

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2014-013

TO: Jack Stucky

CC: Mayor John Engen, Bruce Bender, Leigh Griffing, Scott Paasch, Kevin Slovarp, Mike Haynes, Human Resources Department, City Clerk Department, City Attorney Department

FROM: Jim Nugent, City Attorney

DATE March 18, 2014

RE: Statutory special purchasing conditions for purchasing services from vocational rehabilitation supervised work programs.

FACTS:

Jack Stucky is in the process of preparing a contract renewal for Opportunity Resources for janitorial services for some city owned buildings, such as city hall and city council chambers and requested some information concerning Montana state law authorization for the city to purchase such supervised work program services from a sheltered work shop.

ISSUE(S):

May the City of Missoula purchase janitorial services for some of its buildings from a supervised work program provided by Opportunity Resources as a nonprofit sheltered workshop without first seeking competitive bids?

CONCLUSION(S):

Yes, pursuant to Montana state laws in title 18, chapter 5, part 1 and title 53, chapter 7, part 2 Montana Code Annotated (MCA) the City of Missoula may purchase services from a nonprofit sheltered work shop supervised work program without first seeking competitive bids. Specifically section 18-5-103 MCA pertaining to special purchasing conditions with respect to sheltered workshops provides that the provisions of title 18 MCA relating to competitive bidding do not apply to purchases made in accordance with title 18, chapter 5, part 1 entitled "SHELTERED WORKSHOPS".

LEGAL DISCUSSION:

Initially it should be noted that the 2013 Montana State Legislature amended municipal government law section 7-5-4302 MCA pertaining to the monetary cost threshold for municipal governments being required to advertise for competitive bids for the purchase of a variety of items including maintenance increasing the monetary threshold for requiring competitive bids from \$50,000.00 up to \$80,000.00. However, section 18-5-103 MCA entitled "PROCUREMENT REQUIREMENTS" pertaining to special purchasing conditions associated with nonprofit sheltered workshops authorizes procurement of services without competitive bidding.

Title 53, chapter 7 MCA is entitled "VOCATIONAL REHABILITATION". Part 2 of title 53, chapter 7 MCA is entitled "SHELTERED WORKSHOPS". Subsection 53-7-201(1) MCA expressly indicates that the purpose of title 53, chapter 7, part 2 pertaining to "SHELTERED WORKSHOPS" "is to encourage the development and improvement of supervised work programs and support services for persons with severe disabilities". Section 53-7-201 MCA provides:

53-7-201. Legislative findings and purpose. (1) The purpose of this part is to encourage the development and improvement of supervised work programs and support services for persons with severe disabilities.

(2) Supervised work programs and support services should be available to provide persons with severe disabilities the skills and means by which they may lead socially and vocationally productive lives so they can be integrated into society.

(3) The state may encourage the establishment of and provide funding for supervised work programs and support services for persons with severe disabilities.

Important phrases that are defined in title 53, chapter 7, part 2 in section 53-7-202 MCA include definitions of the phrases "severe disability", "supervised work program", "support services" "supported employment" and "work activity". Section 53-7-202 MCA setting forth definitions provides:

53-7-202. Definitions. (1) "Department" means the department of public health and human services.

(2) "Severe disability" means a severe physical or mental impairment that seriously limits a person's functional capacities in respect to obtaining employment.

(3) "Sheltered employment" means a recognized program of rehabilitation, remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature provided by a nonprofit sheltered workshop provider. Sheltered employment includes job skills and social skills training and remunerative employment.

(4) "Supervised work program" means a program providing guidance in learning and achieving the requirements of job performance through work activity, sheltered employment, and supported employment.

(5) "Support services" means continuous or periodic job skills training provided to a person at a worksite to enable the person to perform work. Support services also include services away from the worksite that are necessary to allow a person with a severe

disability to participate in a supervised work program, such as transportation, direction and assistance in functional skills, and counseling for family members.

(6) "Supported employment" means competitive work in an integrated work setting for a person with a severe disability who is in need of assistance in order to become employed or remain employed. Supported employment includes assessment, preplacement preparation, job development, job placement, job skills training, and support services.

(7) "Work activity" means therapeutic work-related activities provided by a nonprofit work activity center provider to persons whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic work-related activities include training in basic skills of living and any purposeful activity so long as work or production is not the main purpose.

Section 53-7-203 MCA is entitled "PURCHASE OF SERVICES" for the purchase of services from a supervised work program for work performed by persons with severe disabilities utilizing funds appropriated or allocated from any sheltered employment provider, work activity center, supported employment provider or support services provider. The MCA Annotations for section 53-7-203 MCA volume 11, at page 600 in identifying and discussing the legislative intent of the 1989 amendment states that the statement of intent attached to the 1989 state legislation states in part:

"IT IS THE INTENT OF THE LEGISLATURE IN ENACTING THIS BILL, TO ESTABLISH A COMPREHENSIVE PROGRAM OF SUPERVISED WORK AND SUPPORT SERVICES FOR PERSONS WITH SEVERE DISABILITIES. THE PROGRAM MUST INCLUDE SHELTERED EMPLOYMENT, SUPPORTED EMPLOYMENT, WORK ACTIVITY, AND SUPPORT SERVICES THAT WILL HELP PERSONS WHO ARE SEVERELY DISABLED TO LEAD SOCIALLY AND VOCATIONALLY PRODUCTIVE LIVES SO THEY CAN BE INTEGRATED INTO SOCIETY." (emphasis added)

After the identification of the legislative history in the codified MCA, there is a cross reference to special state purchasing conditions pertaining to sheltered workshops in title 18, chapter 5, part 1 MCA. Title 18 MCA is entitled "PUBLIC CONTRACTS". Title 18, chapter 5 MCA is entitled "SPECIAL PURCHASING CONDITIONS". Title 18, chapter 5, part 1 MCA is entitled "SHELTERED WORKSHOPS".

Section 18-5-101 MCA sets forth definitions, including definitions of a "certified sheltered workshop" or "work activity center" as well as a definition of a "person with a disability". Section 18-5-101 MCA provides:

18-5-101. Definitions. As used in this part, the following definitions apply:

- (1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to persons with disabilities, in whole or in part, that:
 - (a) holds a current certificate issued by the United States department of labor for either one or all of the following:
 - (i) evaluation or training;

- (ii) a regular work program; or
- (iii) a work activity center;
- (b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of the facility not otherwise included in this part;
- (c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under this part, employs and trains persons with disabilities for not less than 75% of the hours of direct labor required for the manufacture of products or the provision of service; and
- (d) is referred to as a "facility".

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

(3) "Person with a disability" means an individual with a physical, mental, or emotional disability that constitutes a substantial impediment to employment and that prevents the individual with the disability from engaging in normal competitive employment.

Section 18-5-103 MCA entitled "PROCUREMENT REQUIREMENTS" authorizes the purchase of services from a certified sheltered workshop without the requirement of competitive bidding being applicable to the purchase of services from a supervised work program. Section 18-5-103 MCA provides:

"18-5-103. PROCUREMENT REQUIREMENTS". State departments, institutions, and agencies may procure listed products and services from a facility. **THE PROVISIONS OF THIS TITLE (title 18 MCA) RELATING TO COMPETITIVE BIDDING DO NOT APPLY TO PURCHASES MADE IN ACCORDANCE WITH THIS PART.** "(emphasis added)

Pursuant to title 18 statutory definitions, a public agency is defined pursuant to subsection 18-1-101(2)(c) MCA as including "political subdivisions". "Political subdivisions include city or municipal corporations. See for example subsection 2-9-101(5) and 7-7-109(1)(c) MCA.

CONCLUSION(S):

Yes, pursuant to Montana state laws in title 18, chapter 5, part 1 and title 53, chapter 7, part 2 Montana Code Annotated (MCA) the City of Missoula may purchase services from a nonprofit sheltered work shop supervised work program without first seeking competitive bids. Specifically section 18-5-103 MCA pertaining to special purchasing conditions with respect to sheltered workshops provides that the provisions of title 18 MCA relating to competitive bidding do not apply to purchases made in accordance with title 18, chapter 5, part 1 entitled "SHELTERED WORKSHOPS".

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney
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