

1 HOUSE BILL NO. 139

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC
6 CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; ELIMINATING PREFERENCES IN THE
7 PROCUREMENT PROCESS; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS
8 FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE
9 PROCUREMENT PROCESS; STATUTORILY APPROPRIATING THE PROCEEDS OF SALES OF PROPERTY;
10 PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE
11 PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE
12 PROCURED; AMENDING SECTIONS 7-14-2404, 7-14-2406, 7-14-2716, 17-7-502, 18-1-101, 18-4-122,
13 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, 18-4-231, 18-4-241, 18-4-242, 18-4-302,
14 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, 18-4-313, 18-4-402, 18-5-308, 18-6-101,
15 18-7-104, 18-7-105, 18-8-211, 53-1-203, 53-30-505, AND 60-2-112, MCA; REPEALING SECTIONS
16 18-1-102, 18-1-103, 18-1-106, 18-1-111, 18-1-112, 18-1-113, 18-1-114, 18-4-131, 18-4-225, 18-4-234,
17 18-7-107, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112,
18 MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

19
20 WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903
21 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages
22 under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

23 WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana
24 Procurement Act makes Montana taxpayers pay twice for the same product; and

25 WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow
26 disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but
27 rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section
28 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

29 WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d
30 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law

1 and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for
 2 every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207
 3 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the
 4 Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking
 5 the remedy; and

6 WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the
 7 Legislature, and persons acting under any statute are considered to be acting in contemplation of the
 8 Legislature's power to repeal the statute; and

9 WHEREAS, it is the intent of the Legislature by enacting [sections 6, 15, and 35] and repealing
 10 section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to the availability
 11 of the remedy of money damages; and

12 WHEREAS, it is the intent of the Legislature by enacting [section 35] to make the reversal of the
 13 ISC case apply retroactively, even to the parties in the ISC case, unless a final judgment is obtained in that
 14 case before [the effective date of this act], as provided in [section 36].

15

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

17

18 **Section 1.** Section 7-14-2404, MCA, is amended to read:

19 "**7-14-2404. Competitive bids for county road contracts.** Each bidder shall comply with the
 20 requirements of Title 18, chapter 1, part 2. The contract ~~shall~~ must be awarded to the lowest responsible
 21 and responsive bidder in accordance with the requirements of ~~18-1-102, 18-1-112, and~~ Title 18, chapter
 22 2, part 4, and the board may reserve the right to reject any ~~and all~~ bids. When there is no prevailing rate
 23 of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the
 24 contract."

25

26 **Section 2.** Section 7-14-2406, MCA, is amended to read:

27 "**7-14-2406. Contracts for bridges.** (1) All bids for construction or repair of bridges ~~shall~~ must
 28 meet these requirements:

29 (a) If the department of transportation has adopted or established a standard plan and
 30 specifications, the bids must be submitted ~~thereon~~ on the standard plan and specifications.

1 (b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part
2 2.

3 (2) The board may reject any ~~and all~~ bids. If a contract is awarded, the board shall ~~do so~~ award
4 the contract in accordance with the requirements of ~~18-1-102, 18-1-112, and~~ Title 18, chapter 2, part 4.
5 When there is no prevailing rate of wages set by collective bargaining, the board shall determine the
6 prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of
7 the members of the board.

8 (3) Before entering upon performance of the work, the contractor shall comply with the
9 requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts
10 with the board, a contract ~~shall not be~~ is not completed until the board, while formally convened,
11 affirmatively accepts all of the work ~~thereunder~~ done under the contract."
12

13 **Section 3.** Section 7-14-2716, MCA, is amended to read:

14 **"7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a
15 contract, it shall do so in accordance with the requirements of ~~18-1-102, 18-1-112, and~~ Title 18, chapter
16 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall
17 determine the prevailing rate to be stated in the contract.

18 (2) Partial payments may be provided for in the contract and paid when certified by the county
19 surveyor and committee."
20

21 **Section 4.** Section 17-7-502, MCA, is amended to read:

22 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
23 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
24 without the need for a biennial legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
26 with both of the following provisions:

27 (a) The law containing the statutory authority must be listed in subsection (3).

28 (b) The law or portion of the law making a statutory appropriation must specifically state that a
29 statutory appropriation is made as provided in this section.

30 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;

1 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
 2 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 3 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
 4 18-6-101; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606;
 5 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;
 6 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;
 7 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;
 8 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;
 9 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;
 10 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

11 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 12 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 13 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 14 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 15 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 16 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
 17 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 18 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
 19 July 1, 2001.)"

20

21 **Section 5.** Section 18-1-101, MCA, is amended to read:

22 "**18-1-101. Definitions.** ~~(4)~~ Unless the context requires otherwise, in this title, "~~department~~" the
 23 following definitions apply:

24 (1) "Department" means the department of administration provided for in Title 2, chapter 15, part
 25 10.

26 ~~(2) Unless the context requires otherwise, in this part the following definitions apply:~~

27 ~~(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured~~
 28 ~~products.~~

29 ~~(b) "Montana made" means manufactured or produced in this state and made with the:~~

30 ~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in~~

1 ~~this state; or~~

2 ~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined~~
 3 ~~in 18-2-401.~~

4 ~~(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under~~
 5 ~~18-1-103.~~

6 ~~(d) "Public agency" means a department, commission, council, board, bureau, committee,~~
 7 ~~institution, agency, government corporation, or other entity, instrumentality, or official of the legislative,~~
 8 ~~executive, or judicial branch of this state and its political subdivisions, including the board of regents and~~
 9 ~~the Montana university system.~~

10 ~~(e) "Resident bidder" means a bidder whose residence is in this state as determined under~~
 11 ~~18-1-103.~~

12 (3) "Written" means that whenever written or in-writing determinations or documents are required,
 13 the public agency responsible for the procurement may specify an appropriate visual medium, such as by
 14 computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the
 15 public agency."

16

17 **Section 6.** Section 18-4-122, MCA, is amended to read:

18 "**18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

- 19 (1) simplify, clarify, and modernize the law governing procurement by the state of Montana;
- 20 (2) permit the continued development of procurement policies and practices;
- 21 (3) make as consistent as possible the procurement laws among the various jurisdictions;
- 22 (4) provide for increased public confidence in the procedures followed in public procurement;
- 23 (5) ~~ensure the fair and equitable treatment of all persons who deal with the procurement system~~
 24 ~~of the state~~ provide the exclusive remedies for unlawful bid solicitations or contract awards;
- 25 (6) provide increased economy in state procurement activities and maximize to the fullest extent
 26 practicable the purchasing value of public funds of the state; and
- 27 (7) foster effective, broad-based competition within the free enterprise system; ~~and~~
- 28 ~~(8) provide safeguards for the maintenance of a procurement system of quality and integrity."~~

29

30 **Section 7.** Section 18-4-123, MCA, is amended to read:

1 **"18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different
2 meaning is prescribed for a particular section, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (14) "Printing" means the reproduction of an image from a printing surface generally made by a

1 contact impression that causes a transfer of ink or the reproduction of an impression by a photographic
 2 process and includes graphic arts, typesetting, binding, and other operations necessary to produce a
 3 finished printed product. Printing does not include rebinding or repair by a library or an office, department,
 4 board, or commission ~~thereof~~ of books, journals, pamphlets, magazines, and literary articles held as a part
 5 of its library collection.

6 (15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies
 7 or services. It also includes all functions that pertain to the obtaining of any supply or service, including
 8 description of requirements, selection and solicitation of sources, preparation and award of contract, and
 9 all phases of contract administration.

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

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

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

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

24 (20) "Using agency" means any governmental body of the state ~~which~~ that ~~utilizes~~ uses any
 25 supplies or services procured under this chapter.

26 (21) "Vendor" means a person who offers or may offer supplies or services to a public agency."
 27

28 **Section 8.** Section 18-4-126, MCA, is amended to read:

29 **"18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement
 30 information is a public writing and must be available to the public as provided in 2-6-102 and 18-4-304.

1 (2) All procurement records must be retained, managed, and disposed of in accordance with the
2 state records management program, Title 2, chapter 6.

3 (3) Written determinations required by this chapter must be retained in the appropriate official
4 contract file of the department or the purchasing agency administering the procurement in accordance with
5 the state records management program."
6

7 **Section 9.** Section 18-4-132, MCA, is amended to read:

8 "**18-4-132. Application.** (1) ~~Except as provided in 18-4-313, which applies retroactively to~~
9 ~~telecommunications equipment and systems and data processing equipment acquired under existing~~
10 ~~contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies~~
11 ~~only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application~~
12 ~~to a contract solicited or entered into prior to January 1, 1984.~~

13 ~~(2)~~ This chapter applies to expenditure of public funds irrespective of their source, including federal
14 assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any
15 contract; ~~but this~~ This chapter does not apply to either grants or contracts between the state and its
16 political subdivisions or other governments, except as provided in part 4. This chapter also applies to the
17 disposal of state supplies. ~~Nothing in this~~ This chapter or ~~in~~ rules adopted ~~thereunder~~ pursuant to this
18 chapter prevents do not prevent any governmental body or political subdivision from complying with the
19 terms and conditions of any grant, gift, bequest, or cooperative agreement.

20 ~~(3)~~(2) This chapter does not apply to construction contracts.

21 ~~(4)~~(3) This chapter does not apply to expenditures of or the authorized sale or disposal of
22 equipment purchased with money raised by student activity fees designated for use by the student
23 associations of the university system.

24 ~~(5)~~(4) This chapter does not apply to contracts entered into by the Montana state lottery that have
25 an aggregate value of less than \$250,000.

26 (5) This chapter does not apply to employment of:

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

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

29 (c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
30 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive

1 order of the governor;

2 (d) consulting actuaries;

3 (e) a private consultant employed by the student associations of the university system with money
4 raised from student activity fees designated for use by those student associations;

5 (f) a private consultant employed by the Montana state lottery;

6 (g) a private investigator licensed by any jurisdiction; or

7 (h) a claims adjuster."

8

9 **Section 10.** Section 18-4-133, MCA, is amended to read:

10 **"18-4-133. Purchases exempt from general requirements.** (1) ~~Fresh fruits and vegetables, other~~
11 ~~than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The~~
12 ~~department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized~~
13 ~~account must be kept of these purchases, and the account must be furnished to the department.~~

14 ~~(2)~~ When immediate delivery of articles or performance of service is required by the public
15 exigencies, the articles or service required may be procured by open purchase or contract at the place and
16 in the manner in which the articles are usually bought and sold or the services engaged between individuals
17 but under the direction of the department.

18 ~~(3)~~(2) The department ~~of administration~~ may exempt the department of corrections and the
19 department of public health and human services from the provisions of this chapter for the purchase of
20 suitable clothing by the department of corrections and the department of public health and human services
21 for residents of its institutions and community-based programs.

22 ~~(4)~~(3) As used in this section, "suitable clothing" means styled, reasonable clothing, which will
23 allow the resident to make a normal appearance in the community."

24

25 **Section 11.** Section 18-4-141, MCA, is amended to read:

26 **"18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~No~~ A contract
27 or order or any interest ~~therein~~ in a contract or order may not be transferred, assigned, or subcontracted
28 by the party to whom the contract or order is given to any other party without the express written approval
29 of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. ~~No~~
30 ~~approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their~~

1 ~~obligations to the state under the contract or order.~~

2 (2) Collusion or secret agreements between bidders for the purpose of securing any advantage to
3 the bidders as against the state in the awarding of contracts is prohibited. The state may declare the
4 contract void if the department finds sufficient evidence after a contract has been let that the contract was
5 obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the
6 disadvantage of the state.

7 (3) All rights of action for a breach of a contract by the contracting parties are reserved to the
8 state.

9 (4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a
10 misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of Montana may
11 at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab
12 initio."

13

14 **Section 12.** Section 18-4-224, MCA, is amended to read:

15 "**18-4-224. Contract clauses -- rules.** (1) The department may ~~adopt rules permitting or requiring,~~
16 in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of
17 performance, or other appropriate contract provisions relating to the following subjects:

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

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

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

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

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

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

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

27 (c) by the costs attributable to the events or situations under ~~such~~ clauses established under
28 subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

29 or

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

1 ~~(e) in the absence of agreement by the parties, by a unilateral determination by the state of the~~
 2 ~~costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as~~
 3 ~~computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.~~

4 (3) The department may ~~adopt rules permitting or requiring~~, in its discretion, permit or require the
 5 inclusion in state contracts of clauses providing for appropriate remedies and relating to the following
 6 subjects:

7 (a) liquidated damages, as appropriate;

8 (b) specified excuses for delay or nonperformance;

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

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

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

15 (5) Regardless of a provision in a contract, the department may accept a lower price or better value
 16 offered by a contractor."

17
 18 **Section 13.** Section 18-4-231, MCA, is amended to read:

19 "**18-4-231. Definition of specification.** As used in 18-4-231 through ~~18-4-234~~ 18-4-233,
 20 "specification" means any description of the physical or functional characteristics or of the nature of a
 21 supply or service. It may include a description of any requirement for inspecting, testing, or preparing a
 22 supply or service for delivery."
 23

24 **Section 14.** Section 18-4-241, MCA, is amended to read:

25 "**18-4-241. Authority to remove or suspend from vendors' list vendor.** (1) The department may
 26 remove a ~~person~~ vendor for cause from consideration for award of contracts by the state. ~~The removal may~~
 27 ~~not be for a period of more than 3 years.~~

28 (2) The department may temporarily suspend a ~~person~~ vendor from consideration for award of
 29 contracts if there is probable cause to believe that the ~~person~~ vendor has engaged in activities that may
 30 lead to removal. ~~The suspension may not be for a period exceeding 3 months unless~~ If an indictment has

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

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

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

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

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

13 (b) failure to respond to a number of solicitations over a period of time as determined by the
 14 department in accordance with rules, ~~and after adequate written notice to the affected person of the intent~~
 15 ~~to remove or suspend~~ or failure to provide the department with a correct address;

16 (c) any other cause that the department determines to be so serious and compelling as to affect
 17 responsibility as a state contractor, including removal by another governmental entity ~~for any cause listed~~
 18 ~~in the department's rules;~~ and

19 (d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

20 (4) The department shall issue a written decision to remove or suspend a vendor, stating the
 21 reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy
 22 of the decision must be mailed or otherwise furnished immediately to the ~~person~~ vendor involved."
 23

24 **Section 15.** Section 18-4-242, MCA, is amended to read:

25 "**18-4-242. Remedies prior to and after award** Exclusive remedies for unlawful solicitation or
 26 award. (1) ~~If This section establishes the exclusive remedies for a solicitation or award of a contract is~~
 27 determined to be in violation of the law, the

28 (2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror,
 29 or contractor aggrieved in connection with the solicitation or award of a contract may protest to the
 30 department. The protest must be submitted to the department in writing no later than 14 days after

1 execution of the contract.

2 (3) If the protest is not resolved by mutual agreement, the department shall issue in writing a
3 decision on the protest within 30 days after receipt of the protest. The decision must:

4 (a) state the reason for the action taken by the department with regard to the contract; and

5 (b) inform the aggrieved party of the party's right to request, within 14 days after the date of the
6 department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure
7 Act.

8 (4) In a protest or contested case proceeding, the department may ~~apply the remedies~~, in an
9 appropriate case, order a remedy provided in ~~subsections (2) and (3)~~ subsection (5) or (6).

10 ~~(2)(5)~~ (5) If ~~prior to~~ before an award it is determined that a solicitation or proposed award of a contract
11 is in violation of law, the solicitation or proposed award ~~must~~ may be:

12 (a) canceled; or

13 (b) revised to comply with the law.

14 ~~(3)(6)~~ (6) (a) If after an award it is determined that a solicitation or award of a contract is in violation
15 of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may
16 be:

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

18 or

19 (ii) terminated, and the person awarded the contract must be compensated for the actual expenses
20 reasonably incurred under the contract, plus a reasonable profit, ~~prior to~~ before the termination.

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

23 (i) declared void; or

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

26 ~~(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided~~
27 ~~in subsections (2) and (3).~~

28 (7) The exclusive method of judicial review of a solicitation or award by the department pursuant
29 to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that
30 section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this

1 section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory
 2 to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any
 3 other claim, cause of action, or request for relief for solicitations of awards allegedly made in violation of
 4 law may not be heard or granted by a district court other than as provided in this section.

5 (8) The state is not required to delay, halt, or modify the procurement process pending the result
 6 of a protest, contested case proceeding, or judicial review.

7 (9) The department may adopt rules governing the protest of solicitations and awards."
 8

9 **Section 16.** Section 18-4-302, MCA, is amended to read:

10 **"18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state
 11 contracts for supplies and services must be awarded by ~~competitive sealed bidding, pursuant to 18-4-303,~~
 12 ~~except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 6 and 8 of a source selection~~
 13 method provided for in this title, and subsections (2) and (3) of this section. Supplies or services offered
 14 for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or
 15 services are regulated by the public service commission or other governmental authority.

16 (2) At the time that the department or ~~a purchasing~~ another agency opens bids or proposals, if a
 17 supplier's current publicly advertised or established catalog price is received at or before the time that the
 18 bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or
 19 offeror or improves upon the conditions for the best proposal received using the same factors and weights
 20 included in the proposal, the department or ~~purchasing~~ agency may reject all bids and purchase the supply
 21 from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

22 (3) An office supply procured by the department's central stores program ~~through bulk purchase~~
 23 ~~or procured under a term contract~~ may be purchased by ~~a purchasing~~ an agency, without meeting the
 24 requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established
 25 catalog price, or discount price offered to the ~~purchasing~~ agency is less than the price offered by the central
 26 stores program ~~or under the term contract~~ if the office supply conforms in all material respects to the terms,
 27 conditions, and quality offered by the central stores program ~~or under the term contract~~. A state office
 28 supply term contract must include a provision by which the contracting parties acknowledge and agree to
 29 the provisions of this subsection.

30 (4) A contract for supplies or services, or both, may be negotiated, in accordance with department

1 rules and with the approval of the department director, directly with a vendor without using competitive
 2 sealed bidding or a competitive sealed proposal. A contract may be awarded pursuant to this section only
 3 when it is advantageous to the state to use direct negotiation in the procurement of new or unique
 4 requirements of the state, in the procurement of new technologies, or to achieve best net value.

5 (5) The department may, on behalf of a state agency, participate in, sponsor, conduct, or
 6 administer a contract or other business relationship in a cooperative purchase pursuant to 18-4-402 with
 7 one or more public agencies, nonprofit organizations, or business entities if the department determines the
 8 contract or relationship to be in the best interests of the state."

9
 10 **Section 17.** Section 18-4-303, MCA, is amended to read:

11 **"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include
 12 a purchase description and conditions applicable to the procurement.

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

17 (3) Bids must be opened publicly ~~in the presence of one or more witnesses~~ at the time and place
 18 designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent,
 19 when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and
 20 ~~such~~ other relevant information as may be specified by rule, together with the name of each bidder, must
 21 be recorded. The record must be open to public inspection. After the time of award, all bids and bid
 22 documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject
 23 to the requirements of subsection (4).

24 (4) Bids must be available for public inspection when the bids are opened if:

25 (a) the invitation for bids is issued by a state agency to contract with the private sector to provide
 26 services currently conducted by state employees; and

27 (b) acceptance of bids would result in the displacement of five or more state employees.

28 (5) Bids must be unconditionally accepted without alteration or correction, except as authorized
 29 in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which
 30 may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery,

1 and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in
 2 evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or
 3 life-cycle costs. The invitation for bids ~~shall~~ must set forth the evaluation criteria to be used. Only criteria
 4 set forth in the invitation for bids may be used in bid evaluation.

5 (6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation
 6 of awards or contracts based on ~~such~~ bid mistakes may be permitted in accordance with rules adopted by
 7 the department. After bid opening, ~~no~~ changes in bid prices or other provisions of bids prejudicial to the
 8 interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all
 9 decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid
 10 mistakes must be supported by a written determination made by the department.

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

20 (8) When it is considered impractical to initially prepare a purchase description to support an award
 21 based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be
 22 followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria
 23 set forth in the first solicitation."
 24

25 **Section 18.** Section 18-4-304, MCA, is amended to read:

26 **"18-4-304. Competitive sealed proposals.** (1) ~~When, under rules adopted by the department, the~~
 27 ~~director, the head of a purchasing agency, or a designee of either officer above the level of the procurement~~
 28 ~~officer determines that the use of competitive sealed bidding is either not practicable or not advantageous~~
 29 ~~to the state, a contract may be entered into by competitive sealed proposals. The department may provide~~
 30 ~~by rule that it is either not practicable or not advantageous to the state to procure specified types of~~

1 ~~supplies and services by competitive sealed bidding. The department may procure supplies and services~~
 2 ~~through competitive sealed proposals.~~

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

4 (3) Adequate public notice of the request for proposals must be given in the same manner as
 5 provided in 18-4-303(2).

6 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during
 7 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
 8 the department and must be open for public inspection after contract award. After the contract is
 9 executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform
 10 Trade Secrets Act, Title 30, chapter 14, part 4.

11 (5) The request for proposals must state the evaluation factors and their relative importance ~~of~~
 12 ~~price and other evaluation factors. The award must be made to the responsible and responsive offeror~~
 13 whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the
 14 evaluation. The contract file must demonstrate the basis on which the award is made.

15 (6) ~~As provided in the request for proposals and under rules adopted by the department,~~
 16 ~~discussions with responsible offerors who submit apparently responsive proposals may be conducted for~~
 17 ~~the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation~~
 18 ~~requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for~~
 19 ~~discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award,~~
 20 ~~for the purpose of obtaining best and final offers. The department may discuss a proposal with an offeror~~
 21 for the purpose of clarification or revision of the proposal. In conducting discussions, there may not be
 22 disclosure of any information derived from proposals submitted by competing offerors. ~~The department may~~
 23 ~~require the submission of cost or pricing data in connection with an award under this section.~~

24 ~~(7) The award must be made to the responsible offeror whose proposal is determined in writing~~
 25 ~~to be the most advantageous to the state, taking into consideration price, including the preference in~~
 26 ~~18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may~~
 27 ~~be used in the evaluation. The contract file must contain the basis on which the award is made."~~

28
 29 **Section 19.** Section 18-4-305, MCA, is amended to read:

30 **"18-4-305. Small purchases and limited solicitations.** Any procurement not exceeding the amount

1 established by rule may be made in accordance with small purchase or limited solicitation procedures
 2 established by the department. Procurement requirements may not be artificially divided so as to constitute
 3 a small purchase or limited solicitation under this section."
 4

5 **Section 20.** Section 18-4-309, MCA, is amended to read:

6 **"18-4-309. Prequalification of suppliers.** Prospective suppliers may be prequalified in accordance
 7 with department rules for particular types of supplies and services. ~~Solicitation mailing lists of potential~~
 8 ~~contractors must include but not be limited to such prequalified suppliers."~~
 9

10 **Section 21.** Section 18-4-310, MCA, is amended to read:

11 **"18-4-310. Types of contracts.** ~~Subject to the limitations of this section, any~~ Any type of contract
 12 that will promote the best interests of the state may be used, ~~except that the use of a~~
 13 ~~cost plus percentage of cost contract is prohibited. A cost reimbursement contract may be used only when~~
 14 ~~a determination is made in writing that such contract is likely to be less costly to the state than any other~~
 15 ~~type or that it is impracticable to obtain the supplies or services required except under such a contract."~~
 16

17 **Section 22.** Section 18-4-312, MCA, is amended to read:

18 **"18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement of
 19 services or of supplies, the department may in its discretion require:

20 (a) bid security;

21 (b) contract performance security to guarantee the faithful performance of the contract and the
 22 payment of all laborers, suppliers, ~~materialmen~~, mechanics, and subcontractors; or

23 (c) both bid and contract performance security.

24 (2) If security is required under subsection (1), the following types of security may be required to
 25 be deposited with the state:

26 (a) a sufficient bond with a licensed surety company as surety;

27 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
 28 30, chapter 5, part 1;

29 (c) money of the United States;

30 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market

1 certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings
2 and loan association that is insured by or for which insurance is administered by the federal deposit
3 insurance corporation or that is drawn and issued by a credit union insured by the national credit union
4 share insurance fund.

5 (3) The amount and type of the security must be determined by the department to be sufficient
6 to cover the risk involved to the state. The security must be payable to the state of Montana and, Contract
7 performance security must remain in effect for the entire contract period. In determining the amount and
8 type of contract performance security required for each contract, the department shall consider the nature
9 of the performance and the need for future protection to the state. In determining the need for and amount
10 of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror
11 fails to enter into a formal contract. The considerations must include but are not limited to the type of
12 supply or service being procured, the dollar amount of the proposed contract, and delivery time
13 requirements. The department may adopt rules to assist it in making these determinations and in protecting
14 the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be
15 included in the invitations for bids or requests for proposals.

16 (4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
17 or provide contract performance security, as required by the invitation for bid or request for proposal, after
18 notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to
19 the state and become immediately liable on the bid security, but not in excess of the sum stated in the
20 security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the
21 bid bond or other security may not exceed the amount specified in the invitation for bid or request for
22 proposal.

23 (5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors
24 whose bids or proposals are not accepted.

25 (6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not
26 apply to procurements under this chapter."

27

28 **Section 23.** Section 18-4-313, MCA, is amended to read:

29 **"18-4-313. Contracts -- terms, extensions, and time limits.** (1) ~~Unless otherwise provided by law,~~
30 ~~a contract, lease, or rental agreement for supplies or services may not be made for a period of more than~~

1 ~~7 years. However, the department may contract for the lease or purchase of telecommunications equipment~~
 2 ~~and systems, data processing equipment, the department of revenue liquor agencies, and the department~~
 3 ~~of public health and human services medicaid management information system (MMIS) for a period not to~~
 4 ~~exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the~~
 5 ~~extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period~~
 6 ~~at the time of the agreement, and if the total contract period, including any extension or renewal, does not~~
 7 ~~exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the~~
 8 ~~availability and appropriation of funds for the fiscal periods. Unless otherwise provided by law, a contract,~~
 9 ~~lease, or rental agreement for supplies or services may be made for a specific duration determined by the~~
 10 ~~department to obtain the best net value for the state.~~

11 (2) ~~Prior to~~ Before the issuance, extension, or renewal of a contract, it must be determined that:

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

13 and

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

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

18
 19 **Section 24.** Section 18-4-402, MCA, is amended to read:

20 "**18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor,
 21 conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services
 22 with one or more public procurement units in accordance with an agreement entered into between the
 23 participants independent of the requirements of part 3. ~~Such cooperative~~ Cooperative purchasing may
 24 include purchasing through federal supply schedules of the United States general services administration,
 25 joint or ~~multi-party~~ multiparty contracts between public procurement units and open-ended state public
 26 procurement unit contracts that are made available to local public procurement units."

27
 28 **Section 25.** Section 18-5-308, MCA, is amended to read:

29 "**18-5-308. Construction with other sections.** Procurement from small businesses under this part
 30 is subject to all other statutes governing state procurement and all rules ~~promulgated thereunder~~ adopted

1 pursuant to this part, as now or ~~hereafter~~ later amended, except that in case of conflict this part governs
2 ~~and the provisions set forth in 18-1-102, 18-1-111, and 18-1-112 shall not apply."~~

3
4 **Section 26.** Section 18-6-101, MCA, is amended to read:

5 **"18-6-101. Power to sell state property -- proceeds credited to general fund from which property**
6 **was purchased.** (1) The department has exclusive power, subject to the approval of the governor, to sell
7 or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service
8 equipment, or other personal property of every kind owned by the state but not needed or used by any
9 state institution or by any department of state government.

10 (2) Unless otherwise provided by law, the department shall credit the general fund from which the
11 property was purchased, less a reasonable handling fee, with all the money received from a sale. The
12 proceeds of the sale are statutorily appropriated, as provided in 17-7-502, to the agency that owned the
13 property before it was sold by the department.

14 ~~(3) Whenever the personal property was accounted for in an enterprise or internal service fund or~~
15 ~~designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or~~
16 ~~internal service fund or designated subfund account."~~

17
18 **Section 27.** Section 18-7-104, MCA, is amended to read:

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

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

29 (2) ~~Whenever~~ If a collective bargaining agreement is in effect between an employer and employees
30 who are represented by a responsible organization ~~which~~ that is in no way influenced or controlled by the

1 management, ~~such~~ the collective bargaining agreement and its provisions shall ~~must~~ be construed as
 2 conditions prevalent in ~~said~~ the locality and ~~shall be~~ is the minimum requirement for being adjudged
 3 considered a responsible bidder under ~~this section, 18-7-107, or chapter 4 of this title or this section.~~

4 (3) Printing firms ~~having the use of~~ using the union labels, ~~as set forth above shall be deemed as~~
 5 ~~having provided in subsection (1), have~~ complied with the provisions of ~~this section, 18-7-107, or chapter~~
 6 ~~4 or this section of this title, but nothing in these provisions shall be construed as exempting such.~~
 7 However, this section does not exempt the bidders from any the provisions of this section, 18-7-107, or
 8 chapter 4 of this title or this section, and such the bidders shall also be required to conform to all the
 9 provisions thereof of chapter 4 and this section."

10
 11 **Section 28.** Section 18-7-105, MCA, is amended to read:

12 "**18-7-105. Penalty.** Any officer of the state who ~~shall accept any~~ accepts printed matter for which
 13 the state is chargeable in whole or in part or who ~~is found to have~~ has had printed matter produced, under
 14 conditions other than as set forth in chapter 4 ~~of this title, or 18-7-104, or 18-7-107 shall be,~~ is subject
 15 to a fine of \$50 for each ~~and every~~ offense."

16
 17 **Section 29.** Section 18-8-211, MCA, is amended to read:

18 "**18-8-211. Coordination with other statutes.** (1) This part need not be complied with by an
 19 agency when the contracting authority makes a finding in accordance with this or any other applicable law
 20 that an emergency requires the immediate execution of the work involved. ~~Nothing in this~~ This part relieves
 21 does not relieve the contracting authority from complying with applicable law limiting emergency
 22 expenditures.

23 (2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this
 24 part.

25 (3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112
 26 applies to this part, except that the agency shall select its proposed list of three architects or consulting
 27 engineers in accordance with this part prior to submission to the department of administration.

28 ~~(4) The exception for services estimated to cost less than \$5,000 in 18-8-105 applies to this part."~~

29
 30 **Section 30.** Section 53-1-203, MCA, is amended to read:

1 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections
2 shall:

3 (a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for
4 the admission, custody, transfer, and release of persons in department programs except as otherwise
5 provided by law. However, rules adopted by the department may not amend or alter the statutory powers
6 and duties of the state board of pardons and parole.

7 (b) subject to the functions of the department of administration, lease or purchase lands for use
8 by institutions and classify those lands to determine those that may be most profitably used for agricultural
9 purposes, taking into consideration the needs of all institutions for the food products that can be grown
10 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation
11 of the persons confined in the institutions;

12 (c) contract with private, nonprofit Montana corporations to establish and maintain
13 community-based prerelease centers for purposes of preparing inmates of the Montana state prison who
14 are approaching parole eligibility or discharge for release into the community. The centers shall provide a
15 less restrictive environment than the prison while maintaining adequate security. The centers must be
16 operated in coordination with other department correctional programs, including the supervised release
17 program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's
18 authority to operate and maintain community-based prerelease centers.

19 (d) utilize the staff and services of other state agencies and units of the Montana university system,
20 within their respective statutory functions, to carry out its functions under this title;

21 (e) propose programs to the legislature to meet the projected long-range needs of institutions,
22 including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in
23 institutions;

24 (f) encourage the establishment of programs at the local and institutional level for the rehabilitation
25 and education of adult felony offenders;

26 (g) administer all state and federal funds allocated to the department for youth in need of
27 supervision and delinquent youth, as defined in 41-5-103;

28 (h) collect and disseminate information relating to youth in need of supervision and delinquent
29 youth;

30 (i) maintain adequate data on placements that it funds in order to keep the legislature properly

1 informed of the specific information, by category, related to youth in need of supervision and delinquent
2 youth in out-of-home care facilities;

3 (j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need
4 of supervision and who are referred or committed to the department;

5 (k) administer youth correctional facilities;

6 (l) provide supervision, care, and control of youth released from a state youth correctional facility;

7 and

8 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

9 (i) provide for children in need of temporary protection or correctional services; and

10 (ii) coordinate and apply the principles of modern institutional administration to the institutions in
11 the department.

12 (2) ~~The department and a private, nonprofit Montana corporation may not enter into a contract~~
13 ~~under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that~~
14 ~~limit the term of a contract do not apply to a contract authorized by subsection (1)(c).~~

15 (3) The department of corrections may enter into contracts with nonprofit corporations or
16 associations or private organizations to provide substitute care for youth in need of supervision and
17 delinquent youth in youth care facilities."

18

19 **Section 31.** Section 53-30-505, MCA, is amended to read:

20 "**53-30-505. Contract time limit.** ~~A contract entered into under 53-30-504 may not exceed a term~~
21 ~~of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and~~
22 ~~18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504."~~

23

24 **Section 32.** Section 60-2-112, MCA, is amended to read:

25 "**60-2-112. Competitive bidding.** (1) Except as provided in subsections (2) through (4), when the
26 estimated cost of any work exceeds \$50,000, the commission shall let the contract by competitive bidding
27 to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the
28 commission prescribes by its rules. ~~However, except when prohibited by federal law, the commission shall~~
29 ~~make awards and contracts in accordance with 18-1-102 and 18-1-112.~~

30 (2) The commission may let a contract by means other than competitive bidding if it determines

1 that special circumstances so require. The commission shall specify the special circumstances in writing.

2 (3) The commission may enter into contracts with units of local government for the construction
3 of projects without competitive bidding if it finds that the work can be accomplished at lower total costs,
4 including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and
5 accounting services, administrative costs, and reasonable estimates of other costs attributable to the
6 project.

7 (4) The commission may delegate to the department the authority to enter, without competitive
8 bidding, agreed-upon price contracts for projects costing \$50,000 or less."

9
10 **NEW SECTION. Section 33. Repealer.** Sections 18-1-102, 18-1-103, 18-1-106, 18-1-111,
11 18-1-112, 18-1-113, 18-1-114, 18-4-131, 18-4-225, 18-4-234, 18-7-107, 18-8-101, 18-8-102, 18-8-103,
12 18-8-104, 18-8-105, 18-8-106, 18-8-111, and 18-8-112, MCA, are repealed.

13
14 **NEW SECTION. Section 34. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
16 applications, the part remains in effect in all valid applications that are severable from the invalid
17 applications.

18
19 **NEW SECTION. Section 35. Retroactive applicability.** [Sections 6 and 15] and the repeal of
20 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid
21 or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those
22 authorized by [section 15], unless a final judgment awarding damages has been rendered regarding that
23 claim, cause of action, or request for relief prior to [the effective date of this act].

24
25 **NEW SECTION. Section 36. Effective dates.** (1) Except as provided in subsection (2), [this act]
26 is effective October 1, 1997.

27 (2) [Sections 6, 15, 34, and 35 and this section] and the repeal of 18-4-131 are effective on
28 passage and approval.

29 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0139, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that generally revises the law relating to public contracts.

ASSUMPTIONS:

1. Cost savings due to procurement reform processes cannot be measured with any degree of accuracy.
2. Potential damages paid out as a result of litigation by disappointed vendors cannot be estimated.
3. In FY96, the state paid approximately \$59,000 more to second lowest bidders over lowest bidders due to procurement preferences. In most cases, this amount represents funds that remained in-state rather than going out-of-state. Accordingly, Montana corporation and/or individual taxes paid on these funds would provide an offsetting factor. Therefore, because the amount varies, as does the tax factor, a reasonable estimate of the impact of removing the procurement preference cannot be made.
4. General funded agencies would now receive an appropriation equal to the proceeds from the sale of their surplus property instead of the funds being deposited directly to the general fund, resulting in a potential loss to the general fund of approximately \$110,000 per year. Non-general fund agencies and programs already retain their sale proceeds.
5. Procedures will have to be developed to ensure statutory appropriations requested by agencies do not exceed the sales proceeds deposited in the general fund, and to live within the limitations of the current appropriation control and accounting systems.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
General Fund Expenditures	\$110,000	\$110,000
Net Impact on Fund Balance	(\$110,000)	(\$110,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments and school districts may save an undetermined amount of money by not paying the extra costs associated with procurement preferences. But see assumption #3 above.

Dave Lewis 1-12-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Emily Swanson 1/13/97

EMILY SWANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0139, as introduced

HB 139

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0139, as revised

DESCRIPTION OF PROPOSED LEGISLATION:

A bill that generally revises the law relating to public contracts.

ASSUMPTIONS:

1. Cost savings due to procurement reform processes cannot be measured with any degree of accuracy.
2. Potential damages paid out as a result of litigation by disappointed vendors cannot be estimated.
3. The cost to the state of \$59,000 (actual cost in FY95-96) due to procurement preferences only reflects the extra costs paid by the state Purchasing Bureau. Data is not available for what the preferences cost the University system, some state agencies, or local governments and school districts. Future cost saving cannot be estimated because what will be procured is unknown. If preferences are eliminated, the state would avoid these costs.
4. General funded agencies would now receive an appropriation equal to the proceeds from the sale of their surplus property instead of the funds being deposited directly to the general fund, resulting in a potential loss to the general fund of approximately \$110,000 per year. Non-general fund agencies and programs already retain their sale proceeds.
5. Procedures will have to be developed to ensure statutory appropriations requested by agencies do not exceed the sales proceeds deposited in the general fund, and to live within the limitations of the current appropriation control and accounting systems.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
General Fund Expenditures	\$110,000	\$110,000
Net Impact on Fund Balance	(\$110,000)	(\$110,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments and school districts may save an undetermined amount of money by not paying the extra costs associated with procurement preferences. But see assumption #3 above.

Dave Lewis 1-16-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Emily Swanson 1/16/97

EMILY SWANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0139, as revised

Rev. HB 139-#2

1 HOUSE BILL NO. 139

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC
6 CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; ~~ELIMINATING PREFERENCES IN THE~~
7 ~~PROCUREMENT PROCESS~~; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS
8 FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE
9 PROCUREMENT PROCESS; ~~STATUTORILY APPROPRIATING THE PROCEEDS OF SALES OF PROPERTY~~;
10 PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE
11 PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE
12 PROCURED; AMENDING SECTIONS ~~7-14-2404, 7-14-2406, 7-14-2716, 17-7-502~~, 18-1-101, 18-4-122,
13 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, ~~18-4-231~~, 18-4-241, 18-4-242, 18-4-302,
14 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, ~~18-4-313~~, 18-4-402, ~~18-5-308, 18-6-101,~~
15 ~~18-7-104, 18-7-105~~, 18-8-211, ~~53-1-203, 53-30-505~~, AND 60-2-112, MCA; REPEALING SECTIONS
16 ~~18-1-102, 18-1-103, 18-1-106, 18-1-111, 18-1-112, 18-1-113, 18-1-114~~, 18-4-131, 18-4-225, ~~18-4-234,~~
17 ~~18-7-107~~, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112,
18 MCA; AND PROVIDING EFFECTIVE DATES AND, A RETROACTIVE APPLICABILITY DATE, AND A
19 TERMINATION DATE."

20
21 WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903
22 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages
23 under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

24 WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana
25 Procurement Act makes Montana taxpayers pay twice for the same product; and

26 WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow
27 disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but
28 rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section
29 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

30 WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d

1 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law
 2 and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for
 3 every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207
 4 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the
 5 Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking
 6 the remedy; and

7 WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the
 8 Legislature, and persons acting under any statute are considered to be acting in contemplation of the
 9 Legislature's power to repeal the statute; and

10 WHEREAS, it is the intent of the Legislature by enacting [sections ~~6, 15, and 35~~ 2, 10, AND 23]
 11 and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to
 12 the availability of the remedy of money damages; and

13 WHEREAS, it is the intent of the Legislature by enacting [section ~~35~~ 23] to make the reversal of
 14 the ISC case apply retroactively, ~~even to the parties in the ISC case, unless a final judgment is obtained in~~
 15 ~~that case before [the effective date of this act], as provided in [section 36]~~ UNLESS A COMPLAINT WAS
 16 FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992, AS PROVIDED IN [SECTION 23].

17

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

19

20 ~~Section 1. Section 7-14-2404, MCA, is amended to read:~~

21 ~~"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the~~
 22 ~~requirements of Title 18, chapter 1, part 2. The contract shall must be awarded to the lowest responsible~~
 23 ~~and responsive bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 24 ~~2, part 4, and the board may reserve the right to reject any and all bids. When there is no prevailing rate~~
 25 ~~of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the~~
 26 ~~contract."~~

27

28 ~~Section 2. Section 7-14-2406, MCA, is amended to read:~~

29 ~~"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall must~~
 30 ~~meet these requirements:~~

1 ~~(a) If the department of transportation has adopted or established a standard plan and~~
 2 ~~specifications, the bids must be submitted thereon on the standard plan and specifications.~~

3 ~~(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part~~
 4 ~~2.~~

5 ~~(2) The board may reject any and all bids. If a contract is awarded, the board shall do so award~~
 6 ~~the contract in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4.~~
 7 ~~When there is no prevailing rate of wages set by collective bargaining, the board shall determine the~~
 8 ~~prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of~~
 9 ~~the members of the board.~~

10 ~~(3) Before entering upon performance of the work, the contractor shall comply with the~~
 11 ~~requirements of Title 18, chapter 2, part 2. For the purposes of these sections with relation to contracts~~
 12 ~~with the board, a contract shall not be is not completed until the board, while formally convened,~~
 13 ~~affirmatively accepts all of the work thereunder done under the contract."~~

14
 15 ~~Section 3. Section 7-14-2716, MCA, is amended to read:~~

16 ~~"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a~~
 17 ~~contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 18 ~~2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall~~
 19 ~~determine the prevailing rate to be stated in the contract.~~

20 ~~(2) Partial payments may be provided for in the contract and paid when certified by the county~~
 21 ~~surveyor and committee."~~

22
 23 ~~Section 4. Section 17-7-502, MCA, is amended to read:~~

24 ~~"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory~~
 25 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
 26 ~~without the need for a biennial legislative appropriation or budget amendment.~~

27 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
 28 ~~with both of the following provisions:~~

29 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

30 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~

1 ~~statutory appropriation is made as provided in this section.~~

2 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;~~
 3 ~~2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
 4 ~~15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;~~
 5 ~~16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;~~
 6 ~~18-6-101; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606;~~
 7 ~~19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;~~
 8 ~~23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;~~
 9 ~~39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;~~
 10 ~~50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;~~
 11 ~~75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;~~
 12 ~~85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.~~

13 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
 14 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
 15 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
 16 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
 17 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
 18 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec-~~
 19 ~~7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for~~
 20 ~~supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates~~
 21 ~~July 1, 2001.)"~~

22
 23 **Section 1.** Section 18-1-101, MCA, is amended to read:

24 **"18-1-101. Definitions.** ~~(1)~~ (1) Unless the context requires otherwise, in this title, "department"
 25 the following definitions apply:

26 ~~(1) "Department"~~ "DEPARTMENT" means the department of administration provided for in Title
 27 2, chapter 15, part 10.

28 ~~(2) Unless the context requires otherwise, in this part the following definitions apply:~~

29 ~~(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured~~
 30 ~~products.~~

1 ~~(b) "Montana made" means manufactured or produced in this state and made with the:~~
 2 ~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in~~
 3 ~~this state; or~~
 4 ~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined~~
 5 ~~in 18-2-401.~~

6 ~~(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under~~
 7 ~~18-1-103.~~

8 ~~(d)(2) UNLESS THE CONTEXT REQUIRES OTHERWISE, IN THIS PART, THE FOLLOWING~~
 9 DEFINITIONS APPLY:

10 (A) "GOODS" MEANS SUPPLIES, EQUIPMENT, MATERIALS, COMMODITIES, AND SPECIALLY
 11 MANUFACTURED PRODUCTS.

12 (B) "MONTANA-MADE" MEANS MANUFACTURED OR PRODUCED IN THIS STATE AND MADE
 13 WITH THE:

14 (I) USE OF PARTS, MATERIALS, OR SUPPLIES OF WHICH 50% OR MORE WERE MANUFACTURED
 15 OR PRODUCED IN THIS STATE; OR

16 (II) EMPLOYMENT OF PERSONS OF WHOM 50% OR MORE ARE BONA FIDE RESIDENTS OF
 17 MONTANA AS DEFINED IN 18-2-401.

18 (C) "NONRESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS NOT IN THIS STATE AS
 19 DETERMINED UNDER 18-1-103.

20 (D) "Public agency" means a department, commission, council, board, bureau, committee,
 21 institution, agency, government corporation, or other entity, instrumentality, or official of the legislative,
 22 executive, or judicial branch of this state and its political subdivisions, including the board of regents and
 23 the Montana university system.

24 ~~(e) "Resident bidder" means a bidder whose residence is in this state as determined under~~
 25 ~~18-1-103.~~

26 ~~(3)~~(E) "RESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS IN THIS STATE AS
 27 DETERMINED UNDER 18-1-103.

28 (F) "Written" means that whenever written or in-writing determinations or documents are required,
 29 the public agency responsible for the procurement may specify an appropriate visual medium, such as by
 30 computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the

1 public agency."

2

3 **Section 2.** Section 18-4-122, MCA, is amended to read:

4 **"18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

- 5 (1) simplify, clarify, and modernize the law governing procurement by the state of Montana;
- 6 (2) permit the continued development of procurement policies and practices;
- 7 (3) make as consistent as possible the procurement laws among the various jurisdictions;
- 8 (4) provide for increased public confidence in the procedures followed in public procurement;
- 9 (5) ~~ensure the fair and equitable treatment of all persons who deal with the procurement system~~

10 ~~of the state provide the exclusive remedies for unlawful bid solicitations or contract awards;~~ ENSURE THE
 11 FAIR AND EQUITABLE TREATMENT OF ALL PERSONS WHO DEAL WITH THE PROCUREMENT SYSTEM
 12 OF THE STATE;

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

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

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

17 (8) PROVIDE SAFEGUARDS FOR THE MAINTENANCE OF A PROCUREMENT SYSTEM OF QUALITY
 18 AND INTEGRITY; AND

19 (9) PROVIDE THE EXCLUSIVE REMEDIES FOR UNLAWFUL BID SOLICITATIONS OR CONTRACT
 20 AWARDS."

21

22 **Section 3.** Section 18-4-123, MCA, is amended to read:

23 **"18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different
 24 meaning is prescribed for a particular section, the following definitions apply:

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

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

30 (3) "Contract" means all types of state agreements, regardless of what they may be called, for the

1 procurement or disposal of supplies or services.

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

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

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

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

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

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

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

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

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

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

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

28 (15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies
29 or services. It also includes all functions that pertain to the obtaining of any supply or service, including
30 description of requirements, selection and solicitation of sources, preparation and award of contract, and

1 all phases of contract administration.

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

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

8 (18) "Services" means the furnishing of labor, time, or effort by a contractor, ~~not involving the~~
9 ~~delivery of a specific end product other than reports which are merely incidental to the required~~
10 ~~performance.~~ The term does not include ~~consulting services as defined in 18-8-102, those services listed~~
11 ~~in 18-8-103,~~ employment agreements or collective bargaining agreements, the provision ~~by providers of~~
12 human services ~~regulated by a state agency~~ administered by the department of public health and human
13 services, or services related to construction contracts.

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

16 (20) "Using agency" means any governmental body of the state ~~which that~~ utilizes uses any
17 supplies or services procured under this chapter.

18 (21) "Vendor" means a person who offers or may offer supplies or services to a public agency."
19

20 **Section 4.** Section 18-4-126, MCA, is amended to read:

21 **"18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement
22 information is a public writing and must be available to the public as provided in 2-6-102 and 18-4-304.

23 (2) All procurement records must be retained, managed, and disposed of in accordance with the
24 state records management program, Title 2, chapter 6.

25 (3) Written determinations required by this chapter must be retained in the appropriate official
26 contract file of the department or the purchasing agency administering the procurement in accordance with
27 the state records management program."
28

29 **Section 5.** Section 18-4-132, MCA, is amended to read:

30 **"18-4-132. Application.** (1) ~~Except as provided in 18-4-313, which applies retroactively to~~

1 ~~telecommunications equipment and systems and data processing equipment acquired under existing~~
 2 ~~contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies~~
 3 ~~only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application~~
 4 ~~to a contract solicited or entered into prior to January 1, 1984.~~

5 ~~(2)~~ This chapter applies to expenditure of public funds irrespective of their source, including federal
 6 assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any
 7 contract; ~~but this~~ This chapter does not apply to either grants or contracts between the state and its
 8 political subdivisions or other governments, except as provided in part 4. This chapter also applies to the
 9 disposal of state supplies. ~~Nothing in this~~ This chapter or ~~in~~ rules adopted ~~thereunder~~ pursuant to this
 10 chapter prevents do not prevent any governmental body or political subdivision from complying with the
 11 terms and conditions of any grant, gift, bequest, or cooperative agreement.

12 ~~(3)~~(2) This chapter does not apply to construction contracts.

13 ~~(4)~~(3) This chapter does not apply to expenditures of or the authorized sale or disposal of
 14 equipment purchased with money raised by student activity fees designated for use by the student
 15 associations of the university system.

16 ~~(5)~~(4) This chapter does not apply to contracts entered into by the Montana state lottery that have
 17 an aggregate value of less than \$250,000.

18 (5) This chapter does not apply to employment of:

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

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

21 (c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
 22 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
 23 order of the governor;

24 (d) consulting actuaries;

25 (e) a private consultant employed by the student associations of the university system with money
 26 raised from student activity fees designated for use by those student associations;

27 (f) a private consultant employed by the Montana state lottery;

28 (g) a private investigator licensed by any jurisdiction; or

29 (h) a claims adjuster."

30

1 **Section 6.** Section 18-4-133, MCA, is amended to read:

2 "**18-4-133. Purchases exempt from general requirements.** (1) ~~Fresh fruits and vegetables, other~~
3 ~~than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The~~
4 ~~department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized~~
5 ~~account must be kept of these purchases, and the account must be furnished to the department.~~

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

10 ~~(3)~~(2) The department ~~of administration~~ may exempt the department of corrections and the
11 department of public health and human services from the provisions of this chapter for the purchase of
12 suitable clothing by the department of corrections and the department of public health and human services
13 for residents of its institutions and community-based programs.

14 ~~(4)~~(3) As used in this section, "suitable clothing" means styled, seasonable clothing, which will
15 allow the resident to make a normal appearance in the community."
16

17 **Section 7.** Section 18-4-141, MCA, is amended to read:

18 "**18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~Ne~~ A contract
19 or order or any interest ~~therein~~ in a contract or order may not be transferred, assigned, or subcontracted
20 by the party to whom the contract or order is given to any other party without the express written approval
21 of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. ~~Ne~~
22 ~~approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their~~
23 ~~obligations to the state under the contract or order.~~

24 (2) Collusion or secret agreements between bidders for the purpose of securing any advantage to
25 the bidders as against the state in the awarding of contracts is prohibited. The state may declare the
26 contract void if the department finds sufficient evidence after a contract has been let that the contract was
27 obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the
28 disadvantage of the state.

29 (3) All rights of action for a breach of a contract by the contracting parties are reserved to the
30 state.

1 (4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a
 2 misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of Montana may
 3 at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab
 4 initio."

5
 6 **Section 8.** Section 18-4-224, MCA, is amended to read:

7 "**18-4-224. Contract clauses -- rules.** (1) The department may ~~adopt rules permitting or requiring,~~
 8 in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of
 9 performance, or other appropriate contract provisions relating to the following subjects:

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

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

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

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

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

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

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

19 (c) by the costs attributable to the events or situations under ~~such~~ clauses established under
 20 subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 21 or

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

23 ~~(e) in the absence of agreement by the parties, by a unilateral determination by the state of the~~
 24 ~~costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as~~
 25 ~~computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.~~

26 (3) The department may ~~adopt rules permitting or requiring~~ in its discretion, permit or require the
 27 inclusion in state contracts of clauses providing for appropriate remedies and relating to the following
 28 subjects:

29 (a) liquidated damages, as appropriate;

30 (b) specified excuses for delay or nonperformance;

- 1 (c) termination of the contract for default; and
- 2 (d) termination of the contract, in whole or in part, for the convenience of the state.
- 3 (4) The director or the head of a purchasing agency may vary the clauses established by the
- 4 department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must
- 5 be supported by a written determination that states the circumstances justifying ~~such~~ the variation. Notice
- 6 of any material variation must be stated in the invitation for bids or request for proposals.
- 7 (5) Regardless of a provision in a contract, the department may accept a lower price or better value
- 8 offered by a contractor."

9

10 ~~Section 13. Section 18-4-231, MCA, is amended to read:~~

11 ~~"18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234, 18-4-233,~~

12 ~~"specification" means any description of the physical or functional characteristics or of the nature of a~~

13 ~~supply or service. It may include a description of any requirement for inspecting, testing, or preparing a~~

14 ~~supply or service for delivery."~~

15

16 **Section 9.** Section 18-4-241, MCA, is amended to read:

17 **"18-4-241. Authority to remove or suspend ~~from vendors' list~~ vendor.** (1) The department may

18 remove a ~~person~~ vendor for cause from consideration for award of contracts by the state. ~~The removal may~~

19 ~~not be for a period of more than 3 years.~~

20 (2) The department may temporarily suspend a ~~person~~ vendor from consideration for award of

21 contracts if there is probable cause to believe that the ~~person~~ vendor has engaged in activities that may

22 lead to removal. ~~The suspension may not be for a period exceeding 3 months unless~~ If an indictment has

23 been issued for an offense that would be a cause for removal under subsection (3), ~~in which case~~ the

24 suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial

25 of the suspended ~~person~~ vendor. The authority to remove or suspend must be exercised in accordance with

26 rules adopted by the department.

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

28 (a) violation of contract provisions, as set forth in subsections (3)(a)(i) and (3)(a)(ii), of a character

29 ~~which~~ that is regarded by the department to be so serious as to justify removal action:

30 (i) deliberate failure without good cause to perform in accordance with the specifications or within

1 the time limit provided in the contract; or

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

5 (b) failure to respond to a number of solicitations over a period of time as determined by the
6 department in accordance with rules, ~~and after adequate written notice to the affected person of the intent~~
7 ~~to remove or suspend~~ or failure to provide the department with a correct address;

8 (c) any other cause that the department determines to be so serious and compelling as to affect
9 responsibility as a state contractor, including removal by another governmental entity ~~for any cause listed~~
10 ~~in the department's rules;~~ and

11 (d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

12 (4) The department shall issue a written decision to remove or suspend a vendor, stating the
13 reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy
14 of the decision must be mailed or otherwise furnished immediately to the ~~person~~ vendor involved."

15

16 **Section 10.** Section 18-4-242, MCA, is amended to read:

17 "**18-4-242. Remedies prior to and after award Exclusive remedies for unlawful solicitation or**
18 **award.** (1) ~~If This section establishes the exclusive remedies for~~ a solicitation or award of a contract ~~is~~
19 ~~determined to be in violation of the law, the,~~

20 (2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror,
21 or contractor aggrieved in connection with the solicitation or award of a contract may protest to the
22 department. The protest must be submitted to the department in writing no later than 14 days after
23 execution of the contract.

24 (3) If the protest is not resolved by mutual agreement, the department shall issue in writing a
25 decision on the protest within 30 days after receipt of the protest. The decision must:

26 (a) state the reason for the action taken by the department with regard to the contract; and

27 (b) inform the aggrieved party of the party's right to request, within 14 days after the date of the
28 department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure
29 Act.

30 (4) In a protest or contested case proceeding, the department may ~~apply the remedies,~~ in an

1 appropriate case, order a remedy provided in subsections (2) and (3) subsection (5) or (6).

2 ~~(2)(5)~~ If prior to before an award it is determined that a solicitation or proposed award of a contract
 3 is in violation of law, the solicitation or proposed award must may be:

4 (a) canceled; or

5 (b) revised to comply with the law.

6 ~~(3)(6)~~ (a) If after an award it is determined that a solicitation or award of a contract is in violation
 7 of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may
 8 be:

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

10 or

11 (ii) terminated, and the person awarded the contract must be compensated for the actual expenses
 12 reasonably incurred under the contract, plus a reasonable profit, ~~prior to~~ before the termination.

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

15 (i) declared void; or

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

18 ~~(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided~~
 19 ~~in subsections (2) and (3).~~

20 (7) The exclusive method of judicial review of a solicitation or award by the department pursuant
 21 to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that
 22 section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this
 23 section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory
 24 to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any
 25 other claim, cause of action, or request for relief for solicitations of awards allegedly made in violation of
 26 law may not be heard or granted by a district court other than as provided in this section.

27 (8) The state is not required to delay, halt, or modify the procurement process pending the result
 28 of a protest, contested case proceeding, or judicial review.

29 (9) The department may adopt rules governing the protest of solicitations and awards."

30

1 **Section 11.** Section 18-4-302, MCA, is amended to read:

2 "**18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state
3 contracts for supplies and services must be awarded by ~~competitive sealed bidding, pursuant to 18-4-303,~~
4 ~~except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of a source selection~~
5 method provided for in this title, and subsections (2) and (3) of this section. Supplies or services offered
6 for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or
7 services are regulated by the public service commission or other governmental authority.

8 (2) At the time that the department or ~~a purchasing~~ another agency opens bids or proposals, if a
9 supplier's current publicly advertised or established catalog price is received at or before the time that the
10 bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or
11 offeror or improves upon the conditions for the best proposal received using the same factors and weights
12 included in the proposal, the department or ~~purchasing~~ agency may reject all bids and purchase the supply
13 from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

14 (3) An office supply procured by the department's central stores program ~~through bulk purchase~~
15 ~~or procured under a term contract~~ may be purchased by ~~a purchasing~~ an agency, without meeting the
16 requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established
17 catalog price, or discount price offered to the ~~purchasing~~ agency is less than the price offered by the central
18 stores program ~~or under the term contract~~ if the office supply conforms in all material respects to the terms,
19 conditions, and quality offered by the central stores program ~~or under the term contract~~. A state office
20 supply term contract must include a provision by which the contracting parties acknowledge and agree to
21 the provisions of this subsection.

22 ~~(4) A contract for supplies or services, or both, INFORMATION TECHNOLOGY SYSTEMS AND~~
23 ~~SERVICES may be negotiated, in accordance with department rules and with the approval of the department~~
24 ~~director, directly with a vendor without using competitive sealed bidding or a competitive sealed proposal~~
25 IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE DEPARTMENT
26 DIRECTOR. A contract may be awarded pursuant to this section only when it is advantageous to the state
27 to use direct negotiation in the procurement of new or unique requirements of the state, in the procurement
28 of new technologies, or to achieve best net value. THE DEPARTMENT SHALL REPORT ANY ACTIVITY
29 USING THIS METHOD OF PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE.

30 (5) The department may, on behalf of a state agency, participate in, sponsor, conduct, or

1 administer a AN INFORMATION TECHNOLOGY contract or other INFORMATION TECHNOLOGY business
 2 relationship in a cooperative purchase pursuant to 18-4-402 with one or more public agencies, nonprofit
 3 organizations, or business entities if the department determines the contract or relationship to be in the best
 4 interests of the state. IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE
 5 DEPARTMENT DIRECTOR. THE DEPARTMENT SHALL REPORT ANY ACTIVITY USING THIS METHOD OF
 6 PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE."

7
 8 **Section 12.** Section 18-4-303, MCA, is amended to read:

9 **"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include
 10 a purchase description and conditions applicable to the procurement.

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

15 (3) Bids must be opened publicly ~~in the presence of one or more witnesses~~ at the time and place
 16 designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent,
 17 when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and
 18 ~~such~~ other relevant information as may be specified by rule, together with the name of each bidder, must
 19 be recorded. The record must be open to public inspection. After the time of award, all bids and bid
 20 documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject
 21 to the requirements of subsection (4).

22 (4) Bids must be available for public inspection when the bids are opened if:

23 (a) the invitation for bids is issued by a state agency to contract with the private sector to provide
 24 services currently conducted by state employees; and

25 (b) acceptance of bids would result in the displacement of five or more state employees.

26 (5) Bids must be unconditionally accepted without alteration or correction, except as authorized
 27 in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which
 28 may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery,
 29 and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in
 30 evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or

1 life-cycle costs. The invitation for bids ~~shall~~ must set forth the evaluation criteria to be used. Only criteria
2 set forth in the invitation for bids may be used in bid evaluation.

3 (6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation
4 of awards or contracts based on ~~such~~ bid mistakes may be permitted in accordance with rules adopted by
5 the department. After bid opening, ~~no~~ changes in bid prices or other provisions of bids prejudicial to the
6 interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all
7 decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid
8 mistakes must be supported by a written determination made by the department.

9 (7) The contract must be awarded with reasonable promptness by written notice to the lowest
10 responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation
11 for bids, ~~including the preferences established by Title 18, chapter 1, part 1, INCLUDING THE~~
12 PREFERENCES ESTABLISHED BY TITLE 18, CHAPTER 1, PART 1. If all bids exceed available funds as
13 certified by the appropriate fiscal officer and the low ~~responsive and~~ responsible and responsive bid does
14 not exceed ~~such~~ the funds by more than 5%, the director or the head of a purchasing agency ~~is authorized~~
15 may, in situations ~~where~~ in which time or economic considerations preclude resolicitation of a reduced
16 scope, ~~to~~ negotiate an adjustment of the bid price, including changes in the bid requirements, with the low
17 ~~responsive and~~ responsible and responsive bidder in order to bring the bid within the amount of available
18 funds.

19 (8) When it is considered impractical to initially prepare a purchase description to support an award
20 based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be
21 followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria
22 set forth in the first solicitation."
23

24 **Section 13.** Section 18-4-304, MCA, is amended to read:

25 **"18-4-304. Competitive sealed proposals.** (1) When, under rules adopted by the department, the
26 director, the head of a purchasing agency, or a designee of either officer above the level of the procurement
27 officer determines that the use of competitive sealed bidding is either not practicable or not advantageous
28 to the state, a contract may be entered into by competitive sealed proposals. The department may provide
29 by rule that it is either not practicable or not advantageous to the state to procure specified types of
30 supplies and services by competitive sealed bidding. The department may procure supplies and services

1 through competitive sealed proposals.

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

3 (3) Adequate public notice of the request for proposals must be given in the same manner as
4 provided in 18-4-303(2).

5 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during
6 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
7 the department and must be open for public inspection after contract award. After the contract is
8 executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform
9 Trade Secrets Act, Title 30, chapter 14, part 4.

10 (5) The request for proposals must state the evaluation factors and their relative importance of
11 price and other evaluation factors. The award must be made to the responsible and responsive offeror
12 whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the
13 evaluation. The contract file must demonstrate the basis on which the award is made.

14 (6) As provided in the request for proposals and under rules adopted by the department,
15 discussions with responsible offerors who submit apparently responsive proposals may be conducted for
16 the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation
17 requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for
18 discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award,
19 for the purpose of obtaining best and final offers. The department may discuss a proposal with an offeror
20 for the purpose of clarification or revision of the proposal. In conducting discussions, there may not be
21 disclosure of any information derived from proposals submitted by competing offerors. The department may
22 require the submission of cost or pricing data in connection with an award under this section.

23 (7) The award must be made to the responsible offeror whose proposal is determined in writing
24 to be the most advantageous to the state, taking into consideration price, including the preference in
25 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may
26 be used in the evaluation. The contract file must contain the basis on which the award is made."

27
28 **Section 14.** Section 18-4-305, MCA, is amended to read:

29 **"18-4-305. Small purchases and limited solicitations.** Any procurement not exceeding the amount
30 established by rule may be made in accordance with small purchase or limited solicitation procedures

1 established by the department. Procurement requirements may not be artificially divided so as to constitute
2 a small purchase or limited solicitation under this section."

3
4 **Section 15.** Section 18-4-309, MCA, is amended to read:

5 **"18-4-309. Prequalification of suppliers.** Prospective suppliers may be prequalified in accordance
6 with department rules for particular types of supplies and services. ~~Solicitation mailing lists of potential~~
7 ~~contractors must include but not be limited to such prequalified suppliers."~~

8
9 **Section 16.** Section 18-4-310, MCA, is amended to read:

10 **"18-4-310. Types of contracts.** ~~Subject to the limitations of this section, any~~ Any type of contract
11 that will promote the best interests of the state may be used, ~~except that the use of a~~
12 ~~cost plus percentage of cost contract is prohibited. A cost reimbursement contract may be used only when~~
13 ~~a determination is made in writing that such contract is likely to be less costly to the state than any other~~
14 ~~type or that it is impracticable to obtain the supplies or services required except under such a contract."~~

15
16 **Section 17.** Section 18-4-312, MCA, is amended to read:

17 **"18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement of
18 services or of supplies, the department may in its discretion require:

19 (a) bid security;

20 (b) contract performance security to guarantee the faithful performance of the contract and the
21 payment of all laborers, suppliers, ~~materialmen,~~ mechanics, and subcontractors; or

22 (c) both bid and contract performance security.

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

25 (a) a sufficient bond with a licensed surety company as surety;

26 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
27 30, chapter 5, part 1;

28 (c) money of the United States;

29 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
30 certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings

1 and loan association that is insured by or for which insurance is administered by the federal deposit
 2 insurance corporation or that is drawn and issued by a credit union insured by the national credit union
 3 share insurance fund.

4 (3) The amount and type of the security must be determined by the department to be sufficient
 5 to cover the risk involved to the state. The security must be payable to the state of Montana and, Contract
 6 performance security must remain in effect for the entire contract period. In determining the amount and
 7 type of contract performance security required for each contract, the department shall consider the nature
 8 of the performance and the need for future protection to the state. In determining the need for and amount
 9 of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror
 10 fails to enter into a formal contract. The considerations must include but are not limited to the type of
 11 supply or service being procured, the dollar amount of the proposed contract, and delivery time
 12 requirements. The department may adopt rules to assist it in making these determinations and in protecting
 13 the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be
 14 included in the invitations for bids or requests for proposals.

15 (4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
 16 or provide contract performance security, as required by the invitation for bid or request for proposal, after
 17 notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to
 18 the state and become immediately liable on the bid security, but not in excess of the sum stated in the
 19 security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the
 20 bid bond or other security may not exceed the amount specified in the invitation for bid or request for
 21 proposal.

22 (5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors
 23 whose bids or proposals are not accepted.

24 (6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not
 25 apply to procurements under this chapter."
 26

27 ~~Section 23. Section 18-4-313, MCA, is amended to read:~~

28 ~~"18-4-313. Contracts — terms, extensions, and time limits. (1) Unless otherwise provided by law,~~
 29 ~~a contract, lease, or rental agreement for supplies or services may not be made for a period of more than~~
 30 ~~7 years. However, the department may contract for the lease or purchase of telecommunications equipment~~

1 and systems, data processing equipment, the department of revenue liquor agencies, and the department
 2 of public health and human services medicaid management information system (MMIS) for a period not to
 3 exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the
 4 extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period
 5 at the time of the agreement, and if the total contract period, including any extension or renewal, does not
 6 exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the
 7 availability and appropriation of funds for the fiscal periods. Unless otherwise provided by law, a contract,
 8 lease, or rental agreement for supplies or services may be made for a specific duration determined by the
 9 department to obtain the best net value for the state.

10 (2) ~~Prior to~~ Before the issuance, extension, or renewal of a contract, it must be determined that:

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

12 and

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

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

17
 18 **Section 18.** Section 18-4-402, MCA, is amended to read:

19 **"18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor,
 20 conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services
 21 with one or more public procurement units in accordance with an agreement entered into between the
 22 participants independent of the requirements of part 3. ~~Such cooperative~~ Cooperative purchasing may
 23 include purchasing through federal supply schedules of the United States general services administration,
 24 joint or ~~multi-party~~ multiparty contracts between public procurement units and open-ended state public
 25 procurement unit contracts that are made available to local public procurement units."
 26

27 ~~**Section 25.** Section 18-5-308, MCA, is amended to read:~~

28 ~~"18-5-308. Construction with other sections.~~ Procurement from small businesses under this part
 29 is subject to all other statutes governing state procurement and all rules promulgated thereunder adopted
 30 pursuant to this part, as now or hereafter later amended, except that in case of conflict this part governs

1 and the provisions set forth in ~~18-1-102, 18-1-111, and 18-1-112~~ shall not apply."

2
3 ~~Section 26. Section 18-6-101, MCA, is amended to read:~~

4 ~~"18-6-101. Power to sell state property — proceeds credited to general fund from which property~~
5 ~~was purchased. (1) The department has exclusive power, subject to the approval of the governor, to sell~~
6 ~~or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service~~
7 ~~equipment, or other personal property of every kind owned by the state but not needed or used by any~~
8 ~~state institution or by any department of state government.~~

9 ~~(2) Unless otherwise provided by law, the department shall credit the general fund from which the~~
10 ~~property was purchased, less a reasonable handling fee, with all the money received from a sale. The~~
11 ~~proceeds of the sale are statutorily appropriated, as provided in 17-7-502, to the agency that owned the~~
12 ~~property before it was sold by the department.~~

13 ~~(3) Whenever the personal property was accounted for in an enterprise or internal service fund or~~
14 ~~designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or~~
15 ~~internal service fund or designated subfund account."~~

16
17 ~~Section 27. Section 18-7-104, MCA, is amended to read:~~

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

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

28 ~~(2) Whenever If a collective bargaining agreement is in effect between an employer and employees~~
29 ~~who are represented by a responsible organization which that is in no way influenced or controlled by the~~
30 ~~management, such the collective bargaining agreement and its provisions shall must be construed as~~

1 ~~conditions prevalent in said the locality and shall be is the minimum requirement for being adjudged~~
 2 ~~considered a responsible bidder under this section, 18-7-107, or chapter 4 of this title or this section.~~

3 ~~(3) Printing firms having the use of using the union labels, as set forth above shall be deemed as~~
 4 ~~having provided in subsection (1), have complied with the provisions of this section, 18-7-107, or chapter~~
 5 ~~4 or this section of this title, but nothing in these provisions shall be construed as exempting such.~~
 6 ~~However, this section does not exempt the bidders from any the provisions of this section, 18-7-107, or~~
 7 ~~chapter 4 of this title or this section, and such the bidders shall also be required to conform to all the~~
 8 ~~provisions thereof of chapter 4 and this section."~~

9
 10 ~~Section 28. Section 18-7-106, MCA, is amended to read:~~

11 ~~"18-7-106. Penalty. Any officer of the state who shall accept any accepts printed matter for which~~
 12 ~~the state is chargeable in whole or in part or who is found to have has had printed matter produced, under~~
 13 ~~conditions other than as set forth in chapter 4 of this title, or 18-7-104, or 18-7-107 shall be, is subject~~
 14 ~~to a fine of \$50 for each and every offense."~~

15
 16 ~~Section 19. Section 18-8-211, MCA, is amended to read:~~

17 ~~"18-8-211. Coordination with other statutes. (1) This part need not be complied with by an~~
 18 ~~agency when the contracting authority makes a finding in accordance with this or any other applicable law~~
 19 ~~that an emergency requires the immediate execution of the work involved. Nothing in this This part relieves~~
 20 ~~does not relieve the contracting authority from complying with applicable law limiting emergency~~
 21 ~~expenditures.~~

22 ~~(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this~~
 23 ~~part.~~

24 ~~(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112~~
 25 ~~applies to this part, except that the agency shall select its proposed list of three architects or consulting~~
 26 ~~engineers in accordance with this part prior to submission to the department of administration.~~

27 ~~(4) The exception for services estimated to cost less than \$5,000 in 18-8-106 applies to this part."~~

28
 29 ~~Section 30. Section 53-1-203, MCA, is amended to read:~~

30 ~~"53-1-203. Powers and duties of department of corrections. (1) The department of corrections~~

1 shall:

2 ~~(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for~~
3 ~~the admission, custody, transfer, and release of persons in department programs except as otherwise~~
4 ~~provided by law. However, rules adopted by the department may not amend or alter the statutory powers~~
5 ~~and duties of the state board of pardons and parole.~~

6 ~~(b) subject to the functions of the department of administration, lease or purchase lands for use~~
7 ~~by institutions and classify those lands to determine those that may be most profitably used for agricultural~~
8 ~~purposes, taking into consideration the needs of all institutions for the food products that can be grown~~
9 ~~or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation~~
10 ~~of the persons confined in the institutions;~~

11 ~~(c) contract with private, nonprofit Montana corporations to establish and maintain~~
12 ~~community-based prerelease centers for purposes of preparing inmates of the Montana state prison who~~
13 ~~are approaching parole eligibility or discharge for release into the community. The centers shall provide a~~
14 ~~less restrictive environment than the prison while maintaining adequate security. The centers must be~~
15 ~~operated in coordination with other department correctional programs, including the supervised release~~
16 ~~program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's~~
17 ~~authority to operate and maintain community-based prerelease centers.~~

18 ~~(d) utilize the staff and services of other state agencies and units of the Montana university system,~~
19 ~~within their respective statutory functions, to carry out its functions under this title;~~

20 ~~(e) propose programs to the legislature to meet the projected long range needs of institutions,~~
21 ~~including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in~~
22 ~~institutions;~~

23 ~~(f) encourage the establishment of programs at the local and institutional level for the rehabilitation~~
24 ~~and education of adult felony offenders;~~

25 ~~(g) administer all state and federal funds allocated to the department for youth in need of~~
26 ~~supervision and delinquent youth, as defined in 41-5-103;~~

27 ~~(h) collect and disseminate information relating to youth in need of supervision and delinquent~~
28 ~~youth;~~

29 ~~(i) maintain adequate data on placements that it funds in order to keep the legislature properly~~
30 ~~informed of the specific information, by category, related to youth in need of supervision and delinquent~~

1 youth in out of home care facilities;

2 ~~(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need~~
3 ~~of supervision and who are referred or committed to the department;~~

4 ~~(k) administer youth correctional facilities;~~

5 ~~(l) provide supervision, care, and control of youth released from a state youth correctional facility;~~

6 and

7 ~~(m) use to maximum efficiency the resources of state government in a coordinated effort to:~~

8 ~~(i) provide for children in need of temporary protection or correctional services; and~~

9 ~~(ii) coordinate and apply the principles of modern institutional administration to the institutions in~~
10 ~~the department.~~

11 ~~(2) The department and a private, nonprofit Montana corporation may not enter into a contract~~
12 ~~under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that~~
13 ~~limit the term of a contract do not apply to a contract authorized by subsection (1)(c).~~

14 ~~(3) The department of corrections may enter into contracts with nonprofit corporations or~~
15 ~~associations or private organizations to provide substitute care for youth in need of supervision and~~
16 ~~delinquent youth in youth care facilities."~~

17
18 ~~Section 31. Section 53-30-505, MCA, is amended to read:~~

19 ~~"53-30-505. Contract time limit. A contract entered into under 53-30-504 may not exceed a term~~
20 ~~of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and~~
21 ~~18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504."~~

22
23 ~~Section 20. Section 60-2-112, MCA, is amended to read:~~

24 ~~"60-2-112. Competitive bidding. (1) Except as provided in subsections (2) through (4), when the~~
25 ~~estimated cost of any work exceeds \$50,000, the commission shall let the contract by competitive bidding~~
26 ~~to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the~~
27 ~~commission prescribes by its rules. However, except when prohibited by federal law, the commission shall~~
28 ~~make awards and contracts in accordance with 18-1-102 and 18-1-112. HOWEVER, EXCEPT WHEN~~
29 ~~PROHIBITED BY FEDERAL LAW, THE COMMISSION SHALL MAKE AWARDS AND CONTRACTS IN~~
30 ~~ACCORDANCE WITH 18-1-102 AND 18-1-112.~~

1 (2) The commission may let a contract by means other than competitive bidding if it determines
2 that special circumstances so require. The commission shall specify the special circumstances in writing.

3 (3) The commission may enter into contracts with units of local government for the construction
4 of projects without competitive bidding if it finds that the work can be accomplished at lower total costs,
5 including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and
6 accounting services, administrative costs, and reasonable estimates of other costs attributable to the
7 project.

8 (4) The commission may delegate to the department the authority to enter, without competitive
9 bidding, agreed-upon price contracts for projects costing \$50,000 or less."

10
11 NEW SECTION. Section 21. Repealer. Sections ~~18-1-102, 18-1-103, 18-1-106, 18-1-111,~~
12 ~~18-1-112, 18-1-113, 18-1-114, 18-4-131, 18-4-225, 18-4-234, 18-7-107, 18-8-101, 18-8-102, 18-8-103,~~
13 ~~18-8-104, 18-8-105, 18-8-106, 18-8-111, and 18-8-112, MCA, are repealed.~~

14
15 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
17 applications, the part remains in effect in all valid applications that are severable from the invalid
18 applications.

19
20 NEW SECTION. Section 23. Retroactive applicability. [Sections ~~6 and 15 2 AND 10~~] and the
21 repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful
22 solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief
23 other than those authorized by [section ~~45 10~~], unless ~~a final judgment awarding damages has been~~
24 ~~rendered regarding that claim, cause of action, or request for relief prior to [the effective date of this act]~~
25 A COMPLAINT WAS FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992.

26
27 NEW SECTION. SECTION 24. TERMINATION. SUBSECTIONS (4) AND (5) OF 18-4-302
28 TERMINATE OCTOBER 1, 1999.

29
30 NEW SECTION. Section 25. Effective dates. (1) Except as provided in subsection (2), [this act]

1 is effective October 1, 1997.

2 (2) [Sections ~~6, 15, 34, and 35~~ 2, 10, 22, AND 23 and this section] and the repeal of 18-4-131
3 are effective on passage and approval.

4 -END-

APPROVED BY COM ON
APPROPRIATIONS

HOUSE BILL NO. 139

INTRODUCED BY SWANSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; ~~ELIMINATING PREFERENCES IN THE PROCUREMENT PROCESS;~~ MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE PROCUREMENT PROCESS; ~~STATUTORILY APPROPRIATING THE PROCEEDS OF SALES OF PROPERTY;~~ PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE PROCURED; AMENDING SECTIONS ~~7-14-2404, 7-14-2406, 7-14-2716, 17-7-502, 18-1-101, 18-4-122, 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, 18-4-231, 18-4-241, 18-4-242, 18-4-302, 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, 18-4-313, 18-4-402, 18-5-308, 18-6-101, 18-7-104, 18-7-105, 18-8-211, 53-1-203, 53-30-505, AND 60-2-112, MCA;~~ REPEALING SECTIONS ~~18-1-102, 18-1-103, 18-1-106, 18-1-111, 18-1-112, 18-1-113, 18-1-114, 18-4-131, 18-4-225, 18-4-234, 18-7-107, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112, MCA;~~ AND PROVIDING EFFECTIVE DATES AND, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana Procurement Act makes Montana taxpayers pay twice for the same product; and

WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d

1 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law
 2 and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for
 3 every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207
 4 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the
 5 Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking
 6 the remedy; and

7 WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the
 8 Legislature, and persons acting under any statute are considered to be acting in contemplation of the
 9 Legislature's power to repeal the statute; and

10 WHEREAS, it is the intent of the Legislature by enacting [sections ~~6, 15, and 35~~ 2, 10, AND 23]
 11 and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to
 12 the availability of the remedy of money damages; and

13 WHEREAS, it is the intent of the Legislature by enacting [section ~~36~~ 23] to make the reversal of
 14 the ISC case apply retroactively, ~~even to the parties in the ISC case, unless a final judgment is obtained in~~
 15 ~~that case before [the effective date of this act], as provided in [section 36]~~ UNLESS A COMPLAINT WAS
 16 FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992, AS PROVIDED IN [SECTION 23].

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
 20 ~~Section 1. Section 7-14-2404, MCA, is amended to read:~~

21 ~~"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the~~
 22 ~~requirements of Title 18, chapter 1, part 2. The contract shall must be awarded to the lowest responsible~~
 23 ~~and responsive bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 24 ~~2, part 4, and the board may reserve the right to reject any and all bids. When there is no prevailing rate~~
 25 ~~of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the~~
 26 ~~contract."~~

27
 28 ~~Section 2. Section 7-14-2406, MCA, is amended to read:~~

29 ~~"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall must~~
 30 ~~meet these requirements:~~

1 ~~(a) If the department of transportation has adopted or established a standard plan and~~
2 ~~specifications, the bids must be submitted thereon on the standard plan and specifications.~~

3 ~~(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part~~
4 ~~2.~~

5 ~~(2) The board may reject any and all bids. If a contract is awarded, the board shall do so award~~
6 ~~the contract in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4.~~
7 ~~When there is no prevailing rate of wages set by collective bargaining, the board shall determine the~~
8 ~~prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of~~
9 ~~the members of the board.~~

10 ~~(3) Before entering upon performance of the work, the contractor shall comply with the~~
11 ~~requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts~~
12 ~~with the board, a contract shall not be is not completed until the board, while formally convened,~~
13 ~~affirmatively accepts all of the work thereunder done under the contract."~~

14
15 ~~**Section 3.** Section 7-14-2716, MCA, is amended to read:~~

16 ~~**"7-14-2716. Award of contract by local improvement district.** (1) If the committee awards a~~
17 ~~contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
18 ~~2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall~~
19 ~~determine the prevailing rate to be stated in the contract.~~

20 ~~(2) Partial payments may be provided for in the contract and paid when certified by the county~~
21 ~~surveyor and committee."~~

22
23 ~~**Section 4.** Section 17-7-502, MCA, is amended to read:~~

24 ~~**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory~~
25 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
26 ~~without the need for a biennial legislative appropriation or budget amendment.~~

27 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
28 ~~with both of the following provisions:~~

29 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

30 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~

1 ~~statutory appropriation is made as provided in this section.~~

2 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;~~
 3 ~~2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
 4 ~~15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;~~
 5 ~~16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;~~
 6 ~~18-6-101; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606;~~
 7 ~~19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;~~
 8 ~~23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;~~
 9 ~~39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;~~
 10 ~~50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;~~
 11 ~~75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;~~
 12 ~~85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.~~

13 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
 14 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
 15 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
 16 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
 17 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
 18 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.~~
 19 ~~7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for~~
 20 ~~supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates~~
 21 ~~July 1, 2001.)"~~

22

23 **Section 1.** Section 18-1-101, MCA, is amended to read:

24 **"18-1-101. Definitions.** ~~(1) (1)~~ Unless the context requires otherwise, in this title, ~~"department"~~
 25 ~~the following definitions apply:~~

26 ~~(1) "Department" "DEPARTMENT"~~ means the department of administration provided for in Title
 27 2, chapter 15, part 10.

28 ~~(2) Unless the context requires otherwise, in this part the following definitions apply:~~

29 ~~(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured~~
 30 ~~products.~~

1 ~~(b) "Montana made" means manufactured or produced in this state and made with the:~~

2 ~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in~~
3 ~~this state; or~~

4 ~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined~~
5 ~~in 18-2-401.~~

6 ~~(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under~~
7 ~~18-1-103.~~

8 (d)(2) UNLESS THE CONTEXT REQUIRES OTHERWISE, IN THIS PART, THE FOLLOWING
9 DEFINITIONS APPLY:

10 (A) "GOODS" MEANS SUPPLIES, EQUIPMENT, MATERIALS, COMMODITIES, AND SPECIALLY
11 MANUFACTURED PRODUCTS.

12 (B) "MONTANA-MADE" MEANS MANUFACTURED OR PRODUCED IN THIS STATE AND MADE
13 WITH THE:

14 (I) USE OF PARTS, MATERIALS, OR SUPPLIES OF WHICH 50% OR MORE WERE MANUFACTURED
15 OR PRODUCED IN THIS STATE; OR

16 (II) EMPLOYMENT OF PERSONS OF WHOM 50% OR MORE ARE BONA FIDE RESIDENTS OF
17 MONTANA AS DEFINED IN 18-2-401.

18 (C) "NONRESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS NOT IN THIS STATE AS
19 DETERMINED UNDER 18-1-103.

20 (D) "Public agency" means a department, commission, council, board, bureau, committee,
21 institution, agency, government corporation, or other entity, instrumentality, or official of the legislative,
22 executive, or judicial branch of this state and its political subdivisions, including the board of regents and
23 the Montana university system.

24 ~~(e) "Resident bidder" means a bidder whose residence is in this state as determined under~~
25 ~~18-1-103.~~

26 (3)(E) "RESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS IN THIS STATE AS
27 DETERMINED UNDER 18-1-103.

28 (F) "Written" means that whenever written or in-writing determinations or documents are required,
29 the public agency responsible for the procurement may specify an appropriate visual medium, such as by
30 computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the

1 public agency."

2

3 **Section 2.** Section 18-4-122, MCA, is amended to read:

4 "**18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

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

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

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

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

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

10 ~~of the state provide the exclusive remedies for unlawful bid solicitations or contract awards;~~ ENSURE THE

11 FAIR AND EQUITABLE TREATMENT OF ALL PERSONS WHO DEAL WITH THE PROCUREMENT SYSTEM

12 OF THE STATE;

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

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

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

17 (8) PROVIDE SAFEGUARDS FOR THE MAINTENANCE OF A PROCUREMENT SYSTEM OF QUALITY

18 AND INTEGRITY; AND

19 (9) PROVIDE THE EXCLUSIVE REMEDIES FOR UNLAWFUL BID SOLICITATIONS OR CONTRACT

20 AWARDS."

21

22 **Section 3.** Section 18-4-123, MCA, is amended to read:

23 "**18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different
24 meaning is prescribed for a particular section, the following definitions apply:

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

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

30 (3) "Contract" means all types of state agreements, regardless of what they may be called, for the

1 procurement or disposal of supplies or services.

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

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

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

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

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

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

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

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

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

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

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

28 (15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies
29 or services. It also includes all functions that pertain to the obtaining of any supply or service, including
30 description of requirements, selection and solicitation of sources, preparation and award of contract, and

1 all phases of contract administration.

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

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

8 (18) "Services" means the furnishing of labor, time, or effort by a contractor, ~~not involving the~~
9 ~~delivery of a specific end product other than reports which are merely incidental to the required~~
10 ~~performance~~. The term does not include ~~consulting services as defined in 18-8-102, those services listed~~
11 ~~in 18-8-103, employment agreements or collective bargaining agreements, the provision by providers of~~
12 ~~human services regulated by a state agency~~ administered by the department of public health and human
13 services, or services related to construction contracts.

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

16 (20) "Using agency" means any governmental body of the state ~~which that~~ utilizes uses any
17 supplies or services procured under this chapter.

18 (21) "Vendor" means a person who offers or may offer supplies or services to a public agency."
19

20 **Section 4.** Section 18-4-126, MCA, is amended to read:

21 "**18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement
22 information is a public writing and must be available to the public as provided in 2-6-102 and 18-4-304.

23 (2) All procurement records must be retained, managed, and disposed of in accordance with the
24 state records management program, Title 2, chapter 6.

25 (3) Written determinations required by this chapter must be retained in the appropriate official
26 contract file of the department or the purchasing agency administering the procurement in accordance with
27 the state records management program."
28

29 **Section 5.** Section 18-4-132, MCA, is amended to read:

30 "**18-4-132. Application.** (1) ~~Except as provided in 18-4-313, which applies retroactively to~~

1 ~~telecommunications equipment and systems and data processing equipment acquired under existing~~
 2 ~~contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies~~
 3 ~~only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application~~
 4 ~~to a contract solicited or entered into prior to January 1, 1984.~~

5 ~~(2)~~ This chapter applies to expenditure of public funds irrespective of their source, including federal
 6 assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any
 7 contract; ~~but this~~ This chapter does not apply to either grants or contracts between the state and its
 8 political subdivisions or other governments, except as provided in part 4. This chapter also applies to the
 9 disposal of state supplies. ~~Nothing in this~~ This chapter or ~~in rules adopted thereunder~~ pursuant to this
 10 chapter prevents do not prevent any governmental body or political subdivision from complying with the
 11 terms and conditions of any grant, gift, bequest, or cooperative agreement.

12 ~~(3)~~(2) This chapter does not apply to construction contracts.

13 ~~(4)~~(3) This chapter does not apply to expenditures of or the authorized sale or disposal of
 14 equipment purchased with money raised by student activity fees designated for use by the student
 15 associations of the university system.

16 ~~(5)~~(4) This chapter does not apply to contracts entered into by the Montana state lottery that have
 17 an aggregate value of less than \$250,000.

18 (5) This chapter does not apply to employment of:

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

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

21 (c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
 22 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
 23 order of the governor;

24 (d) consulting actuaries;

25 (e) a private consultant employed by the student associations of the university system with money
 26 raised from student activity fees designated for use by those student associations;

27 (f) a private consultant employed by the Montana state lottery;

28 (g) a private investigator licensed by any jurisdiction; or

29 (h) a claims adjuster."

30

1 **Section 6.** Section 18-4-133, MCA, is amended to read:

2 "**18-4-133. Purchases exempt from general requirements.** (1) ~~Fresh fruits and vegetables, other~~
3 ~~than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The~~
4 ~~department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized~~
5 ~~account must be kept of these purchases, and the account must be furnished to the department.~~

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

10 ~~(3)~~(2) The department of ~~administration~~ may exempt the department of corrections and the
11 department of public health and human services from the provisions of this chapter for the purchase of
12 suitable clothing by the department of corrections and the department of public health and human services
13 for residents of its institutions and community-based programs.

14 ~~(4)~~(3) As used in this section, "suitable clothing" means styled, seasonable clothing, which will
15 allow the resident to make a normal appearance in the community."
16

17 **Section 7.** Section 18-4-141, MCA, is amended to read:

18 "**18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~No~~ A contract
19 or order or any interest ~~therein~~ in a contract or order may not be transferred, assigned, or subcontracted
20 by the party to whom the contract or order is given to any other party without the express written approval
21 of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. ~~No~~
22 ~~approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their~~
23 ~~obligations to the state under the contract or order.~~

24 (2) Collusion or secret agreements between bidders for the purpose of securing any advantage to
25 the bidders as against the state in the awarding of contracts is prohibited. The state may declare the
26 contract void if the department finds sufficient evidence after a contract has been let that the contract was
27 obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the
28 disadvantage of the state.

29 (3) All rights of action for a breach of a contract by the contracting parties are reserved to the
30 state.

1 (4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a
 2 misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of Montana may
 3 at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab
 4 initio."

5

6 **Section 8.** Section 18-4-224, MCA, is amended to read:

7 "**18-4-224. Contract clauses -- rules.** (1) The department may ~~adopt rules permitting or requiring,~~
 8 in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of
 9 performance, or other appropriate contract provisions relating to the following subjects:

- 10 (a) the unilateral right of the state to order in writing:
 11 (i) changes in the work within the scope of the contract; and
 12 (ii) temporary work stoppage or delay of performance; and
 13 (b) variations occurring between estimated quantities of work in a contract and actual quantities.

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

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

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

19 (c) by the costs attributable to the events or situations under ~~such~~ clauses established under
 20 subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

21 or

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

23 ~~(e) in the absence of agreement by the parties, by a unilateral determination by the state of the~~
 24 ~~costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as~~
 25 ~~computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.~~

26 (3) The department may ~~adopt rules permitting or requiring,~~ in its discretion, permit or require
 27 inclusion in state contracts of clauses providing for appropriate remedies and relating to the following
 28 subjects:

29 (a) liquidated damages, as appropriate;

30 (b) specified excuses for delay or nonperformance;

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

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

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

7 (5) Regardless of a provision in a contract, the department may accept a lower price or better value
8 offered by a contractor."

9
10 ~~Section 13. Section 18-4-231, MCA, is amended to read:~~

11 ~~"18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234 18-4-233,~~
12 ~~"specification" means any description of the physical or functional characteristics or of the nature of a~~
13 ~~supply or service. It may include a description of any requirement for inspecting, testing, or preparing a~~
14 ~~supply or service for delivery."~~

15
16 **Section 9.** Section 18-4-241, MCA, is amended to read:

17 **"18-4-241. Authority to remove or suspend from vendors' list vendor.** (1) The department may
18 remove a ~~person~~ vendor for cause from consideration for award of contracts by the state. ~~The removal may~~
19 ~~not be for a period of more than 3 years.~~

20 (2) The department may temporarily suspend a ~~person~~ vendor from consideration for award of
21 contracts if there is probable cause to believe that the ~~person~~ vendor has engaged in activities that may
22 lead to removal. ~~The suspension may not be for a period exceeding 3 months unless~~ If an indictment has
23 been issued for an offense that would be a cause for removal under subsection (3), ~~in which case~~ the
24 suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial
25 of the suspended ~~person~~ vendor. The authority to remove or suspend must be exercised in accordance with
26 rules adopted by the department.

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

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

30 (i) deliberate failure without good cause to perform in accordance with the specifications or within

1 the time limit provided in the contract; or

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

5 (b) failure to respond to a number of solicitations over a period of time as determined by the
6 department in accordance with rules, ~~and after adequate written notice to the affected person of the intent~~
7 ~~to remove or suspend~~ or failure to provide the department with a correct address;

8 (c) any other cause that the department determines to be so serious and compelling as to affect
9 responsibility as a state contractor, including removal by another governmental entity ~~for any cause listed~~
10 ~~in the department's rules;~~ and

11 (d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

12 (4) The department shall issue a written decision to remove or suspend a vendor, stating the
13 reasons for the action taken, ~~for reasons other than those reasons provided in subsection (3)(b).~~ A copy
14 of the decision must be mailed or otherwise furnished immediately to the ~~person~~ vendor involved."

15

16 **Section 10.** Section 18-4-242, MCA, is amended to read:

17 "**18-4-242. Remedies prior to and after award** Exclusive remedies for unlawful solicitation or
18 award. (1) ~~¶~~ This section establishes the exclusive remedies for a solicitation or award of a contract is
19 determined to be in violation of the law, the,

20 (2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror,
21 or contractor aggrieved in connection with the solicitation or award of a contract may protest to the
22 department. The protest must be submitted to the department in writing no later than 14 days after
23 execution of the contract.

24 (3) If the protest is not resolved by mutual agreement, the department shall issue in writing a
25 decision on the protest within 30 days after receipt of the protest. The decision must:

26 (a) state the reason for the action taken by the department with regard to the contract; and

27 (b) inform the aggrieved party of the party's right to request, within 14 days after the date of the
28 department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure
29 Act.

30 (4) In a protest or contested case proceeding, the department may ~~apply the remedies,~~ in an

1 appropriate case, order a remedy provided in subsections (2) and (3) subsection (5) or (6).

2 ~~(2)(5)~~ If prior to before an award it is determined that a solicitation or proposed award of a contract
 3 is in violation of law, the solicitation or proposed award ~~must~~ may be:

4 (a) canceled; or

5 (b) revised to comply with the law.

6 ~~(3)(6)~~ (a) If after an award it is determined that a solicitation or award of a contract is in violation
 7 of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may
 8 be:

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

10 or

11 (ii) terminated, and the person awarded the contract must be compensated for the actual expenses
 12 reasonably incurred under the contract, plus a reasonable profit, ~~prior to before~~ the termination.

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

15 (i) declared void; or

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

18 ~~(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided~~
 19 ~~in subsections (2) and (3).~~

20 (7) The exclusive method of judicial review of a solicitation or award by the department pursuant
 21 to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that
 22 section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this
 23 section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory
 24 to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any
 25 other claim, cause of action, or request for relief for solicitations of awards allegedly made in violation of
 26 law may not be heard or granted by a district court other than as provided in this section.

27 (8) The state is not required to delay, halt, or modify the procurement process pending the result
 28 of a protest, contested case proceeding, or judicial review.

29 (9) The department may adopt rules governing the protest of solicitations and awards."

30

1 **Section 11.** Section 18-4-302, MCA, is amended to read:

2 "**18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state
3 contracts for supplies and services must be awarded by ~~competitive sealed bidding, pursuant to 18-4-303,~~
4 ~~except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of a source selection~~
5 method provided for in this title, and subsections (2) and (3) of this section. Supplies or services offered
6 for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or
7 services are regulated by the public service commission or other governmental authority.

8 (2) At the time that the department or a ~~purchasing~~ another agency opens bids or proposals, if a
9 supplier's current publicly advertised or established catalog price is received at or before the time that the
10 bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or
11 offeror or improves upon the conditions for the best proposal received using the same factors and weights
12 included in the proposal, the department or ~~purchasing~~ agency may reject all bids and purchase the supply
13 from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

14 (3) An office supply procured by the department's central stores program ~~through bulk purchase~~
15 ~~or procured under a term contract~~ may be purchased by a ~~purchasing~~ an agency, without meeting the
16 requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established
17 catalog price, or discount price offered to the ~~purchasing~~ agency is less than the price offered by the central
18 stores program ~~or under the term contract~~ if the office supply conforms in all material respects to the terms,
19 conditions, and quality offered by the central stores program ~~or under the term contract~~. A state office
20 supply term contract must include a provision by which the contracting parties acknowledge and agree to
21 the provisions of this subsection.

22 (4) A contract for supplies or services, or both, INFORMATION TECHNOLOGY SYSTEMS AND
23 SERVICES may be negotiated, in accordance with department rules and with the approval of the department
24 director, directly with a vendor without using competitive sealed bidding or a competitive sealed proposal
25 IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE DEPARTMENT
26 DIRECTOR. A contract may be awarded pursuant to this section only when it is advantageous to the state
27 to use direct negotiation in the procurement of new or unique requirements of the state, in the procurement
28 of new technologies, or to achieve best net value. THE DEPARTMENT SHALL REPORT ANY ACTIVITY
29 USING THIS METHOD OF PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE.

30 (5) The department may, on behalf of a state agency, participate in, sponsor, conduct, or

1 ~~administer a~~ AN INFORMATION TECHNOLOGY contract or other INFORMATION TECHNOLOGY business
 2 relationship in a cooperative purchase pursuant to 18-4-402 with one or more public agencies, nonprofit
 3 organizations, or business entities if the department determines the contract or relationship to be in the best
 4 interests of the state. IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE
 5 DEPARTMENT DIRECTOR. THE DEPARTMENT SHALL REPORT ANY ACTIVITY USING THIS METHOD OF
 6 PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE."

7
 8 **Section 12.** Section 18-4-303, MCA, is amended to read:

9 **"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include
 10 a purchase description and conditions applicable to the procurement.

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

15 (3) Bids must be opened publicly ~~in the presence of one or more witnesses~~ at the time and place
 16 designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent,
 17 when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and
 18 ~~such~~ other relevant information as may be specified by rule, together with the name of each bidder, must
 19 be recorded. The record must be open to public inspection. After the time of award, all bids and bid
 20 documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject
 21 to the requirements of subsection (4).

22 (4) Bids must be available for public inspection when the bids are opened if:

23 (a) the invitation for bids is issued by a state agency to contract with the private sector to provide
 24 services currently conducted by state employees; and

25 (b) acceptance of bids would result in the displacement of five or more state employees.

26 (5) Bids must be unconditionally accepted without alteration or correction, except as authorized
 27 in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which
 28 may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery,
 29 and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in
 30 evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or

1 life-cycle costs. The invitation for bids ~~shall~~ must set forth the evaluation criteria to be used. Only criteria
2 set forth in the invitation for bids may be used in bid evaluation.

3 (6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation
4 of awards or contracts based on ~~such~~ bid mistakes may be permitted in accordance with rules adopted by
5 the department. After bid opening, ~~no~~ changes in bid prices or other provisions of bids prejudicial to the
6 interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all
7 decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid
8 mistakes must be supported by a written determination made by the department.

9 (7) The contract must be awarded with reasonable promptness by written notice to the lowest
10 responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation
11 for bids, ~~including the preferences established by Title 18, chapter 1, part 1, INCLUDING THE~~
12 PREFERENCES ESTABLISHED BY TITLE 18, CHAPTER 1, PART 1. If all bids exceed available funds as
13 certified by the appropriate fiscal officer and the low ~~responsive and responsible~~ and responsive bid does
14 not exceed ~~such~~ the funds by more than 5%, the director or the head of a purchasing agency ~~is authorized~~
15 may, in situations ~~where~~ in which time or economic considerations preclude resolicitation of a reduced
16 scope, ~~to~~ negotiate an adjustment of the bid price, including changes in the bid requirements, with the low
17 ~~responsive and responsible~~ and responsive bidder in order to bring the bid within the amount of available
18 funds.

19 (8) When it is considered impractical to initially prepare a purchase description to support an award
20 based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be
21 followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria
22 set forth in the first solicitation."
23

24 **Section 13.** Section 18-4-304, MCA, is amended to read:

25 **"18-4-304. Competitive sealed proposals.** (1) ~~When, under rules adopted by the department, the~~
26 ~~director, the head of a purchasing agency, or a designee of either officer above the level of the procurement~~
27 ~~officer determines that the use of competitive sealed bidding is either not practicable or not advantageous~~
28 ~~to the state, a contract may be entered into by competitive sealed proposals. The department may provide~~
29 ~~by rule that it is either not practicable or not advantageous to the state to procure specified types of~~
30 ~~supplies and services by competitive sealed bidding. The department may procure supplies and services~~

1 through competitive sealed proposals.

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

3 (3) Adequate public notice of the request for proposals must be given in the same manner as
4 provided in 18-4-303(2).

5 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during
6 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
7 the department and must be open for public inspection after contract award. After the contract is
8 executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform
9 Trade Secrets Act, Title 30, chapter 14, part 4.

10 (5) The request for proposals must state the evaluation factors and their relative importance of
11 price and other evaluation factors. The award must be made to the responsible and responsive offeror
12 whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the
13 evaluation. The contract file must demonstrate the basis on which the award is made.

14 ~~(6) As provided in the request for proposals and under rules adopted by the department,~~
15 ~~discussions with responsible offerors who submit apparently responsive proposals may be conducted for~~
16 ~~the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation~~
17 ~~requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for~~
18 ~~discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award,~~
19 ~~for the purpose of obtaining best and final offers. The department may discuss a proposal with an offeror~~
20 ~~for the purpose of clarification or revision of the proposal. In conducting discussions, there may not be~~
21 ~~disclosure of any information derived from proposals submitted by competing offerors. The department may~~
22 ~~require the submission of cost or pricing data in connection with an award under this section.~~

23 ~~(7) The award must be made to the responsible offeror whose proposal is determined in writing~~
24 ~~to be the most advantageous to the state, taking into consideration price, including the preference in~~
25 ~~18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may~~
26 ~~be used in the evaluation. The contract file must contain the basis on which the award is made."~~

27

28 **Section 14.** Section 18-4-305, MCA, is amended to read:

29 **"18-4-305. Small purchases and limited solicitations.** Any procurement not exceeding the amount
30 established by rule may be made in accordance with small purchase or limited solicitation procedures

1 established by the department. Procurement requirements may not be artificially divided so as to constitute
2 a small purchase or limited solicitation under this section."

3

4 **Section 15.** Section 18-4-309, MCA, is amended to read:

5 "18-4-309. **Prequalification of suppliers.** Prospective suppliers may be prequalified in accordance
6 with department rules for particular types of supplies and services. ~~Solicitation mailing lists of potential~~
7 ~~contractors must include but not be limited to such prequalified suppliers."~~

8

9 **Section 16.** Section 18-4-310, MCA, is amended to read:

10 "18-4-310. **Types of contracts.** ~~Subject to the limitations of this section, any~~ Any type of contract
11 that will promote the best interests of the state may be used, ~~except that the use of a~~
12 ~~cost plus percentage of cost contract is prohibited. A cost reimbursement contract may be used only when~~
13 ~~a determination is made in writing that such contract is likely to be less costly to the state than any other~~
14 ~~type or that it is impracticable to obtain the supplies or services required except under such a contract."~~

15

16 **Section 17.** Section 18-4-312, MCA, is amended to read:

17 "18-4-312. **Bid and contract performance security.** (1) For state contracts for the procurement of
18 services or of supplies, the department may in its discretion require:

19 (a) bid security;

20 (b) contract performance security to guarantee the faithful performance of the contract and the
21 payment of all laborers, suppliers, ~~materialmen~~, mechanics, and subcontractors; or

22 (c) both bid and contract performance security.

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

25 (a) a sufficient bond with a licensed surety company as surety;

26 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
27 30, chapter 5, part 1;

28 (c) money of the United States;

29 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
30 certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings

1 and loan association that is insured by or for which insurance is administered by the federal deposit
 2 insurance corporation or that is drawn and issued by a credit union insured by the national credit union
 3 share insurance fund.

4 (3) The amount and type of the security must be determined by the department to be sufficient
 5 to cover the risk involved to the state. The security must be payable to the state of Montana ~~and~~. Contract
 6 performance security must remain in effect for the entire contract period. In determining the amount and
 7 type of contract performance security required for each contract, the department shall consider the nature
 8 of the performance and the need for future protection to the state. In determining the need for and amount
 9 of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror
 10 fails to enter into a formal contract. The considerations must include but are not limited to the type of
 11 supply or service being procured, the dollar amount of the proposed contract, and delivery time
 12 requirements. The department may adopt rules to assist it in making these determinations and in protecting
 13 the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be
 14 included in the invitations for bids or requests for proposals.

15 (4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
 16 or provide contract performance security, as required by the invitation for bid or request for proposal, after
 17 notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to
 18 the state and become immediately liable on the bid security, but not in excess of the sum stated in the
 19 security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the
 20 bid bond or other security may not exceed the amount specified in the invitation for bid or request for
 21 proposal.

22 (5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors
 23 whose bids or proposals are not accepted.

24 (6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not
 25 apply to procurements under this chapter."
 26

27 ~~Section 23. Section 18-4-313, MCA, is amended to read:~~

28 ~~"18-4-313. Contracts terms, extensions, and time limits. (1) Unless otherwise provided by law,~~
 29 ~~a contract, lease, or rental agreement for supplies or services may not be made for a period of more than~~
 30 ~~7 years. However, the department may contract for the lease or purchase of telecommunications equipment~~

1 and systems, data processing equipment, the department of revenue liquor agencies, and the department
 2 of public health and human services medicaid management information system (MMIS) for a period not to
 3 exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the
 4 extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period
 5 at the time of the agreement, and if the total contract period, including any extension or renewal, does not
 6 exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the
 7 availability and appropriation of funds for the fiscal periods. Unless otherwise provided by law, a contract,
 8 lease, or rental agreement for supplies or services may be made for a specific duration determined by the
 9 department to obtain the best net value for the state.

10 (2) ~~Prior to~~ Before the issuance, extension, or renewal of a contract, it must be determined that:

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

12 and

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

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

17
 18 **Section 18.** Section 18-4-402, MCA, is amended to read:

19 "**18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor,
 20 conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services
 21 with one or more public procurement units in accordance with an agreement entered into between the
 22 participants independent of the requirements of part 3. ~~Such cooperative~~ Cooperative purchasing may
 23 include purchasing through federal supply schedules of the United States general services administration,
 24 joint or ~~multi-party~~ multiparty contracts between public procurement units and open-ended state public
 25 procurement unit contracts that are made available to local public procurement units."

26
 27 ~~**Section 25.** Section 18-5-308, MCA, is amended to read:~~

28 "~~**18-5-308. Construction with other sections.** Procurement from small businesses under this part~~
 29 ~~is subject to all other statutes governing state procurement and all rules promulgated thereunder~~ adopted
 30 pursuant to this part, as now or hereafter later amended, except that in case of conflict this part governs

1 and the provisions set forth in ~~18-1-102, 18-1-111, and 18-1-112~~ shall not apply."

2
3 ~~Section 26.~~ Section 18-6-101, MCA, is amended to read:

4 ~~"18-6-101. Power to sell state property proceeds credited to general fund from which property~~
5 ~~was purchased.~~ (1) The department has exclusive power, subject to the approval of the governor, to sell
6 or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service
7 equipment, or other personal property of every kind owned by the state but not needed or used by any
8 state institution or by any department of state government.

9 (2) ~~Unless otherwise provided by law, the department shall credit the general fund from which the~~
10 ~~property was purchased, less a reasonable handling fee, with all the money received from a sale. The~~
11 ~~proceeds of the sale are statutorily appropriated, as provided in 17-7-502, to the agency that owned the~~
12 ~~property before it was sold by the department.~~

13 (3) ~~Whenever the personal property was accounted for in an enterprise or internal service fund or~~
14 ~~designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or~~
15 ~~internal service fund or designated subfund account."~~

16
17 ~~Section 27.~~ Section 18-7-104, MCA, is amended to read:

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

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

28 (2) ~~Whenever if a collective bargaining agreement is in effect between an employer and employees~~
29 ~~who are represented by a responsible organization which that is in no way influenced or controlled by the~~
30 ~~management, such the collective bargaining agreement and its provisions shall must be construed as~~

1 ~~conditions prevalent in said the locality and shall be is the minimum requirement for being adjudged~~
 2 ~~considered a responsible bidder under this section, 18-7-107, or chapter 4 of this title or this section.~~

3 ~~(3) Printing firms having the use of using the union labels, as set forth above shall be deemed as~~
 4 ~~having provided in subsection (1), have complied with the provisions of this section, 18-7-107, or chapter~~
 5 ~~4 or this section of this title, but nothing in these provisions shall be construed as exempting such.~~
 6 ~~However, this section does not exempt the bidders from any the provisions of this section, 18-7-107, or~~
 7 ~~chapter 4 of this title or this section, and such the bidders shall also be required to conform to all the~~
 8 ~~provisions thereof of chapter 4 and this section."~~

9
 10 ~~Section 28. Section 18-7-105, MCA, is amended to read:~~

11 ~~"18-7-105. Penalty. Any officer of the state who shall accept any accepts printed matter for which~~
 12 ~~the state is chargeable in whole or in part or who is found to have has had printed matter produced, under~~
 13 ~~conditions other than as set forth in chapter 4 of this title, or 18-7-104, or 18-7-107 shall be, is subject~~
 14 ~~to a fine of \$50 for each and every offense."~~

15
 16 ~~Section 19. Section 18-8-211, MCA, is amended to read:~~

17 ~~"18-8-211. Coordination with other statutes. (1) This part need not be complied with by an~~
 18 ~~agency when the contracting authority makes a finding in accordance with this or any other applicable law~~
 19 ~~that an emergency requires the immediate execution of the work involved. Nothing in this This part relieves~~
 20 ~~does not relieve the contracting authority from complying with applicable law limiting emergency~~
 21 ~~expenditures.~~

22 ~~(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this~~
 23 ~~part.~~

24 ~~(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112~~
 25 ~~applies to this part, except that the agency shall select its proposed list of three architects or consulting~~
 26 ~~engineers in accordance with this part prior to submission to the department of administration.~~

27 ~~(4) The exception for services estimated to cost less than \$5,000 in 18-8-105 applies to this part."~~

28
 29 ~~Section 30. Section 53-1-203, MCA, is amended to read:~~

30 ~~"53-1-203. Powers and duties of department of corrections. (1) The department of corrections~~

1 shall:

2 ~~(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for~~
3 ~~the admission, custody, transfer, and release of persons in department programs except as otherwise~~
4 ~~provided by law. However, rules adopted by the department may not amend or alter the statutory powers~~
5 ~~and duties of the state board of pardons and parole.~~

6 ~~(b) subject to the functions of the department of administration, lease or purchase lands for use~~
7 ~~by institutions and classify those lands to determine those that may be most profitably used for agricultural~~
8 ~~purposes, taking into consideration the needs of all institutions for the food products that can be grown~~
9 ~~or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation~~
10 ~~of the persons confined in the institutions;~~

11 ~~(c) contract with private, nonprofit Montana corporations to establish and maintain~~
12 ~~community based prerelease centers for purposes of preparing inmates of the Montana state prison who~~
13 ~~are approaching parole eligibility or discharge for release into the community. The centers shall provide a~~
14 ~~less restrictive environment than the prison while maintaining adequate security. The centers must be~~
15 ~~operated in coordination with other department correctional programs, including the supervised release~~
16 ~~program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's~~
17 ~~authority to operate and maintain community based prerelease centers.~~

18 ~~(d) utilize the staff and services of other state agencies and units of the Montana university system,~~
19 ~~within their respective statutory functions, to carry out its functions under this title;~~

20 ~~(e) propose programs to the legislature to meet the projected long range needs of institutions,~~
21 ~~including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in~~
22 ~~institutions;~~

23 ~~(f) encourage the establishment of programs at the local and institutional level for the rehabilitation~~
24 ~~and education of adult felony offenders;~~

25 ~~(g) administer all state and federal funds allocated to the department for youth in need of~~
26 ~~supervision and delinquent youth, as defined in 41-5-103;~~

27 ~~(h) collect and disseminate information relating to youth in need of supervision and delinquent~~
28 ~~youth;~~

29 ~~(i) maintain adequate data on placements that it funds in order to keep the legislature properly~~
30 ~~informed of the specific information, by category, related to youth in need of supervision and delinquent~~

1 youth in out of home care facilities;

2 ~~(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need~~
3 ~~of supervision and who are referred or committed to the department;~~

4 ~~(k) administer youth correctional facilities;~~

5 ~~(l) provide supervision, care, and control of youth released from a state youth correctional facility;~~

6 and

7 ~~(m) use to maximum efficiency the resources of state government in a coordinated effort to:~~

8 ~~(i) provide for children in need of temporary protection or correctional services; and~~

9 ~~(ii) coordinate and apply the principles of modern institutional administration to the institutions in~~
10 ~~the department.~~

11 ~~(2) The department and a private, nonprofit Montana corporation may not enter into a contract~~
12 ~~under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that~~
13 ~~limit the term of a contract do not apply to a contract authorized by subsection (1)(c).~~

14 ~~(3) The department of corrections may enter into contracts with nonprofit corporations or~~
15 ~~associations or private organizations to provide substitute care for youth in need of supervision and~~
16 ~~delinquent youth in youth care facilities."~~

17

18 **Section 31.** Section 53-30-505, MCA, is amended to read:

19 ~~"53-30-505. Contract time limit. A contract entered into under 53-30-504 may not exceed a term~~
20 ~~of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and~~
21 ~~18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504."~~

22

23 **Section 20.** Section 60-2-112, MCA, is amended to read:

24 **"60-2-112. Competitive bidding.** (1) Except as provided in subsections (2) through (4), when the
25 estimated cost of any work exceeds \$50,000, the commission shall let the contract by competitive bidding
26 to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the
27 commission prescribes by its rules. ~~However, except when prohibited by federal law, the commission shall~~
28 ~~make awards and contracts in accordance with 18-1-102 and 18-1-112.~~ HOWEVER, EXCEPT WHEN
29 PROHIBITED BY FEDERAL LAW, THE COMMISSION SHALL MAKE AWARDS AND CONTRACTS IN
30 ACCORDANCE WITH 18-1-102 AND 18-1-112.

1 (2) The commission may let a contract by means other than competitive bidding if it determines
2 that special circumstances so require. The commission shall specify the special circumstances in writing.

3 (3) The commission may enter into contracts with units of local government for the construction
4 of projects without competitive bidding if it finds that the work can be accomplished at lower total costs,
5 including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and
6 accounting services, administrative costs, and reasonable estimates of other costs attributable to the
7 project.

8 (4) The commission may delegate to the department the authority to enter, without competitive
9 bidding, agreed-upon price contracts for projects costing \$50,000 or less."
10

11 NEW SECTION. Section 21. Repealer. Sections ~~18-1-102, 18-1-103, 18-1-106, 18-1-111,~~
12 ~~18-1-112, 18-1-113, 18-1-114,~~ 18-4-131, 18-4-225, ~~18-4-234, 18-7-107,~~ 18-8-101, 18-8-102, 18-8-103,
13 18-8-104, 18-8-105, 18-8-106, 18-8-111, and 18-8-112, MCA, are repealed.
14

15 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
17 applications, the part remains in effect in all valid applications that are severable from the invalid
18 applications.
19

20 NEW SECTION. Section 23. Retroactive applicability. [Sections ~~6 and 15 2 AND 10~~] and the
21 repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful
22 solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief
23 other than those authorized by [section ~~15 10~~], unless a final judgment awarding damages has been
24 rendered regarding that claim, cause of action, or request for relief prior to [the effective date of this act].
25 A COMPLAINT WAS FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992.
26

27 NEW SECTION. SECTION 24. TERMINATION. SUBSECTIONS (4) AND (5) OF 18-4-302
28 TERMINATE OCTOBER 1, 1999.
29

30 NEW SECTION. Section 25. Effective dates. (1) Except as provided in subsection (2), [this act]

1 is effective October 1, 1997.

2 (2) [Sections ~~6, 15, 34, and 35~~ 2, 10, 22, AND 23 and this section] and the repeal of 18-4-131
3 are effective on passage and approval.

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0139, second reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Montana Procurement Act.

ASSUMPTIONS:

1. Cost savings due to procurement reform processes cannot be measured with any degree of certainty.
2. The bill, as amended, retains current law procurement preferences and does not provide for new statutory appropriations to agencies for the net proceeds from sales of surplus property. Therefore, there is no fiscal impact related to either of those items.

FISCAL IMPACT:

The fiscal impact, if any, cannot be measured with any degree of certainty.

Dave Lewis 3-5-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Emily Swanson 3-5-97
EMILY SWANSON, PRIMARY SPONSOR DATE
Fiscal Note for HB0139, second reading

HB 139-#3

1 HOUSE BILL NO. 139

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC
6 CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; ~~ELIMINATING PREFERENCES IN THE~~
7 ~~PROCUREMENT PROCESS~~; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS
8 FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE
9 PROCUREMENT PROCESS; ~~STATUTORILY APPROPRIATING THE PROCEEDS OF SALES OF PROPERTY;~~
10 PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE
11 PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE
12 PROCURED; AMENDING SECTIONS ~~7-14-2404, 7-14-2406, 7-14-2716, 17-7-502,~~ 18-1-101, 18-4-122,
13 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, ~~18-4-231,~~ 18-4-241, 18-4-242, 18-4-302,
14 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, ~~18-4-313,~~ 18-4-402, ~~18-5-308, 18-6-101,~~
15 ~~18-7-104, 18-7-105,~~ 18-8-211, ~~53-1-203, 53-30-505,~~ AND 60-2-112, MCA; REPEALING SECTIONS
16 ~~18-1-102, 18-1-103, 18-1-106, 18-1-111, 18-1-112, 18-1-113, 18-1-114,~~ 18-4-131, 18-4-225, ~~18-4-234,~~
17 ~~18-7-107,~~ 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112,
18 MCA; AND PROVIDING EFFECTIVE DATES ~~AND~~, A RETROACTIVE APPLICABILITY DATE, AND A
19 TERMINATION DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

1 HOUSE BILL NO. 139

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC
6 CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; ~~ELIMINATING PREFERENCES IN THE~~
7 ~~PROCUREMENT PROCESS~~; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS
8 FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE
9 PROCUREMENT PROCESS; ~~STATUTORILY APPROPRIATING THE PROCEEDS OF SALES OF PROPERTY~~;
10 PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE
11 PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE
12 PROCURED; AMENDING SECTIONS ~~7-14-2404, 7-14-2406, 7-14-2716, 17-7-502~~, 18-1-101, 18-4-122,
13 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, ~~18-4-231~~, 18-4-241, 18-4-242, 18-4-302,
14 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, ~~18-4-313~~, 18-4-402, ~~18-6-308, 18-6-101,~~
15 ~~18-7-104, 18-7-105~~, 18-8-211, ~~53-1-203, 53-30-505~~, AND 60-2-112, MCA; REPEALING SECTIONS
16 ~~18-1-102, 18-1-103, 18-1-106, 18-1-111, 18-1-112, 18-1-113, 18-1-114~~, 18-4-131, 18-4-225, ~~18-4-234,~~
17 ~~18-7-107~~, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112,
18 MCA; AND PROVIDING EFFECTIVE DATES ~~AND~~, AND A RETROACTIVE APPLICABILITY DATE, AND A
19 TERMINATION DATE."

20
21 WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903
22 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages
23 under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

24 WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana
25 Procurement Act makes Montana taxpayers pay twice for the same product; and

26 WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow
27 disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but
28 rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section
29 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

30 WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d

1 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law
 2 and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for
 3 every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207
 4 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the
 5 Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking
 6 the remedy; and

7 WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the
 8 Legislature, and persons acting under any statute are considered to be acting in contemplation of the
 9 Legislature's power to repeal the statute; and

10 WHEREAS, it is the intent of the Legislature by enacting [sections ~~6, 15, and 35~~ 2, 10, AND 23]
 11 and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to
 12 the availability of the remedy of money damages; and

13 WHEREAS, it is the intent of the Legislature by enacting [section ~~35~~ 23] to make the reversal of
 14 the ISC case apply retroactively, ~~even to the parties in the ISC case, unless a final judgment is obtained in~~
 15 ~~that case before [the effective date of this act], as provided in [section 36]~~ UNLESS A COMPLAINT WAS
 16 FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992, AS PROVIDED IN [SECTION 23].

17

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

19

20 ~~Section 1. Section 7-14-2404, MCA, is amended to read:~~

21 ~~"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the~~
 22 ~~requirements of Title 18, chapter 1, part 2. The contract shall must be awarded to the lowest responsible~~
 23 ~~and responsive bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 24 ~~2, part 4, and the board may reserve the right to reject any and all bids. When there is no prevailing rate~~
 25 ~~of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the~~
 26 ~~contract."~~

27

28 ~~Section 2. Section 7-14-2406, MCA, is amended to read:~~

29 ~~"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall must~~
 30 ~~meet these requirements:~~

1 ~~(a) If the department of transportation has adopted or established a standard plan and~~
 2 ~~specifications, the bids must be submitted thereon on the standard plan and specifications.~~

3 ~~(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part~~
 4 ~~2.~~

5 ~~(2) The board may reject any and all bids. If a contract is awarded, the board shall do so award~~
 6 ~~the contract in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4.~~
 7 ~~When there is no prevailing rate of wages set by collective bargaining, the board shall determine the~~
 8 ~~prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of~~
 9 ~~the members of the board.~~

10 ~~(3) Before entering upon performance of the work, the contractor shall comply with the~~
 11 ~~requirements of Title 18, chapter 2, part 2. For the purposes of these sections with relation to contracts~~
 12 ~~with the board, a contract shall not be is not completed until the board, while formally convened,~~
 13 ~~affirmatively accepts all of the work thereunder done under the contract."~~

14
 15 **Section 3.** ~~Section 7-14-2716, MCA, is amended to read:~~

16 ~~"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a~~
 17 ~~contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 18 ~~2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall~~
 19 ~~determine the prevailing rate to be stated in the contract.~~

20 ~~(2) Partial payments may be provided for in the contract and paid when certified by the county~~
 21 ~~surveyor and committee."~~

22
 23 **Section 4.** ~~Section 17-7-502, MCA, is amended to read:~~

24 ~~"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory~~
 25 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
 26 ~~without the need for a biennial legislative appropriation or budget amendment.~~

27 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
 28 ~~with both of the following provisions:~~

29 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

30 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~

1 ~~statutory appropriation is made as provided in this section.~~

2 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;~~
 3 ~~2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
 4 ~~15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;~~
 5 ~~16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;~~
 6 ~~18-6-101; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606;~~
 7 ~~19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;~~
 8 ~~23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;~~
 9 ~~39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;~~
 10 ~~50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;~~
 11 ~~75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;~~
 12 ~~85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.~~

13 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
 14 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
 15 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
 16 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
 17 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
 18 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.~~
 19 ~~7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for~~
 20 ~~supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates~~
 21 ~~July 1, 2001.)"~~

22

23 **Section 1.** Section 18-1-101, MCA, is amended to read:

24 **"18-1-101. Definitions.** ~~(1)~~ (1) Unless the context requires otherwise, in this title, "department"
 25 ~~the following definitions apply:~~

26 ~~(1) "Department" "DEPARTMENT" means the department of administration provided for in Title~~
 27 ~~2, chapter 15, part 10.~~

28 ~~(2) Unless the context requires otherwise, in this part the following definitions apply:~~

29 ~~(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured~~
 30 ~~products.~~

1 ~~(b) "Montana-made" means manufactured or produced in this state and made with the:~~

2 ~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in~~
3 ~~this state; or~~

4 ~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined~~
5 ~~in 18-2-401.~~

6 ~~(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under~~
7 ~~18-1-103.~~

8 ~~(d)(2) UNLESS THE CONTEXT REQUIRES OTHERWISE, IN THIS PART, THE FOLLOWING~~
9 ~~DEFINITIONS APPLY:~~

10 ~~(A) "GOODS" MEANS SUPPLIES, EQUIPMENT, MATERIALS, COMMODITIES, AND SPECIALLY~~
11 ~~MANUFACTURED PRODUCTS.~~

12 ~~(B) "MONTANA-MADE" MEANS MANUFACTURED OR PRODUCED IN THIS STATE AND MADE~~
13 ~~WITH THE:~~

14 ~~(I) USE OF PARTS, MATERIALS, OR SUPPLIES OF WHICH 50% OR MORE WERE MANUFACTURED~~
15 ~~OR PRODUCED IN THIS STATE; OR~~

16 ~~(II) EMPLOYMENT OF PERSONS OF WHOM 50% OR MORE ARE BONA FIDE RESIDENTS OF~~
17 ~~MONTANA AS DEFINED IN 18-2-401.~~

18 ~~(C) "NONRESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS NOT IN THIS STATE AS~~
19 ~~DETERMINED UNDER 18-1-103.~~

20 ~~(D) "Public agency" means a department, commission, council, board, bureau, committee,~~
21 ~~institution, agency, government corporation, or other entity, instrumentality, or official of the legislative,~~
22 ~~executive, or judicial branch of this state and its political subdivisions, including the board of regents and~~
23 ~~the Montana university system.~~

24 ~~(e) "Resident bidder" means a bidder whose residence is in this state as determined under~~
25 ~~18-1-103.~~

26 ~~(3)(E) "RESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS IN THIS STATE AS~~
27 ~~DETERMINED UNDER 18-1-103.~~

28 ~~(F) "Written" means that whenever written or in-writing determinations or documents are required,~~
29 ~~the public agency responsible for the procurement may specify an appropriate visual medium, such as by~~
30 ~~computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the~~

1 public agency."

2

3 **Section 2.** Section 18-4-122, MCA, is amended to read:

4 **"18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

- 5 (1) simplify, clarify, and modernize the law governing procurement by the state of Montana;
- 6 (2) permit the continued development of procurement policies and practices;
- 7 (3) make as consistent as possible the procurement laws among the various jurisdictions;
- 8 (4) provide for increased public confidence in the procedures followed in public procurement;
- 9 (5) ~~ensure the fair and equitable treatment of all persons who deal with the procurement system~~

10 ~~of the state provide the exclusive remedies for unlawful bid solicitations or contract awards;~~ ENSURE THE

11 FAIR AND EQUITABLE TREATMENT OF ALL PERSONS WHO DEAL WITH THE PROCUREMENT SYSTEM

12 OF THE STATE;

13 (6) provide increased economy in state procurement activities and maximize to the fullest extent

14 practicable the purchasing value of public funds of the state; ~~and~~

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

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

17 (8) PROVIDE SAFEGUARDS FOR THE MAINTENANCE OF A PROCUREMENT SYSTEM OF QUALITY

18 AND INTEGRITY; AND

19 (9) PROVIDE THE EXCLUSIVE REMEDIES FOR UNLAWFUL BID SOLICITATIONS OR CONTRACT

20 AWARDS."

21

22 **Section 3.** Section 18-4-123, MCA, is amended to read:

23 **"18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different

24 meaning is prescribed for a particular section, the following definitions apply:

25 (1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock

26 company, joint venture, or other private legal entity.

27 (2) "Change order" means a written order, signed by an authorized department representative,

28 directing the contractor to make changes which the changes clause of the contract authorizes the

29 department to order without the consent of the contractor.

30 (3) "Contract" means all types of state agreements, regardless of what they may be called, for the

1 procurement or disposal of supplies or services.

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

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

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

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

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

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

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

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

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

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

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

28 (15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies
29 or services. It also includes all functions that pertain to the obtaining of any supply or service, including
30 description of requirements, selection and solicitation of sources, preparation and award of contract, and

1 all phases of contract administration.

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

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

8 (18) "Services" means the furnishing of labor, time, or effort by a contractor, ~~not involving the~~
9 ~~delivery of a specific end product other than reports which are merely incidental to the required~~
10 ~~performance.~~ The term does not include ~~consulting services as defined in 18-8-102, those services listed~~
11 ~~in 18-8-103,~~ employment agreements or collective bargaining agreements, the provision ~~by providers of~~
12 human services ~~regulated by a state agency~~ administered by the department of public health and human
13 services, or services related to construction contracts.

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

16 (20) "Using agency" means any governmental body of the state ~~which that~~ utilizes uses any
17 supplies or services procured under this chapter.

18 (21) "Vendor" means a person who offers or may offer supplies or services to a public agency."
19

20 **Section 4.** Section 18-4-126, MCA, is amended to read:

21 **"18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement
22 information is a public writing and must be available to the public as provided in 2-6-102 and 18-4-304.

23 (2) All procurement records must be retained, managed, and disposed of in accordance with the
24 state records management program, Title 2, chapter 6.

25 (3) Written determinations required by this chapter must be retained in the appropriate official
26 contract file of the department or the purchasing agency administering the procurement in accordance with
27 the state records management program."
28

29 **Section 5.** Section 18-4-132, MCA, is amended to read:

30 **"18-4-132. Application.** (1) ~~Except as provided in 18-4-313, which applies retroactively to~~

1 ~~telecommunications equipment and systems and data processing equipment acquired under existing~~
 2 ~~contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies~~
 3 ~~only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application~~
 4 ~~to a contract solicited or entered into prior to January 1, 1984.~~

5 ~~(2)~~ This chapter applies to expenditure of public funds irrespective of their source, including federal
 6 assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any
 7 contract; ~~but this~~ This chapter does not apply to either grants or contracts between the state and its
 8 political subdivisions or other governments, except as provided in part 4. This chapter also applies to the
 9 disposal of state supplies. ~~Nothing in this~~ This chapter or in rules adopted ~~thereunder~~ pursuant to this
 10 chapter prevents do not prevent any governmental body or political subdivision from complying with the
 11 terms and conditions of any grant, gift, bequest, or cooperative agreement.

12 ~~(3)~~(2) This chapter does not apply to construction contracts.

13 ~~(4)~~(3) This chapter does not apply to expenditures of or the authorized sale or disposal of
 14 equipment purchased with money raised by student activity fees designated for use by the student
 15 associations of the university system.

16 ~~(5)~~(4) This chapter does not apply to contracts entered into by the Montana state lottery that have
 17 an aggregate value of less than \$250,000.

18 (5) This chapter does not apply to employment of:

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

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

21 (c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
 22 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
 23 order of the governor;

24 (d) consulting actuaries;

25 (e) a private consultant employed by the student associations of the university system with money
 26 raised from student activity fees designated for use by those student associations;

27 (f) a private consultant employed by the Montana state lottery;

28 (g) a private investigator licensed by any jurisdiction; or

29 (h) a claims adjuster."

30

1 **Section 6.** Section 18-4-133, MCA, is amended to read:

2 "**18-4-133. Purchases exempt from general requirements.** (1) ~~Fresh fruits and vegetables, other~~
3 ~~than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The~~
4 ~~department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized~~
5 ~~account must be kept of these purchases, and the account must be furnished to the department.~~

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

10 ~~(3)~~(2) The department ~~of administration~~ may exempt the department of corrections and the
11 department of public health and human services from the provisions of this chapter for the purchase of
12 suitable clothing by the department of corrections and the department of public health and human services
13 for residents of its institutions and community-based programs.

14 ~~(4)~~(3) As used in this section, "suitable clothing" means styled, seasonable clothing, which will
15 allow the resident to make a normal appearance in the community."
16

17 **Section 7.** Section 18-4-141, MCA, is amended to read:

18 "**18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~No~~ A contract
19 or order or any interest ~~therein~~ in a contract or order may not be transferred, assigned, or subcontracted
20 by the party to whom the contract or order is given to any other party without the express written approval
21 of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. ~~No~~
22 ~~approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their~~
23 ~~obligations to the state under the contract or order.~~

24 (2) Collusion or secret agreements between bidders for the purpose of securing any advantage to
25 the bidders as against the state in the awarding of contracts is prohibited. The state may declare the
26 contract void if the department finds sufficient evidence after a contract has been let that the contract was
27 obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the
28 disadvantage of the state.

29 (3) All rights of action for a breach of a contract by the contracting parties are reserved to the
30 state.

1 (4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a
 2 misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of Montana may
 3 at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab
 4 initio."

5
 6 **Section 8.** Section 18-4-224, MCA, is amended to read:

7 **"18-4-224. Contract clauses -- rules.** (1) The department may ~~adopt rules permitting or requiring,~~
 8 in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of
 9 performance, or other appropriate contract provisions relating to the following subjects:

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

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

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

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

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

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

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

19 (c) by the costs attributable to the events or situations under ~~such~~ established under
 20 subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 21 or

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

23 ~~(e) in the absence of agreement by the parties, by a unilateral determination by the state of the~~
 24 ~~costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as~~
 25 ~~computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.~~

26 (3) The department may ~~adopt rules permitting or requiring,~~ in its discretion, permit or require the
 27 inclusion in state contracts of clauses providing for appropriate remedies and relating to the following
 28 subjects:

29 (a) liquidated damages, as appropriate;

30 (b) specified excuses for delay or nonperformance;

- 1 (c) termination of the contract for default; and
- 2 (d) termination of the contract, in whole or in part, for the convenience of the state.
- 3 (4) The director or the head of a purchasing agency may vary the clauses established by the
- 4 department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must
- 5 be supported by a written determination that states the circumstances justifying ~~such~~ the variation. Notice
- 6 of any material variation must be stated in the invitation for bids or request for proposals.
- 7 (5) Regardless of a provision in a contract, the department may accept a lower price or better value
- 8 offered by a contractor."

9

10 ~~Section 13. Section 18-4-231, MCA, is amended to read:~~

11 ~~"18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234 18-4-233,~~

12 ~~"specification" means any description of the physical or functional characteristics or of the nature of a~~

13 ~~supply or service. It may include a description of any requirement for inspecting, testing, or preparing a~~

14 ~~supply or service for delivery."~~

15

16 **Section 9.** Section 18-4-241, MCA, is amended to read:

17 **"18-4-241. Authority to remove or suspend from vendors' list vendor.** (1) The department may

18 remove a ~~person~~ vendor for cause from consideration for award of contracts by the state. ~~The removal may~~

19 ~~not be for a period of more than 3 years.~~

20 (2) The department may temporarily suspend a ~~person~~ vendor from consideration for award of

21 contracts if there is probable cause to believe that the ~~person~~ vendor has engaged in activities that may

22 lead to removal. ~~The suspension may not be for a period exceeding 3 months unless~~ If an indictment has

23 been issued for an offense that would be a cause for removal under subsection (3), in which case the

24 suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial

25 of the suspended ~~person~~ vendor. The authority to remove or suspend must be exercised in accordance with

26 rules adopted by the department.

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

28 (a) violation of contract provisions, as set forth in subsections (3)(a)(i) and (3)(a)(ii), of a character

29 ~~which~~ that is regarded by the department to be so serious as to justify removal action:

30 (i) deliberate failure without good cause to perform in accordance with the specifications or within

1 the time limit provided in the contract; or

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

5 (b) failure to respond to a number of solicitations over a period of time as determined by the
6 department in accordance with rules, ~~and after adequate written notice to the affected person of the intent~~
7 ~~to remove or suspend~~ or failure to provide the department with a correct address;

8 (c) any other cause that the department determines to be so serious and compelling as to affect
9 responsibility as a state contractor, including removal by another governmental entity ~~for any cause listed~~
10 ~~in the department's rules;~~ and

11 (d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

12 (4) The department shall issue a written decision to remove or suspend a vendor, stating the
13 reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy
14 of the decision must be mailed or otherwise furnished immediately to the ~~person~~ vendor involved."

15

16 **Section 10.** Section 18-4-242, MCA, is amended to read:

17 **"18-4-242. Remedies prior to and after award** Exclusive remedies for unlawful solicitation or
18 award. (1) ~~¶~~ This section establishes the exclusive remedies for a solicitation or award of a contract is
19 determined to be in violation of the law, ~~the,~~

20 (2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror,
21 or contractor aggrieved in connection with the solicitation or award of a contract may protest to the
22 department. The protest must be submitted to the department in writing no later than 14 days after
23 execution of the contract.

24 (3) If the protest is not resolved by mutual agreement, the department shall issue in writing a
25 decision on the protest within 30 days after receipt of the protest. The decision must:

26 (a) state the reason for the action taken by the department with regard to the contract; and

27 (b) inform the aggrieved party of the party's right to request, within 14 days after the date of the
28 department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure
29 Act.

30 (4) In a protest or contested case proceeding, the department may ~~apply the remedies,~~ in an

1 appropriate case, order a remedy provided in subsections (2) and (3) subsection (5) or (6).

2 ~~(2)(5)~~ If ~~prior to~~ before an award it is determined that a solicitation or proposed award of a contract
3 is in violation of law, the solicitation or proposed award ~~must~~ may be:

4 (a) canceled; or

5 (b) revised to comply with the law.

6 ~~(3)(6)~~ (a) If after an award it is determined that a solicitation or award of a contract is in violation
7 of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may
8 be:

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

11 (ii) terminated, and the person awarded the contract must be compensated for the actual expenses
12 reasonably incurred under the contract, plus a reasonable profit, ~~prior to~~ before the termination.

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

15 (i) declared void; or

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

18 ~~(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided~~
19 ~~in subsections (2) and (3).~~

20 (7) The exclusive method of judicial review of a solicitation or award by the department pursuant
21 to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that
22 section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this
23 section. Except as provided in subsections (6)(a)(iii) and (6)(b)(iii), there is no right under any legal theory
24 to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any
25 other claim, cause of action, or request for relief for solicitations of awards allegedly made in violation of
26 law may not be heard or granted by a district court other than as provided in this section.

27 (8) The state is not required to delay, halt, or modify the procurement process pending the result
28 of a protest, contested case proceeding, or judicial review.

29 (9) The department may adopt rules governing the protest of solicitations and awards."
30

1 **Section 11.** Section 18-4-302, MCA, is amended to read:

2 "**18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state
3 contracts for supplies and services must be awarded by ~~competitive sealed bidding, pursuant to 18-4-303,~~
4 ~~except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of a source selection~~
5 method provided for in this title, and subsections (2) and (3) of this section. Supplies or services offered
6 for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or
7 services are regulated by the public service commission or other governmental authority.

8 (2) At the time that the department or ~~a purchasing~~ another agency opens bids or proposals, if a
9 supplier's current publicly advertised or established catalog price is received at or before the time that the
10 bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or
11 offeror or improves upon the conditions for the best proposal received using the same factors and weights
12 included in the proposal, the department or ~~purchasing~~ agency may reject all bids and purchase the supply
13 from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

14 (3) An office supply procured by the department's central stores program ~~through bulk purchase~~
15 ~~or procured under a term contract~~ may be purchased by ~~a purchasing an~~ agency, without meeting the
16 requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established
17 catalog price, or discount price offered to the ~~purchasing~~ agency is less than the price offered by the central
18 stores program ~~or under the term contract~~ if the office supply conforms in all material respects to the terms,
19 conditions, and quality offered by the central stores program ~~or under the term contract~~. A state office
20 supply term contract must include a provision by which the contracting parties acknowledge and agree to
21 the provisions of this subsection.

22 ~~(4) A contract for supplies or services, or both, INFORMATION TECHNOLOGY SYSTEMS AND~~
23 ~~SERVICES may be negotiated, in accordance with department rules and with the approval of the department~~
24 ~~director, directly with a vendor without using competitive sealed bidding or a competitive sealed proposal~~
25 ~~IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE DEPARTMENT~~
26 ~~DIRECTOR. A contract may be awarded pursuant to this section only when it is advantageous to the state~~
27 ~~to use direct negotiation in the procurement of new or unique requirements of the state, in the procurement~~
28 ~~of new technologies, or to achieve best net value. THE DEPARTMENT SHALL REPORT ANY ACTIVITY~~
29 ~~USING THIS METHOD OF PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE.~~

30 ~~(5) The department may, on behalf of a state agency, participate in, sponsor, conduct, or~~

1 ~~administer a AN INFORMATION TECHNOLOGY contract or other INFORMATION TECHNOLOGY business~~
 2 ~~relationship in a cooperative purchase pursuant to 18-4-402 with one or more public agencies, nonprofit~~
 3 ~~organizations, or business entities if the department determines the contract or relationship to be in the best~~
 4 ~~interests of the state. IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE~~
 5 ~~DEPARTMENT DIRECTOR. THE DEPARTMENT SHALL REPORT ANY ACTIVITY USING THIS METHOD OF~~
 6 ~~PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE."~~

7
 8 **Section 12.** Section 18-4-303, MCA, is amended to read:

9 **"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include
 10 a purchase description and conditions applicable to the procurement.

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

15 (3) Bids must be opened publicly ~~in the presence of one or more witnesses~~ at the time and place
 16 designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent,
 17 when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and
 18 ~~such~~ other relevant information as may be specified by rule, together with the name of each bidder, must
 19 be recorded. The record must be open to public inspection. After the time of award, all bids and bid
 20 documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject
 21 to the requirements of subsection (4).

22 (4) Bids must be available for public inspection when the bids are opened if:

23 (a) the invitation for bids is issued by a state agency to contract with the private sector to provide
 24 services currently conducted by state employees; and

25 (b) acceptance of bids would result in the displacement of five or more state employees.

26 (5) Bids must be unconditionally accepted without alteration or correction, except as authorized
 27 in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which
 28 may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery,
 29 and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in
 30 evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or

1 life-cycle costs. The invitation for bids ~~shall~~ must set forth the evaluation criteria to be used. Only criteria
2 set forth in the invitation for bids may be used in bid evaluation.

3 (6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation
4 of awards or contracts based on ~~such~~ bid mistakes may be permitted in accordance with rules adopted by
5 the department. After bid opening, ~~no~~ changes in bid prices or other provisions of bids prejudicial to the
6 interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all
7 decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid
8 mistakes must be supported by a written determination made by the department.

9 (7) The contract must be awarded with reasonable promptness by written notice to the lowest
10 responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation
11 for bids, ~~including the preferences established by Title 18, chapter 1, part 1, INCLUDING THE~~
12 PREFERENCES ESTABLISHED BY TITLE 18, CHAPTER 1, PART 1. If all bids exceed available funds as
13 certified by the appropriate fiscal officer and the low ~~responsive and~~ responsible and responsive bid does
14 not exceed ~~such~~ the funds by more than 5%, the director or the head of a purchasing agency ~~is authorized~~
15 may, in situations ~~where~~ in which time or economic considerations preclude resolicitation of a reduced
16 scope, ~~to~~ negotiate an adjustment of the bid price, including changes in the bid requirements, with the low
17 ~~responsive and~~ responsible and responsive bidder in order to bring the bid within the amount of available
18 funds.

19 (8) When it is considered impractical to initially prepare a purchase description to support an award
20 based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be
21 followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria
22 set forth in the first solicitation."
23

24 **Section 13.** Section 18-4-304, MCA, is amended to read:

25 **"18-4-304. Competitive sealed proposals.** (1) ~~When, under rules adopted by the department, the~~
26 ~~director, the head of a purchasing agency, or a designee of either officer above the level of the procurement~~
27 ~~officer determines that the use of competitive sealed bidding is either not practicable or not advantageous~~
28 ~~to the state, a contract may be entered into by competitive sealed proposals. The department may provide~~
29 ~~by rule that it is either not practicable or not advantageous to the state to procure specified types of~~
30 ~~supplies and services by competitive sealed bidding.~~ The department may procure supplies and services

1 through competitive sealed proposals.

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

3 (3) Adequate public notice of the request for proposals must be given in the same manner as
4 provided in 18-4-303(2).

5 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during
6 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
7 the department and must be open for public inspection after contract award. After the contract is
8 executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform
9 Trade Secrets Act, Title 30, chapter 14, part 4.

10 (5) The request for proposals must state the evaluation factors and their relative importance of
11 price and other evaluation factors. The award must be made to the responsible and responsive offeror
12 whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the
13 evaluation. The contract file must demonstrate the basis on which the award is made.

14 ~~(6) As provided in the request for proposals and under rules adopted by the department,~~
15 ~~discussions with responsible offerors who submit apparently responsive proposals may be conducted for~~
16 ~~the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation~~
17 ~~requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for~~
18 ~~discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award,~~
19 ~~for the purpose of obtaining best and final offers. The department may discuss a proposal with an offeror~~
20 ~~for the purpose of clarification or revision of the proposal. In conducting discussions, there may not be~~
21 ~~disclosure of any information derived from proposals submitted by competing offerors. The department may~~
22 ~~require the submission of cost or pricing data in connection with an award under this section.~~

23 ~~(7) The award must be made to the responsible offeror whose proposal is determined in writing~~
24 ~~to be the most advantageous to the state, taking into consideration price, including the preference in~~
25 ~~18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may~~
26 ~~be used in the evaluation. The contract file must contain the basis on which the award is made."~~

27

28 **Section 14.** Section 18-4-305, MCA, is amended to read:

29 **"18-4-305. Small purchases and limited solicitations.** Any procurement not exceeding the amount
30 established by rule may be made in accordance with small purchase or limited solicitation procedures

1 established by the department. Procurement requirements may not be artificially divided so as to constitute
2 a small purchase or limited solicitation under this section."

3
4 **Section 15.** Section 18-4-309, MCA, is amended to read:

5 "18-4-309. **Prequalification of suppliers.** Prospective suppliers may be prequalified in accordance
6 with department rules for particular types of supplies and services. ~~Solicitation mailing lists of potential~~
7 ~~contractors must include but not be limited to such prequalified suppliers."~~

8
9 **Section 16.** Section 18-4-310, MCA, is amended to read:

10 "18-4-310. **Types of contracts.** ~~Subject to the limitations of this section, any~~ Any type of contract
11 that will promote the best interests of the state may be used, ~~except that the use of a~~
12 ~~cost plus percentage of cost contract is prohibited. A cost reimbursement contract may be used only when~~
13 ~~a determination is made in writing that such contract is likely to be less costly to the state than any other~~
14 ~~type or that it is impracticable to obtain the supplies or services required except under such a contract."~~

15
16 **Section 17.** Section 18-4-312, MCA, is amended to read:

17 "18-4-312. **Bid and contract performance security.** (1) For state contracts for the procurement of
18 services or of supplies, the department may in its discretion require:

19 (a) bid security;

20 (b) contract performance security to guarantee the faithful performance of the contract and the
21 payment of all laborers, suppliers, ~~materialmen,~~ mechanics, and subcontractors; or

22 (c) both bid and contract performance security.

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

25 (a) a sufficient bond with a licensed surety company as surety;

26 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
27 30, chapter 5, part 1;

28 (c) money of the United States;

29 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
30 certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings

1 and loan association that is insured by or for which insurance is administered by the federal deposit
2 insurance corporation or that is drawn and issued by a credit union insured by the national credit union
3 share insurance fund.

4 (3) The amount and type of the security must be determined by the department to be sufficient
5 to cover the risk involved to the state. The security must be payable to the state of Montana and, Contract
6 performance security must remain in effect for the entire contract period. In determining the amount and
7 type of contract performance security required for each contract, the department shall consider the nature
8 of the performance and the need for future protection to the state. In determining the need for and amount
9 of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror
10 fails to enter into a formal contract. The considerations must include but are not limited to the type of
11 supply or service being procured, the dollar amount of the proposed contract, and delivery time
12 requirements. The department may adopt rules to assist it in making these determinations and in protecting
13 the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be
14 included in the invitations for bids or requests for proposals.

15 (4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
16 or provide contract performance security, as required by the invitation for bid or request for proposal, after
17 notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to
18 the state and become immediately liable on the bid security, but not in excess of the sum stated in the
19 security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the
20 bid bond or other security may not exceed the amount specified in the invitation for bid or request for
21 proposal.

22 (5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors
23 whose bids or proposals are not accepted.

24 (6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not
25 apply to procurements under this chapter."

26

27 ~~Section 23. Section 18-4-313, MCA, is amended to read:~~

28 ~~"18-4-313. Contracts -- terms, extensions, and time limits. (1) Unless otherwise provided by law,~~
29 ~~a contract, lease, or rental agreement for supplies or services may not be made for a period of more than~~
30 ~~7 years. However, the department may contract for the lease or purchase of telecommunications equipment~~

1 ~~and systems, data processing equipment, the department of revenue liquor agencies, and the department~~
 2 ~~of public health and human services medicaid management information system (MMIS) for a period not to~~
 3 ~~exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the~~
 4 ~~extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period~~
 5 ~~at the time of the agreement, and if the total contract period, including any extension or renewal, does not~~
 6 ~~exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the~~
 7 ~~availability and appropriation of funds for the fiscal periods. Unless otherwise provided by law, a contract,~~
 8 ~~lease, or rental agreement for supplies or services may be made for a specific duration determined by the~~
 9 ~~department to obtain the best net value for the state.~~

10 ~~(2) Prior to Before the issuance, extension, or renewal of a contract, it must be determined that:~~

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

12 ~~and~~

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

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

17
 18 **Section 18.** Section 18-4-402, MCA, is amended to read:

19 **"18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor,
 20 conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services
 21 with one or more public procurement units in accordance with an agreement entered into between the
 22 participants independent of the requirements of part 3. ~~Such cooperative~~ Cooperative purchasing may
 23 include purchasing through federal supply schedules of the United States general services administration,
 24 joint or ~~multi-party~~ multiparty contracts between public procurement units and open-ended state public
 25 procurement unit contracts that are made available to local public procurement units."
 26

27 ~~**Section 25.** Section 18-5-308, MCA, is amended to read:~~

28 ~~**"18-5-308. Construction with other sections.** Procurement from small businesses under this part~~
 29 ~~is subject to all other statutes governing state procurement and all rules promulgated thereunder adopted~~
 30 ~~purcuant to this part, as now or hereafter later amended, except that in case of conflict this part governs~~

1 and the provisions set forth in ~~18-1-102, 18-1-111, and 18-1-112~~ shall not apply."

2

3 ~~Section 26. Section 18-6-101, MCA, is amended to read:~~

4 ~~"18-6-101. Power to sell state property—proceeds credited to general fund from which property~~
 5 ~~was purchased. (1) The department has exclusive power, subject to the approval of the governor, to sell~~
 6 ~~or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service~~
 7 ~~equipment, or other personal property of every kind owned by the state but not needed or used by any~~
 8 ~~state institution or by any department of state government.~~

9 ~~(2) Unless otherwise provided by law, the department shall credit the general fund from which the~~
 10 ~~property was purchased, less a reasonable handling fee, with all the money received from a sale. The~~
 11 ~~proceeds of the sale are statutorily appropriated, as provided in 17-7-502, to the agency that owned the~~
 12 ~~property before it was sold by the department.~~

13 ~~(3) Whenever the personal property was accounted for in an enterprise or internal service fund or~~
 14 ~~designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or~~
 15 ~~internal service fund or designated subfund account."~~

16

17 ~~Section 27. Section 18-7-104, MCA, is amended to read:~~

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

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

28 ~~(2) Whenever if a collective bargaining agreement is in effect between an employer and employees~~
 29 ~~who are represented by a responsible organization which that is in no way influenced or controlled by the~~
 30 ~~management, such the collective bargaining agreement and its provisions shall must be construed as~~

1 ~~conditions prevalent in said the locality and shall be is the minimum requirement for being adjudged~~
 2 ~~considered a responsible bidder under this section, 18-7-107, or chapter 4 of this title or this section.~~

3 ~~(3) Printing firms having the use of using the union labels, as set forth above shall be deemed as~~
 4 ~~having provided in subsection (1), have complied with the provisions of this section, 18-7-107, or chapter~~
 5 ~~4 or this section of this title, but nothing in these provisions shall be construed as exempting such.~~
 6 ~~However, this section does not exempt the bidders from any the provisions of this section, 18-7-107, or~~
 7 ~~chapter 4 of this title or this section, and such the bidders shall also be required to conform to all the~~
 8 ~~provisions thereof of chapter 4 and this section."~~

9
 10 ~~Section 28. Section 18-7-105, MCA, is amended to read:~~

11 ~~"18-7-105. Penalty. Any officer of the state who shall accept any accepts printed matter for which~~
 12 ~~the state is chargeable in whole or in part or who is found to have has had printed matter produced, under~~
 13 ~~conditions other than as set forth in chapter 4 of this title, or 18-7-104, or 18-7-107 shall be, is subject~~
 14 ~~to a fine of \$50 for each and every offense."~~

15
 16 ~~Section 19. Section 18-8-211, MCA, is amended to read:~~

17 ~~"18-8-211. Coordination with other statutes. (1) This part need not be complied with by an~~
 18 ~~agency when the contracting authority makes a finding in accordance with this or any other applicable law~~
 19 ~~that an emergency requires the immediate execution of the work involved. Nothing in this This part relieves~~
 20 ~~does not relieve the contracting authority from complying with applicable law limiting emergency~~
 21 ~~expenditures.~~

22 ~~(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this~~
 23 ~~part.~~

24 ~~(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112~~
 25 ~~applies to this part, except that the agency shall select its proposed list of three architects or consulting~~
 26 ~~engineers in accordance with this part prior to submission to the department of administration.~~

27 ~~(4) The exception for services estimated to cost less than \$5,000 in 18-8-105 applies to this part."~~

28
 29 ~~Section 30. Section 53-1-203, MCA, is amended to read:~~

30 ~~"53-1-203. Powers and duties of department of corrections. (1) The department of corrections~~

1 shall:

2 ~~(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for~~
3 ~~the admission, custody, transfer, and release of persons in department programs except as otherwise~~
4 ~~provided by law. However, rules adopted by the department may not amend or alter the statutory powers~~
5 ~~and duties of the state board of pardons and parole.~~

6 ~~(b) subject to the functions of the department of administration, lease or purchase lands for use~~
7 ~~by institutions and classify those lands to determine those that may be most profitably used for agricultural~~
8 ~~purposes, taking into consideration the needs of all institutions for the food products that can be grown~~
9 ~~or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation~~
10 ~~of the persons confined in the institutions;~~

11 ~~(c) contract with private, nonprofit Montana corporations to establish and maintain~~
12 ~~community-based prerelease centers for purposes of preparing inmates of the Montana state prison who~~
13 ~~are approaching parole eligibility or discharge for release into the community. The centers shall provide a~~
14 ~~less restrictive environment than the prison while maintaining adequate security. The centers must be~~
15 ~~operated in coordination with other department correctional programs, including the supervised release~~
16 ~~program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's~~
17 ~~authority to operate and maintain community-based prerelease centers.~~

18 ~~(d) utilize the staff and services of other state agencies and units of the Montana university system,~~
19 ~~within their respective statutory functions, to carry out its functions under this title;~~

20 ~~(e) propose programs to the legislature to meet the projected long range needs of institutions,~~
21 ~~including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in~~
22 ~~institutions;~~

23 ~~(f) encourage the establishment of programs at the local and institutional level for the rehabilitation~~
24 ~~and education of adult felony offenders;~~

25 ~~(g) administer all state and federal funds allocated to the department for youth in need of~~
26 ~~supervision and delinquent youth, as defined in 41-5-103;~~

27 ~~(h) collect and disseminate information relating to youth in need of supervision and delinquent~~
28 ~~youth;~~

29 ~~(i) maintain adequate data on placements that it funds in order to keep the legislature properly~~
30 ~~informed of the specific information, by category, related to youth in need of supervision and delinquent~~

1 youth in out-of-home care facilities;

2 ~~(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need~~
3 ~~of supervision and who are referred or committed to the department;~~

4 ~~(k) administer youth correctional facilities;~~

5 ~~(l) provide supervision, care, and control of youth released from a state youth correctional facility;~~

6 and

7 ~~(m) use to maximum efficiency the resources of state government in a coordinated effort to:~~

8 ~~(i) provide for children in need of temporary protection or correctional services; and~~

9 ~~(ii) coordinate and apply the principles of modern institutional administration to the institutions in~~
10 ~~the department.~~

11 ~~(2) The department and a private, nonprofit Montana corporation may not enter into a contract~~
12 ~~under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that~~
13 ~~limit the term of a contract do not apply to a contract authorized by subsection (1)(c).~~

14 ~~(3) The department of corrections may enter into contracts with nonprofit corporations or~~
15 ~~associations or private organizations to provide substitute care for youth in need of supervision and~~
16 ~~delinquent youth in youth care facilities."~~

17

18 ~~**Section 31.** Section 53-30-505, MCA, is amended to read:~~

19 ~~"**53-30-505. Contract time limit.** A contract entered into under 53-30-504 may not exceed a term~~
20 ~~of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and~~
21 ~~18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504."~~

22

23 **Section 20.** Section 60-2-112, MCA, is amended to read:

24 **"60-2-112. Competitive bidding.** (1) Except as provided in subsections (2) through (4), when the
25 estimated cost of any work exceeds \$50,000, the commission shall let the contract by competitive bidding
26 to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the
27 commission prescribes by its rules. ~~However, except when prohibited by federal law, the commission shall~~
28 ~~make awards and contracts in accordance with 18-1-102 and 18-1-112. HOWEVER, EXCEPT WHEN~~
29 ~~PROHIBITED BY FEDERAL LAW, THE COMMISSION SHALL MAKE AWARDS AND CONTRACTS IN~~
30 ~~ACCORDANCE WITH 18-1-102 AND 18-1-112.~~

1 (2) The commission may let a contract by means other than competitive bidding if it determines
2 that special circumstances so require. The commission shall specify the special circumstances in writing.

3 (3) The commission may enter into contracts with units of local government for the construction
4 of projects without competitive bidding if it finds that the work can be accomplished at lower total costs,
5 including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and
6 accounting services, administrative costs, and reasonable estimates of other costs attributable to the
7 project.

8 (4) The commission may delegate to the department the authority to enter, without competitive
9 bidding, agreed-upon price contracts for projects costing \$50,000 or less."

10
11 NEW SECTION. Section 21. Repealer. Sections ~~18-1-102, 18-1-103, 18-1-106, 18-1-111,~~
12 ~~18-1-112, 18-1-113, 18-1-114,~~ 18-4-131, 18-4-225, ~~18-4-234, 18-7-107,~~ 18-8-101, 18-8-102, 18-8-103,
13 18-8-104, 18-8-105, 18-8-106, 18-8-111, and 18-8-112, MCA, are repealed.

14
15 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
17 applications, the part remains in effect in all valid applications that are severable from the invalid
18 applications.

19
20 NEW SECTION. Section 23. Retroactive applicability. [Sections ~~6 and 15 2 AND 10~~] and the
21 repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful
22 solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief
23 other than those authorized by [section ~~15 10~~], unless a final judgment awarding damages has been
24 rendered regarding that claim, cause of action, or request for relief prior to [the effective date of this act]
25 A COMPLAINT WAS FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992.

26
27 ~~NEW SECTION. SECTION 24. TERMINATION. SUBSECTIONS (4) AND (5) OF 18-4-302~~
28 ~~TERMINATE OCTOBER 1, 1999.~~

29
30 NEW SECTION. Section 24. Effective dates. (1) Except as provided in subsection (2), [this act]

1 is effective October 1, 1997.

2 (2) ~~{Sections 6, 15, 34, and 35~~ 2, 10, 22, AND 23 and this section] and the repeal of 18-4-131

3 are effective on passage and approval.

4 -END-

1 HOUSE BILL NO. 139

2 INTRODUCED BY SWANSON

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC
6 CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; ~~ELIMINATING PREFERENCES IN THE~~
7 ~~PROCUREMENT PROCESS~~; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS
8 FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE
9 PROCUREMENT PROCESS; ~~STATUTORILY APPROPRIATING THE PROCEEDS OF SALES OF PROPERTY~~;
10 PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE
11 PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE
12 PROCURED; AMENDING SECTIONS ~~7-14-2404, 7-14-2406, 7-14-2716, 17-7-502~~, 18-1-101, 18-4-122,
13 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, ~~18-4-231~~, 18-4-241, 18-4-242, 18-4-302,
14 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, ~~18-4-313~~, 18-4-402, ~~18-5-308, 18-6-101,~~
15 ~~18-7-104, 18-7-105~~, 18-8-211, ~~53-1-203, 53-30-505~~, AND 60-2-112, MCA; REPEALING SECTIONS
16 ~~18-1-102, 18-1-103, 18-1-106, 18-1-111, 18-1-112, 18-1-113, 18-1-114~~, 18-4-131, 18-4-225, ~~18-4-234,~~
17 ~~18-7-107~~, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112.
18 MCA; AND PROVIDING EFFECTIVE DATES AND, AND A RETROACTIVE APPLICABILITY DATE, AND A
19 TERMINATION DATE."

20
21 WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903
22 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages
23 under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

24 WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana
25 Procurement Act makes Montana taxpayers pay twice for the same product; and

26 WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow
27 disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but
28 rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section
29 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

30 WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d

1 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law
 2 and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for
 3 every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207
 4 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the
 5 Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking
 6 the remedy; and

7 WHEREAS, according to section 1-2-110, MCA, a statute may be repealed at any time by the
 8 Legislature, and persons acting under any statute are considered to be acting in contemplation of the
 9 Legislature's power to repeal the statute; and

10 WHEREAS, it is the intent of the Legislature by enacting [sections ~~6, 15, and 35~~ 2, 10, AND 23]
 11 and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to
 12 the availability of the remedy of money damages; and

13 WHEREAS, it is the intent of the Legislature by enacting [section ~~35~~ 23] to make the reversal of
 14 the ISC case apply retroactively, ~~even to the parties in the ISC case, unless a final judgment is obtained in~~
 15 ~~that case before [the effective date of this act], as provided in [section 36]~~ UNLESS A COMPLAINT WAS
 16 FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992, AS PROVIDED IN [SECTION 23].

17

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

19

20 ~~Section 1. Section 7-14-2404, MCA, is amended to read:~~

21 ~~"7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the~~
 22 ~~requirements of Title 18, chapter 1, part 2. The contract shall must be awarded to the lowest responsible~~
 23 ~~and responsive bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 24 ~~2, part 4, and the board may reserve the right to reject any and all bids. When there is no prevailing rate~~
 25 ~~of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the~~
 26 ~~contract."~~

27

28 ~~Section 2. Section 7-14-2406, MCA, is amended to read:~~

29 ~~"7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall must~~
 30 ~~meet these requirements:~~

1 ~~(a) If the department of transportation has adopted or established a standard plan and~~
 2 ~~specifications, the bids must be submitted thereon on the standard plan and specifications.~~

3 ~~(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part~~
 4 ~~2.~~

5 ~~(2) The board may reject any and all bids. If a contract is awarded, the board shall do so award~~
 6 ~~the contract in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4.~~
 7 ~~When there is no prevailing rate of wages set by collective bargaining, the board shall determine the~~
 8 ~~prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of~~
 9 ~~the members of the board.~~

10 ~~(3) Before entering upon performance of the work, the contractor shall comply with the~~
 11 ~~requirements of Title 18, chapter 2, part 2. For the purposes of these sections with relation to contracts~~
 12 ~~with the board, a contract shall not be is not completed until the board, while formally convened,~~
 13 ~~affirmatively accepts all of the work thereunder done under the contract."~~

14
 15 ~~Section 3. Section 7-14-2716, MCA, is amended to read:~~

16 ~~"7-14-2716. Award of contract by local improvement district. (1) If the committee awards a~~
 17 ~~contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter~~
 18 ~~2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall~~
 19 ~~determine the prevailing rate to be stated in the contract.~~

20 ~~(2) Partial payments may be provided for in the contract and paid when certified by the county~~
 21 ~~surveyor and committee."~~

22
 23 ~~Section 4. Section 17-7-502, MCA, is amended to read:~~

24 ~~"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory~~
 25 ~~appropriation is an appropriation made by permanent law that authorizes spending by a state agency~~
 26 ~~without the need for a biennial legislative appropriation or budget amendment.~~

27 ~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply~~
 28 ~~with both of the following provisions:~~

29 ~~(a) The law containing the statutory authority must be listed in subsection (3).~~

30 ~~(b) The law or portion of the law making a statutory appropriation must specifically state that a~~

1 ~~statutory appropriation is made as provided in this section.~~

2 ~~(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;~~
 3 ~~2-18-812; 3-6-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;~~
 4 ~~15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;~~
 5 ~~16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;~~
 6 ~~18-6-101; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606;~~
 7 ~~19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;~~
 8 ~~23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;~~
 9 ~~39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;~~
 10 ~~50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;~~
 11 ~~75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;~~
 12 ~~85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.~~

13 ~~(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,~~
 14 ~~paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued~~
 15 ~~pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of~~
 16 ~~Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as~~
 17 ~~determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the~~
 18 ~~bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.~~
 19 ~~7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for~~
 20 ~~supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates~~
 21 ~~July 1, 2001.)"~~

22

23 **Section 1.** Section 18-1-101, MCA, is amended to read:

24 **"18-1-101. Definitions.** ~~(4)~~ (1) Unless the context requires otherwise, in this title, "department"
 25 ~~the following definitions apply:~~

26 ~~(1) "Department" "DEPARTMENT"~~ means the department of administration provided for in Title
 27 2, chapter 15, part 10.

28 ~~(2) Unless the context requires otherwise, in this part the following definitions apply:~~

29 ~~(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured~~
 30 ~~products.~~

1 ~~(b) "Montana made" means manufactured or produced in this state and made with the:~~

2 ~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in~~
3 ~~this state; or~~

4 ~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined~~
5 ~~in 18-2-401.~~

6 ~~(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under~~
7 ~~18-1-103.~~

8 ~~(d)(2) UNLESS THE CONTEXT REQUIRES OTHERWISE, IN THIS PART, THE FOLLOWING~~
9 ~~DEFINITIONS APPLY:~~

10 ~~(A) "GOODS" MEANS SUPPLIES, EQUIPMENT, MATERIALS, COMMODITIES, AND SPECIALLY~~
11 ~~MANUFACTURED PRODUCTS.~~

12 ~~(B) "MONTANA-MADE" MEANS MANUFACTURED OR PRODUCED IN THIS STATE AND MADE~~
13 ~~WITH THE:~~

14 ~~(I) USE OF PARTS, MATERIALS, OR SUPPLIES OF WHICH 50% OR MORE WERE MANUFACTURED~~
15 ~~OR PRODUCED IN THIS STATE; OR~~

16 ~~(II) EMPLOYMENT OF PERSONS OF WHOM 50% OR MORE ARE BONA FIDE RESIDENTS OF~~
17 ~~MONTANA AS DEFINED IN 18-2-401.~~

18 ~~(C) "NONRESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS NOT IN THIS STATE AS~~
19 ~~DETERMINED UNDER 18-1-103.~~

20 ~~(D) "Public agency" means a department, commission, council, board, bureau, committee,~~
21 ~~institution, agency, government corporation, or other entity, instrumentality, or official of the legislative,~~
22 ~~executive, or judicial branch of this state and its political subdivisions, including the board of regents and~~
23 ~~the Montana university system.~~

24 ~~(e) "Resident bidder" means a bidder whose residence is in this state as determined under~~
25 ~~18-1-103.~~

26 ~~(3)(E) "RESIDENT BIDDER" MEANS A BIDDER WHOSE RESIDENCE IS IN THIS STATE AS~~
27 ~~DETERMINED UNDER 18-1-103.~~

28 ~~(F) "Written" means that whenever written or in-writing determinations or documents are required,~~
29 ~~the public agency responsible for the procurement may specify an appropriate visual medium, such as by~~
30 ~~computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the~~

1 public agency."

2

3 **Section 2.** Section 18-4-122, MCA, is amended to read:

4 "**18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

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

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

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

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

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

10 ~~of the state provide the exclusive remedies for unlawful bid solicitations or contract awards;~~ ENSURE THE

11 FAIR AND EQUITABLE TREATMENT OF ALL PERSONS WHO DEAL WITH THE PROCUREMENT SYSTEM

12 OF THE STATE;

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

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

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

17 (8) PROVIDE SAFEGUARDS FOR THE MAINTENANCE OF A PROCUREMENT SYSTEM OF QUALITY

18 AND INTEGRITY; AND

19 (9) PROVIDE THE EXCLUSIVE REMEDIES FOR UNLAWFUL BID SOLICITATIONS OR CONTRACT
20 AWARDS."

21

22 **Section 3.** Section 18-4-123, MCA, is amended to read:

23 "**18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different
24 meaning is prescribed for a particular section, the following definitions apply:

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

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

30 (3) "Contract" means all types of state agreements, regardless of what they may be called, for the

1 procurement or disposal of supplies or services.

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

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

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

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

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

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

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

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

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

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

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

28 (15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies
29 or services. It also includes all functions that pertain to the obtaining of any supply or service, including
30 description of requirements, selection and solicitation of sources, preparation and award of contract, and

1 all phases of contract administration.

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

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

8 (18) "Services" means the furnishing of labor, time, or effort by a contractor, ~~not involving the~~
9 ~~delivery of a specific end product other than reports which are merely incidental to the required~~
10 ~~performance~~. The term does not include ~~consulting services as defined in 18-8-102, those services listed~~
11 ~~in 18-8-103, employment agreements or collective bargaining agreements, the provision by providers of~~
12 human services ~~regulated by a state agency~~ administered by the department of public health and human
13 services, or services related to construction contracts.

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

16 (20) "Using agency" means any governmental body of the state ~~which~~ that ~~utilizes~~ uses any
17 supplies or services procured under this chapter.

18 (21) "Vendor" means a person who offers or may offer supplies or services to a public agency."
19

20 **Section 4.** Section 18-4-126, MCA, is amended to read:

21 **"18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement
22 information is a public writing and must be available to the public as provided in 2-6-102 and 18-4-304.

23 (2) All procurement records must be retained, managed, and disposed of in accordance with the
24 state records management program, Title 2, chapter 6.

25 (3) Written determinations required by this chapter must be retained in the appropriate official
26 contract file of the department or the purchasing agency administering the procurement in accordance with
27 the state records management program."
28

29 **Section 5.** Section 18-4-132, MCA, is amended to read:

30 **"18-4-132. Application.** (1) ~~Except as provided in 18-4-313, which applies retroactively to~~

1 ~~telecommunications equipment and systems and data processing equipment acquired under existing~~
 2 ~~contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies~~
 3 ~~only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application~~
 4 ~~to a contract solicited or entered into prior to January 1, 1984.~~

5 (2) This chapter applies to expenditure of public funds irrespective of their source, including federal
 6 assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any
 7 contracts; ~~but this~~ This chapter does not apply to either grants or contracts between the state and its
 8 political subdivisions or other governments, except as provided in part 4. This chapter also applies to the
 9 disposal of state supplies. ~~Nothing in this~~ This chapter or ~~in~~ rules adopted ~~thereunder~~ pursuant to this
 10 chapter prevents do not prevent any governmental body or political subdivision from complying with the
 11 terms and conditions of any grant, gift, bequest, or cooperative agreement.

12 ~~(3)(2)~~ This chapter does not apply to construction contracts.

13 ~~(4)(3)~~ This chapter does not apply to expenditures of or the authorized sale or disposal of
 14 equipment purchased with money raised by student activity fees designated for use by the student
 15 associations of the university system.

16 ~~(5)(4)~~ This chapter does not apply to contracts entered into by the Montana state lottery that have
 17 an aggregate value of less than \$250,000.

18 (5) This chapter does not apply to employment of:

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

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

21 (c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested
 22 case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive
 23 order of the governor;

24 (d) consulting actuaries;

25 (e) a private consultant employed by the student associations of the university system with money
 26 raised from student activity fees designated for use by those student associations;

27 (f) a private consultant employed by the Montana state lottery;

28 (g) a private investigator licensed by any jurisdiction; or

29 (h) a claims adjuster."

30

1 **Section 6.** Section 18-4-133, MCA, is amended to read:

2 **"18-4-133. Purchases exempt from general requirements.** (1) ~~Fresh fruits and vegetables, other~~
3 ~~than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The~~
4 ~~department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized~~
5 ~~account must be kept of these purchases, and the account must be furnished to the department.~~

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

10 ~~(3)~~(2) The department ~~of administration~~ may exempt the department of corrections and the
11 department of public health and human services from the provisions of this chapter for the purchase of
12 suitable clothing by the department of corrections and the department of public health and human services
13 for residents of its institutions and community-based programs.

14 ~~(4)~~(3) As used in this section, "suitable clothing" means styled, seasonable clothing, which will
15 allow the resident to make a normal appearance in the community."
16

17 **Section 7.** Section 18-4-141, MCA, is amended to read:

18 **"18-4-141. Contract transfers and collusion prohibited -- violations and penalty.** (1) ~~No~~ A contract
19 or order or any interest ~~therein~~ in a contract or order may not be transferred, assigned, or subcontracted
20 by the party to whom the contract or order is given to any other party without the express written approval
21 of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. ~~No~~
22 ~~approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their~~
23 ~~obligations to the state under the contract or order.~~

24 (2) Collusion or secret agreements between bidders for the purpose of securing any advantage to
25 the bidders as against the state in the awarding of contracts is prohibited. The state may declare the
26 contract void if the department finds sufficient evidence after a contract has been let that the contract was
27 obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the
28 disadvantage of the state.

29 (3) All rights of action for a breach of a contract by the contracting parties are reserved to the
30 state.

1 (4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a
 2 misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of Montana may
 3 at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab
 4 initio."

5
 6 **Section 8.** Section 18-4-224, MCA, is amended to read:

7 "**18-4-224. Contract clauses -- rules.** (1) The department may ~~adopt rules permitting or requiring,~~
 8 in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of
 9 performance, or other appropriate contract provisions relating to the following subjects:

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

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

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

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

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

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

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

19 (c) by the costs attributable to the events or situations under ~~such~~ clauses established under
 20 subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

21 or

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

23 ~~(e) in the absence of agreement by the parties, by a unilateral determination by the state of the~~
 24 ~~costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as~~
 25 ~~computed by the state in accordance with applicable sections of the rules adopted under 18-4-225.~~

26 (3) The department may ~~adopt rules permitting or requiring,~~ in its discretion, permit or require the
 27 inclusion in state contracts of clauses providing for appropriate remedies and relating to the following
 28 subjects:

29 (a) liquidated damages, as appropriate;

30 (b) specified excuses for delay or nonperformance;

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

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

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

7 (5) Regardless of a provision in a contract, the department may accept a lower price or better value
8 offered by a contractor."

9

10 ~~Section 13. Section 18-4-231, MCA, is amended to read:~~

11 ~~"18-4-231. Definition of specification. As used in 18-4-231 through 18-4-234 18-4-233,~~
12 ~~"specification" means any description of the physical or functional characteristics or of the nature of a~~
13 ~~supply or service. It may include a description of any requirement for inspecting, testing, or preparing a~~
14 ~~supply or service for delivery."~~

15

16 **Section 9.** Section 18-4-241, MCA, is amended to read:

17 **"18-4-241. Authority to remove or suspend ~~from vendors' list~~ vendor.** (1) The department may
18 remove a ~~person~~ vendor for cause from consideration for award of contracts by the state. ~~The removal may~~
19 ~~not be for a period of more than 3 years.~~

20 (2) The department may temporarily suspend a ~~person~~ vendor from consideration for award of
21 contracts if there is probable cause to believe that the ~~person~~ vendor has engaged in activities that may
22 lead to removal. ~~The suspension may not be for a period exceeding 3 months unless~~ If an indictment has
23 been issued for an offense that would be a cause for removal under subsection (3), ~~in which case~~ the
24 suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial
25 of the suspended ~~person~~ vendor. The authority to remove or suspend must be exercised in accordance with
26 rules adopted by the department.

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

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

30 (i) deliberate failure without good cause to perform in accordance with the specifications or within

1 the time limit provided in the contract; or

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

5 (b) failure to respond to a number of solicitations over a period of time as determined by the
6 department in accordance with rules, ~~and after adequate written notice to the affected person of the intent~~
7 ~~to remove or suspend~~ or failure to provide the department with a correct address;

8 (c) any other cause that the department determines to be so serious and compelling as to affect
9 responsibility as a state contractor, including removal by another governmental entity ~~for any cause listed~~
10 ~~in the department's rules~~; and

11 (d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

12 (4) The department shall issue a written decision to remove or suspend a vendor, stating the
13 reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy
14 of the decision must be mailed or otherwise furnished immediately to the ~~person~~ vendor involved."
15

16 **Section 10.** Section 18-4-242, MCA, is amended to read:

17 "**18-4-242. Remedies prior to and after award** Exclusive remedies for unlawful solicitation or
18 award. (1) ~~If This section establishes the exclusive remedies for a solicitation or award of a contract is~~
19 determined to be in violation of the law, the,

20 (2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror,
21 or contractor aggrieved in connection with the solicitation or award of a contract may protest to the
22 department. The protest must be submitted to the department in writing no later than 14 days after
23 execution of the contract.

24 (3) If the protest is not resolved by mutual agreement, the department shall issue in writing a
25 decision on the protest within 30 days after receipt of the protest. The decision must:

26 (a) state the reason for the action taken by the department with regard to the contract; and

27 (b) inform the aggrieved party of the party's right to request, within 14 days after the date of the
28 department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure
29 Act.

30 (4) In a protest or contested case proceeding, the department may apply the remedies, in an

1 appropriate case, order a remedy provided in subsections (2) and (3) subsection (5) or (6).

2 ~~(2)(5)~~ If ~~prior to~~ before an award it is determined that a solicitation or proposed award of a contract
3 is in violation of law, the solicitation or proposed award ~~must~~ may be:

4 (a) canceled; or

5 (b) revised to comply with the law.

6 ~~(3)(6)~~ (a) If after an award it is determined that a solicitation or award of a contract is in violation
7 of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may
8 be:

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

10 or

11 (ii) terminated, and the person awarded the contract must be compensated for the actual expenses
12 reasonably incurred under the contract, plus a reasonable profit, ~~prior to~~ before the termination.

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

15 (i) declared void; or

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

18 ~~(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided~~
19 ~~in subsections (2) and (3).~~

20 (7) The exclusive method of judicial review of a solicitation or award by the department pursuant
21 to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that
22 section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this
23 section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory
24 to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any
25 other claim, cause of action, or request for relief for solicitations of awards allegedly made in violation of
26 law may not be heard or granted by a district court other than as provided in this section.

27 (8) The state is not required to delay, halt, or modify the procurement process pending the result
28 of a protest, contested case proceeding, or judicial review.

29 (9) The department may adopt rules governing the protest of solicitations and awards."

30

1 **Section 11.** Section 18-4-302, MCA, is amended to read:

2 **"18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state
3 contracts for supplies and services must be awarded by ~~competitive sealed bidding, pursuant to 18-4-303,~~
4 ~~except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of a source selection~~
5 ~~method provided for in this title, and subsections (2) and (3) of this section.~~ Supplies or services offered
6 for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or
7 services are regulated by the public service commission or other governmental authority.

8 (2) At the time that the department or ~~a purchasing another~~ agency opens bids or proposals, if a
9 supplier's current publicly advertised or established catalog price is received at or before the time that the
10 bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or
11 offeror or improves upon the conditions for the best proposal received using the same factors and weights
12 included in the proposal, the department or ~~purchasing~~ agency may reject all bids and purchase the supply
13 from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

14 (3) An office supply procured by the department's central stores program ~~through bulk purchase~~
15 ~~or procured under a term contract~~ may be purchased by ~~a purchasing an~~ agency, without meeting the
16 requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established
17 catalog price, or discount price offered to the ~~purchasing~~ agency is less than the price offered by the central
18 stores program ~~or under the term contract~~ if the office supply conforms in all material respects to the terms,
19 conditions, and quality offered by the central stores program ~~or under the term contract~~. A state office
20 supply term contract must include a provision by which the contracting parties acknowledge and agree to
21 the provisions of this subsection.

22 ~~(4) A contract for supplies or services, or both, INFORMATION TECHNOLOGY SYSTEMS AND~~
23 ~~SERVICES may be negotiated, in accordance with department rules and with the approval of the department~~
24 ~~director, directly with a vendor without using competitive sealed bidding or a competitive sealed proposal~~
25 ~~IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE DEPARTMENT~~
26 ~~DIRECTOR. A contract may be awarded pursuant to this section only when it is advantageous to the state~~
27 ~~to use direct negotiation in the procurement of new or unique requirements of the state, in the procurement~~
28 ~~of new technologies, or to achieve best net value. THE DEPARTMENT SHALL REPORT ANY ACTIVITY~~
29 ~~USING THIS METHOD OF PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE.~~

30 ~~(5) The department may, on behalf of a state agency, participate in, sponsor, conduct, or~~

1 ~~administer a AN INFORMATION TECHNOLOGY contract or other INFORMATION TECHNOLOGY business~~
 2 ~~relationship in a cooperative purchase pursuant to 18-4-402 with one or more public agencies, nonprofit~~
 3 ~~organizations, or business entities if the department determines the contract or relationship to be in the best~~
 4 ~~interests of the state. IN ACCORDANCE WITH DEPARTMENT RULES AND WITH THE APPROVAL OF THE~~
 5 ~~DEPARTMENT DIRECTOR. THE DEPARTMENT SHALL REPORT ANY ACTIVITY USING THIS METHOD OF~~
 6 ~~PROCUREMENT TO THE LEGISLATIVE FINANCE COMMITTEE."~~

7

8 **Section 12.** Section 18-4-303, MCA, is amended to read:

9 **"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include
 10 a purchase description and conditions applicable to the procurement.

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

15 (3) Bids must be opened publicly ~~in the presence of one or more witnesses~~ at the time and place
 16 designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent,
 17 when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and
 18 ~~such~~ other relevant information as may be specified by rule, together with the name of each bidder, must
 19 be recorded. The record must be open to public inspection. After the time of award, all bids and bid
 20 documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject
 21 to the requirements of subsection (4).

22 (4) Bids must be available for public inspection when the bids are opened if:

23 (a) the invitation for bids is issued by a state agency to contract with the private sector to provide
 24 services currently conducted by state employees; and

25 (b) acceptance of bids would result in the displacement of five or more state employees.

26 (5) Bids must be unconditionally accepted without alteration or correction, except as authorized
 27 in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which
 28 may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery,
 29 and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in
 30 evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or

1 life-cycle costs. The invitation for bids ~~shall~~ must set forth the evaluation criteria to be used. Only criteria
2 set forth in the invitation for bids may be used in bid evaluation.

3 (6) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation
4 of awards or contracts based on ~~such~~ bid mistakes may be permitted in accordance with rules adopted by
5 the department. After bid opening, ~~no~~ changes in bid prices or other provisions of bids prejudicial to the
6 interest of the state or fair competition may not be permitted. Except as otherwise provided by rule, all
7 decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid
8 mistakes must be supported by a written determination made by the department.

9 (7) The contract must be awarded with reasonable promptness by written notice to the lowest
10 responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation
11 for bids, ~~including the preferences established by Title 18, chapter 1, part 1, INCLUDING THE~~
12 PREFERENCES ESTABLISHED BY TITLE 18, CHAPTER 1, PART 1. If all bids exceed available funds as
13 certified by the appropriate fiscal officer and the low ~~responsive and~~ responsible and responsive bid does
14 not exceed ~~such~~ the funds by more than 5%, the director or the head of a purchasing agency ~~is authorized~~
15 may, in situations ~~where~~ in which time or economic considerations preclude resolicitation of a reduced
16 scope, ~~to~~ negotiate an adjustment of the bid price, including changes in the bid requirements, with the low
17 ~~responsive and~~ responsible and responsive bidder in order to bring the bid within the amount of available
18 funds.

19 (8) When it is considered impractical to initially prepare a purchase description to support an award
20 based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be
21 followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria
22 set forth in the first solicitation."
23

24 **Section 13.** Section 18-4-304, MCA, is amended to read:

25 "**18-4-304. Competitive sealed proposals.** (1) ~~When, under rules adopted by the department, the~~
26 ~~director, the head of a purchasing agency, or a designee of either officer above the level of the procurement~~
27 ~~officer determines that the use of competitive sealed bidding is either not practicable or not advantageous~~
28 ~~to the state, a contract may be entered into by competitive sealed proposals. The department may provide~~
29 ~~by rule that it is either not practicable or not advantageous to the state to procure specified types of~~
30 ~~supplies and services by competitive sealed bidding.~~ The department may procure supplies and services

1 through competitive sealed proposals.

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

3 (3) Adequate public notice of the request for proposals must be given in the same manner as
4 provided in 18-4-303(2).

5 (4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during
6 the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by
7 the department and must be open for public inspection after contract award. After the contract is
8 executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform
9 Trade Secrets Act, Title 30, chapter 14, part 4.

10 (5) The request for proposals must state the evaluation factors and their relative importance of
11 price and other evaluation factors. The award must be made to the responsible and responsive offeror
12 whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the
13 evaluation. The contract file must demonstrate the basis on which the award is made.

14 ~~(6) As provided in the request for proposals and under rules adopted by the department,~~
15 ~~discussions with responsible offerors who submit apparently responsive proposals may be conducted for~~
16 ~~the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation~~
17 ~~requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for~~
18 ~~discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award,~~
19 ~~for the purpose of obtaining best and final offers. The department may discuss a proposal with an offeror~~
20 ~~for the purpose of clarification or revision of the proposal. In conducting discussions, there may not be~~
21 ~~disclosure of any information derived from proposals submitted by competing offerors. The department may~~
22 ~~require the submission of cost or pricing data in connection with an award under this section.~~

23 ~~(7) The award must be made to the responsible offeror whose proposal is determined in writing~~
24 ~~to be the most advantageous to the state, taking into consideration price, including the preference in~~
25 ~~18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may~~
26 ~~be used in the evaluation. The contract file must contain the basis on which the award is made."~~

27

28 **Section 14.** Section 18-4-305, MCA, is amended to read:

29 **"18-4-305. Small purchases and limited solicitations.** Any procurement not exceeding the amount
30 established by rule may be made in accordance with small purchase or limited solicitation procedures

1 established by the department. Procurement requirements may not be artificially divided so as to constitute
2 a small purchase or limited solicitation under this section."

3

4 **Section 15.** Section 18-4-309, MCA, is amended to read:

5 "18-4-309. **Prequalification of suppliers.** Prospective suppliers may be prequalified in accordance
6 with department rules for particular types of supplies and services. ~~Solicitation mailing lists of potential~~
7 ~~contractors must include but not be limited to such prequalified suppliers."~~

8

9 **Section 16.** Section 18-4-310, MCA, is amended to read:

10 "18-4-310. **Types of contracts.** ~~Subject to the limitations of this section, any~~ Any type of contract
11 that will promote the best interests of the state may be used, ~~except that the use of a~~
12 ~~cost plus percentage of cost contract is prohibited. A cost reimbursement contract may be used only when~~
13 ~~a determination is made in writing that such contract is likely to be less costly to the state than any other~~
14 ~~type or that it is impracticable to obtain the supplies or services required except under such a contract."~~

15

16 **Section 17.** Section 18-4-312, MCA, is amended to read:

17 "18-4-312. **Bid and contract performance security.** (1) For state contracts for the procurement of
18 services or of supplies, the department may in its discretion require:

19 (a) bid security;

20 (b) contract performance security to guarantee the faithful performance of the contract and the
21 payment of all laborers, suppliers, ~~materialmen~~, mechanics, and subcontractors; or

22 (c) both bid and contract performance security.

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

25 (a) a sufficient bond with a licensed surety company as surety;

26 (b) an irrevocable letter of credit not to exceed \$100,000 in accordance with the provisions of Title
27 30, chapter 5, part 1;

28 (c) money of the United States;

29 (d) a cashier's check, certified check, bank money order, certificate of deposit, money market
30 certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings

1 and loan association that is insured by or for which insurance is administered by the federal deposit
2 insurance corporation or that is drawn and issued by a credit union insured by the national credit union
3 share insurance fund.

4 (3) The amount and type of the security must be determined by the department to be sufficient
5 to cover the risk involved to the state. The security must be payable to the state of Montana ~~and~~. Contract
6 performance security must remain in effect for the entire contract period. In determining the amount and
7 type of contract performance security required for each contract, the department shall consider the nature
8 of the performance and the need for future protection to the state. In determining the need for and amount
9 of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror
10 fails to enter into a formal contract. The considerations must include but are not limited to the type of
11 supply or service being procured, the dollar amount of the proposed contract, and delivery time
12 requirements. The department may adopt rules to assist it in making these determinations and in protecting
13 the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be
14 included in the invitations for bids or requests for proposals.

15 (4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract
16 or provide contract performance security, as required by the invitation for bid or request for proposal, after
17 notification of award, the department may, in its discretion, require the bidder to forfeit the bid security to
18 the state and become immediately liable on the bid security, but not in excess of the sum stated in the
19 security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the
20 bid bond or other security may not exceed the amount specified in the invitation for bid or request for
21 proposal.

22 (5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors
23 whose bids or proposals are not accepted.

24 (6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not
25 apply to procurements under this chapter."
26

27 ~~Section 23. Section 18-4-313, MCA, is amended to read:~~

28 ~~"18-4-313. Contracts terms, extensions, and time limits. (1) Unless otherwise provided by law,~~
29 ~~a contract, lease, or rental agreement for supplies or services may not be made for a period of more than~~
30 ~~7 years. However, the department may contract for the lease or purchase of telecommunications equipment~~

1 and systems, data processing equipment, the department of revenue liquor agencies, and the department
 2 of public health and human services medicaid management information system (MMIS) for a period not to
 3 exceed 10 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the
 4 extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period
 5 at the time of the agreement, and if the total contract period, including any extension or renewal, does not
 6 exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the
 7 availability and appropriation of funds for the fiscal periods. Unless otherwise provided by law, a contract,
 8 lease, or rental agreement for supplies or services may be made for a specific duration determined by the
 9 department to obtain the best net value for the state.

10 (2) ~~Prior to Before the issuance, extension, or renewal of a contract, it must be determined that:~~

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

12 and

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

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

17
 18 **Section 18.** Section 18-4-402, MCA, is amended to read:

19 "**18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor,
 20 conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services
 21 with one or more public procurement units in accordance with an agreement entered into between the
 22 participants independent of the requirements of part 3. ~~Such cooperative~~ Cooperative purchasing may
 23 include purchasing through federal supply schedules of the United States general services administration,
 24 joint or ~~multi-party~~ multiparty contracts between public procurement units and open-ended state public
 25 procurement unit contracts that are made available to local public procurement units."

26
 27 ~~**Section 25.** Section 18-5-308, MCA, is amended to read:~~

28 "~~18-5-308. Construction with other sections.~~ Procurement from small businesses under this part
 29 ~~is subject to all other statutes governing state procurement and all rules promulgated thereunder adopted~~
 30 ~~pursuant to this part, as now or hereafter later amended, except that in case of conflict this part governs~~

1 and the provisions set forth in ~~18-1-102, 18-1-111, and 18-1-112~~ shall not apply."

2

3 ~~Section 26. Section 18-6-101, MCA, is amended to read:~~

4 ~~"18-6-101. Power to sell state property—proceeds credited to general fund from which property~~
 5 ~~was purchased. (1) The department has exclusive power, subject to the approval of the governor, to sell~~
 6 ~~or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service~~
 7 ~~equipment, or other personal property of every kind owned by the state but not needed or used by any~~
 8 ~~state institution or by any department of state government.~~

9 ~~(2) Unless otherwise provided by law, the department shall credit the general fund from which the~~
 10 ~~property was purchased, less a reasonable handling fee, with all the money received from a sale. The~~
 11 ~~proceeds of the sale are statutorily appropriated, as provided in 17-7-502, to the agency that owned the~~
 12 ~~property before it was sold by the department.~~

13 ~~(3) Whenever the personal property was accounted for in an enterprise or internal service fund or~~
 14 ~~designated subfund account, the proceeds of the sale shall be credited to the appropriate enterprise or~~
 15 ~~internal service fund or designated subfund account."~~

16

17 ~~Section 27. Section 18-7-104, MCA, is amended to read:~~

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

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

28 ~~(2) Whenever if a collective bargaining agreement is in effect between an employer and employees~~
 29 ~~who are represented by a responsible organization which that is in no way influenced or controlled by the~~
 30 ~~management, such the collective bargaining agreement and its provisions shall must be construed as~~

1 ~~conditions prevalent in said the locality and shall be is the minimum requirement for being adjudged~~
 2 ~~considered a responsible bidder under this section, 18-7-107, or chapter 4 of this title or this section.~~

3 ~~(3) Printing firms having the use of using the union labels, as set forth above shall be deemed as~~
 4 ~~having provided in subsection (1), have complied with the provisions of this section, 18-7-107, or chapter~~
 5 ~~4 or this section of this title, but nothing in these provisions shall be construed as exempting such.~~
 6 ~~However, this section does not exempt the bidders from any the provisions of this section, 18-7-107, or~~
 7 ~~chapter 4 of this title or this section, and such the bidders shall also be required to conform to all the~~
 8 ~~provisions thereof of chapter 4 and this section."~~

9
 10 ~~Section 28. Section 18-7-106, MCA, is amended to read:~~

11 ~~"18-7-106. Penalty. Any officer of the state who shall accept any accepts printed matter for which~~
 12 ~~the state is chargeable in whole or in part or who is found to have has had printed matter produced, under~~
 13 ~~conditions other than as set forth in chapter 4 of this title, or 18-7-104, or 18-7-107 shall be, is subject~~
 14 ~~to a fine of \$50 for each and every offense."~~

15
 16 ~~Section 19. Section 18-8-211, MCA, is amended to read:~~

17 ~~"18-8-211. Coordination with other statutes. (1) This part need not be complied with by an~~
 18 ~~agency when the contracting authority makes a finding in accordance with this or any other applicable law~~
 19 ~~that an emergency requires the immediate execution of the work involved. Nothing in this This part relieves~~
 20 ~~does not relieve the contracting authority from complying with applicable law limiting emergency~~
 21 ~~expenditures.~~

22 ~~(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this~~
 23 ~~part.~~

24 ~~(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112~~
 25 ~~applies to this part, except that the agency shall select its proposed list of three architects or consulting~~
 26 ~~engineers in accordance with this part prior to submission to the department of administration.~~

27 ~~(4) The exception for services estimated to cost less than \$5,000 in 18-8-106 applies to this part."~~

28
 29 ~~Section 30. Section 53-1-203, MCA, is amended to read:~~

30 ~~"53-1-203. Powers and duties of department of corrections. (1) The department of corrections~~

1 shall:

2 ~~(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for~~
3 ~~the admission, custody, transfer, and release of persons in department programs except as otherwise~~
4 ~~provided by law. However, rules adopted by the department may not amend or alter the statutory powers~~
5 ~~and duties of the state board of pardons and parole.~~

6 ~~(b) subject to the functions of the department of administration, lease or purchase lands for use~~
7 ~~by institutions and classify those lands to determine those that may be most profitably used for agricultural~~
8 ~~purposes, taking into consideration the needs of all institutions for the food products that can be grown~~
9 ~~or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation~~
10 ~~of the persons confined in the institutions;~~

11 ~~(c) contract with private, nonprofit Montana corporations to establish and maintain~~
12 ~~community-based prerelease centers for purposes of preparing inmates of the Montana state prison who~~
13 ~~are approaching parole eligibility or discharge for release into the community. The centers shall provide a~~
14 ~~less restrictive environment than the prison while maintaining adequate security. The centers must be~~
15 ~~operated in coordination with other department correctional programs, including the supervised release~~
16 ~~program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's~~
17 ~~authority to operate and maintain community based prerelease centers.~~

18 ~~(d) utilize the staff and services of other state agencies and units of the Montana university system,~~
19 ~~within their respective statutory functions, to carry out its functions under this title;~~

20 ~~(e) propose programs to the legislature to meet the projected long-range needs of institutions,~~
21 ~~including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in~~
22 ~~institutions;~~

23 ~~(f) encourage the establishment of programs at the local and institutional level for the rehabilitation~~
24 ~~and education of adult felony offenders;~~

25 ~~(g) administer all state and federal funds allocated to the department for youth in need of~~
26 ~~supervision and delinquent youth, as defined in 41-5-103;~~

27 ~~(h) collect and disseminate information relating to youth in need of supervision and delinquent~~
28 ~~youth;~~

29 ~~(i) maintain adequate data on placements that it funds in order to keep the legislature properly~~
30 ~~informed of the specific information, by category, related to youth in need of supervision and delinquent~~

1 youth in out-of-home care facilities;

2 (j) ~~provide funding for and place youth who are alleged or adjudicated to be delinquent or in need~~

3 ~~of supervision and who are referred or committed to the department;~~

4 (k) ~~administer youth correctional facilities;~~

5 (l) ~~provide supervision, care, and control of youth released from a state youth correctional facility;~~

6 and

7 (m) ~~use to maximum efficiency the resources of state government in a coordinated effort to:~~

8 (i) ~~provide for children in need of temporary protection or correctional services; and~~

9 (ii) ~~coordinate and apply the principles of modern institutional administration to the institutions in~~

10 ~~the department.~~

11 (2) ~~The department and a private, nonprofit Montana corporation may not enter into a contract~~

12 ~~under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that~~

13 ~~limit the term of a contract do not apply to a contract authorized by subsection (1)(c).~~

14 (3) ~~The department of corrections may enter into contracts with nonprofit corporations or~~

15 ~~associations or private organizations to provide substitute care for youth in need of supervision and~~

16 ~~delinquent youth in youth care facilities."~~

17

18 **Section 31.** ~~Section 53-30-505, MCA, is amended to read:~~

19 ~~"53-30-505. Contract time limit. A contract entered into under 53-30-504 may not exceed a term~~

20 ~~of 30 years and must contain provisions for renegotiation after 30 years. The provisions of 18-3-104 and~~

21 ~~18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504."~~

22

23 **Section 20.** Section 60-2-112, MCA, is amended to read:

24 **"60-2-112. Competitive bidding.** (1) Except as provided in subsections (2) through (4), when the

25 estimated cost of any work exceeds \$50,000, the commission shall let the contract by competitive bidding

26 to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the

27 commission prescribes by its rules. ~~However, except when prohibited by federal law, the commission shall~~

28 ~~make awards and contracts in accordance with 18-1-102 and 18-1-112. HOWEVER, EXCEPT WHEN~~

29 PROHIBITED BY FEDERAL LAW, THE COMMISSION SHALL MAKE AWARDS AND CONTRACTS IN

30 ACCORDANCE WITH 18-1-102 AND 18-1-112.

1 (2) The commission may let a contract by means other than competitive bidding if it determines
2 that special circumstances so require. The commission shall specify the special circumstances in writing.

3 (3) The commission may enter into contracts with units of local government for the construction
4 of projects without competitive bidding if it finds that the work can be accomplished at lower total costs,
5 including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and
6 accounting services, administrative costs, and reasonable estimates of other costs attributable to the
7 project.

8 (4) The commission may delegate to the department the authority to enter, without competitive
9 bidding, agreed-upon price contracts for projects costing \$50,000 or less."

10

11 NEW SECTION. Section 21. Repealer. Sections ~~18-1-102, 18-1-103, 18-1-106, 18-1-111,~~
12 ~~18-1-112, 18-1-113, 18-1-114, 18-4-131, 18-4-225, 18-4-234, 18-7-107, 18-8-101, 18-8-102, 18-8-103,~~
13 ~~18-8-104, 18-8-105, 18-8-106, 18-8-111, and 18-8-112, MCA, are repealed.~~

14

15 NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
17 applications, the part remains in effect in all valid applications that are severable from the invalid
18 applications.

19

20 NEW SECTION. Section 23. Retroactive applicability. [Sections ~~6 and 15 2 AND 10~~] and the
21 repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful
22 solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief
23 other than those authorized by [section ~~15 10~~], unless a final judgment awarding damages has been
24 rendered regarding that claim, cause of action, or request for relief prior to [the effective date of this act].
25 A COMPLAINT WAS FILED IN DISTRICT COURT PRIOR TO JANUARY 1, 1992.

26

27 ~~NEW SECTION. SECTION 24. TERMINATION. SUBSECTIONS (4) AND (5) OF 18-4-302~~
28 ~~TERMINATE OCTOBER 1, 1999.~~

29

30 NEW SECTION. Section 24. Effective dates. (1) Except as provided in subsection (2), [this act]

1 is effective October 1, 1997.

2 (2) [Sections ~~6, 15, 34, and 35~~ 2, 10, 22, AND 23 and this section] and the repeal of 18-4-131

3 are effective on passage and approval.

4 -END-