

DEPARTMENT OF ADMINISTRATION  
GENERAL SERVICES DIVISION  
STATE PROCUREMENT BUREAU

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MEMORANDUM

TO: George Harris, Administrator  
Centralize Services Division  
Department of Livestock

FROM: Brad Sanders, Bureau Chief   
State Procurement Bureau

DATE: December 28, 2011

SUBJECT: Response to USDA Administrative and Financial Review of  
Brucellosis Bison Operations Management Program Findings

The Department of Livestock requested assistance responding to the USDA Administrative and Financial Review of Brucellosis Bison Operations Management Program Findings. Specifically, the findings that the Department of Livestock should *"implement policies and procedures to undertake affirmative action in the procurement of equipment, services, and supplies from minority firms, women's business enterprises, and labor surplus area firms in accordance with the regulations"*. (page 5 of the findings report)

18-1-102, MCA, provides that the State of Montana apply a reciprocal preference to all contracts for the purchase of goods or services and specifically includes all contracts involving federal funds. Although not the specific recommendation of the report, this statute provides the only preference for awarding Montana contracts. Further, 18-1-111, MCA disallows any partiality or favoritism in awarding contracts. Providing a preference for minority or women owned business or minority firms is not allowed under Montana law.

The Montana Procurement Act, 18-4, MCA specifies the requirements for awarding contracts for supplies and services. 18-4-132, (a), MCA states this chapter (Title 18, Chapter 4) "applies to the expenditure of public funds, including federal assistance money, by the state acting through a governmental body under any contract." The Montana Procurement Act does not include the ability of the State of Montana to consider factors such as race or gender in awarding contracts.

Title 7 CFR, Part 3016, Subpart C, Section 36(e) states: *"Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used **when possible**"*. This is not

allowed per the state statutes reference above. The State has no process in place to certify or monitor specific sector of contractors. This approach is consistent with other federally funded projects. The Montana Department of Livestock (DOL) must comply with all State procurement and contracting laws. DOL does not have the ability to implement policies and procedures not specifically allowed by Montana statute.

I am available to discuss this with you and or the staff of the USDA.

Thank you.