

*sent.
02/03/06*

Bill, Thank you for the follow up here. I did add this issue to our short "give the Governor a heads up" list of possible legislation to be pursued in 2007, which was due this week. So..if/when we know what sort of exemption statement we need we have the placeholder in place to allow us to pursue the action. I currently have my staff doing some research for me on book jobbers, library best reasonable practices with regard to book purchases, as well as the laws and exemptions, then will be scheduling a meeting with state purchasing bureau folks and as appropriate our agency legal services. I will keep you posted and I would appreciate it if you can let me know what your City Attorney's has to say on the statue as well. Thanks, Darlene

From: Cochran, Bill [mailto:CochranB@ci.billings.mt.us]
Sent: Thursday, February 02, 2006 5:18 PM
To: Staffeldt, Darlene
Subject: RE: Ingram Ordering

Hi Darlene,

I had a good meeting this morning with our Deputy City Administrator to review the status of this issue. He's going to have our City Attorney's Office review whether MCA 18-4-305 applies to our purchases, in that each item we order from a jobber is a unique item, unlike office supplies, commodities, etc.

Although the public library homepages for Houston TX and Indianapolis IN both refer to statutory authority exempting library materials from state procurement requirements, they don't give the citations and I haven't researched yet. An explicit statutory exemption is accessible from the State of New Jersey homepage under Statutes Annotated, as follows:

NJSA 40:54-12.1 Purchases not requiring advertisements for bids.

The board of trustees of the free public library of any municipality or of a joint free public library may, within the limits of funds appropriated or otherwise made available to the board, purchase the following without advertising for bids therefore: (1) library materials including books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, video and magnetic tapes, other printed or published matter, and audiovisual and other materials of a similar nature; (2) necessary binding or rebinding of library materials; and (3) specialized library services.

Our Deputy City Administrator thought it would be a good idea for us to pursue an explicit statutory exemption, even if MCA 18-4-305 applies, just to make it unambiguous.

Let me know if I can be of any assistance as you continue to work on this.

Bill

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From: Staffeldt, Darlene [mailto:dstaffeldt@mt.gov]
Sent: Tuesday, January 31, 2006 12:45 PM
To: Cochran, Bill
Cc: Schmitz, Kris
Subject: RE: Ingram Ordering

Bill, Thank you for you phone call this morning. I am sorry that I missed the call. I appreciate the research you were able to share and I agree that we may have to do more research as soon as possible. I need to let the Governor's office know this week – Thursday of anything we will be taking to the legislature in regards to new legislation and/or revision and I have tentatively added this issue to the list in case we get down the road and decide that is what we have to do in order to get this "straighten" out for Montana's libraries. Brad seemed to imply that we could handle the exceptions in the administrative rules but we will keep all avenues open at this time. I will be pulling together some more facts/research and then meet with Brad as soon as possible. We (either Kris or I) will keep in touch with you. Could you send the URLs for the research you have done by email. Thanks, Darlene

From: Schmitz, Kris
Sent: Tuesday, January 31, 2006 7:36 AM
To: 'Cochran, Bill'
Cc: Staffeldt, Darlene
Subject: FW: Ingram Ordering

Hi Bill,
We are hitting a brick wall with DofA on the purchasing issue. See the response below. Darlene and I are in the process of setting up a meeting with Brad Sanders to go over his ruling on this and what it would take to get an administrative rule change. I will be in touch with more details after this meeting. I know this won't help you with your Thursday meeting but we all agree this is an area, if forced too, that we will need to change the "rules or laws" on this to allow the exemption. We will also try and pull a representative from the universities in on this meeting to give a little more fighting power on this issue.
Sorry...be in touch soon.
Kris

From: Sanders, Brad
Sent: Thursday, January 26, 2006 2:33 PM
To: Schmitz, Kris
Cc: Staffeldt, Darlene
Subject: RE: Ingram Ordering

Kris,

Title 18 MCA and ARM Title 2, Chapter 5 governs the procurement of all goods and services. We view books and publications as a good. Any purchase of more than \$25,000 must be competitively procured through a formal solicitation, unless there is a specific exemption. The only exemption available for the purchase of

books or publications is found in ARM 2.5.604(e), which allows for direct purchase if it is available from only one source. My understanding is these are available from multiple jobbers. Additionally, even if a library only purchases one of each, it may still represents a large order if the cumulative amounts of all books exceed the 25K threshold.

We could establish a multi-vendor contract at predetermined discounts that would allow libraries to purchase regardless of cost, or we would be willing to work with you to establish an administrative rule that exempts these goods from competition, with the appropriate justification.

Bottom line, at this point, we don't see anything that exempts these purchases from the Montana Procurement Act. Let me know if you want to discuss further.

thanks- Brad

-----Original Message-----

From: Schmitz, Kris
Sent: Thursday, January 26, 2006 1:02 PM
To: Sanders, Brad
Cc: Staffeldt, Darlene
Subject: FW: Ingram Ordering

Hi Brad,

Here is what Bill had sent me and the research he had done. Obviously I wasn't able to confirm it for him but I hope you can help clear this up for us. It would mean a major change for all libraries because none of us have ever put this out to bid.

Let me know what you find out.

Thanks for your help.

Kris

From: Cochran, Bill [mailto:CochranB@ci.billings.mt.us]
Sent: Thursday, January 26, 2006 12:40 PM
To: Varnai, Christine
Cc: McCandless, Bruce; RaymondS@ci.billings.mt.us; Schmitz, Kris
Subject: RE: Ingram Ordering

Christine,

I appreciated your meeting with Sandy and I last week and also your confirmation that, as long as we continue to get regular discount schedules from the three national book jobbers so we can justify who we do most of our business with, we would be OK with our current procedures. So I was disappointed that the state procurement officer told you otherwise after our meeting, per your message below.

I believe that the procurement officer is misinforming you and the State Library is in the process of confirming that for me; their Central Services Manager, who I've copied into this message, is unaware of any library in the state that works with a jobber in the fashion you've been told is required and states that "I'm not quite sure how you could even do it." The Director of Library Services at MSU-Billings and the Collection Management

Librarian at MSU-Bozeman both confirmed that no state university or college library, which are bound by the same procurement rules we as local governments are and spend considerably more on material than we do, bids out or contracts for service, but instead do the same thing we have always done. The Director of the Bozeman Public Library and the Assistant Director of the Great Falls Public Library confirm that they, too, deal with a primary vendor off of a standard discount letter of the type we showed you. In all these cases, state procurement officers, University finance staff, and auditors have confirmed that this is justifiable because no single item on any invoice exceeds the \$50,000 threshold and because the service provided is inherently sole source, since the major jobbers all offer somewhat different discount structures, services, and products.

The Montana statute that I suspect is what the procurement officer is referring to, 7-5-4302 MCA, requires competitive, advertised bidding for "a contract for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies or for the construction, repair, or maintenance in excess of \$50,000", which must be let to the lowest responsible bidder. Clearly the scope of this statute is for major vehicle and construction purchases and contracts, not non-exclusive discount schedules for the purchases of various small-cost book titles and audiovisual items. The way the requirement would play out for us, if it applied, would be that we would advertise twice in *The Billings Times* which presumably would draw the attention of the three national jobbers, who would competitively bid for our business and then enter into a contract with us. Not even the consortium of all the Montana university and college libraries together has ever entered into a contract with any of these jobbers.

The exception from state procurement requirements for library materials appears to be understood because of the per-item cost, the sole-source nature of the service, or both, in all states except in those in which it has been made an explicit exception in statute in states including Texas, Indiana, and New Jersey.

I'll share the results of the State Library's inquiry to state procurement officials on this issue, but, barring a surprise, it appears that we are doing exactly what all other state and local publicly funded libraries are doing and it appears that it has always been approved by state procurement officials, state and local finance officers, and auditors.

I would ask that you continue to approve blanket purchase orders per our current practice unless that State Library reports new information based upon their contact with state procurement officers, which would affect not only us, but the entire University system and public libraries in all the larger cities of the state.

Thank you for continuing to work with us on this, as I know you have been tasked to complete the Purchasing Policy ASAP and this is not resolving itself very timely to get that done. We'll work with you to get it cleared up as possible.

Bill

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From: Varnai, Christine
Sent: Monday, January 23, 2006 12:10 PM
To: Raymond, Sandy; Cochran, Bill
Subject: Ingram Ordering

Sandy and Bill,

I just spoke with the State Procurement Officer about whether a Blanket Order Purchase needs to follow the bid laws. The answer is YES. Even if a monthly purchase order was created, there should be a contract because since we all know the annual spend is \$60,000 and it is a continuous purchase, this technically should be bid out. Creating monthly purchase orders or Blanket Orders is really artificial dividing. This means, I will also have to review all the current City-wide Blanket Orders and review whether we have contracts or not.

So, unfortunately, this will have to be bid out. If we average the invoices at \$4K a month, \$48,000 a year, we can avoid a sealed bid or RFP process, which will save us some time. I'd be happy to accept new quotes as you showed me in our meeting and write up a short contract with you. This process should only really take one week and we're done and set for one year (or more if we put a clause with a yearly extension).

I've included a simple purchases contract for you to review.

Thank you,

Christine Varnai
Purchasing Agent
City of Billings



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