award of a contract is in violation of law.

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a

1 solicitation or award of a contract is in violation of law
2 and the person awarded the contract has not acted
3 fraudulently or in bad faith, the contract may be:

4 (i) ratified and affirmed, provided it is determined
5 that doing so is in the best interests of the state; or

6 (ii) terminated, and the person awarded the contract
7 must be compensated for the actual expenses reasonably
8 incurred under the contract, plus a reasonable profit, prior
9 to the termination.

10 (b) If after an award it is determined that a
11 solicitation or award of a contract is in violation of law
12 and the person awarded the contract has acted fraudulently
13 or in bad faith, the contract may be:

14 (i) declared void; or

15 (ii) ratified and affirmed if such action is in the
16 best interests of the state, without prejudice to the
17 state's rights to appropriate damages.

18 **NEW_SECTION.** Section 11. Collection of data
19 concerning public procurement. All using agencies shall
20 cooperate with the department in the preparation of
21 statistical data concerning the procurement, usage, and
22 disposition of all supplies and services, and the department
23 may employ trained personnel as necessary to carry out this
24 function. All using agencies shall furnish such reports as
25 the department may require concerning usage, needs, and

1 stocks on hand, and the department may prescribe forms to be
2 used by the using agencies in requisitioning, ordering, and
3 reporting of supplies and services.

4 **NEW_SECTION.** Section 12. Definitions. As used in
5 [sections 12 through 29 30], the following definitions
6 apply:

7 (1) "Cost-reimbursement contract" means a contract
8 under which a contractor is reimbursed for costs which are
9 allowable and allocable in accordance with the contract
10 terms and the provisions of [sections 1 through 46 48], and
11 a fee, if any.

12 (2) "Established catalog price" means the price
13 included in a catalog, price list, schedule, or other form
14 that:

15 (a) is regularly maintained by a manufacturer or
16 contractor;

17 (b) is either published or otherwise available for
18 inspection by customers; and

19 (c) states prices at which sales are currently or were
20 last made to a significant number of any category of buyers
21 or buyers constituting the general buying public for the
22 supplies or services involved.

23 (3) "Invitation for bids" means all documents, whether
24 attached or incorporated by reference, utilized for
25 soliciting bids.

(4) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(7) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

NEW SECTION. Section 13. Methods of source selection. Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to [section 14], except as provided in 18-4-104; Title 18, chapter 5; Title 18, chapter 8; and [sections 15 through 17]. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

NEW SECTION. Section 14. Competitive sealed bidding.

(1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in [sections 1 through 46 ~~48~~]. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation

1 for award must be objectively measurable, such as discounts,
2 transportation costs, and total or life-cycle costs. The
3 invitation for bids shall set forth the evaluation criteria
4 to be used. Only criteria set forth in the invitation for
5 bids may be used in bid evaluation.

6 (5) Correction or withdrawal of inadvertently
7 erroneous bids, before or after award, or cancellation of
8 awards or contracts based on such bid mistakes may be
9 permitted in accordance with rules adopted by the
10 department. After bid opening no changes in bid prices or
11 other provisions of bids prejudicial to the interest of the
12 state or fair competition may be permitted. Except as
13 otherwise provided by rule, all decisions to permit the
14 correction or withdrawal of bids or to cancel awards or
15 contracts based on bid mistakes must be supported by a
16 written determination made by the department.

17 (6) The contract must be awarded with reasonable
18 promptness by written notice to the lowest responsible and
19 responsive bidder whose bid meets the requirements and
20 criteria set forth in the invitation for bids, including the
21 preferences established by Title 18, chapter 1, part 1. If
22 all bids exceed available funds as certified by the
23 appropriate fiscal officer and the low responsive and
24 responsible bid does not exceed such funds by more than 5%,
25 the director or the head of a purchasing agency is

1 authorized, in situations where time or economic
2 considerations preclude resolicitation of a reduced scope,
3 to negotiate an adjustment of the bid price, including
4 changes in the bid requirements, with the low responsive and
5 responsible bidder in order to bring the bid within the
6 amount of available funds.

7 (7) When it is considered impractical to initially
8 prepare a purchase description to support an award based on
9 price, an invitation for bids may be issued requesting the
10 submission of unpriced offers, to be followed by an
11 invitation for bids limited to those bidders whose offers
12 have been qualified under the criteria set forth in the
13 first solicitation.

14 ~~NEW SECTION.~~ Section 15. Competitive sealed
15 proposals. (1) When, under rules adopted by the department,
16 the director, the head of a purchasing agency, or a designee
17 of either officer above the level of the procurement officer
18 determines in writing that the use of competitive sealed
19 bidding is either not practicable or not advantageous to the
20 state, a contract may be entered into by competitive sealed
21 proposals. The department may provide by rule that it is
22 either not practicable or not advantageous to the state to
23 procure specified types of supplies and services by
24 competitive sealed bidding.

25 (2) Proposals must be solicited through a request for

1 proposals.

2 (3) Adequate public notice of the request for
3 proposals must be given in the same manner as provided in
4 [section 14(2)].

5 (4) Proposals must be opened so as to avoid disclosure
6 of contents to competing offerors during the process of
7 negotiation. A register of proposals must be prepared in
8 accordance with rules adopted by the department and must be
9 open for public inspection after contract award.

10 (5) The request for proposals must state the relative
11 importance of price and other evaluation factors.

12 (6) As provided in the request for proposals and under
13 rules adopted by the department, discussions may be
14 conducted with responsible offerors who submit apparently
15 responsive proposals for the purpose of clarification, to
16 assure full understanding of and responsiveness to the
17 solicitation requirements. Offerors must be accorded fair
18 and equal treatment with respect to any opportunity for
19 discussion and revision of proposals, and such revisions may
20 be permitted, after submissions and prior to award, for the
21 purpose of obtaining best and final offers. In conducting
22 discussions, there may be no disclosure of any information
23 derived from proposals submitted by competing offerors. The
24 department may require the submission of cost or pricing
25 data in connection with an award under this section.

1 (7) The award must be made to the responsible offeror
2 whose proposal is determined in writing to be the most
3 advantageous to the state, taking into consideration price,
4 including the preference in 18-1-102, and the evaluation
5 factors set forth in the request for proposals. No other
6 factors or criteria may be used in the evaluation. The
7 contract file shall contain the basis on which the award is
8 made.

9 NEW SECTION. Section 16. Small purchases. Any
10 procurement not exceeding the amount established by rule may
11 be made in accordance with small purchase procedures
12 established by the department. Procurement requirements may
13 not be artificially divided so as to constitute a small
14 purchase under this section.

15 NEW SECTION. Section 17. Sole source procurement. A
16 contract may be awarded for a supply or service item without
17 competition when, under rules adopted by the department, the
18 director, the head of a purchasing agency, or a designee of
19 either officer above the level of the procurement officer
20 determines in writing that there is only one source for the
21 required supply or service item. The department may require
22 the submission of cost or pricing data in connection with an
23 award under this section.

24 NEW SECTION. Section 18. Cancellation of invitations
25 for bids or requests for proposals. An invitation for bids,

1 a request for proposals, or other solicitation may be
2 canceled or any or all bids or proposals may be rejected in
3 whole or in part, as may be specified in the solicitation,
4 when it is in the best interests of the state. The reasons
5 therefor must be made part of the contract file.

6 **NEW_SECTION.** Section 19. Nonresponsibility of bidders
7 and offerors -- nondisclosure. (1) A written determination
8 of nonresponsibility of a bidder or offeror must be made in
9 accordance with rules adopted by the department. The
10 unreasonable failure of a bidder or offeror to promptly
11 supply information in connection with an inquiry with
12 respect to responsibility may be grounds for a determination
13 of nonresponsibility with respect to such bidder or offeror.

14 (2) Information furnished by a bidder or offeror
15 pursuant to this section may not be disclosed outside of the
16 department or the purchasing agency without prior written
17 consent by the bidder or offeror.

18 **NEW_SECTION.** Section 20. Prequalification of
19 suppliers. Prospective suppliers may be prequalified for
20 particular types of supplies and services. Solicitation
21 mailing lists of potential contractors must include but not
22 be limited to such prequalified suppliers.

23 **NEW_SECTION.** Section 21. Types of contracts. Subject
24 to the limitations of this section, any type of contract
25 that will promote the best interests of the state may be

1 used, except that the use of a cost-plus-percentage-of-cost
2 contract is prohibited. A cost-reimbursement contract may be
3 used only when a determination is made in writing that such
4 contract is likely to be less costly to the state than any
5 other type or that it is impracticable to obtain the
6 supplies or services required except under such a contract.

7 **NEW_SECTION.** Section 22. Approval of accounting
8 system. Except with respect to firm fixed-price contracts,
9 no contract type may be used unless it has been determined
10 in writing by the department that:

11 (1) the proposed contractor's accounting system will
12 permit timely development of all necessary cost data in the
13 form required by the specific contract type contemplated;
14 and

15 (2) the proposed contractor's accounting system is
16 adequate to allocate costs in accordance with generally
17 accepted accounting principles.

18 **NEW_SECTION.** Section 23. Contract performance
19 security. (1) For state contracts for the procurement of
20 supplies and services, the department may in its discretion
21 require the filing of security to guarantee the faithful
22 performance of the contract and the payment of all laborers,
23 suppliers, materialmen, mechanics, and subcontractors.

24 (2) If contract performance security is required under
25 subsection (1), the following types of security may be

1 deposited with the state:

2 (a) a good and sufficient bond with a licensed surety
3 company as surety;

4 (b) an Irrevocable letter of credit in accordance with
5 the provisions of Title 30, chapter 5, part 1;

6 (c) lawful money of the United States;

7 (d) a cashier's check, certified check, bank money
8 order, or bank draft, drawn or issued by any banking
9 corporation incorporated under the laws of Montana or by a
10 banking association located in Montana; or

11 (e) certificates of deposit or money market
12 certificates issued by any bank or savings and loan
13 association licensed to do business in Montana.

14 (3) The amount of the security mentioned above must be
15 set in an amount considered by the department to be
16 sufficient to cover the risk involved to the state, except
17 that the same shall not be less than 25% of the total
18 contract price, and must be payable to the state of Montana.
19 Any contract security requirements must be included in the
20 invitations for bids or requests for proposals.

21 (4) The provisions of Title 18, chapter 2, parts 2 and
22 3, do not apply to procurements under [sections 1 through 46
23 48].

24 ~~NEW SECTION.~~ Section 24. Contracts -- terms,
25 extensions, and time limits. (1) Unless otherwise provided

1 by law, no contract, lease, or rental agreement for supplies
2 or services may be made for a longer period than 3 years;
3 however, the department may contract for the lease or
4 purchase of telecommunications equipment and systems and
5 data processing equipment for a period not to exceed 10
6 years. A contract, lease, or rental agreement may be
7 extended or renewed, notwithstanding the time limits stated
8 in this section, if the terms of the extension or renewal,
9 if any, are included in the solicitation and funds are
10 available for the first fiscal period at the time of the
11 agreement. Payment and performance obligations for
12 succeeding fiscal periods are subject to the availability
13 and appropriation of funds therefor.

14 (2) Prior to the extension or renewal of a contract,
15 it must be determined in writing that:

16 (a) estimated requirements cover the period of the
17 contract and are reasonably firm and continuing; and

18 (b) the contract will serve the best interests of the
19 state by encouraging effective competition or otherwise
20 promoting economies in state procurement.

21 (3) When funds are not appropriated or otherwise made
22 available to support continuation of performance in a
23 subsequent fiscal period, the contract must be canceled.

24 ~~THERE IS A NEW MCA SECTION THAT READS:~~

25 Section 25. Consultation with the legislature. Before

1 entering into a contract, lease, or rental agreement for
 2 supplies or services for a period longer than 3 years and
 3 involving expenditures exceeding \$25,000, the department or
 4 its designee shall inform and consult with the legislature
 5 if the legislature is in session or the legislative finance
 6 committee if the legislature is not in session.

7 **NEW_SECTION.** Section 26. Right to inspect plant. The
 8 state may, at reasonable times, inspect the part of the
 9 plant or place of business of a contractor or any
 10 subcontractor that is related to the performance of any
 11 contract awarded or to be awarded by the state.

12 **NEW_SECTION.** Section 27. Finality of determinations.
 13 The determinations required by [sections 14(5), 15(1),
 14 15(7), 17, 18, 19, 21, 22, and 24(2)] are final and
 15 conclusive unless they are clearly erroneous, arbitrary,
 16 capricious, or contrary to law.

17 **NEW_SECTION.** Section 28. Reporting of anticompetitive
 18 practices. If for any reason collusion or other
 19 anticompetitive practices are suspected among any bidders or
 20 offerors, a notice of the relevant facts shall be
 21 transmitted to the attorney general by the department.

22 **NEW_SECTION.** Section 29. Retention of procurement
 23 records. All procurement records must be retained, managed,
 24 and disposed of in accordance with Title 2, chapter 6.

25 **NEW_SECTION.** Section 30. Records of sole source

1 procurements. (1) The department shall maintain or shall
 2 require the head of a purchasing agency to maintain a record
 3 listing all contracts made under [section 17] for a minimum
 4 of 4 years. The record must contain:

- 5 (a) each contractor's name;
- 6 (b) the amount and type of each contract; and
- 7 (c) a listing of the supplies or services procured
- 8 under each contract.

9 (2) The record must be available for public
 10 inspection.

11 **NEW_SECTION.** Section 31. Definition. As used in
 12 [sections 30 31 through 33 34], "specification" means any
 13 description of the physical or functional characteristics or
 14 of the nature of a supply or service. It may include a
 15 description of any requirement for inspecting, testing, or
 16 preparing a supply or service for delivery.

17 **NEW_SECTION.** Section 32. Duties of the department --
 18 rules. (1) The department shall adopt rules governing the
 19 preparation, maintenance, and content of specifications for
 20 supplies and services required by the state.

21 (2) The department shall prepare, issue, revise,
 22 maintain, and monitor the use of specifications for supplies
 23 and services required by the state.

24 **NEW_SECTION.** Section 33. Using agencies' advice. The
 25 director may obtain expert advice and assistance from

1 personnel of using agencies in the development of
2 specifications and may delegate in writing to a using agency
3 the authority to prepare and utilize its own specifications.

4 **NEW SECTION.** Section 34. Competition. All
5 specifications shall promote overall economy for the
6 purposes intended and encourage competition in satisfying
7 the state's needs and may not be unduly restrictive.

8 **NEW SECTION.** Section 35. Contract clauses --
9 rules. (1) The department may adopt rules permitting or
10 requiring the inclusion of clauses providing for adjustments
11 in prices, time of performance, or other appropriate
12 contract provisions relating to the following subjects:

13 (a) the unilateral right of the state to order in
14 writing:

15 (i) changes in the work within the scope of the
16 contract; and

17 (ii) temporary work stoppage or delay of performance;
18 and

19 (b) variations occurring between estimated quantities
20 of work in a contract and actual quantities.

21 (2) Adjustments in price pursuant to clauses
22 established under subsection (1) must be computed in one or
23 more of the following ways:

24 (a) by agreement on a fixed price adjustment before
25 commencement of the pertinent performance or as soon

1 thereafter as practicable;

2 (b) by unit prices specified in the contract or
3 subsequently agreed upon;

4 (c) by the costs attributable to the events or
5 situations under such clauses with adjustment of profit or
6 fee, all as specified in the contract or subsequently agreed
7 upon;

8 (d) in such other manner as the contracting parties
9 may mutually agree; or

10 (e) in the absence of agreement by the parties, by a
11 unilateral determination by the state of the costs
12 attributable to the events or situations under such clauses
13 with adjustment of profit or fee, all as computed by the
14 state in accordance with applicable sections of the rules
15 adopted under [section 35 36].

16 (3) The department may adopt rules, including but not
17 limited to rules permitting or requiring the inclusion in
18 state contracts of clauses providing for appropriate
19 remedies and relating to the following subjects:

20 (a) liquidated damages, as appropriate;

21 (b) specified excuses for delay or nonperformance;

22 (c) termination of the contract for default; and

23 (d) termination of the contract, in whole or in part,
24 for the convenience of the state.

25 (4) The director or the head of a purchasing agency

may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

NEW SECTION. Section 36. Cost principles -- rules.

The department shall adopt rules setting forth cost principles which must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. However, if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

NEW SECTION. Section 37. Definitions. As used in [sections 36 37 through 38 39], the following definitions apply:

(1) "Supplies" means supplies owned by the state.

(2) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

NEW SECTION. Section 38. Supply management rules. (1)

The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(2) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

NEW SECTION. Section 39. Allocation of proceeds. Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

NEW SECTION. Section 40. Definitions. As used in [sections 39 40 through 45 46], the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds

1 for the procurement of supplies and services; and any
2 nonprofit corporation operating a charitable hospital.

3 (3) "Public procurement unit" means a local or state
4 public procurement unit of this or any other state,
5 including an agency of the United States.

6 (4) "State public procurement unit" means a state
7 department, agency, or official that expends public funds
8 for the procurement of supplies and services.

9 NEW SECTION. Section 41. Cooperative purchasing
10 authorized. The department may participate in, sponsor,
11 conduct, or administer a cooperative purchasing agreement
12 for the procurement of any supplies or services with one or
13 more public procurement units in accordance with an
14 agreement entered into between the participants. Such
15 cooperative purchasing may include but is not limited to
16 joint or multi-party contracts between public procurement
17 units and open-ended state public procurement unit contracts
18 that are made available to local public procurement units.

19 NEW SECTION. Section 42. Sale, acquisition, or use of
20 supplies by a public procurement unit. The department may
21 sell to, acquire from, or use any supplies belonging to
22 another public procurement unit independent of the
23 requirements of [sections 12 through 29 30 and 36 31 through
24 30 32].

25 NEW SECTION. Section 43. Cooperative use of supplies

1 or services. The department may enter into an agreement,
2 independent of the requirements of [sections 12 through 29
3 30 and 36 31 through 30 32], with any other public
4 procurement unit for the cooperative use of supplies or
5 services under the terms agreed upon between the parties.

6 NEW SECTION. Section 44. Joint use of facilities. The
7 department may enter into agreements for the common use or
8 lease of warehousing facilities, capital equipment, and
9 other facilities with another public procurement unit under
10 the terms agreed upon between the parties.

11 NEW SECTION. Section 45. Information and services --
12 fees. (1) Upon request, the director may make available to
13 public procurement units certain services, including but not
14 limited to the following:

- 15 (a) standard forms;
- 16 (b) printed manuals;
- 17 (c) product specifications and standards;
- 18 (d) quality assurance testing services and methods;
- 19 (e) qualified products lists;
- 20 (f) source information;
- 21 (g) common use commodities listings;
- 22 (h) supplier prequalification information;
- 23 (i) supplier performance ratings;
- 24 (j) debarred and suspended bidders lists;
- 25 (k) forms for invitations for bids, requests for

1 proposals, instructions to bidders, general contract
2 provisions, and other contract forms;

3 (1) contracts or published summaries thereof,
4 including price and time of delivery information; and

5 (m) cooperative purchasing.

6 (2) The state, through the director, may provide
7 technical services, including but not limited to the
8 following:

9 (a) development of product specifications;

10 (b) development of quality assurance test methods,
11 including receiving, inspection, and acceptance procedures;

12 (c) use of product testing and inspection facilities;
13 and

14 (d) use of personnel training programs.

15 (3) The director may enter into contractual
16 arrangements and publish a schedule of fees for the services
17 provided under subsections (1) and (2). Such fees may be
18 used by the department to offset costs incurred in providing
19 such services.

20 **NEW SECTION.** Section 46. Review of procurement
21 requirements. To the extent possible, the director may
22 collect information concerning the type, cost, quality, and
23 quantity of commonly used supplies or services being
24 procured or used by state public procurement units. The
25 director may also collect such information from local public

1 procurement units. The director may make available all such
2 information to any public procurement unit upon request.

3 **NEW SECTION.** Section 47. Application. (1) Except as
4 provided in [section 24], which applies retroactively to
5 telecommunications equipment and systems and data processing
6 equipment acquired under existing contracts, leases, or
7 rental agreements, and subject to the terms of such
8 agreements, [sections 1 through 46 ~~48~~] apply only to
9 contracts solicited or entered into after January 1, 1984,
10 unless the parties agree to its application to a contract
11 solicited or entered into prior to January 1, 1984.

12 (2) [Sections 1 through 46 ~~48~~] apply to expenditure of
13 public funds irrespective of their source, including federal
14 assistance money, by this state acting through a
15 governmental body, as defined in [section 3], under any
16 contract; but [sections 1 through 46 ~~48~~] do not apply to
17 either grants or contracts between the state and its
18 political subdivisions or other governments, except as
19 provided in [sections 39 ~~40~~ through 45 ~~46~~]. [Sections 1
20 through 46 ~~48~~] also apply to the disposal of state supplies.
21 Nothing in [sections 1 through 46 ~~48~~] or in rules adopted
22 thereunder prevents any governmental body or political
23 subdivision from complying with the terms and conditions of
24 any grant, gift, bequest, or cooperative agreement.

25 (3) [Sections 1 through 46 ~~48~~] do not apply to the

1 construction of public works.

2 THERE IS A NEW MCA SECTION THAT READS:

3 Section 48. Local government adoption of procurement
4 provisions. A political subdivision or school district may
5 adopt any or all parts of [sections 1 through 48] and the
6 accompanying rules promulgated by the department.

7 NEW SECTION. Section 49. Performance within state of
8 public printing, binding, and stationery work --
9 exceptions. (1) Except as provided in subsections (2) and
10 (5), all printing, binding, and stationery work for the
11 state of Montana must be performed within the state. All
12 invitations for bids, requests for proposals, and contracts
13 for such work must so stipulate.

14 (2) The work referred to in subsection (1) may be
15 performed outside the state if it is established that:

16 (a) the work cannot be performed within the state;

17 (b) the lowest price for which the work can be
18 procured within the state exceeds the charge usually and
19 customarily made to private individuals and corporations for
20 work of similar character and quality; or

21 (c) all bids or proposals for the work or any part
22 thereof are excessive and not reasonably competitive.

23 (3) No payment may be made by the state for printing,
24 binding, or stationery work unless the work is done within
25 the state or is authorized to be done outside the state

1 pursuant to subsection (2).

2 (4) All contracts for work to be performed outside the
3 state under subsection (2) must require that such work be
4 performed under conditions which substantially conform to
5 the laws of this state regarding conditions of employment,
6 hours of labor, and minimum wages. Violation of the
7 provisions of this subsection is cause for cancellation of
8 the contract.

9 (5) The publication of the Montana Code Annotated, as
10 provided in 1-11-301 through 1-11-304, as amended, is exempt
11 from the requirements of this section.

12 Section 50. Section 18-4-104, MCA, is amended to read:

13 "18-4-104. Purchases exempt from general requirements.
14 (1) Fresh fruits and vegetables (other than potatoes) shall
15 not be included in the supplies to be purchased as provided
16 in this chapter [sections 1 through 46-48]. The department
17 may allow a state agency or institution to purchase fresh
18 fruits and vegetables. An itemized account shall be kept of
19 these purchases and the account shall be furnished to the
20 department.

21 (2) Likewise, when immediate delivery of articles or
22 performance of service is required by the public exigencies,
23 the articles or service so required may be procured by open
24 purchase or contract at the place and in the manner in which
25 the articles are usually bought and sold or the services

1 engaged between individuals but under the direction of the
2 department.

3 (3) The department of administration may exempt the
4 department of institutions from the provisions of ~~part 2 of~~
5 ~~this chapter [sections 1 through 46-48]~~ for the purchase of
6 suitable clothing by the department of institutions for
7 residents of its institutions and community-based programs.

8 (4) As used in this section, "suitable clothing" means
9 styled, seasonable clothing, which will allow the resident
10 to make a normal appearance in the community."

11 Section 51. Section 18-7-104, MCA, is amended to read:

12 "18-7-104. Union label. All printing for which the
13 state of Montana is chargeable shall bear the label of the
14 branch of the International typographical union, the allied
15 printing trades council, or the amalgamated lithographers of
16 America of the locality in which it is printed, except under
17 the following conditions. Printing firms not having the use
18 of the labels and who are desirous of presenting bids for
19 printing as enumerated above shall be required to establish
20 consideration as a responsible bidder as follows:

21 (1) As a condition to consideration as a responsible
22 bidder, printing concerns must file with the secretary of
23 state a sworn statement to the effect that employees in the
24 employ of the concern which is to produce such printing are
25 receiving the prevailing wage rate and are working under

1 conditions prevalent in the locality in which the work is
2 produced.

3 (2) Whenever a collective bargaining agreement is in
4 effect between an employer and employees who are represented
5 by a responsible organization which is in no way influenced
6 or controlled by the management, such agreement and its
7 provisions shall be construed as conditions prevalent in
8 said locality and shall be the minimum requirement for being
9 adjudged a responsible bidder under ~~18-7-103 [sections 1~~
10 ~~through 46-48], [section 47-49],~~ or 18-7-104.

11 (3) Printing firms having the use of the union labels
12 as set forth above shall be deemed as having complied with
13 the provisions of ~~18-7-103 [sections 1 through 46-48],~~
14 ~~[section 47-49],~~ or 18-7-104, but nothing in these
15 provisions shall be construed as exempting such bidders from
16 any provisions of ~~18-7-103 [sections 1 through 46-48],~~
17 ~~[section 47-49],~~ or 18-7-104, and such bidders shall also
18 be required to conform to all provisions thereof."

19 Section 52. Section 18-7-105, MCA, is amended to read:

20 "18-7-105. Penalty. Any officer of the state who shall
21 accept any printed matter--~~except--certificates--named--in~~
22 ~~18-7-193,~~ for which the state is chargeable in whole or in
23 part or who is found to have had printed matter produced,
24 under conditions other than as set forth in ~~18-7-103~~
25 ~~[sections 1 through 46-48], [section 47-49],~~ or 18-7-104

shall be subject to a fine of \$50 for each and every offense."

Section 53. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters.

(1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the

commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly

1 notified in succession until a sale is completed. Deposits
2 shall be returned to the unsuccessful bidders except bidders
3 defaulting after notification.

4 (d) The department shall reserve the right to reject
5 any bids which do not equal or exceed the full market value
6 of the lands and waters as determined by the department. The
7 department shall convey the lands and waters without
8 covenants of warranty by deed executed by the governor or in
9 his absence or disability by the lieutenant governor,
10 attested by the secretary of state and further countersigned
11 by the director.

12 ~~(4) Notwithstanding the provisions of 18-4-102, the~~
13 ~~the~~ department, with the consent of the commission, is
14 authorized to utilize the installment contract method to
15 facilitate the acquisition of wildlife management areas, in
16 which game and nongame fur-bearing animals and game and
17 nongame birds may breed and replenish, and areas which
18 provide access to fishing sites for the public. In no case
19 may the total cost of such installment contracts exceed the
20 cost of purchases authorized by the department and
21 appropriated by the legislature."

22 NEW SECTION. Section 54. Codification instruction.
23 Sections 1 through 46 ~~48~~ are intended to be codified as an
24 integral part of Title 18, and the provisions of Title 18
25 apply to sections 1 through 46 ~~48~~. Section 47 ~~42~~ is

1 intended to be codified as an integral part of Title 18,
2 chapter 7, and the provisions of Title 18, chapter 7, apply
3 to section 47 ~~42~~.

4 NEW SECTION. Section 55. Severability. If a part of
5 this act is invalid, all valid parts that are severable from
6 the invalid part remain in effect. If a part of this act is
7 invalid in one or more of its applications, the part remains
8 in effect in all valid applications that are severable from
9 the invalid applications.

10 NEW SECTION. Section 56. Repealer. Sections 18-4-101,
11 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through
12 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113,
13 MCA, are repealed.

14 NEW SECTION. Section 57. Effective date. ~~This 111~~
15 ~~EXCEPT FOR SECTIONS 24 AND 47, THIS~~ act is effective January
16 1, 1984.

17 ~~(21) SECTIONS 24 AND 47 ARE EFFECTIVE ON PASSAGE AND~~
18 ~~APPROVAL.~~

-End-

1 HOUSE BILL NO. 493

2 INTRODUCED BY YARDLEY, DOVER

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR
7 STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE
8 DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104,
9 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING
10 SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203,
11 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111
12 THROUGH 18-7-113, MCA; AND PROVIDING ~~A--DELETED--EFFECTIVE~~
13 DATE EFFECTIVE DATES."

14

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

16 NEW SECTION. Section 1. Short title. [Sections 1
17 through ~~46 48~~] may be cited as the "Montana Procurement
18 Act".

19 NEW SECTION. Section 2. Purpose. The underlying
20 purposes and policies of [sections 1 through ~~46 48~~] are to:

21 (1) simplify, clarify, and modernize the law governing
22 procurement by the state of Montana;

23 (2) permit the continued development of procurement
24 policies and practices;

25 (3) make as consistent as possible the procurement

THIRD READING

There are no changes in H B 493
second reading (yellow) amended.
Please refer to it for complete text.

HB493

March 25, 1983

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 493 be amended as follows:

1. Page 1, lines 17 and 20
Strike: "48"
Insert: "45"
2. Page 2, line 14.
Strike: "48"
Insert: "45"
3. Page 5, line 12.
Strike: "48"
Insert: "45"
4. Page 5, line 20.
Strike: "private"
5. Page 6, lines 4, 8, 13, 15, and 16.
Strike: "48"
Insert: "45"
6. Page 7, lines 2, 8, 9, 13, and 15.
Strike: "48"
Insert: "45"
7. Page 7, line 19.
Following: "state;"
Insert: "and"
8. Page 7, line 21.
Following: "state"
Strike: remainder of line 21 through "services" on line 24
9. Page 9, lines 7 through 18.
Strike: subsections (a), (b), and (c) in their entirety
Renumber: subsequent subsections
10. Page 10, line 6.
Strike: "and"
Following: line 6
Insert: "(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend; and"
Renumber: subsequent subsections
11. Page 10, line 16.
Following: "(1)"
Strike: remainder of line 16 and line 17 in their entirety
Insert: "If"

SENATE STANDING COMMITTEE REPORT
STATE ADMINISTRATION HOUSE BILL NO. 493
March 25, 1983
Page 2

12. Page 10, line 19.
Following: "law"
Insert: ", the department may apply the remedies provided in subsections (2) and (3)"
13. Page 11.
Following: line 17
Insert: "(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3)."
14. Page 12, line 5.
Strike: "30"
Insert: "77"
15. Page 12, line 10.
Strike: "48"
Insert: "45"
16. Page 14, line 12.
Following: "bids."
Insert: "Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids."
17. Page 14, line 20.
Strike: "48"
Insert: "45"
18. Page 20.
Following: line 25
Insert: "required to be"
19. Page 21, line 4.
Following: "credit"
Insert: "not to exceed \$100,000"
20. Page 21, line 14.
Following: "amount"
Insert: "and type"
21. Page 21, line 15.
Strike: "set in an amount considered"
Insert: "determined"
22. Page 21.
Following: line 18
Insert: "In determining the amount and type of security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. The department may adopt rules to assist it in making this determination and in protecting the state in dealing with irrevocable letters of credit."

23. Page 21, line 23.
Strike: "48"
Insert: "45"

24. Page 22.
Following: line 23
Strike: Sections 25 through 27 in their entirety
Renumber: subsequent sections

25. Page 24, line 12.
Strike: "31"
Insert: "28"
Strike: "34"
Insert: "31"

26. Page 26, line 16.
Following: "adopt"
Strike: remainder of line 16 through "to" on line 17

27. Page 27, line 17.
Strike: "37"
Insert: "34"
Strike: "39"
Insert: "36"

28. Page 28, line 16.
Strike: "40"
Insert: "37"
Strike: "46"
Insert: "43"

29. Page 29, line 15.
Strike: "but is not limited to"

30. Page 29, line 23.
Following: "29"
Strike: remainder of line 23 through "39" on line 24
Insert: "27"

31. Page 30, line 3.
Strike: "30" through "39"
Insert: "27"

32. Page 30, line 12.
Strike: "director"
Insert: "department"

33. Page 31, lines 6, 15, and 21.
Strike: "director"
Insert: "department"

34. Page 31, line 24.
Following: "units."
Strike: remainder of line 24 through "units." on line 1, page 32.

35. Page 32, line 1.
Strike: "director"
Insert: "department"

36. Page 32, lines 8, 12, 16, 20, 21, and 25.
Strike: "48"
Insert: "45"

37. Page 32, line 19.
Strike: "40"
Insert: "37"
Strike: "46"
Insert: "43"

38. Page 32, line 25.
Strike: "the"

39. Page 33, line 1.
Strike: "of public works"
Insert: "contracts"

40. Page 33, line 5.
Strike: "48"
Insert: "45"

41. Page 33.
Following: line 6
Strike: section 49 in its entirety
Insert: "Section 46. State printing, binding, and stationery work -- resident preference. All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102."

42. Page 34, line 16.
Strike: "48"
Insert: "45"

43. Page 35, line 5.
Strike: "48"
Insert: "45"

SENATE STANDING COMMITTEE REPORT
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Page 5

44. Page 36, lines 10, 13, 16, and 25.
Strike: "48"
Insert: "45"

45. Page 36, lines 10, 14, 17, and 25.
Strike: "49"
Insert: "46"

46. Page 39, line 23 and line 25.
Strike: "48"
Insert: "45"

47. Page 39, line 25.
Strike: "49"
Insert: "46"

48. Page 40, line 3.
Strike: "49"
Insert: "46"

49. Page 40, lines 15 and 17.
Strike: "47"
Insert: "44"

1 STATEMENT OF INTENT

2 HOUSE BILL 493

3 House State Administration Committee
4

5 A statement of intent is required for this bill because
6 it grants rulemaking authority to the Department of
7 Administration for the purpose of implementing the
8 procurement procedures established by the bill. The bill is
9 based upon the American Bar Association Model Procurement
10 Code for State and Local Governments. The Model Code was
11 drafted on the concept that it should be a short statute
12 providing the fundamentals of sound procurement that should
13 be implemented by rules consistent with the statutory
14 framework.

15 It is intended that the Department look to the
16 Recommended Regulations for the Model Procurement Code for
17 State and Local Governments adopted by the American Bar
18 Association for guidance in adopting rules implementing the
19 provisions of this bill.

REFERENCE BILL
HB 493

HOUSE BILL NO. 493

INTRODUCED BY YARDLEY, DOVER

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104, 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111 THROUGH 18-7-113, MCA; AND PROVIDING A--DELAYED--EFFECTIVE DATE EFFECTIVE DATES."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 46 ~~48 45~~] may be cited as the "Montana Procurement Act".

NEW SECTION. Section 2. Purpose. The underlying purposes and policies of [sections 1 through 46 ~~48 45~~] are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

NEW SECTION. Section 3. Definitions. In [sections 1 through 46 ~~48 45~~], 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 which 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 a duly authorized representative of a person holding a superior position.

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

(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) "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) "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. It 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 such an award is not a grant but a procurement contract.

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

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

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It

1 also includes all functions that pertain to the obtaining of
2 any supply or service, including description of
3 requirements, selection and solicitation of sources,
4 preparation and award of contract, and all phases of
5 contract administration.

6 (16) "Procurement officer" means any person duly
7 authorized to enter into and administer contracts and make
8 written determinations with respect thereto. The term also
9 includes an authorized representative acting within the
10 limits of his authority.

11 (17) "Purchasing agency" means any governmental body,
12 other than the department, which is authorized by [sections
13 1 through 46 ~~48~~ 45] or its implementing rules or by way of
14 delegation from the director to enter into contracts.

15 (18) "Services" means the furnishing of labor, time, or
16 effort by a contractor, not involving the delivery of a
17 specific end product other than reports which are merely
18 incidental to the required performance. The term does not
19 include consulting services as defined in 18-8-102, those
20 services listed in 18-8-103, employment agreements or
21 collective bargaining agreements, the provision by private
22 providers of human services regulated by a state agency, or
23 services related to construction contracts.

24 (19) "Supplies" means all property except as otherwise
25 provided by law, including but not limited to equipment,

1 materials, printing, and commodities, and excluding land or
2 any interest in land.

3 (20) "Using agency" means any governmental body of the
4 state which utilizes any supplies or services procured under
5 [sections 1 through 46 ~~48~~ 45].

6 ~~NEW SECTION.~~ Section 4. Supplementary general
7 principles of law applicable -- requirement of good faith.
8 (1) Unless displaced by the particular provisions of
9 [sections 1 through 46 ~~48~~ 45], the principles of law and
10 equity, including the Uniform Commercial Code, the law
11 merchant, and law relative to capacity to contract, agency,
12 fraud, misrepresentation, duress, coercion, mistake, or
13 bankruptcy, supplement the provisions of [sections 1 through
14 46 ~~48~~ 45], except that writs of mandamus and prohibition
15 issued pursuant to Title 27, chapters 26 and 27, may not be
16 used as a remedy for violations of [sections 1 through 46 ~~48~~
17 45].

18 (2) [Sections 1 through 46 ~~48~~ 45] require all parties
19 involved in the negotiation, performance, or administration
20 of state contracts to act in good faith.

21 ~~NEW SECTION.~~ Section 5. Public access to procurement
22 information -- records -- retention. (1) Procurement
23 information is a public writing and must be available to the
24 public as provided in 2-6-102.

25 (2) All procurement records shall be retained and

1 disposed of in accordance with the state records management
2 program.

3 (3) Written determinations required by [sections 1
4 through 46 ~~48 45~~] must be retained in the appropriate
5 official contract file of the department or the purchasing
6 agency administering the procurement in accordance with the
7 state records management program.

8 ~~NEW_SECTION.~~ Section 6. General procurement authority
9 and duties of department -- rules. (1) Except as otherwise
10 provided in [sections 1 through 46 ~~48 45~~], the department
11 shall adopt rules, consistent with [sections 1 through 46 ~~48 45~~],
12 governing the procurement and disposal of any and all
13 supplies and services to be procured by the state. The
14 department shall consider and decide matters of policy
15 within the provisions of [sections 1 through 46 ~~48 45~~]. The
16 department may audit and monitor the implementation of its
17 rules and the requirements of [sections 1 through 46 ~~48 45~~].

18 (2) Except as otherwise specifically provided by law,
19 the department shall, in accordance with its rules:

20 (a) procure or supervise the procurement of all
21 supplies and services needed by the state; ~~AND~~

22 (b) sell, trade, or otherwise dispose of surplus
23 supplies belonging to the state; ~~and~~

24 ~~(c) establish and maintain programs for the~~
25 ~~inspection, testing, acceptance, and inventory of supplies~~

1 ~~and services.~~

2 (3) Nothing contained herein shall preclude the state
3 from doing its own printing on its own printing facilities.

4 ~~NEW_SECTION.~~ Section 7. Delegation of authority by
5 department. Subject to the rules of the department, the
6 director may delegate procurement authority to designees or
7 to any state department, agency, or official.

8 ~~NEW_SECTION.~~ Section 8. State procurement rules --
9 delegation -- existing rights. (1) Rules shall be adopted by
10 the department in accordance with the applicable provisions
11 of Title 2, chapter 4.

12 (2) The department may not delegate its power to adopt
13 rules.

14 (3) No rule may change a commitment, right, or
15 obligation of the state or of a contractor under a contract
16 in existence on the effective date of such rule.

17 ~~NEW_SECTION.~~ Section 9. Authority to remove or
18 suspend from vendors' list. (1) The department may remove a
19 person for cause from consideration for award of contracts.
20 The removal may not be for a period of more than 3 years.

21 (2) The department may suspend a person from
22 consideration for award of contracts if there is probable
23 cause to believe that the person has engaged in activities
24 that may lead to removal. The suspension may not be for a
25 period exceeding 3 months unless an indictment has been

1 issued for an offense that would be a cause for removal
2 under subsection (3), in which case the suspension must, at
3 the request of the attorney general, remain in effect until
4 after the trial of the suspended person. The authority to
5 remove or suspend must be exercised in accordance with rules
6 adopted by the department.

7 (3) The causes for removal or suspension include the
8 following:

9 ~~(a) conviction for commission of a criminal offense as~~
10 ~~an incident to obtaining or attempting to obtain a public or~~
11 ~~private contract or subcontract or in the performance of~~
12 ~~such contract or subcontract;~~

13 ~~(b) conviction under state or federal statutes of~~
14 ~~embezzlement, theft, forgery, bribery, falsification or~~
15 ~~destruction of records, receiving stolen property or other~~
16 ~~offense indicating a lack of business integrity which~~
17 ~~currently seriously and directly affects responsibility as~~
18 ~~a state contractor;~~

19 ~~(c) conviction under state or federal antitrust~~
20 ~~statutes arising out of the submission of bids or proposals;~~

21 ~~(d) (A) violation of contract provisions, as set forth~~
22 ~~in subsection (3)(d)(i) and (3)(d)(ii) (I) AND (II) OF~~
23 ~~SUBSECTION (3)(A), of a character which is regarded by the~~
24 department to be so serious as to justify removal action:

25 (i) deliberate failure without good cause to perform

1 in accordance with the specifications or within the time
2 limit provided in the contract; or

3 (ii) a recent record of failure to perform or of
4 unsatisfactory performance in accordance with the terms of
5 one or more contracts, provided that failure to perform or
6 unsatisfactory performance caused by acts beyond the control
7 of the contractor may not be considered to be a basis for
8 removal; and

9 (B) FAILURE TO RESPOND TO A NUMBER OF SOLICITATIONS
10 OVER A PERIOD OF TIME AS DETERMINED BY THE DEPARTMENT IN
11 ACCORDANCE WITH RULES, AND AFTER ADEQUATE WRITTEN NOTICE TO
12 THE AFFECTED PERSON OF THE INTENT TO REMOVE OR SUSPEND; AND

13 ~~(e) (C)~~ any other cause the department determines to be
14 so serious and compelling as to affect responsibility as a
15 state contractor, including removal by another governmental
16 entity for any cause listed in the department's rules.

17 (4) The department shall issue a written decision to
18 remove or suspend, stating the reasons for the action taken.
19 A copy of the decision must be mailed or otherwise furnished
20 immediately to the person involved.

21 NEW SECTION. Section 10. Remedies prior to and after
22 award. (1) The provisions of this section apply whenever it
23 is determined administratively or upon judicial review that
24 IE a solicitation or award of a contract is in violation of
25 law. THE DEPARTMENT MAY APPLY THE REMEDIES PROVIDED IN

1 ~~SUBSECTIONS (2) AND (3).~~

2 (2) If prior to award it is determined that a
3 solicitation or proposed award of a contract is in violation
4 of law, the solicitation or proposed award must be:

5 (a) canceled; or

6 (b) revised to comply with the law.

7 (3) (a) If after an award it is determined that a
8 solicitation or award of a contract is in violation of law
9 and the person awarded the contract has not acted
10 fraudulently or in bad faith, the contract may be:

11 (i) ratified and affirmed, provided it is determined
12 that doing so is in the best interests of the state; or

13 (ii) terminated, and the person awarded the contract
14 must be compensated for the actual expenses reasonably
15 incurred under the contract, plus a reasonable profit, prior
16 to the termination.

17 (b) If after an award it is determined that a
18 solicitation or award of a contract is in violation of law
19 and the person awarded the contract has acted fraudulently
20 or in bad faith, the contract may be:

21 (i) declared void; or

22 (ii) ratified and affirmed if such action is in the
23 best interests of the state, without prejudice to the
24 state's rights to appropriate damages.

25 ~~(4) IN THE EVENT THE MATTER IS REVIEWED BY A COURT,~~

1 ~~THE COURT MAY APPLY THE SAME REMEDIES PROVIDED IN~~
2 ~~SUBSECTIONS (2) AND (3).~~

3 ~~NEW SECTION.~~ Section 11. Collection of data
4 concerning public procurement. All using agencies shall
5 cooperate with the department in the preparation of
6 statistical data concerning the procurement, usage, and
7 disposition of all supplies and services, and the department
8 may employ trained personnel as necessary to carry out this
9 function. All using agencies shall furnish such reports as
10 the department may require concerning usage, needs, and
11 stocks on hand, and the department may prescribe forms to be
12 used by the using agencies in requisitioning, ordering, and
13 reporting of supplies and services.

14 ~~NEW SECTION.~~ Section 12. Definitions. As used in
15 [sections 12 through 29 ~~28 21~~], the following definitions
16 apply:

17 (1) "Cost-reimbursement contract" means a contract
18 under which a contractor is reimbursed for costs which are
19 allowable and allocable in accordance with the contract
20 terms and the provisions of [sections 1 through 46 ~~48 45~~],
21 and a fee, if any.

22 (2) "Established catalog price" means the price
23 included in a catalog, price list, schedule, or other form
24 that:

25 (a) is regularly maintained by a manufacturer or

1 contractor;

2 (b) is either published or otherwise available for

3 inspection by customers; and

4 (c) states prices at which sales are currently or were

5 last made to a significant number of any category of buyers

6 or buyers constituting the general buying public for the

7 supplies or services involved.

8 (3) "Invitation for bids" means all documents, whether

9 attached or incorporated by reference, utilized for

10 soliciting bids.

11 (4) "Purchase description" means the words used in a

12 solicitation to describe the supplies or services to be

13 purchased and includes specifications attached to or made a

14 part of the solicitation.

15 (5) "Request for proposals" means all documents,

16 whether attached or incorporated by reference, utilized for

17 soliciting proposals.

18 (6) "Responsible bidder or offeror" means a person who

19 has the capability in all respects to perform fully the

20 contract requirements and the integrity and reliability

21 which will assure good faith performance.

22 (7) "Responsive bidder" means a person who has

23 submitted a bid which conforms in all material respects to

24 the invitation for bids.

25 ~~NEW SECTION.~~ Section 13. Methods of source selection.

1 Unless otherwise authorized by law, all state contracts for

2 supplies and services must be awarded by competitive sealed

3 bidding, pursuant to [section 14], except as provided in

4 18-4-104; Title 18, chapter 5; Title 18, chapter 8; and

5 [sections 15 through 17]. Supplies or services offered for

6 sale, lease, or rental by public utilities are exempt from

7 this requirement if the prices of the supplies or services

8 are regulated by the public service commission or other

9 governmental authority.

10 ~~NEW SECTION.~~ Section 14. Competitive sealed bidding.

11 (1) An invitation for bids must be issued and must include a

12 purchase description and conditions applicable to the

13 procurement.

14 (2) Adequate public notice of the invitation for bids

15 must be given a reasonable time prior to the date set forth

16 therein for the opening of bids, in accordance with rules

17 adopted by the department. Notice may include publication in

18 a newspaper of general circulation at a reasonable time

19 prior to bid opening.

20 (3) Bids must be opened publicly in the presence of

21 one or more witnesses at the time and place designated in

22 the invitation for bids. ~~EACH BIDDER HAS THE RIGHT TO BE~~

23 ~~PRESENT, EITHER IN PERSON OR BY AGENT, WHEN THE BIDS ARE~~

24 ~~OPENED AND HAS THE RIGHT TO EXAMINE AND INSPECT ALL BIDS.~~

25 The amount of each bid and such other relevant information

as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in [sections 1 through ~~46~~ ~~48~~ ~~45~~]. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(5) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as

otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(6) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(7) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the

1 first solicitation.

2 ~~NEW SECTION.~~ Section 15. Competitive sealed
3 proposals. (1) When, under rules adopted by the department,
4 the director, the head of a purchasing agency, or a designee
5 of either officer above the level of the procurement officer
6 determines in writing that the use of competitive sealed
7 bidding is either not practicable or not advantageous to the
8 state, a contract may be entered into by competitive sealed
9 proposals. The department may provide by rule that it is
10 either not practicable or not advantageous to the state to
11 procure specified types of supplies and services by
12 competitive sealed bidding.

13 (2) Proposals must be solicited through a request for
14 proposals.

15 (3) Adequate public notice of the request for
16 proposals must be given in the same manner as provided in
17 [section 14(2)].

18 (4) Proposals must be opened so as to avoid disclosure
19 of contents to competing offerors during the process of
20 negotiation. A register of proposals must be prepared in
21 accordance with rules adopted by the department and must be
22 open for public inspection after contract award.

23 (5) The request for proposals must state the relative
24 importance of price and other evaluation factors.

25 (6) As provided in the request for proposals and under

1 rules adopted by the department, discussions may be
2 conducted with responsible offerors who submit apparently
3 responsive proposals for the purpose of clarification, to
4 assure full understanding of and responsiveness to the
5 solicitation requirements. Offerors must be accorded fair
6 and equal treatment with respect to any opportunity for
7 discussion and revision of proposals, and such revisions may
8 be permitted, after submissions and prior to award, for the
9 purpose of obtaining best and final offers. In conducting
10 discussions, there may be no disclosure of any information
11 derived from proposals submitted by competing offerors. The
12 department may require the submission of cost or pricing
13 data in connection with an award under this section.

14 (7) The award must be made to the responsible offeror
15 whose proposal is determined in writing to be the most
16 advantageous to the state, taking into consideration price,
17 including the preference in 18-1-102, and the evaluation
18 factors set forth in the request for proposals. No other
19 factors or criteria may be used in the evaluation. The
20 contract file shall contain the basis on which the award is
21 made.

22 ~~NEW SECTION.~~ Section 16. Small purchases. Any
23 procurement not exceeding the amount established by rule may
24 be made in accordance with small purchase procedures
25 established by the department. Procurement requirements may

1 not be artificially divided so as to constitute a small
2 purchase under this section.

3 NEW_SECTION. Section 17. Sole source procurement. A
4 contract may be awarded for a supply or service item without
5 competition when, under rules adopted by the department, the
6 director, the head of a purchasing agency, or a designee of
7 either officer above the level of the procurement officer
8 determines in writing that there is only one source for the
9 required supply or service item. The department may require
10 the submission of cost or pricing data in connection with an
11 award under this section.

12 NEW_SECTION. Section 18. Cancellation of invitations
13 for bids or requests for proposals. An invitation for bids,
14 a request for proposals, or other solicitation may be
15 canceled or any or all bids or proposals may be rejected in
16 whole or in part, as may be specified in the solicitation,
17 when it is in the best interests of the state. The reasons
18 therefor must be made part of the contract file.

19 NEW_SECTION. Section 19. Nonresponsibility of bidders
20 and offerors -- nondisclosure. (1) A written determination
21 of nonresponsibility of a bidder or offeror must be made in
22 accordance with rules adopted by the department. The
23 unreasonable failure of a bidder or offeror to promptly
24 supply information in connection with an inquiry with
25 respect to responsibility may be grounds for a determination

1 of nonresponsibility with respect to such bidder or offeror.

2 (2) Information furnished by a bidder or offeror
3 pursuant to this section may not be disclosed outside of the
4 department or the purchasing agency without prior written
5 consent by the bidder or offeror.

6 NEW_SECTION. Section 20. Prequalification of
7 suppliers. Prospective suppliers may be prequalified for
8 particular types of supplies and services. Solicitation
9 mailing lists of potential contractors must include but not
10 be limited to such prequalified suppliers.

11 NEW_SECTION. Section 21. Types of contracts. Subject
12 to the limitations of this section, any type of contract
13 that will promote the best interests of the state may be
14 used, except that the use of a cost-plus-percentage-of-cost
15 contract is prohibited. A cost-reimbursement contract may be
16 used only when a determination is made in writing that such
17 contract is likely to be less costly to the state than any
18 other type or that it is impracticable to obtain the
19 supplies or services required except under such a contract.

20 NEW_SECTION. Section 22. Approval of accounting
21 system. Except with respect to firm fixed-price contracts,
22 no contract type may be used unless it has been determined
23 in writing by the department that:

24 (1) the proposed contractor's accounting system will
25 permit timely development of all necessary cost data in the

form required by the specific contract type contemplated;
and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

NEW SECTION. Section 23. Contract performance security. (1) For state contracts for the procurement of supplies and services, the department may in its discretion require the filing of security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors.

(2) If contract performance security is required under subsection (1), the following types of security may be REQUIRED TO BE deposited with the state:

(a) a good and sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit NOT TO EXCEED \$100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market

certificates issued by any bank or savings and loan association licensed to do business in Montana.

(3) The amount AND TYPE of the security mentioned above must be ~~set-in-an-amount-considered~~ DETERMINED by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 25% of the total contract price, and must be payable to the state of Montana. IN DETERMINING THE AMOUNT AND TYPE OF SECURITY REQUIRED FOR EACH CONTRACT, THE DEPARTMENT SHALL CONSIDER THE NATURE OF THE PERFORMANCE AND THE NEED FOR FUTURE PROTECTION TO THE STATE. THE DEPARTMENT MAY ADOPT RULES TO ASSIST IT IN MAKING THIS DETERMINATION AND IN PROTECTING THE STATE IN DEALING WITH IRREVOCABLE LETTERS OF CREDIT. Any contract security requirements must be included in the invitations for bids or requests for proposals.

(4) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to procurements under [sections 1 through 46 ~~44 45~~].

NEW SECTION. Section 24. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems and data processing equipment for a period not to exceed 10

1 years. A contract, lease, or rental agreement may be
 2 extended or renewed, notwithstanding the time limits stated
 3 in this section, if the terms of the extension or renewal,
 4 if any, are included in the solicitation and funds are
 5 available for the first fiscal period at the time of the
 6 agreement. Payment and performance obligations for
 7 succeeding fiscal periods are subject to the availability
 8 and appropriation of funds therefor.

9 (2) Prior to the extension or renewal of a contract,
 10 it must be determined in writing that:

11 (a) estimated requirements cover the period of the
 12 contract and are reasonably firm and continuing; and

13 (b) the contract will serve the best interests of the
 14 state by encouraging effective competition or otherwise
 15 promoting economies in state procurement.

16 (3) When funds are not appropriated or otherwise made
 17 available to support continuation of performance in a
 18 subsequent fiscal period, the contract must be canceled.

19 ~~HERE IS A NEW MEA SECTION THAT READS:~~

20 ~~Section 25. Consultation with the legislature before~~
 21 ~~entering into a contract, lease, or rental agreement for~~
 22 ~~supplies or services for a period longer than 3 years and~~
 23 ~~involving expenditures exceeding \$25,000, the department or~~
 24 ~~its designee shall inform and consult with the legislature~~
 25 ~~if the legislature is in session or the legislative finance~~

1 ~~committee if the legislature is not in session.~~

2 ~~NEW SECTION. Section 26. Right to inspect plants. The~~
 3 ~~state may, at reasonable times, inspect the part of the~~
 4 ~~plant or place of business of a contractor or any~~
 5 ~~subcontractor that is related to the performance of any~~
 6 ~~contract awarded or to be awarded by the state.~~

7 ~~NEW SECTION. Section 27. Finality of determinations.~~
 8 ~~The determinations required by [sections 14(5), 15(1),~~
 9 ~~15(7), 17, 18, 19, 21, 22, and 24(2)] are final and~~
 10 ~~conclusive unless they are clearly erroneous, arbitrary,~~
 11 ~~capricious, or contrary to law.~~

12 ~~NEW SECTION. Section 25. Reporting of anticompetitive~~
 13 ~~practices. If for any reason collusion or other~~
 14 ~~anticompetitive practices are suspected among any bidders or~~
 15 ~~offerors, a notice of the relevant facts shall be~~
 16 ~~transmitted to the attorney general by the department.~~

17 ~~NEW SECTION. Section 26. Retention of procurement~~
 18 ~~records. All procurement records must be retained, managed,~~
 19 ~~and disposed of in accordance with Title 2, chapter 6.~~

20 ~~NEW SECTION. Section 27. Records of sole source~~
 21 ~~procurements. (1) The department shall maintain or shall~~
 22 ~~require the head of a purchasing agency to maintain a record~~
 23 ~~listing all contracts made under [section 17] for a minimum~~
 24 ~~of 4 years. The record must contain:~~

25 (a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(2) The record must be available for public inspection.

NEW SECTION. Section 28. Definition. As used in [sections ~~30 31~~ 28 through ~~33 34~~ 31], "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

NEW SECTION. Section 29. Duties of the department -- rules. (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

NEW SECTION. Section 30. Using agencies' advice. The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

NEW SECTION. Section 31. Competition. All specifications shall promote overall economy for the

purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

NEW SECTION. Section 32. Contract clauses -- rules. (1) The department may adopt rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or

1 fee, all as specified in the contract or subsequently agreed
2 upon;

3 (d) in such other manner as the contracting parties
4 may mutually agree; or

5 (e) in the absence of agreement by the parties, by a
6 unilateral determination by the state of the costs
7 attributable to the events or situations under such clauses
8 with adjustment of profit or fee, all as computed by the
9 state in accordance with applicable sections of the rules
10 adopted under [section 35 ~~26~~ 33].

11 (3) The department may adopt rules, ~~including but not~~
12 ~~limited to~~ rules permitting or requiring the inclusion in
13 state contracts of clauses providing for appropriate
14 remedies and relating to the following subjects:

15 (a) liquidated damages, as appropriate;

16 (b) specified excuses for delay or nonperformance;

17 (c) termination of the contract for default; and

18 (d) termination of the contract, in whole or in part,
19 for the convenience of the state.

20 (4) The director or the head of a purchasing agency
21 may vary the clauses established by the department under
22 subsections (1) and (3) for inclusion in any particular
23 state contract. Any variations must be supported by a
24 written determination that states the circumstances
25 justifying such variation. Notice of any material variation

1 must be stated in the invitation for bids or request for
2 proposals.

3 **NEW SECTION.** Section 33. Cost principles -- rules.
4 The department shall adopt rules setting forth cost
5 principles which must be used to determine the allowability
6 of incurred costs for the purpose of reimbursing costs under
7 contract provisions that provide for the reimbursement of
8 costs. However, if a written determination is approved at a
9 level above the procurement officer, such cost principles
10 may be modified by contract.

11 **NEW SECTION.** Section 34. Definitions. As used in
12 [sections 36 ~~22~~ 34 through 38 ~~32~~ 36], the following
13 definitions apply:

14 (1) "Supplies" means supplies owned by the state.

15 (2) "Surplus supplies" means any supplies having a
16 remaining useful life but that are no longer required by the
17 using agency in possession of them. This includes obsolete
18 supplies, scrap materials, and supplies that have completed
19 their useful life cycle.

20 **NEW SECTION.** Section 35. Supply management rules. (1)
21 The department shall adopt rules governing:

22 (a) the management of supplies during their entire
23 life cycle;

24 (b) the sale, lease, or disposal of surplus supplies
25 by public auction, competitive sealed bidding, or other

1 appropriate method designated by rule;

2 (c) transfer of surplus supplies.

3 (2) No employee of the owning or disposing agency

4 directly involved with the disposal may purchase supplies

5 sold by his agency.

6 ~~NEW_SECTION.~~ Section 36. Allocation of proceeds.

7 Proceeds from the sale, lease, or disposal of surplus

8 supplies must be allocated as provided by 18-6-101, less a

9 reasonable handling fee.

10 ~~NEW_SECTION.~~ Section 37. Definitions. As used in

11 [sections ~~39 40 37~~ through 45 ~~46 43~~], the following

12 definitions apply:

13 (1) "Cooperative purchasing" means procurement

14 conducted by or on behalf of more than one public

15 procurement unit.

16 (2) "Local public procurement unit" means a county,

17 city, town, or other subdivision of the state or a public

18 agency of any such subdivision; public authority;

19 educational, health, or other institution; to the extent

20 provided by law, any other entity that expends public funds

21 for the procurement of supplies and services; and any

22 nonprofit corporation operating a charitable hospital.

23 (3) "Public procurement unit" means a local or state

24 public procurement unit of this or any other state,

25 including an agency of the United States.

1 (4) "State public procurement unit" means a state

2 department, agency, or official that expends public funds

3 for the procurement of supplies and services.

4 ~~NEW_SECTION.~~ Section 38. Cooperative purchasing

5 authorized. The department may participate in, sponsor,

6 conduct, or administer a cooperative purchasing agreement

7 for the procurement of any supplies or services with one or

8 more public procurement units in accordance with an

9 agreement entered into between the participants. Such

10 cooperative purchasing may include ~~but--is--not--limited--to~~

11 joint or multi-party contracts between public procurement

12 units and open-ended state public procurement unit contracts

13 that are made available to local public procurement units.

14 ~~NEW_SECTION.~~ Section 39. Sale, acquisition, or use of

15 supplies by a public procurement unit. The department may

16 sell to, acquire from, or use any supplies belonging to

17 another public procurement unit independent of the

18 requirements of [sections 12 through ~~29 30~~ and ~~36 37~~ through

19 ~~38 39 27~~].

20 ~~NEW_SECTION.~~ Section 40. Cooperative use of supplies

21 or services. The department may enter into an agreement,

22 independent of the requirements of [sections 12 through ~~29~~

23 ~~30~~ and ~~--36 37~~ through ~~--38 39 27~~], with any other public

24 procurement unit for the cooperative use of supplies or

25 services under the terms agreed upon between the parties.

1 NEW SECTION. Section 41. Joint use of facilities. The
2 department may enter into agreements for the common use or
3 lease of warehousing facilities, capital equipment, and
4 other facilities with another public procurement unit under
5 the terms agreed upon between the parties.

6 NEW SECTION. Section 42. Information and services --
7 fees. (1) Upon request, the director DEPARTMENT may make
8 available to public procurement units certain services,
9 including but not limited to the following:

- 10 (a) standard forms;
- 11 (b) printed manuals;
- 12 (c) product specifications and standards;
- 13 (d) quality assurance testing services and methods;
- 14 (e) qualified products lists;
- 15 (f) source information;
- 16 (g) common use commodities listings;
- 17 (h) supplier prequalification information;
- 18 (i) supplier performance ratings;
- 19 (j) debarred and suspended bidders lists;
- 20 (k) forms for invitations for bids, requests for
- 21 proposals, instructions to bidders, general contract
- 22 provisions, and other contract forms;
- 23 (l) contracts or published summaries thereof,
- 24 including price and time of delivery information; and
- 25 (m) cooperative purchasing.

1 (2) The state, through the director DEPARTMENT, may
2 provide technical services, including but not limited to the
3 following:

- 4 (a) development of product specifications;
- 5 (b) development of quality assurance test methods,
- 6 including receiving, inspection, and acceptance procedures;
- 7 (c) use of product testing and inspection facilities;
- 8 and
- 9 (d) use of personnel training programs.

10 (3) The director DEPARTMENT may enter into contractual
11 arrangements and publish a schedule of fees for the services
12 provided under subsections (1) and (2). Such fees may be
13 used by the department to offset costs incurred in providing
14 such services.

15 NEW SECTION. Section 43. Review of procurement
16 requirements. To the extent possible, the director
17 DEPARTMENT may collect information concerning the type,
18 cost, quality, and quantity of commonly used supplies or
19 services being procured or used by state public procurement
20 units. ~~The director may also collect such information from~~
21 ~~local public procurement units.~~ The director DEPARTMENT may
22 make available all such information to any public
23 procurement unit upon request.

24 NEW SECTION. Section 44. Application. (1) Except as
25 provided in [section 24], which applies retroactively to

telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, [sections 1 through 46 ~~48~~ 45] apply only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) [Sections 1 through 46 ~~48~~ 45] apply to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in [section 3], under any contract; but [sections 1 through 46 ~~48~~ 45] do not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in [sections 39 ~~48~~ 37 through 45 ~~46~~ 43]. [Sections 1 through 46 ~~48~~ 45] also apply to the disposal of state supplies. Nothing in [sections 1 through 46 ~~48~~ 45] or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) [Sections 1 through 46 ~~48~~ 45] do not apply to the construction of ~~public works~~ CONTRACTS.

~~HERE IS A NEW MCA SECTION THAT READS:~~

Section 45. Local government adoption of procurement

provisions. A political subdivision or school district may adopt any or all parts of [sections 1 through 46 ~~45~~] and the accompanying rules promulgated by the department.

~~NEW-SECTION-49-Performance-within-state-of public-printing-binding-and-stationery-work-exceptions--(1)-Except-as-provided-in-subsections--(2)-and (5)--(1)-printing-binding-and-stationery-work-for-the state-of-Montana-must-be-performed-within-the-state-All invitations-for-bids-requests-for-proposals-and-contracts for-such-work-must-so-stipulate~~

~~(2)-The-work-referred-to-in-subsection-(1)-may-be performed-outside-the-state-if-it-is-established-that~~

~~(a)-the-work-cannot-be-performed-within-the-state~~

~~(b)-the-lowest-price-for-which-the-work-can-be procured-within-the-state-exceeds-the-charge-usually-and customarily-made-to-private-individuals-and-corporations-for work-of-similar-character-and-quantity-or~~

~~(c)-all-bids-or-proposals-for-the-work-or-any-part thereof-are-excessive-and-not-reasonably-competitive~~

~~(3)-No-payment-may-be-made-by-the-state-for-printing, binding-or-stationery-work-unless-the-work-is-done-within the-state-or-is-authorized-to-be-done-outside-the-state pursuant-to-subsection-(2)~~

~~(4)-All-contracts-for-work-to-be-performed-outside-the state-under-subsection-(2)-must-require-that-such-work-be~~

1 performed under conditions which substantially conform to
 2 the laws of this state regarding conditions of employment,
 3 hours of labor, and minimum wages. Violation of the
 4 provisions of this subsection is cause for cancellation of
 5 the contract.

6 (5) The publication of the Montana Code Annotated, as
 7 provided in 1-11-301 through 1-11-304, as amended, is exempt
 8 from the requirements of this section.

9 THERE IS A NEW MCA SECTION THAT READS:

10 Section 46. State printing, binding, and stationery
 11 work -- resident preference. All printing, binding, and
 12 stationery work for the state of Montana, except the Montana
 13 Code Annotated and certificates of appointment and election
 14 to office, must be printed in the state of Montana by a
 15 responsible bidder if his bid does not exceed the lowest bid
 16 by a nonresident printer by more than the percentage in
 17 18-1-102.

18 Section 47. Section 18-4-104, MCA, is amended to read:

19 "18-4-104. Purchases exempt from general requirements.
 20 (1) Fresh fruits and vegetables (other than potatoes) shall
 21 not be included in the supplies to be purchased as provided
 22 in this chapter [sections 1 through 46-48 45]. The
 23 department may allow a state agency or institution to
 24 purchase fresh fruits and vegetables. An itemized account
 25 shall be kept of these purchases and the account shall be

1 furnished to the department.

2 (2) Likewise, when immediate delivery of articles or
 3 performance of service is required by the public exigencies,
 4 the articles or service so required may be procured by open
 5 purchase or contract at the place and in the manner in which
 6 the articles are usually bought and sold or the services
 7 engaged between individuals but under the direction of the
 8 department.

9 (3) The department of administration may exempt the
 10 department of institutions from the provisions of part 2 of
 11 this chapter [sections 1 through 46-48 45] for the purchase
 12 of suitable clothing by the department of institutions for
 13 residents of its institutions and community-based programs.

14 (4) As used in this section, "suitable clothing" means
 15 styled, seasonable clothing, which will allow the resident
 16 to make a normal appearance in the community."

17 Section 48. Section 18-7-104, MCA, is amended to read:

18 "18-7-104. Union label. All printing for which the
 19 state of Montana is chargeable shall bear the label of the
 20 branch of the international typographical union, the allied
 21 printing trades council, or the amalgamated lithographers of
 22 America of the locality in which it is printed, except under
 23 the following conditions. Printing firms not having the use
 24 of the labels and who are desirous of presenting bids for
 25 printing as enumerated above shall be required to establish

consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under 18-7-103 ~~[sections 1 through 46-48 45]~~, ~~[section 47-49 46]~~, or 18-7-104.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of 18-7-103 ~~[sections 1 through 46-48 45]~~, ~~[section 47-49 46]~~, or 18-7-104, but nothing in these provisions shall be construed as exempting such bidders from any provisions of 18-7-103 ~~[sections 1 through 46-48 45]~~, ~~[section 47-49 46]~~, or 18-7-104, and such bidders shall also be required to conform to all provisions thereof."

Section 49. Section 18-7-105, MCA, is amended to read:

"18-7-105. Penalty. Any officer of the state who shall accept any printed matter, ~~except certificates named in 18-7-103~~, for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in 18-7-103 ~~[sections 1 through 46-48 45]~~, ~~[section 47-49 46]~~, or 18-7-104 shall be subject to a fine of \$50 for each and every offense."

Section 50. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters.

(1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing

1 animals needed for propagation or stocking purposes or to
2 exercise control measures of undesirable species;

3 (a) for state parks and outdoor recreation;

4 (f) to extend and consolidate by exchange, lands or
5 waters suitable for these purposes.

6 (2) The department, with the consent of the
7 commission, may acquire by condemnation lands or structures
8 for the preservation of historical or archaeological sites
9 that are threatened with destruction or alteration.

10 (3) (a) The department, with the consent of the
11 commission, may dispose of lands and waters acquired by it
12 on those terms after that public notice, without regard to
13 other laws which provide for sale or disposal of state lands
14 and with or without reservation, as it considers necessary
15 and advisable.

16 (b) Notice of sale describing the lands or waters to
17 be disposed of shall be published once a week for 3
18 successive weeks in a newspaper with general circulation
19 printed and published in the county where the lands or
20 waters are situated or, if no newspaper is published in that
21 county, then in any newspaper with general circulation in
22 that county.

23 (c) The notice shall advertise for cash bids to be
24 presented to the director within 30 days from the date of
25 the first publication. Each bid must be accompanied by a

1 cashier's check or cash deposit in an amount equal to 10% of
2 the amount bid. The highest bid shall be accepted upon
3 payment of the balance due within 10 days after mailing
4 notice by registered or certified mail to the highest
5 bidder. If that bidder defaults on payment of the balance
6 due, then the next highest bidders shall be similarly
7 notified in succession until a sale is completed. Deposits
8 shall be returned to the unsuccessful bidders except bidders
9 defaulting after notification.

10 (d) The department shall reserve the right to reject
11 any bids which do not equal or exceed the full market value
12 of the lands and waters as determined by the department. The
13 department shall convey the lands and waters without
14 covenants of warranty by deed executed by the governor or in
15 his absence or disability by the lieutenant governor,
16 attested by the secretary of state and further countersigned
17 by the director.

18 ~~(4) Notwithstanding the provisions of 10-4-102, the~~
19 ~~The~~ department, with the consent of the commission, is
20 authorized to utilize the installment contract method to
21 facilitate the acquisition of wildlife management areas, in
22 which game and nongame fur-bearing animals and game and
23 nongame birds may breed and replenish, and areas which
24 provide access to fishing sites for the public. In no case
25 may the total cost of such installment contracts exceed the

1 cost of purchases authorized by the department and
2 appropriated by the legislature."

3 NEW_SECTION. Section 51. Codification instruction.
4 Sections 1 through 46 ~~48 42~~ are intended to be codified as
5 an integral part of Title 18, and the provisions of Title 18
6 apply to sections 1 through 46 ~~48 42~~. Section 47 ~~49 46~~ is
7 intended to be codified as an integral part of Title 18,
8 chapter 7, and the provisions of Title 18, chapter 7, apply
9 to section 47 ~~42 46~~.

10 NEW_SECTION. Section 52. Severability. If a part of
11 this act is invalid, all valid parts that are severable from
12 the invalid part remain in effect. If a part of this act is
13 invalid in one or more of its applications, the part remains
14 in effect in all valid applications that are severable from
15 the invalid applications.

16 NEW_SECTION. Section 53. Repealer. Sections 18-4-101,
17 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through
18 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113,
19 NCA, are repealed.

20 NEW_SECTION. Section 54. Effective date. ~~That (1)~~
21 EXCEPT FOR SECTIONS 24 AND 42 44, THIS act is effective
22 January 1, 1984.

23 (2) SECTIONS 24 AND 42 44 ARE EFFECTIVE ON PASSAGE AND
24 APPROVAL.

-End-