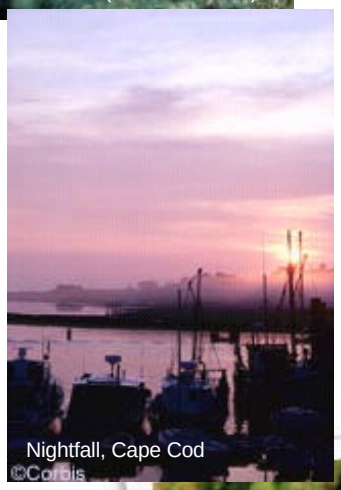
The Commonwealth of Massachusetts

Procurement Policies & Procedures Handbook

Sanderson Brook Falls
Chesterfield (Westfield River)

Great Meadows National Wildlife Refuge, Sudbury

Fishermen's Memorial Statue, Gloucester


Nightfall, Cape Cod
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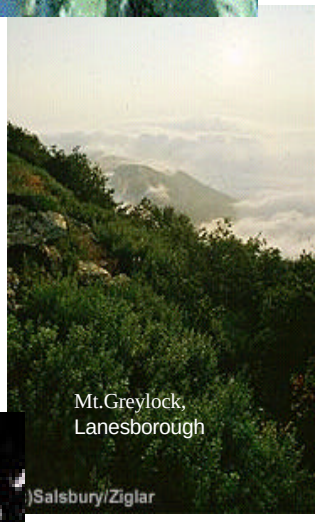
Symphony Hall, Springfield


Mt.Greylock, Lanesborough
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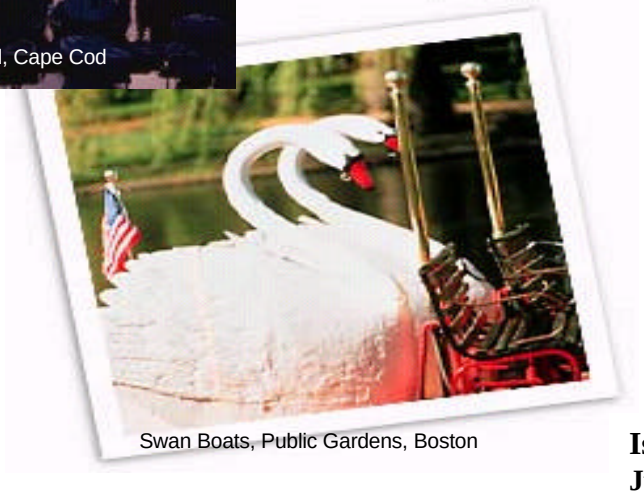
Swan Boats, Public Gardens, Boston

Tanglewood Music Center, Lenox

Issued by the Operational Services Division
July 2000

HANDBOOK UPDATE 1
Issued January 30, 2001

The purpose of this update is to notify you of form changes. The handbook itself has not been changed.

Content:

- ***The Standard Contract Form and Instructions:*** This form has been revised and, as the new title indicates, now contains instructions. It also contains links to policies, procedures and legal references which are incorporated by reference into the Standard Contract Form. Contractors are responsible for checking these instructions, policies, procedures and legal references which may be updated periodically.

- ***Request for Verification of Taxation Reporting Information (Massachusetts Substitute W-9 Format):*** This form contains clerical corrections.

- ***Authorization for Electronic Funds Payments:*** This form contains small changes.

HANDBOOK UPDATE 2
Issued June 4, 2001

The purpose of this update is to notify you of Purchase of Service Attachment and title changes. The handbook itself has not been changed. The forms listed below have been amended to be consistent with the revised *Uniform Financial Statements and Independent Auditor's Report*. These forms are effective for all FY 2002 Purchase of Service contracts.

Content:

- ***Purchase of Service Attachment 3: Fiscal Year Program Budget***
- ***Purchase of Service Attachment 5: Non-Reimbursable Cost Program Offset Schedule***
- ***Purchase of Service UFR Titles***

HANDBOOK UPDATE 3
Issued November 20, 2002

The purpose of this update is to present revised Affirmative Program Market information. This package contains the historical background of the program as well as management responsibilities and procurement guidance. Further, it introduces the Affirmative Market Program Plan complete with guidelines for its evaluation and monitoring.

The following table presents the content in the update and the action required within the *Procurement Policies and Procedures Handbook*. The handbook document has not been updated.

Content	***Action Required for the Handbook***
Chaper 3: Affirmative Market Program – Minority and Women Business Enterprise (M/WBE) Participation	Chapter 3, page 33 Replace section within Step 4 –Draft Evaluation Criteria: Affirmative Market Program – Minority and Women Business Enterprise (M/WBE) Participation
New Appendix – Affirmative Market Program Plan, Guidance, Form and Evaluation, Executive Order 390	Add to the appendices
Appendix: RFR Required Specifications: Affirmative Market Program (AMP)	Appendix: RFR Required Specifications, page 192 Replace Affirmative Market Program
Appendix: RFR Required Specifications: Affirmative Market Subcontracting Policies	Appendix: Add to RFR Required Specifications

CHAPTER 3, PAGE 33: Affirmative Market Program – Minority and Women Business Enterprise (M/WBE) Participation

Historical Background

The Affirmative Market Program (AMP) currently housed at OSD, was established in August of 1996 through Executive Order 390 (EO390) as signed by then Governor Weld and Lt. Governor Cellucci "Establishing an Affirmative Market Program in Public Contracting". It establishes a policy to promote the award of state contracts in a manner that develops and strengthens certified Minority and Women Business Enterprises (M/WBEs). As a result, Bidders are strongly encouraged to develop creative initiatives to help foster business relationships with State Office of Minority and Women Business Assistance (SOMWBA) certified M/WBEs with commitments either for their development and growth, as joint venture partners, as subcontractors or other initiatives.

In establishing Executive Order 390 the "Commonwealth has affirmed responsibility to develop and maintain equitable practices and policies in the public marketplace." The hearings and investigations that both the Massachusetts Commission Against Discrimination and the Executive Office of Transportation and Construction conducted produced the documentation necessary to demonstrate the purpose of Executive Order 390. Therefore all executive offices, agencies, departments, boards, and commissions of the Commonwealth (hereafter referred to as "agency") are directed to implement the narrowly tailored Affirmative Market Program.

Subject to the approval of the Secretary of Administration and Finance or his/her designee all participating state agencies and authorities shall set annual benchmarks for spending with minority- and women-owned businesses. A diverse business community strengthens the economy and is beneficial to all of the citizens of the Commonwealth of Massachusetts.

Management Responsibilities

The Executive Director of the Affirmative Market Program monitors compliance of AMP objectives and reports directly to the Secretary of Administration and Finance and the state's Purchasing Agent. Secretary and agency heads shall designate a highly placed individual charged with management of this program within their agencies. These AMP Coordinators are responsible for the implementation and enforcement of this program and the coordination of those functions.

All managers are responsible for improving their agency performance in the AMP by assisting in the success of meeting their annual benchmarks and increasing contracts with M/WBEs. In "recognizing the importance of joint ventures and partnerships involving M/WBEs" and "increasing the participation of M/WBEs in state contracting", the Governor's Diversity Initiative has included the Affirmative Market Program as a mandated objective. These performance standards for managers reflect the Commonwealth's commitment to EO 390.

All agencies and participating authorities shall adhere to the mandate of Executive Order 390, which states, "it is the intention of this Executive Order that the principles underlying the Affirmative Market Program be incorporated into the fabric of general management in state government". To achieve this there must be a coordination of efforts in purchasing which would include Affirmative Market Program Coordinators, procurement, purchasing, fiscal staff and procurement management teams.

General Guidance

Affirmative Market Program Opportunities for Incidental Purchases Under $5,000

An incidental purchase is defined as a one-time purchase, or a series of purchases for a one-time non-recurring need. The total dollar value cannot exceed the agency or object code (OBJ2) transaction thresholds for incidental purchases. Pursuant to Executive Order 390, agencies should always consider using SOMWBA certified Minority and Women-Owned Business Enterprises (M/WBE) for incidental purchases. A listing of SOMWBA certified businesses is located at www.mass.gov/somwba. These purchases would assist the agency in reaching their annual Affirmative Market Program benchmarks.

Affirmative Market Program Opportunities for Small Procurements Under $50,000

When agencies need to conduct procurements under $50,000.00, they should approach this as an opportunity to further AMP activity and meet their program benchmarks by taking the following steps:

- Include their agency' AMP coordinator in the selection of the bidders and the bidding process for input.
- Consider that small procurements need not be posted on Comm-PASS. This allows the agency the opportunity to strongly consider a SOMWBA certified business.
- The RFR must be sent to a minimum of three bidders, though 3 responses are not required. Using the SOMWBA certified business list at www.state.ma.us/somwba or the OSD statewide contract certified vendor list at comm-PASS@state.ma.us, the agency can identify potential bidders.
- Written response by the bidder may include the Affirmative Market Program Plan Form. Although this form is not required for small procurements, it can be a productive tool to inform bidders further of the Commonwealth's commitment to the Affirmative Market Program.
- Evaluation of the response should take into consideration the "best value" criterion and may also consider the certification status of the bidders (if the procuring agency has completed thorough research to identify patterns of inequality) as agencies consider opportunities for meeting benchmarks.

Affirmative Market Program Requirements for Large Procurements Over $50,000

- All large procurements over $50,000 must include language that requires the submission of an Affirmative Market Program Plan. The mandatory language and sample plan are included in the appendix. To assist and encourage bidders' participation in the Affirmative Market Program (AMP), the AMP Plan submitted by a bidder must be evaluated at 10% or more of the total evaluation. The Contract Manager, PMT and AMP Coordinator have the discretion to require at least one or more components of the AMP Plan are included in the bidder's submission in order for a bidder to receive total scoring. The components include the following areas: subcontracting, growth and development, ancillary uses, past performance, or other creative initiatives.
- In addition to the requirement that an Affirmative Market Program Plan be included in all procurements over $50,000, SOMWBA certified businesses are strongly encouraged to submit responses and bid on RFR's regardless of the size of the procurement or contract. Agencies may award additional points to SOMWBA certified bidders under certain circumstances (see below). This additional scoring is above and beyond the points that may be awarded to SOMWBA certified bidders who submit an AMP Plan with their response to the RFR.

Please Note: Before awarding additional points to SOMWBA certified primary contractors, procuring agencies must research and analyze the availability and utilization by the Commonwealth of M/WBEs for the specific commodity or service being procured. This research must be conducted with sufficient documentation of any possible history of disparity among certified vendors. Reference materials could include utilization studies, disparity studies, or availability analysis that documents a history of under-utilization of M/WBEs. In addition, records of public hearings and other anecdotal evidence of such under-utilization, if available, should be documented. The research and resulting documentation produced by the contract manager or the procurement management team should be compelling to substantiate the disparity and support the decision to provide an additional 5**%** or more of the total score to SOMWBA certified businesses. Any newly conducted fact finding utilization studies, availability analysis or studies of this type will be posted on a regular basis on the AMP website at **www.state.ma.us/eoaf/amp**. Absent this analysis, procuring agencies should not be awarding additional points or weight solely on the basis of SOMWBA certification unless an agency has mandated workforce goals. The AMP directors and AMP Coordinators are available to provide further guidance. Questions regarding this requirement may also be directed to each agency's general counsel or the legal unit at OSD.

- While agencies have flexibility in determining what to request and require in a bidder's Affirmative Market Program Plan, it is the agency's responsibility to develop an approach that will result in each agency meeting its annual AMP benchmarks. Once an AMP Plan is submitted, negotiated and approved, the procuring agency can then monitor the contractor's performance, and use actual expenditures with SOMWBA certified contractors and subcontractors to fulfill their own AMP expenditure benchmarks. M/WBE participation must be incorporated into and monitored for all types of procurements regardless of size, however, the AMP Plan is mandated only for large procurements over $50,000.

- Each participating executive branch agency and authority has assigned an AMP Coordinator to oversee the AMP plans and to set AMP benchmarks. The Contract Manager and/or Affirmative Market Program Coordinator should use discretion in the benchmark setting process in order to set benchmarks that are realistic and attainable. The percentage of the benchmark should be assessed by the Contract Manager or PMT and evaluated and reviewed by the Affirmative Market Program Coordinator. When the scope of the contract and vendor pool availability allows, it is the expectation that benchmarks will increase each year of the contract. Possible methods and tools for research of certified vendor availability for the geographic areas covered by the RFR can include: querying the SOMWBA website, looking at the M/WBE on statewide contracts listing, maintaining your own certified vendor files and data base, outreach activities to community based organizations working with minority and women entrepreneurs and communication with AMP Directors and other AMP Coordinators.

Please refer to the appendix for specific examples and suggestions that agencies should consider when developing Affirmative Market Program Plan language. A sample AMP Plan Form may be found in the appendix section.

Components of an Affirmative Market Program Plan

The AMP RFR methodology used here is a guideline meant to address items in an AMP Plan. It should be adapted to fit the specific needs of each contract and RFR. Higher evaluation points should clearly be awarded to AMP Plans that show more initiatives, use of certified vendors in the primary industry (defined as the industry directly related to the specified contract), subcontracting expenditure commitments and partnerships for the purpose of contracting with the Commonwealth of Massachusetts.

Agencies may consider requiring all or some of the following components as part of the Affirmative Market Program Plan submitted by bidders:

1. Subcontracting: Bidders may be asked to include expenditure commitments and copies of subcontracting agreements, MOU's (Memos of Understanding) or otherwise binding commitments between the bidder and certified M/WBE firms.
2. Growth and Development: Bidders may be asked to submit a plan for education, training, mentoring, resource sharing, joint activities, and assistance in attaining SOMWBA certification that would increase industry capacity and the pool of qualified SOMWBA certified companies. Other creative initiatives should be encouraged under this option.
3. Ancillary Uses of Certified M/WBE Firm (s): Bidders may be asked to include expenditure commitments for use of certified M/WBE firm(s) with or without the use of written commitments between the bidder and M/WBE firm(s). A description of the ancillary uses of certified M/WBEs, if any, must be in the AMP Plan Form.
4. Past Performance: Bidders may be asked to include information on past expenditures with certified M/WBEs for the previous two years.
5. In Addition: Agencies are encouraged to include additional incentives for bidders to commit to at least one SOMWBA certified MBE and at least one certified WBE in the submission of their AMP Plans.

Additional information and examples of these five approaches can be found in the appendix.

Planning for the Affirmative Market Program Plan in a Procurement

Agencies are directed to implement a narrowly tailored AMP. The following steps are important considerations when developing AMP language in an RFR:

✓ **Include AMP Coordinators or their designees as PMT participants or advisors.**
✓ Research the SOMWBA certified vendor pool availability, industry capacity and climate.
✓ Determine an appropriate AMP approach (see appendix for options).
✓ Require a formal Affirmative Market Program Plan from all bidders (for large procurements).
✓ Identify compliance and reporting methodologies.
✓ Determine how the AMP Plan will be evaluated (10% of the total evaluation is the required minimum for large procurements).
✓ Include additional weight of 5% **or more** for SOMWBA certified businesses if an agency has determined that a disparity exists and that additional weight would correct this disparity.
✓ Negotiate the AMP Plan with the selected bidders before contract signing.

NOTE: A copy of EO390 is included in the appendix. In addition, a directory of SOMWBA certified firms is available via the Internet at www.mass.gov/somwba. A Minority Business Enterprise (MBE) or a Woman Business Enterprise (WBE) is

defined as a business that has been certified as such by the State Office of Minority and Women Business Assistance (SOMWBA). Minority- and Women-Owned firms that are not currently SOMWBA-certified but would like to be considered as an M/WBE for an RFR should apply for certification. An application is available, and should be filed with SOMWBA in order to be considered as such during the evaluation process. Documentation of having applied for SOMWBA certification must be included as part of the bidder's response. For further information on SOMWBA certification, contact the State Office of Minority and Women Business Assistance at (617) 727-8692 or via the Internet at www.mass.gov/somwba. Other resources are available to M/WBE firms that may qualify for SOMWBA certification. See www.state.ma.us/eoaf/amp, http://Comm-PASS@state.ma.us or www.mass.gov.

Negotiations of the AMP Plan Before Contract Signing

Prior to signing a contract, agencies may negotiate a benchmark or target for spending with SOMWBA certified M/WBEs for the duration of the contract, but only to increase what was committed in the original response.

- This benchmark should be based on a reasonable and verifiable methodology within the context of their projected revenues (if available) for the new contract, the Bidder's past history with M/WBE firms (if applicable), actual availability of certified M/WBEs, geographic location of the project, scope of contractual work and/or other relevant factors.

- This benchmark is a commitment by the Bidder. This negotiation will ***not*** result in an increase in the evaluation scores for bidders. It is in the best interest of bidders to propose a comprehensive AMP plan with their original proposal since AMP plan evaluation scores will be based on the original proposals (with possible clarifications and BAFOs [Best and Final Offer] if used).

- For Bidders who have previously done business with SOMWBA certified M/WBEs, negotiations will be based within the context of the Bidder's expenditures with M/WBEs for the past two years and projected increases with available SOMWBA certified M/WBEs for the new contract.

The AMP Plan Implementation

Agencies need to develop their own deliverables for AMP Plan implementation. The ultimate outcome being sought is the successful partnering between private businesses, certified vendors, and the Commonwealth of Massachusetts to participate in the Affirmative Market Program.

- The PMT, AMP Coordinator or contract manager will set timelines for progress reviews for the purpose of compliance and tracking of contractor's benchmark. Reviews will be conducted either quarterly or semi-annually as determined by the PMT, AMP Coordinator or contract manager. The importance for maintaining such scheduled reviews is to proactively address any issues or difficulties in a timely manner during the use of the contract. This would allow the opportunity to set a strategic plan for M/WBE use with the contractor prior to the annual review to ensure a positive outcome of benchmark evaluations.
- Contractors may be required to show gross revenues on the contract, expenditures with M/WBE firms, copies of checks to M/WBE subcontractors, current worker's compensation contributions, current unemployment insurance policy and other information to verify progress in meeting the benchmarks. In those cases where AMP plan commitments were proposed in a bidder's response based on expected Commonwealth revenues, and the level of Commonwealth spending is less than projected, adjustments will be considered accordingly during the contract review period. Bidders should be advised of this possibility in the RFR so as not to discourage their interest and participation in Commonwealth solicitations. Contractors should report any difficulties in meeting AMP Plan commitments to the contract manager, PMT or AMP Coordinator as soon as they occur.
- Benchmarks will be evaluated every year at the anniversary date or at the time of contract renewal.
- Compliance with the AMP Plan is a contractually required, material condition of the contract.

Guidelines for Monitoring and Enforcing Compliance of AMP Plan

The Executive Office for Administration and Finance (ANF) and the Operational Services Division (OSD) jointly issue the AMP portion of the RFR for use by agencies and their departments. It is the expectation that all parties act in good faith in the execution of this AMP policy. The prime contractor should immediately communicate any difficulties relative to compliance with AMP requirements to the contract manager, PMT or AMP Coordinator. Once the contract manager, PMT or AMP Coordinator has had an opportunity to make an assessment of the circumstances and issues involved, appropriate measures or steps will be taken to address any concerns or issues of non-compliance for all parties involved. A contractor may be considered out of compliance with the AMP plan under certain conditions including, but not limited to, the following:

- If the timeline of the benchmark is not met;
- If the AMP form (s) or verification (s) of certification, or verification of expenditures with M/WBEs are materially incomplete by the due date or otherwise not submitted in accordance with the contract requirements; and/or
- If any change in or substitution to identified M/WBEs is made without prior notification to and approval of the contract manager or AMP Coordinator.

If the contractor or subcontractor is not in compliance with the terms agreed to in the AMP Plan, the contract manager or AMP Coordinator should work closely with the contractor to resolve any outstanding issues. This may involve informal discussions with the contractor about the specific AMP related problem and include a meeting with the contractor to discuss the issue. The contractor shall provide information as is necessary in the judgement of the contract manager, PMT or AMP Coordinator to ascertain its compliance with the terms agreed to in the AMP Plan.

If no resolution occurs and the problem continues, more formal steps should be taken, including the following:

1. Written notice from the contract manager, PMT or AMP Coordinator to the contractor, describing the problem, proposed solution and response time required, with a copy of the notice to the PTL and OSD, if applicable.
2. Follow-up meetings with the contractor.
3. Formal corrective action plans may be initiated with written notice from the procuring agency or OSD, as appropriate, if no resolution has occurred at this point.
4. At any time during non-compliance with the AMP Plan and depending upon agency-established internal control procedures, the contract manager, PMT or AMP Coordinator, in conjunction with the responsible accounts payable person, may review invoices upon receipt for the purpose of determining whether to reject said invoices. Any rejected invoices will be returned with a written explanation for its rejection.
5. Upon notice to the contractor, an agency may impose a penalty fee or suspend a contract until a contractor has resolved the AMP non-compliance.
6. If a contractor's poor performance in meeting their AMP Plan benchmarks is serious enough to suggest contract termination, debarment or disqualification actions, then the matter should be referred to the agency's legal counsel.

The contract manager, PMT or AMP Coordinator should maintain sufficient documentation of all written or verbal communication to support the actions taken to resolve any non-compliance issues with the AMP Plan.

Guidelines for AMP Plan Exemptions

Although submission of an AMP is required for all procurements over $50,000, OSD recognizes that there may be unique circumstances whereby a PMT or AMP Coordinator may need to exercise some discretion in implementing this requirement. Examples of this might include procurements that result in the establishment of "qualified lists" of contractors, or in those cases where a significant number of small or individually owned and operated businesses are expected to respond to a procurement. In these cases the PMT may determine that requiring a prospective commitment to a percentage or fixed dollar amount through sub-contracting or ancillary arrangements at the onset of the contract might discourage bidders from responding. OSD does not expect that this will happen often, but where the PMT or AMP Coordinator believes this to be the case, it may exercise some discretion in AMP Plan implementation. The PMT or AMP Coordinator may request a waiver in writing to the AMP office in those cases where a bidder can clearly document that requiring submission of an AMP Plan would present a hardship and would impede their participation in any contracting opportunity. The AMP office will respond to all waiver requests within 10 working days.

If an AMP waiver is approved and a contract signed with the bidder, all parties including the contractor (s) identified in the waiver, AMP coordinator, and PMT must agree to work towards implementation of a contractor specific AMP plan during the life of the contract. The AMP Director or designee may follow up periodically with agencies that have received waivers to assess status and progress towards implementation of an AMP plan during the life of the contract.

NEW APPENDIX – Affirmative Market Program Plan, Guidance, Form and Evaluation; Executive Order 390

Components of A Bidders AMP Plan

While agencies have flexibility in determining what to request and require in an Affirmative Market Program Plan, it is the agency's responsibility to develop an approach that will result in each agency meeting its annual AMP benchmarks. When drafting the AMP Plan agencies should determine, based on the scope of the contract and "best value" practices, the components of the AMP plan that will be required in a bidder's response, keeping in mind that building M/WBE capacity within all industries will allow for a larger pool of qualified bidders in the future.

AMP Plan Options

Agencies have the flexibility to select all or some of the following components for inclusion in the required AMP Plan:

1.) Projected benchmark (s) or commitment (s) to future expenditures during the life of the contract with M/WBE(s) through Subcontracting. Responses must include expenditure commitments and copies of subcontracting agreements, MOUs (Memo of Understanding) or otherwise binding commitments between the bidder and M/WBE firms.

2.) Projected benchmark (s) or commitment (s) to future expenditures during the life of the contract with M/WBE(s) through Growth and Development. Responses must include commitments for expenses for education, training, mentoring, resource sharing, joint activities, and assistance in attaining SOMWBA certification and other creative initiatives.

3.) Projected benchmark (s) or commitment (s) to future expenditures during the life of the contract with M/WBE(s) through Ancillary Uses of M/WBE firm(s). Responses must include expenditure commitments from the bidder for use of M/WBE firm(s) with or without the use of written commitments between the bidder and M/WBE firm(s). Description of the ancillary uses of M/WBEs must be in the AMP Plan Form.

4.) Request information on a bidder's past performance (in the last 2 years) and expenditures with certified M/WBEs.

5) In addition, agencies are encouraged to include additional incentives for bidders to commit to at least one SOMWBA certified MBE and at least one SOMWBA certified WBE in each AMP Plan submitted. A description of bidder capacity or use of these M/WBEs should be included in the AMP plan.

ADDITIONAL GUIDANCE

- To assist agencies in establishing reasonable and realistic AMP benchmarks in each contract, the following formula may be helpful. It is at the discretion of the contract manager to decide which methodology best meets his/her needs according to their specific RFR.

Prior Two Year Average M/WBE Expenditures **(If Applicable)**	+	Projected Additional Expenditures With M/WBE **(For Each Year of the Contract)**	=	M/WBE Benchmark **(For Each Year of the Contract)**

- When both MBEs and WBEs are included in a bidder's AMP response, a separate benchmark should be submitted for each in order to track M/WBE usage and spending separately.

- Benchmarks are expected to increase yearly when factors allow.

- For Bidders that have not previously done business with SOMWBA certified Minority and Women-Owned Businesses, (M/WBEs), benchmarks should be negotiated based on vendor pool availability of certified M/WBEs, the total contract amount, M/WBE availability, geographic location of the project, scope of contractual work or other relevant factors.

- Bidders should be encouraged to research available SOMWBA certified M/WBE vendor pools.

- The Contract Manager or Affirmative Market Coordinator will set timelines for progress reviews for the purpose of compliance and tracking of contractor's benchmark either quarterly or mid-year. Reports from contractors will be required to show gross revenues on the contract and expenditures with certified M/WBE firms to verify progress in meeting the benchmarks. Benchmarks will be evaluated every year at the anniversary date or at the time of contract renewal.

Sample Affirmative Market Program Plan Form

OSD has developed the attached sample Affirmative Market Program Plan form that must be used by agencies when issuing RFRs over $50,000. Use of this specific form is not required; agencies have the flexibility to develop their own forms to capture and evaluate the AMP plans submitted by bidders. If alternative forms are developed, the following information should, at a minimum, be requested:

- A separate AMP Plan Form to be submitted with each bidder's response (one copy for each MBE/WBE) to document the requirements and assist in the evaluation.

- Names, addresses, phone numbers, fax numbers, email addresses, and contact persons of SOMWBA certified M/WBE firms proposed within each AMP Plan.

- A description of each business relationship to be established and how the proposed relationship(s) will result in increased participation of SOMWBA certified M/WBEs in the delivery of commodities and services to the Commonwealth.

- The actual dollar amounts (benchmarks) or percentage of total funds, to be spent with each SOMWBA certified MBE and/or WBE firm in each twelve-month period related to the contract (if the contract extends over 1 or more years). The contract manager, PMT or AMP Coordinator can request a bidder to submit a benchmark committing to an actual dollar amount or percentage of total funds.

- The actual dollar amounts spent with each MBE and/or WBE firm in the last 2 years (if applicable).

- A copy of the current SOMWBA certification letter or verification of the application that was submitted to SOMWBA for each MBE or WBE firm.

AFFIRMATIVE MARKET PROGRAM (AMP) FORM

Pursuant to Executive Order 390, any contract with a potential financial benefit of $50,000 or more requires a bidder to complete applicable sections of this form and include the required attachments for consideration in the scoring of their submission for any contracting opportunity with the Commonwealth of Massachusetts.

Bidder Name**:** _____
RFR Name/Title: _____ RFR Number: _____
Contact Name: _____
Phone: ( ) _____
Fax: ( ) _____
Email address: _____
Company Address: _____
Is Bidder SOMWBA Certified? Yes ❒ No ❒

Bidders must submit one form for each M/WBE Business Relationship

The bidder's business relationship is with:
Please Check (Only One Per Form): _____MBE _____WBE _____M/WBE_____ M/W Non Profit
SOMWBA Certification Number & Expiration Date (Copy of SOMWBA certificate must be attached): _____

Check type of business relationship that applies. Agencies may consider requiring all or some of the following components as part of the AMP Plan submitted by bidders.

_____ 1. Subcontract: verification of expenditure commitments.
_____ 2. Growth & Development: plan for education, training, mentoring, resource sharing, other initiatives.
_____ 3. Ancillary: verbal or written expenditure commitments
_____ 4. Past Performance: past expenditures with certified M/WBEs for previous 2 years.
_____ 5. Additional Creative Initiatives: description needed: _____

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1. Please complete this Section if the business relationship is Subcontract:

Committed Expenditures: Year 1: $_____
Benchmark: Year 2: $ _____ Year 3: _____ Year 4: $_____ Year 5: $_____

Note: All expenditures for Subcontractors require a contract agreement between Bidder & M/WBE.
Description of commodities or services acquired from subcontractor (attach additional pages as necessary): _____

2. Please complete this section if the business relationship is Growth & Development:

Please provide a narrative here that describes your approach in building the capacity of the M/WBE, including deliverables or measurable outcomes and anticipated dates of completion which can be validated during the contract. (Attach additional pages as necessary): _____

3. Please complete this section if the business relationship is Ancillary:

Committed Expenditures: Year 1: $_____
Benchmark: Year 2: $_____ Year 3: $_____ Year 4: $_____ Year 5: $_____
Total $ _____ for all years with a written contract.
Total $ _____ for all years with a verbal agreement.
Description of commodities or services M/WBE will provide (continue on additional pages as necessary): _____
_____

4. Please complete this section for consideration relating to Past Performance (or spending with certified minority- or women-owned businesses):

Expenditures for the past 2 years: $_____ in Year 200___ ; $_____ in Year 200___.
Description of these expenditures for commodities or services (continue on additional pages as necessary): _____
_____

5. Please complete this section for consideration relating to any Additional Incentives:

Please provide a description of any creative approaches to partnering with certified businesses (continue on additional pages as necessary): _____
_____
_____
_____
_____

Certification: I hereby certify under the pains and penalty of perjury that the information above is correct, to the best of my knowledge:

_____
(Signature of Authorized Signatory of Bidder)

_____
(Print Name)

_____
(Title)

_____
(Business Name)

_____
(Date)

EVALUATION of the AMP PLAN

An Agency's evaluation of the AMP Plan should be based primarily on how well it demonstrates the development and strengthening of Minority and Women Business Enterprises (M/WBEs) within the service area defined by the RFR. Participation of M/WBEs should be considered a "best value" criterion in the procurement process. The following are recommendations or guidelines that can be used as an evaluation tool and adapted to your RFR. You can make your own RFR/Evaluation components or choose other components and scores that best suit the industry and types of contractors the PMT has targeted for the contract. Thoughtful discussions within the PMT and with the AMP Coordinators will provide the best components in the AMP Plan for the particular procurement.

OSD has developed a sample evaluation-grid for the AMP by component options, which includes definitions, information to request from bidders and other helpful information. Agencies should make their own evaluation-scoring sheet based on the AMP components selected for that particular RFR. Scores may be based on a poor, fair, good, very good or excellent rating, on a mathematical formula or other scoring methodology.

AMP Component Option	Definition	Bidder Submission Should Include:	Additional Information	Considerations for Evaluation
1. Subcontracting with SOMWBA certified businesses	An individual, business, or organization that is SOMWBA certified and has a contract or formal written agreement to provide services and/or commodities to a Commonwealth contractor.	▪ Names, addresses, phone numbers, fax numbers, email addresses, and contact persons of SOMWBA certified M/WBE firms proposed within the AMP Plan. ▪ A description of each business relationship to be established, e.g. how the proposed relationship(s) will result in increased business and revenue to SOMWBA certified sub-contractors. ▪ The actual dollar amounts (benchmark), to be spent with each SOMWBA certified MBE and/or WBE firm during the life of the contract.	Using a sub-contracting approach in an AMP plan works best when there is an available pool of qualified W/MBE's. These may be newly incorporated or developing companies that might not be in a position to compete as a prime contractor but could be a valuable sub-contracting partner. Subcontractor participation should be based on the broadest and most inclusive available pool of M/WBEs. The services provided via the subcontract will be directly related to scope of the contract. Agencies should consider and plan for how sub-contracting information will be reported by the prime contractor throughout the contract duration. Agencies can identify potential subcontractors by using the SOMWBA certified business list at www.mass.gov/somwba or the OSD statewide contract certified vendor list at comm-PASS@state.ma.us.	PMTs or AMP Coordinators should rate the bidders response based on the commitments made in their AMP plan. If this component is the only one selected for inclusion in an AMP plan, it should receive the most weight. Additional weight should be given to the responses that are proposing the greatest dollar commitment to certified W/MBEs through sub-contract agreements and to those responses that commit to at least one certified MBE and one certified WBE.

AMP Component Option	Definition	Bidder Submission Should Include:	Additional Information	Considerations for Evaluation
2. Growth and Development	A plan that addresses the education, training, mentoring, resource sharing, joint activities and general assistance that is provided to W/MBEs that results in increased capacity in a specific industry and increases the pool of qualified SOMWBA certified companies.	▪ Names, addresses, phone numbers, fax numbers, email addresses, and contact persons of M/WBE firms seeking SOMWBA certification proposed within the AMP Plan. ▪ A description of each business relationship to be established, e.g. how the proposed relationship(s) will result in increased business and revenue to SOMWBA certified sub-contractors.	Using a growth and development approach in an AMP plan works best when there are little or no documented SOMWBA certified companies available to do business with the Commonwealth. This approach may be of particular value to the Commonwealth when an explicit outcome of the procurement is to begin to develop certified SOMWBA capacity within a specific geographic area or within a specific service type. Agencies should consider and plan for how growth and development information will be reported by the prime contractor (bidder) throughout the contract duration. A good example of this type of approach would be a procurement that requires bidders to either: a) Show capacity development through measurable increases in the number of certified W/MBEs within a specified area or within an industry. b) Document steady and significant growth in the annual revenue of certified W/MBEs as a result of mentoring, sub-contracting arrangements, joint ventures or other approaches. Agencies may elect to encourage bidders to include those expenditures with M/WBE's which may not have been certified during the past two years if these M/WBEs are currently undergoing the SOMWBA certification process. Bidders would be required to submit documentation of this process and any assistance they have provided their minority and women owned businesses in achieving certification status.	PMTs or AMP Coordinators should rate the bidder response based on the commitments made in their AMP plan. If this component is the only one selected for inclusion in an AMP plan, it should receive the most weight. If growth and development activities are one of several AMP options required in the AMP plan, the PMT should weight the criteria based on the desired result or best value. If the target is increased Commonwealth spending with certified W/MBEs immediately, then sub-contracting commitment should be weighted more heavily than growth and development. If, however, the goal is to develop and increase sustainable, long term relationships and growth, then growth and development initiatives should receive the heaviest weighting. Additional weight should also be given to the responses that are proposing the greatest dollar commitment to certified W/MBEs through growth and development activities and to those responses that commit to at least one certified MBE and one certified WBE.

AMP Component Option	Definition	Bidder Submission Should Include:	Additional Information	Considerations for Evaluation
3. Ancillary Service/Purchase Agreements with SOMWBA certified businesses	Any use of a SOMWBA certified M/WBE with or without a written agreement. Ancillary services are generally not directly related to the core services or commodity being delivered. As an example, a bidder providing counseling services who purchases office supplies or equipment maintenance from a SOMWBA certified company is an example of an ancillary agreement.	• Names, addresses, phone numbers, fax numbers, email addresses, and contact persons of SOMWBA certified M/WBE firms proposed within the AMP Plan. ▪ A description of each business relationship to be established, e.g. how the proposed relationship(s) will result in increased business and revenue to SOMWBA certified businesses. ▪ The actual dollar amounts (benchmark), to be spent with each SOMWBA certified MBE and/or WBE firm during the life of the contract.	Using an Ancillary Approach in an AMP Plan works best where there are limited opportunities to directly sub-contract a portion of the services or commodities required under the contract but there is a sufficient pool of SOMWBA certified businesses to provide services or commodities that support the general operation of the bidder. This approach may be combined with other AMP options and may be used when the primary contractor (bidder) is looking for creative initiatives for use of certified vendors. Agencies should consider and plan for how ancillary agreement information will be reported by the prime contractor (bidder) throughout the contract duration. A good example of this approach is when a bidder wants to improve the local economy by building partnerships with certified vendors or a bidder wants to purchase goods and services from certified vendors in its local area that ultimately will increase Commonwealth vendor pools, capacity and community development.	PMTs or AMP Coordinators should rate the bidder's response based on the commitments made in their AMP plan. This item may help insure that the bidder's efforts are not focused primarily on one M/WBE and that maximum utilization is considered. A relatively small amount of the evaluation scoring may be appropriate here.
4..Past Performance	A Bidder's expenditures with SOMWBA certified MBEs and/or WBEs within the past two years.	• Names, addresses, phone numbers and contact persons of SOMWBA vertified M/WBE firms with which the bidder has done business in the last 2 years. • The actual dollar amounts spent with each MBE and/or WBE firm in the last 2 years (if applicable).	Using past performance history may be an excellent indicator of a bidder's commitment to AMP objectives. PMTs or AMP Coordinators could rate the bidders based on past business with SOMWBA certified M/WBEs. This may help insure the bidders take the time to provide accurate M/WBE expenditures with their proposal. This in turn provides the basis for a realistic benchmark. Agencies may elect to encourage bidders to include those expenditures with	A relatively small amount of the evaluation scoring may be appropriate here but there should be some positive weight given for past year commitments.

AMP Component Option	Definition	Bidder Submission Should Include:	Additional Information	Considerations for Evaluation
			M/WBE's which may not have been certified during the past two years if these M/WBEs are currently undergoing the SOMWBA certification process. Bidders would be required to submit documentation of this process and any assistance they have provided their minority and women owned business in achieving certification status.	
5. Other	In addition, agencies are encouraged to include further incentives for bidders to commit to at least one SOMWBA certified MBE and at least one SOMWBA certified WBE in each AMP plan submitted.	▪ A description of bidder capacity or use of these M/WBEs should be included in the AMP plan. ▪ A description of the type of business relationship to be established, e.g. how the proposed relationship(s) will result in increased business opportunities and revenue to SOMWBA certified or eligible contractors.	Including this approach in an AMP Plan allows creativity in the inclusion of at least one minority-owned and one women-owned business in the submission of an AMP plan. This approach will also assist in ensuring equitable outreach by bidder to both types of certified businesses.	PMTs or AMP Coordinators should rate the bidder's response based on the commitments made in their AMP plan. This item may help insure that the bidder's efforts are not focused primarily on only one certified vendor and that consideration is given to all possible partnerships. A relatively small amount of the evaluation scoring may be appropriate here.

EXECUTIVE ORDER 390

AFFIRMATIVE MARKET

PROGRAM IN PUBLIC CONTRACTING

THE COMMONWEALTH OF MASSACHUSETTS
Executive Department
State House Boston 02133
(617) 727-3600

ARGEO PAUL CELLUCCI
GOVERNOR

CHARLES D. BAKER
SECRETARY

By His Excellency

WILLIAM F. WELD
GOVERNOR

EXECUTIVE ORDER NO. ***390***

ESTABLISHING AN AFFIRMATIVE MARKET PROGRAM
IN PUBLIC CONTRACTING

WHEREAS, The Commonwealth has an affirmative responsibility to develop and maintain equitable practices and policies in the public marketplace;

WHEREAS, a diverse business community strengthens the state economy and is beneficial to all of the citizens of the Commonwealth;

WHEREAS, in 1990, the Massachusetts Commission Against Discrimination conducted hearings and investigations which documented a history of discrimination against minorities and women in the Commonwealth, and in 1994, the Executive Office of Transportation and Construction produced a Disparity Study which documented a history of discrimination against minority and women owned businesses, in which the Commonwealth's agencies were participants;

WHEREAS, this discrimination against minorities and women currently affects the utilization of minority and women owned businesses in state contracting;

WHEREAS, the Commonwealth has a compelling interest in redressing the effects of past discrimination through the utilization of the available and qualified pool of minority and women owned businesses;

NOW, THEREFORE, I, WILLIAM F. WELD, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, and Lieutenant Governor ARGEO PAUL CELLUCCI, do hereby order as follows:

Section 1. **Declaration of Policy .** It is the policy of the Commonwealth to promote equality in the market and, to that end, to encourage full participation of minority and women owned businesses in all areas of state contracting, including contracts for construction, design, goods and services.

Section 2. **Affirmative Market Plans**. The Commonwealth has a compelling interest in using racial and gender based classifications for the purposes of remedying past discrimination and promoting other, non-remedial objectives such as the delivery of effective human services in the areas of public health, safety and welfare.

Subject to the approval and direction of the Secretary of Administration and Finance, all executive offices, agencies, departments, boards and commissions of the Commonwealth (hereinafter referred to as "Agency" or "Agencies") are hereby directed to implement the narrowly tailored affirmative market program set forth in this Executive Order which shall include race and gender conscious goals where necessary to eliminate disparity between minority or women owned businesses (M/WBEs) and other business entities in the relevant market, defined as the Commonwealth of Massachusetts.

For purposes of this Executive Order, "minority" shall be defined as a permanent resident of the U.S. operating a business .within the Commonwealth who is black, Western Hemisphere Hispanic, Asian, American Indian, or Cape Verdean, and a "Minority Business Enterprise" (MBE) as a minority business certified by the-State Office of Minority and women Business Assistance (SOMWBA) or another state Agency. A "Woman Business Enterprise" (WBE) shall be a business certified as such by SOMWBA or another state Agency.

Goals for M/WBE participation in state funded contracts shall be based upon the broadest and most inclusive pool of available M/WBEs capable of performing the contracts and interested in doing business with the Commonwealth in the-areas of construction, design, goods and services. SOMWBA, or its successor, shall create and maintain a current directory of certified M/WBEs which will serve as one source of information in determining the pool of available M/WBEs. Goals shall be established by the Secretary of Administration and Finance, or his/her designee, and shall be expressed as overall annual program goals, applicable to the total dollar amount of an Agency's contracts awarded during the fiscal year for each of the Agency's types of contracts. The goals established in Section 1.2 of Executive Order 237 shall remain in effect until revised goals are developed pursuant to this Executive order, which shall occur promptly, but in no event later than January 1, 1997. Goals developed pursuant to this Executive Order shall be revised as necessary for the fiscal year beginning July 1, 1997 and at least every two years thereafter.

The Secretary of Administration and Finance, or his/her designee, shall develop a procedure by which Agencies may, for an individual contract, adjust the goals for M/WBE participation (whether the goals are established pursuant to Executive Order 237 or pursuant to this Executive Order) based upon actual availability, geographic location of the project, the contractual scope of work or other relevant factors.

The Secretary of Administration and Finance, or his/her designee, shall develop a good faith efforts waiver procedure by which Agencies may determine, at any time prior to the award of the contract, that compliance with the goals is not feasible and by which Agencies may reduce or waive the goals for an individual contract.

Recognizing the importance of joint ventures and partnerships involving M/WBEs in increasing the participation of M/WBEs in state contracting, the Secretary of Administration and Finance, or his/her designee, shall develop guidelines and procedures for Agencies to follow in contracting with such entities. Such guidelines and procedures shall seek to encourage the development of joint ventures and partnerships for the purpose of contracting with the Commonwealth.

In connection with the affirmative market program, SOMWBA shall regularly review and, where necessary, modify its certification process to ensure that it operates effectively, and shall report annually to the Secretary of Administration and Finance.

Section 3. **Capacity Development.** The Massachusetts Office of Business Development **(MOBD),** or its successor, is hereby designated the state Agency responsible for providing a capacity development program to M/WBEs and other interested businesses seeking to do business with the Commonwealth. The capacity development program shall include, but is not limited to, the following core areas of business development: strategic planning, financial management planning, human resource-management and planning, information technology access and management, and . marketing.

MOBD shall report annually to the Secretary of Administration and Finance on its progress in assisting M/WBEs and other businesses.

Contracting Agencies of the Commonwealth shall supplement the capacity development program provided by MOBD with industry specific assistance, training, education and procurement information.

Section 4. **Program Oversight, Enforcement and Reporting Requirements.** The Secretary of Administration and Finance shall be responsible for the overall management, monitoring and enforcement of the program established pursuant to this Executive Order. A Program Director shall be designated within the Executive Office of Administration and Finance to assist in program development, coordination and compliance. A Director of Enforcement shall be designated within the Executive Office of Administration and Finance with responsibility for monitoring contract compliance across all Agencies, addressing potential program violations and coordinating Agency enforcement activities with SOMWBA and the Attorney General.

Each Secretary and Agency head shall designate a highly placed individual charged with management of this program. Each Secretary and Agency head may designate such other

personnel as they deem necessary to support the implementation, monitoring and enforcement of this program and the coordination of those functions. Each Secretariat shall ensure that Agencies establish, subject to guidelines developed by the Secretary of Administration and Finance or his/her designee, special provisions that serve as governing standards for contract compliance. It is the intention of this Executive Order that the principles underlying the affirmative market program be incorporated into the fabric of general management in state government.

Each Secretariat shall report annually to the Secretary of Administration and Finance on the effectiveness of the program, including a report of the total dollar amounts awarded and actually paid to M/WBEs in all areas of state contracting. The Secretary of Administration and Finance shall report annually, within ten weeks of the issuance of the Annual Financial Report by the Office of the Comptroller, to the Minority and Women Business Enterprise Oversight Committee established by this Executive order and to the Governor.

Section 5. **Minority and Women Business Enterprise Oversight Committee**. The Secretary of Administration and Finance shall appoint a Minority and Women Business Enterprise Oversight Committee, not to exceed twenty members, which shall assist the Secretary in the implementation of this Executive order. Oversight Committee members shall serve for two year terms, except that in the initial appointments, one half shall be appointed to one year terms, and one half shall be appointed to two year terms. Members may serve a maximum of three (3) full two year terms.

Section 6. **Independent Authorities and Public Institutions of Higher Learning**. Independent authorities and public institutions of higher learning are encouraged to adopt M/WBE policies and programs consistent with this Executive Order.

Section 7. **Sunset Provision.** The Executive Office for Administration and Finance shall review the program described in this Executive Order at least every five years. The review shall determine: whether the objectives are being met; whether the conditions giving rise to the Order continue to exist; whether race and gender neutral measures are capable of addressing the effects of discrimination without the other measures specified in the order; and whether the program described in the Order should be modified or sunsetted.

Section 8. Effective Date. With the exception of the goal component of the affirmative market program, as set forth in Section 2 of this Executive order, all provisions of this Executive Order are effective immediately. The goal component of Order 237, as set forth in Section 1.2 of Executive Order 237, shall remain in effect until revised goals - are developed pursuant to Section 2 of this Executive Order, but in no event shall it remain in effect beyond January 1, 1997. All other provisions of Executive Order 237 are hereby immediately revoked.

Given at the Executive Chamber in Boston this 6th day of August in the year one thousand nine hundred and ninety-six.

_____
William F. Weld, Governor
Commonwealth of Massachusetts

_____
Argeo Paul Cellucci, Lieutenant Governor
Commonwealth of Massachusetts

_____
William Francis Galvin
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

APPENDIX: RFR – Required Specifications

Affirmative Market Program (AMP).
Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs) and resulted in the Affirmative Market Program in Public Contracting. As a result, M/WBEs are strongly encouraged to submit responses to this RFR, either as prime vendors, subcontractors, joint venture partners or other type of business partnerships.

Non-certified bidders are strongly encouraged to develop creative initiatives to help foster new business relationships with M/WBEs within the primary industries affected by this RFR. In order to satisfy the compliance of this section and encourage bidder's participation of AMP objectives, the Affirmative Market Program Plan for large procurements greater than $50,000 must be evaluated at 10% or more of the total evaluation. Once an AMP Plan is submitted, negotiated and approved, the agency will then monitor the contractor's performance, and use actual expenditures with SOMWBA certified contractors to fulfill their own AMP expenditure benchmarks. M/WBE participation must be incorporated into and monitored for all types of procurements regardless of size, however, submission of an AMP Plan is mandated only for large procurements over $50,000.

Agencies may require some or all of the following components as part of the Affirmative Market Program Plan submitted by bidders: Sub-contracting with certified M/WBE firms, Growth and Development activities to increase M/WBE capacity, Ancillary use of certified M/WBE firms, Past Performance or information of past expenditures with certified M/WBEs. Agencies are encouraged to include additional incentives for bidders to commit to at least one certified MBE and WBE in the submission of AMP plans.

A Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), M/Non-Profit, or W/Non-Profit, is defined as such by SOMWBA. All certified businesses are required to submit an up to date copy of their State Office of Minority and Women Business Assistance (SOMWBA) certification letter. The purpose for this certification is to participate in the Commonwealth's Affirmative Market Program for public contracting. Minority- and Women-Owned firms that are not currently certified but would like to be considered as an M/WBE for the purpose of this RFR should submit their application at least two weeks prior to the RFR closing date. For further information on SOMWBA certification, contact their office at 1-617-727-8692 or via the Internet at mass.gov/somwba.

Affirmative Market Program Subcontracting Policies. Prior approval of the agency is required for any subcontracted service of the contract. Agencies may define required deliverables including, but not limited to, documentation necessary to verify subcontractor commitments and expenditures with Minority- or Women-Owned Business Enterprises (M/WBEs) for the purpose of monitoring and enforcing compliance of subcontracting commitments made in a bidder's Affirmative Market Program (AMP) Plan. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.

HANDBOOK UPDATE 4
Issued May 27, 2003

The purpose of this update is to present revised Request for Response Optional and Required Specifications. It also introduces a new form, the Prompt Payment Discount Form, for optional use by departments.

The following table highlights the changes in the optional and required specifications.

The original handbook document has not been updated (the specifications start on page 189). However, these specifications and the new Prompt Payment Discount Form have been posted on the OSD Website Forms page (mass.gov/osd). Further, this update has been appended to the front of the *Procurement Policies and Procedures Handbook* (also available on the Website at mass.gov/osd).

Request for Response Optional Specifications

Specification	***Change***
Emergency Standby Commodities and/or Services	This new, optional language requires vendors to give the Commonwealth priority in the provision of commodities and services in the event of a declared state of emergency. This language will be required for all statewide contracts. Departments should consider including this language as well.
Prompt Payment Discounts (including the new Prompt Payment Discount Form)	This new, optional language encourages bidders to provide discounts in exchange for early and/or on-time payments. A new Prompt Payment Discount Form has also been developed for departments' use.

Request for Response Required Specifications

Specification	***Change***
Affirmative Market Program (AMP)	This updated language has already been introduced in Handbook Update #3.
Electronic Funds Payment	Vendor participation is now required for all Commonwealth contracts, unless the bidder can demonstrate a hardship. Previously, the language encouraging vendor participation was required but vendor participation had been optional.

Identifiable Health Information	This new, required language specifies certain requirements for contractors doing business with departments that are subject to the Federal Health Insurance Portability and Accountability Act of 1996.
Information Technology (required for Information Technology contracts only)	This new language requires bidders to conform with the Commonwealth's Enterprise Information Technology Policies, Standards and Procedures.
Pricing: Federal Government Services Administration (GSA) or Veteran's Administration Supply	This new language requires the bidder, upon request, to provide the Commonwealth with pricing schedules available under their GSA or other federal pricing contracts. This information will be useful to the Procurement Management Team in negotiating lower prices.
Pricing: Price Limitation	This new language requires vendors to give the Commonwealth the same low price for similar commodities and services enjoyed by other customers.

OPTIONAL SPECIFICATIONS

The following RFR provisions may appear in Commonwealth competitive procurements conducted under 801 CMR 21.00:

Alternatives. A response which fails to meet any material term or condition of the RFR, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, bidders may submit responses proposing alternatives which provide equivalent, better or more cost effective performance than achievable under the stated RFR specifications. These alternatives may include related commodities or services that may be available to enhance performance during the period of the contract. The response should describe how any alternative achieves substantially equivalent or better performance to that of the RFR specifications.

The department will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this RFR is to provide the best value of commodities and services to achieve the procurement goals of the department. Bidders that propose discounts, uncharged commodities and services or other benefits in addition to the RFR specifications may receive a preference or additional points under this RFR as specified.

Contractors may also propose alternatives for equivalent, better or more cost effective performance than specified under the Contractor's original response to enable the department to take advantage of enhanced technologies, commodities or services which become available during the term of the contract.

Brand Name or Equal. Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any commodity or service, and the department may consider clearly identified offers of substantially equivalent commodities and services submitted in response to such reference.

Debriefing. *Optional specification for non-POS RFRs.* Non-successful bidders may request a debriefing from the department. Department debriefing procedures may be found in the RFR.

Emergency Standby Commodities and/or Services. Due to a declaration of a state of emergency where the safety and well-being of Commonwealth citizens are at risk, the Commonwealth of Massachusetts may request specific commodities and/or services from its contractors. Contractors may be called upon to supply and/or deliver to the Commonwealth on a priority basis such commodities and/or services currently under contract.

Such accommodations may be requested from a contractor during an actual emergency. To accommodate such requests, contractors may be requested and must make every effort to service these requests from regular sources of supply at the rates set forth in any standard contract resulting from this RFR.

Environmentally Preferable Products and Services. The department and contractor(s) may negotiate during the contract term to permit the substitution or addition of Environmentally Preferable Products (EPPs) when such products are readily available at a competitive cost and satisfy the department's performance needs.

Estimated Provisions. The Commonwealth makes no guarantee that any commodities or services will be purchased from any contract resulting from this RFR. Any estimates or past procurement volumes referenced in this RFR are included only for the convenience of bidders, and are not to be relied upon as any indication of future purchase levels.

Prompt Payment Discounts (PPD). All bidders responding to this procurement are strongly encouraged to participate in the Commonwealth Prompt Payment Discount (PPD) initiative for receiving early and/or on-time payments. PPD benefits both Contractors and the Commonwealth. Contractors benefit by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. Participation in the Electronic Funds Transfer initiative

further maximizes the benefits with payments directed to designated accounts, thus eliminating the impact of check clearance policies and traditional mail lead time or delays. The Commonwealth benefits because contractors reduce the cost of products and services through the applied discount. Payments that are processed electronically can be tracked and verified through the Comptroller's VendorWeb system. The PPD offering form can be found on the OSD forms page.

Bidders should submit agreeable terms for Prompt Payment Discount offerings using the PPD offering form within their proposal, unless otherwise specified by the PMT. The PMT will review, negotiate or reject the offering as deemed in the best interest of the Commonwealth.

Use of a Procurement by a Single or Multiple Departments: Multiple Department Procurement/Limited User Contracts. Departments reserve the right to include an option for other named departments to purchase services or commodities under the same terms of the contract. Should departments exercise this option, bidders will be required to specify their ability to extend services to other departments and the rates to be used. This department will execute contracts on behalf of all of the participating departments with the selected bidder(s).

Use of a Procurement by a Single or Multiple Departments: Single Department Procurement/Multiple Department User Contracts. This department reserves the right to include an option for other departments to purchase services or commodities under the same terms of the contract. Should departments exercise this option, bidders will be required to specify their ability to extend services to other departments and the rates to be used. Other departments may execute separate contracts with awarded bidders.

RFR - REQUIRED SPECIFICATIONS

In general, most of the required contractual stipulations are referenced in the Standard Contract Form and the Commonwealth Terms and Conditions (either version). However, the following RFR provisions must appear in all Commonwealth competitive procurements conducted under 801 CMR 21.00:

The terms of 801 CMR 21.00: Procurement of Commodities and Services (and 808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services, if applicable) are incorporated by reference into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00 (and 808 CMR 1.00, if applicable). Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost proposals or figures in U.S. currency. All responses must be submitted in accordance with the specific terms of this RFR. No electronic responses may be submitted in response to this RFR.

Affirmative Market Program AMP. Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs) and resulted in the Affirmative Market Program in Public Contracting. As a result, M/WBEs are strongly encouraged to submit responses to this RFR, either as prime vendors, subcontractors, joint venture partners or other type of business partnerships.

Non-certified bidders are strongly encouraged to develop creative initiatives to help foster new business relationships with M/WBEs within the primary industries affected by this RFR. In order to satisfy the compliance of this section and encourage bidder's participation of AMP objectives, the Affirmative Market Program Plan for large procurements greater than $50,000 must be evaluated at 10% or more of the total evaluation. Once an AMP Plan is submitted, negotiated and approved, the agency will then monitor the contractor's performance, and use actual expenditures with SOMWBA certified contractors to fulfill their own AMP expenditure benchmarks. M/WBE participation must be incorporated into and monitored for all types of procurements regardless of size, however, submission of an AMP Plan is mandated only for large procurements over $50,000.

Agencies may require some or all of the following components as part of the Affirmative Market Program Plan submitted by bidders: Sub-contracting with certified M/WBE firms, Growth and Development activities to increase M/WBE capacity, Ancillary use of certified M/WBE firms, Past Performance or information of past expenditures with certified M/WBEs. Agencies are encouraged to include additional incentives for bidders to commit to at least one certified MBE and WBE in the submission of AMP plans.

A Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), M/Non-Profit, or W/Non-Profit, is defined as such by SOMWBA. All certified businesses are required to submit an up to date copy of their State Office of Minority and Women Business Assistance (SOMWBA) certification letter. The purpose for this certification is to participate in the Commonwealth's Affirmative Market Program for public contracting. Minority- and Women-Owned firms that are not currently certified but would like to be considered as an M/WBE for the purpose of this RFR should submit their application at least two weeks prior to the RFR closing date. For further information on SOMWBA certification, contact their office at 1-617-727-8692 or via the Internet at mass.gov/somwba.

Affirmative Market Program Subcontracting Policies. Prior approval of the agency is required for any subcontracted service of the contract. Agencies may define required deliverables including, but not limited to, documentation necessary to verify subcontractor commitments and expenditures with Minority- or Women-Owned Business Enterprises (M/WBEs) for the purpose of monitoring and enforcing compliance of subcontracting commitments made in a bidder's Affirmative Market Program (AMP) Plan. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.

Best Value Selection and Negotiation. The PMT may select the response(s) which demonstrates the best value overall, including proposed alternatives, that will achieve the procurement goals of the department. The PMT and a selected bidder, or a contractor, may negotiate a change in any element of contract performance or cost identified in the original RFR or the selected bidder's or contractor's response which results in lower costs or a more cost effective or better value than was presented in the selected bidder's or contractor's original response.

Bidder Communication. Bidders are prohibited from communicating directly with any employee of the procuring department except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may contact the contact person for this RFR in the event this RFR is incomplete or the bidder is having trouble obtaining any required attachments electronically through Comm-PASS.

Comm-PASS. If this RFR has been distributed electronically using the Comm-PASS system, RFR attachments that are referenced are available either as separate pdf files with this RFR or on the OSD forms page (mass.gov/osd). Bidders are solely responsible for obtaining and completing the required attachments that are identified in this RFR and for checking Comm-PASS for any addenda or modifications that are subsequently made to this RFR or attachments. The Commonwealth and its subdivisions accept no liability and will provide no accommodation to bidders who fail to check for amended RFRs and submit inadequate or incorrect responses. Bidders are advised to check the "last change" field on the summary page of RFRs for which they intend to submit a response to ensure that they have the most recent RFR files. Bidders may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of the RFR, specifications, terms and conditions, or which change the intent of this RFR are prohibited and may disqualify a response.

Contract Expansion. If additional funds become available during the contract duration period, the department reserves the right to increase the maximum obligation to some or all contracts executed as a result of this RFR or to execute contracts with contractors not funded in the initial selection process, subject to available funding, satisfactory contract performance and service or commodity need.

Costs. Costs which are not specifically identified in the bidder's response, and accepted by a department as part of a contract, will not be compensated under any contract awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by bidders responding to this RFR.

Debriefing/Appeals: Debriefing ☛ *Required for POS Only. This is an optional specification for non-POS RFRs.* Non-successful bidders may request a debriefing from the department. Department debriefing procedures may be found in the RFR. Non-successful bidders aggrieved by the decision of a department must participate in a debriefing as a prerequisite to an administrative appeal.

Debriefing/Appeals: Administrative Appeals to Departments ☛ *Required for POS Only.* Non-successful bidders who participate in the debriefing process and remain aggrieved with the decision of the department may appeal that decision to the department head. Department appeal procedures may be found in the RFR.

Debriefing/Appeals: Administrative Appeals to OSD ☛ *Required for POS Only.* Non-successful bidders who participate in the department appeal process and remain aggrieved by the selection decision of the department may appeal the department decision to the Operational Services Division. The basis for an appeal to OSD is limited to the following grounds:

1. The competitive procurement conducted by the department failed to comply with applicable regulations and guidelines. These would be limited to the requirements of 801 CMR 21.00 or any successor regulations, the *Procurement Policies and Procedures Handbook*, subsequent policies and procedures issued by OSD and the specifications of the RFR; or
2. There was a fundamental unfairness in the procurement process. The allegation of unfairness or bias is one that is easier to allege than prove, consequently, the burden of proof rests with the bidder to provide sufficient and specific evidence in support of its claim. OSD will presume that departments conducted a fair procurement absent documentation to the contrary.

Requests for an appeal must be sent to the attention of the Deputy Purchasing Agent at Room 1017, One Ashburton Place, Boston, MA 02108 and be received within fourteen (14) calendar days of the postmark of the notice of the department head's decision on appeal. Appeal requests must specify in sufficient detail the basis for the appeal. Sufficient detail requires a description of the published policy or procedure which was applied and forms the basis for the appeal and presentation of all information that supports the claim under paragraphs 1 or 2 above. OSD reserves the right to reject appeal requests based on grounds other than those stated above or those submitted without sufficient detail on the basis for the appeal.

The decision of the Deputy Purchasing Agent shall be rendered, in writing, setting forth the grounds for the decision within sixty (60) calendar days of receipt of the appeal request. Pending appeals to the Deputy Purchasing Agent shall not prohibit the department from proceeding with executing contracts.

Electronic Funds Transfer (EFT). All bidders responding to this RFR must agree to participate in the Commonwealth Electronic Funds Transfer (EFT) program for receiving payments, unless the bidder can provide compelling proof that it would be unduly burdensome. EFT is a benefit to both contractors and the Commonwealth because it ensures fast, safe and reliable payment directly to contractors and saves both parties the cost of processing checks. Contractors are able to track and verify payments made electronically through the Comptroller's Vendor Web system. EFT applications can be found on OSD forms page (mass.gov/osd). Additional information about EFT is available on the VendorWeb site (mass.gov/osc: click on MASSfinance).

Successful bidders, upon notification of contract award, will be required to enroll in EFT as a contract requirement by completing and submitting the *Authorization for Electronics Funds Payment Form* to this department for review, approval and forwarding to the Office of the Comptroller. If the bidder is already enrolled in the program, it may so indicate in its response. Because the *Authorization for Electronic Funds Payment Form* contains banking information, this form, and any information contained on this form, shall not be considered a public record and shall not be subject to public disclosure through a public records request.

The requirement to use EFT may be waived by the PMT on a case-by-case basis if participation in the program would be unduly burdensome on the bidder. If a bidder is claiming that this requirement is a hardship or unduly burdensome, the specific reason must be documented in its response. The PMT will consider such requests on a case-by-case basis and communicate the findings with the bidder.

Filing Requirements ☛ *Required for POS Only.* Successful bidders must have filed their Uniform Financial Statements and Independent Auditor's Report (UFR), as required for current contractors, with the Operational Services Division via the Internet using the UFR eFiling application for the most recently completed fiscal year before a contract can be executed and services may begin. Other contractor qualification/risk management reporting requirements and non-filing consequences promulgated by secretariats or departments pursuant to 808 CMR 1.04(3) may also apply. In the event immediate services are required by a department, a contract may be executed and services may begin with the approval of OSD and the appropriate secretariat. However, unless authorized by OSD and the appropriate secretariat, the contractor will not be paid for any such services rendered until the UFR has been filed.

Identifiable Health Information: HIPAA and Protected Health Information. Any department subject to the requirements of 45 CFR 160, 162, and 164 (the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) that seeks bidders to perform a function or activity involving the use or disclosure of protected health information, must include a provision in the procurement solicitation document (i.e., RFR) informing bidders of their contractual obligations, if any, that the department will require to comply with HIPAA. For example, if the department seeks a bidder to perform business associate functions, as that term is used in HIPAA, then the department must include in the RFR a sufficient description of business associate obligations including, but not limited to, the bidder's obligation to: adequately safeguard the information (in whatever form it is maintained or used, including verbal communications) from inappropriate or unauthorized use or disclosure; provide individuals access to their records; and strictly limit use and disclosure of the information for only those purposes approved of by the department.

Information Technology. *Required for Information Technology contracts.* All IT systems and applications developed by, or for Executive Department agencies or operating within the Massachusetts Access to Government Network (MAGNet), must conform with the Enterprise Information Technology Policies, Standards and Procedures promulgated by the Commonwealth's CIO. Non-conforming IT systems cannot be deployed unless the purchasing agency and their contractor have jointly applied for and received in writing from the Commonwealth's CIO or his designee, notice that a specified deviation will be permitted. The Enterprise Information Technology Policies, Standards and Procedures, with the exception of the Commonwealth's Public Access Architecture, is available at mass.gov/itd. The Commonwealth's Public Access Architecture is available in hard copy from the purchasing agency. Purchasing agencies may also obtain a current copy of the Public Access Architecture, on behalf of their contractor, by contacting the Information Technology Division (ITD) Customer Coordination Group (CCG: 617-626-4600).

Please Note: Given the pace of information technology innovation, purchasing agencies and their contractors are encouraged to contact the Information Technology Division (ITD) Customer Coordination Group (CCG: 617-626-4600) to signal a system or application design and development initiative. Such advance notice helps to ensure conformance with the relevant Enterprise Technology Policies, Standards and Procedures.

Contractor delivery of IT systems and applications that fail to conform to the Commonwealth's Enterprise Information Technology Policies, Standards and Procedures, absent the Commonwealth CIO's grant of written permission for a deviation, shall constitute breach of any contract entered as a result of this Request for Response and any subsequent Request for Quotes. The Commonwealth may choose to require the contractor, at his own cost, to re-engineer the non-conforming system for the purpose of bringing it into compliance with Commonwealth Enterprise Information Technology Policies, Standards and Procedures.

Information Technology - Clarification of Language in Section 11, Indemnification of the Commonwealth Terms and Conditions. *Required for the following object codes (or their successors) within the "Expenditure Classification Handbook" as issued by the Office of the Comptroller (or it successor):*

E08 - Telecommunication Services, Voice
EE8 - Telecommunication Services, Data
E09 - Software purchases
H03 - IT consulting & Maintenance
J08 - IT Cabling/installation & maintenance
K01 - IT equipment purchases
L01 - IT TELP
L21 - IT Rental or Lease
L41 - IT Technical Support

Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the Contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of $100,000, or two times the value of the product or service (as defined in the contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions.

Northern Ireland Notice and Certification. All bidders must complete the Northern Ireland Notice and Certification form to satisfy M.G.L. c.7 section 22C, which states that no state agency may procure commodities or services from any bidder employing ten (10) or more employees in an office or other facility located in Northern Ireland unless the bidder certifies through the notice and certification form that if it employs ten or more employees in Northern Ireland, a) the bidder does not discriminate in employment, compensation or the terms, conditions and privileges of employment on account of religious or political belief, b) the bidder promotes religious tolerance within the workplace and the eradication of any manifestations of religious and other illegal discrimination and, c) the bidder is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Pricing: Federal Government Services Administration (GSA) or Veteran's Administration Supply. The Commonwealth reserves the right to request from the successful bidder(s) initial pricing schedules and periodic updates available under their GSA or other federal pricing contracts. In the absence of proprietary information being part of such contracts, compliance for submission of requested pricing information is expected within 30 days of any request. If the contractor receives a GSA or Veteran's Administration Supply contract at any time during this contract period, it must notify the Commonwealth contract manager.

Pricing: Price Limitation. The bidder must agree that no other customer of similar size and similar terms and conditions shall receive a lower price for the same commodity and service during the contract period, unless this same lower price is immediately effective for the Commonwealth. The bidder must also agree to provide current or historical pricing offered or negotiated with other governmental or private entities at any time during the contract period upon the request of the contract manager.

Public Records. All responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L., Chapter 66, Section 10, and to Chapter 4, Section 7, Subsection 26. Any statements in submitted responses that are inconsistent with these statutes shall be disregarded.

Reasonable Accommodation. Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case-by-case basis. A bidder requesting accommodation must submit a written statement which describes the bidder's disability and the requested accommodation to the contact person for the RFR. The PMT reserves the right to reject unreasonable requests.

Subcontracting Policies. Prior approval of the department is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same state and federal financial and program reporting requirements and held to the same reimbursable cost standards as contractors.

COMMONWEALTH OF MASSACHUSETTS
Prompt Pay Discount Form

Prompt Payment Discounts (PPD). All bidders responding to this procurement must agree to participate in the Commonwealth Prompt Payment Discount (PPD) initiative for receiving early and/or on-time payments, unless the bidder can provide compelling proof that it would be unduly burdensome. PPD benefits both Contractors and the Commonwealth. Contractors benefit by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. Contractors who also participate in the Electronic Funds Transfer initiative will maximize their benefit by ensuring that funds are paid directly to their designated accounts, thus eliminating the impact of check clearance policies and traditional mail lead time or delays. The Commonwealth benefits because contractors reduce the cost of products and services through the applied discount. Payments that are processed electronically can be tracked and verified through the Comptroller's Vendor Web system. The PPD offering form can be found on Comm-PASS under Forms and Information.

Bidders must submit agreeable terms for Prompt Payment Discount offerings using the PPD offering form within their proposal, unless otherwise specified by the PMT. The PMT will review, negotiate or reject the offering as deemed in the best interest of the Commonwealth.

The requirement to use PPD offerings may be waived by the PMT on a case-by-case basis if participation in the program would be unduly burdensome on the bidder. If a bidder is claiming that this requirement is a hardship or unduly burdensome, the specific reason must be documented in or attached to the PPD offering form. The PMT will consider such requests on a case by case basis.

Bidder Name:

Date of Offer for Prompt/Early Payment Discount:

All discounts offered will be taken in cases where the payment date is within the specified number of days listed below and in accordance with the Commonwealth's Bill Paying Policy MMARS Memo #289. The turn-around-time for payments will be measured from a) date services were rendered, goods received or b) receipt of a valid invoice, whichever is later. If internal systems require an alternate method of measuring payment turn-around times, Bidder must note issues below to be considered by the PMT.

In cases where the Bidder considers offering a Prompt/Early Payment discount to be a hardship, the Bidder must clearly define the issues and reasons for said hardship.

In the example below, the Bidder is proposing that payments made within 10 days of invoice will receive a 5% discount off of the contract price; payments that are made within 20 days of invoice will receive a 3% discount off of the contract price and; orders paid on time, within 30 days of invoice will receive a 1% discount off of the contract price. The example is supplied for the sole purpose of demonstrating how the table should be filled out below. The back of this form is intentionally left blank for the bidder to include comments, conditions or clarifications to the discounts proposed below.

% Discount Off of Proposed Pricing	**Turn-around-time for Payments**
Example: 5%	**Example: 10 Days**
Example: 3%	**Example: 20 Days**
Example: 1%	**Example: 30 Days**

☐ I cannot offer a prompt pay discount because:_____

_____

HANDBOOK UPDATE 5
Issued December 1, 2003

The purpose of this update is to present revised OSD regulations 801 CMR 21.00 and 808 CMR 1.00 as well as guidance pertaining to profits earned by for-profit human and social service contractors.

The update contains:

Update: Revised 801 CMR 21.00, *Procurement of Commodities or Services, Including Human and Social Services* (the list of changes precedes the regulation).
Action: Please replace this regulation in your handbook.

Update: Revised 808 CMR 1.00, *Compliance, Reporting and Auditing for Human and Social Services* (the list of changes precedes the regulation).
Action: Please replace this regulation in your handbook.

Update: Revised Purchase of Service Attachment 3: Fiscal Year Program Budget (associated with the revised Commercial Fee language in regulation 808 CMR 1.00).
Action: Please replace this form in your handbook.

Update: Guidance concerning Commercial Fee for handbook Chapters 4 and 6
Action: Please replace the current guidance on pages 59 (Chapter 4) and 108 (Chapter 6).

The original *Procurement Policies and Procedures Handbook* has not been updated. However, this update has been appended to the front of it (available on OSD's web site at mass.gov/osd).

A new handbook, incorporating all of the previous updates, with new chapters on NewMMARS and Enhanced Comm-PASS, will be published by the next summer of next year.

801 CMR 21.00, Procurement of Commodities or Services, including Human and Social Services

Provision	***Brief Description of the Change***
21.01(2)(b)	Application. Added a new subsection, which applies to the procurement of legal services, pursuant to M.G.L. c. 30, § 65. Please note: Review of the need for legal services by the Governor's Chief Legal Counsel applies to all legal services, including those purchased as incidental purchases.
21.01(3) and Regulatory Authority sections	Authority. Added references to applicable statutes, M.G.L. c. 29, § 29F and M.G.L. c. 30, §§ 51, 52 and 65, and deleted references to inapplicable statutes, M.G.L. c. 7, §§ 22G-22M.
21.02	Definitions. Added definitions for the terms, "Governor's Chief Legal Counsel" and the "Office of the Attorney General", which are referenced in 801 CMR 21.01(2)(b).
21.07(3)(c)	Contract Effective Start Date. Added language referencing the approval by the Governor's Chief Legal Counsel and/or the Office of the Attorney General for outside legal service contracts.
21.08(4)	Contract Funding and Compensation. Deleted this obsolete section which was only effective until September 30, 1998.

801 CMR 21.00: PROCUREMENT OF COMMODITIES OR SERVICES, INCLUDING HUMAN AND SOCIAL SERVICES

Section

21.01: Purpose, Application and Authority
21.02: Definitions
21.03: Requests for Information or Interest (RFI)
21.04: Statewide Contracts
21.05: Competitive Procurement Exceptions
21.06: Competitive Procurement Standards
21.07: Contract Negotiation, Execution and Effective Start Date
21.08: Contract Funding and Compensation
21.09: Quality Assurance
21.10: Integration
21.11: Severability

21.01: Purpose, Application and Authority

(1) Purpose. The purpose of 801 CMR 21.00 is to provide all Departments with uniform rules and standards governing the Procurement of Commodities or Services, or both, including Human and Social Services for Clients. Procurements will be considered in the best interests, or the Best Value, to a Department and the State when a Procurement supports and balances the following Procurement Principles: the achievement of required outcomes, generates the best quality economic value, is performed timely, minimizes the burden on administrative resources, expedites simple or routine purchases, allows flexibility in developing alternative Procurement and business relationships, encourages competition, encourages the continuing participation of quality Contractors and supports State and Department Procurement planning and implementation.

(2) Application.

(a) Unless otherwise provided by law and excluding procurements for legal services, 801 CMR 21.00 shall apply to all Procurements of Commodities or Services, or both, by any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch. 801 CMR 21.00 will not apply to the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities, although the use of 801 CMR 21.00 by these entities is encouraged. 801 CMR 21.00 will not apply to interdepartmental services or transactions between two or more State Departments (815 CMR 6.00) or to grants and subsidies (815 CMR 2.00). The Executive Office for Administration and Finance (ANF) or the Operational Services Division (OSD) will interpret 801 CMR 21.00 and may take whatever actions necessary to carry out the purposes of 801 CMR 21.00. No Department shall incur any obligation for, or authorize payments for, any Commodities or Services except in accordance with 801 CMR 21.00. ANF, OSD and the Office of the Comptroller (CTR) may issue additional policies, procedures and Contract forms to be used by Departments to carry out the purposes of 801 CMR 21.00. OSD, through its Division of Purchased Services, may issue policies, procedures and Contract forms to be used by Departments for the procurement of Human and Social Services for Clients.

(b) Pursuant to M.G.L. c. 30, § 65, 801 CMR 21.00 shall apply to all Procurements for legal services by any Officer, Department, Agency, Board or Commission serving under the Governor, including Public Institutions of Higher Education, or within one of the Executive Offices headed by a Secretary appointed by the Governor. OSD, in consultation with the Governor's Chief Legal Counsel and the Office of the Attorney General, shall develop policies and procedures regarding the competitive procurement of outside legal services, pursuant to M.G.L. c. 30, § 65. Such policies and procedures shall include an initial determination by the Governor's Chief Legal Counsel that the legal services can not be provided by a state employee before the procurement or engagement of outside legal services. The Incidental Purchase Competitive Procurement Exception in 801 CMR 21.05(1) shall not apply to the procurement of outside legal services.

(3) Authority. 801 CMR 21.00 is promulgated under the authority of M.G.L. c. 7, §§ 4, 4A, and 22; M.G.L. c. 29, §§ 27B, 29A, 29B and 29F; M.G.L. c. 30, §§ 51, 52 and 65; St. 1993, c. 110, § 274, as amended; and Executive Orders 279 and 350.

21.02: Definitions

Acquisition Method. The method of procuring a Commodity or Service, or both. Acquisition methods include outright purchase, license, lease-purchase, lease, rental, fee-for-service or other methods authorized by law and implemented in accordance with policies and procedures issued by ANF, OSD and CTR.

Authorized Signatory. An individual authorized in writing to execute Contracts or other agreements or commitments on behalf of a Department or Contractor.

Available Funding. Operating appropriations, capital appropriations, trust funds or federal grant funds which have been appropriated or authorized for the purposes of a Contract.

Best Value. The result of common sense Procurement decision-making consistent with the States Procurement Principles, which are to balance and support the achievement of: required outcomes, best quality economic value, timely performance, minimizing the burdens on administrative resources, expediting simple or routine purchases, flexibility in developing alternative Procurement and business relationships, encouraging competition, encouraging the continuing participation of quality Contractors and supporting State and Department Procurement planning and implementation.

Bidder. An individual or organization proposing to enter into a Contract to provide a Commodity or Service, or both, to or for a Department or the State.

Client. An individual, group of individuals, the family or other person(s) who provides support to such individuals and who is eligible for or receiving Human and Social Services. Also referred to as "consumer".

Commodities. An article of trade, goods, products, supplies or information technology resources, including automated data processing and telecommunications hardware, software and systems.

Commonwealth Terms and Conditions. Documents, jointly issued by ANF, OSD and CTR, that must be executed by all Contractors that enter into Contracts with the State.

Consultant Contract. A Contract for consultant services pursuant to M.G.L. c. 29, § 29A.

Contract. A legally enforceable agreement between a Contractor and a Department. ANF, OSD and CTR shall jointly issue Commonwealth Terms and Conditions, a Standard Contract Form and other forms or documentation that Departments shall use to document the Procurement of Commodities or Services, or both.

Contract Employee. An individual Contractor whose Contract performance was classified, prior to the Contractor's selection, as work to be performed under the direct supervision and control of the Department, and not work as an independent Contractor, pursuant to the federal Internal Revenue Service (IRS) SS-8 process.

Contractor. An individual or organization which enters into a Contract with a Department or the State to provide Commodities or Services, or both.

Department. Any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch excluding the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities.

Designee. A State employee who has been delegated authority in writing to act on behalf of a Department Head or other Department officer in their official capacity.

Duration. The authorized total period of performance of a Contract under 801 CMR 21.00, which includes the initial duration of a Contract, either less than one fiscal year, a single fiscal year or multiple fiscal years, and any options to renew beyond the initial duration of the Contract.

21.02: continued

Environmentally Preferable Products and Services. Commodities or Services that are less detrimental to the environment and human health than competing Commodities or Services serving the same purpose. Includes Commodities or Services that minimize waste, use recycled materials, conserve energy or water, or reduce the consumption or disposal of toxic materials.

Execution. The distinct, verifiable signature or symbol of an authorized signatory of a Contractor or a Department which, when affixed to a document, is legally binding. If the signature is affixed through electronic means, the action of signing must be accomplished consistent with information processing standards established by CTR or by law.

Executive Office for Administration and Finance (ANF). The Executive Office established by M.G.L. c. 7.

Governor's Chief Legal Counsel. The attorney, appointed by the Governor, who serves as the chief legal advisor to the Governor and who is responsible for the approval of outside legal services pursuant to M.G.L. c. 30, § 65.

Human and Social Services. Services provided by a Contractor to assist, maintain or improve the personal, mental or physical well-being of Clients. This may include, but is not limited to, social, habilitative, rehabilitative, mental health, mental retardation, special education, vocational, employment and training and elder services.

Independent Contractor. An individual or organization under Contract with a Department where the Contractor's work is not performed under the direct supervision and control of a Department.

Office of the Attorney General. The Constitutional Office, headed by the Attorney General and established pursuant to M.G.L. c. 12.

Office of the Comptroller (CTR). The Department established pursuant to M.G.L. c. 7A.

Operational Services Division (OSD). The Department within the Executive Office for Administration and Finance established pursuant to M.G.L. c. 7, § 4A to regulate and oversee the Procurement of Commodities or Services in the State. OSD includes the Division of Purchased Services established by St. 1993, c. 110, § 274, as amended.

Procurement. The acquisition of Commodities or Services, or both, which may be made through an outright purchase, license, lease-purchase, lease, rental, fee-for-service or other method approved by OSD or authorized by law.

Procuring Department. A Department authorized to procure Commodities or Services, or both, for the Department or on behalf of multiple Departments. OSD shall be the primary Procuring Department for Statewide Contracts and may designate another Department to act as the Procuring Department for a Statewide Contract.

Recycled Products. Goods containing materials which have been diverted from the solid waste stream including post-consumer materials and materials or by-products generated in industrial processes or which have been wholly or partially remanufactured.

Request for Response (RFR). The mechanism used to communicate Procurement specifications and to request Responses or interest from potential Bidders. An RFR may also be referred to as a "solicitation".

Response. A Response from a Bidder to a Request for Response (RFR) under a competitive Procurement. A Response shall include submissions commonly referred to as "bids", "quotes" or "proposals".

Secretariat. Any Executive Office established by M.G.L. chs. 6A and 7, including any Department, Agency, Office, Division, Board, Commission or Institution within such Executive Offices.

21.02: continued

Selected Bidder. A Bidder that has been selected to negotiate a Contract with a Procuring Department.

Services. The furnishing of time, labor, effort or specialized skills by a Contractor. Services shall include operational, professional, maintenance and repair, non-professional, consultant and Human and Social Services, as well as any other services identified in policies and procedures issued by ANF, OSD and CTR.

Standard Contract Form. A Contract form, jointly issued by ANF, OSD and CTR, that Departments shall use for the Procurement of Commodities or Services, or both, which incorporates by reference a Commonwealth Terms and Conditions.

State. The Commonwealth of Massachusetts.

Statewide Contract. A Contract procured on behalf of all Departments for specified Commodities or Services, or both, which may be used by any Department or other entities authorized by OSD.

Suspension. The halt of Contract performance due to the lack of Available Funding, a breach of Contract, inadequate performance, an unanticipated emergency or other circumstances determined by a Department to warrant a pause in Contract performance. A suspension may continue until lifted by the Department, if the reason for the suspension has been alleviated, or Contract performance may be terminated.

21.03: Requests for Information or Interest (RFI)

A Procuring Department may gather information to assist in the development of a potential Procurement by inviting other Departments, potential Bidders or other interested parties to provide technical and business advice concerning industry standards, practice, general cost or price structures or other information which is relevant to the type of Commodities or Services, or both, that a Procuring Department seeks to procure.

21.04: Statewide Contracts

OSD shall be the primary Procuring Department for Statewide Contracts unless OSD designates another Department to act as the Procuring Department for a Statewide Contract. OSD shall establish Statewide Contracts for Commodities or Services, or both, which shall be available to Departments and other entities authorized by OSD. Departments shall acquire Commodities or Services, or both, from available Statewide Contracts in accordance with policies and procedures issued by ANF, OSD and CTR.

21.05: Competitive Procurement Exceptions

A Procuring Department shall be authorized to procure Commodities or Services, or both, without a competitive Procurement under the following exceptions, and in accordance with policies and procedures issued by ANF, OSD and CTR. Any questions as to the existence of an exception under 801 CMR 21.05 shall be determined by ANF or OSD. All other provisions of 801 CMR 21.00 shall apply.

(1) Incidental Purchases. A one-time purchase, or multiple purchases, with a total dollar value that does not exceed the minimum amount established by law, ANF or OSD.

(2) Exemption from Competitive Procurement. A general law, special law or other existing legal obligation that specifically exempts or prohibits a Procuring Department or a specific Contract from being competitively procured or specifically names a particular Contractor(s) to be awarded a Contract.

(3) Emergency Contract. An emergency Contract shall be appropriate whenever a Procuring Department Head determines that an unforeseen crisis or incident has arisen which requires or mandates the immediate acquisition of Commodities or Services, or both, to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of Clients or other persons or serious damage to property is threatened. The Contract shall be

21.05: continued

effective only for the period necessary to cure the emergency or in accordance with policies and procedures issued by ANF, OSD and CTR. Each Secretariat may establish a policy for administering emergency Contracts.

(4) Collective Purchasing. The acquisition of Commodities or Services, or both, by one or more Departments from existing Contracts that have been established by or are proposed by federal agencies, other States or any other public entity. Prior to any acquisitions by Departments under 801 CMR 21.05(4), OSD shall confirm or identify which Contracts may be used by Departments and any other requirements for these Contracts.

(5) Interim Contracts. An Interim Contract may be used to prevent a lapse of Contract performance in the following circumstances:

(a) Termination or Suspension of Current Contractor. An Interim Contract may be executed whenever an existing Contract has been or will be terminated or suspended for any reason or whenever a Contractor is unable to complete full performance under a Contract. An Interim Contract may be offered to the Bidder that offered the next Best Value Response under the original Procurement and under the same terms and prices offered in that Bidder's original Response. The duration of an Interim Contract shall be limited to the remaining time available under the duration stated in the original RFR, including any options to renew. If the Department is unable to negotiate a Contract with any of the original Bidders who submitted Responses, in their original rank order according to Best Value, and under the same terms as offered in their original Response, the Department will be required to conduct a new competitive Procurement.

(b) Delayed Competitive Procurement. An Interim Contract may be executed with a current Contractor(s) when a new competitive Procurement has been commenced, but due to an unanticipated delay, has not been completed prior to the end of the duration available under the current Contract, as specified in that Contract's original RFR. An Interim Contract may be used to extend the current Contract(s), under the same terms and conditions, only for the period necessary to complete the competitive Procurement, including the execution of new Contracts.

(6) Contract Employees. A Department requiring the performance of an Individual Contractor, where the planned Contract performance has been classified, prior to the Contractor's selection, as work of a Contract Employee and not that of an Independent Contractor, may select an individual for that Contract using a recruitment process similar to the process the Department uses to select employees, rather than using the Request for Response process under 801 CMR 21.06.

21.06: Competitive Procurement Standards

All acquisitions of Commodities or Services, or both, must be competitively procured unless the acquisition qualifies as an exception under 801 CMR 21.05. A Procuring Department shall be responsible for conducting a Procurement for single or multiple Contracts for Commodities or Services, or both, in accordance with 801 CMR 21.00 and policies and procedures issued by ANF, OSD and CTR. The policies and procedures shall address, but shall not be limited to, the following Procurement standards:

(1) Procurement File. A Procuring Department shall maintain a paper or electronic Procurement file for each Procurement of Commodities or Services, or both. The file shall contain the original, copies or the file location of the RFR and data or other information relevant to the Procurement and selection of a Contractor, the executed Contract form(s), correspondence with the Contractor and any applicable approvals or justifications.

(2) Duration. The duration of any Contract procured or executed under 801 CMR 21.00 shall include the initial duration of a Contract, either less than one fiscal year, a single fiscal year or multiple fiscal years, and any options to renew beyond the initial duration of the Contract. The duration established for a Contract shall be the period determined by the Procuring Department to be reasonably necessary to obtain the required Commodities or Services, or both, at the Best Value for the Procuring Department and the State and shall be subject to Available Funding for the Contract, as follows:

21.06: continued

(a) The duration of any Contract funded with an annual operating appropriation (account type 01) account(s) is subject to the appropriation by the Legislature, in each fiscal year of the Contract, of sufficient funds for the purposes of the Contract.

(b) The duration of any Contract funded with an annual retained revenue appropriation (account type 01) account(s) is subject to the appropriation by the Legislature, in each fiscal year of the Contract, and receipt of sufficient revenues for the purposes of the Contract.

(c) The duration of any Contract funded with a trust account(s) (account type 03) is subject to the availability, or anticipated availability through authorized revenues, of sufficient funds for the purposes of the Contract. Payments are contingent upon the receipt of sufficient trust revenues to support payments under the Contract.

(d) The duration of any Contract funded with a federal grant appropriation (account type 04) account(s) is subject to approval by the federal government and appropriation by the Legislature, in each fiscal year of the Contract, of sufficient funds for the purposes of the Contract.

(e) The initial duration of any Contract funded with a capital appropriation (account type 02) account(s) is limited to the fiscal years in which sufficient funds are appropriated by the Legislature for the purposes of the Contract, provided that any options to renew which extend beyond the original authorization of funding of the capital account(s) funding the Contract is subject to the extension, by the Legislature, of the authorization of funding or a separate appropriation, in each additional fiscal year of the Contract, with sufficient funds for the purposes of the Contract.

(f) If the appropriation, authorization or Available Funding ceases for a Contract, for any reason, a Contract shall be deemed under Suspension and Contract performance must halt. A Contractor shall not be entitled to compensation for any performance provided during the period of Contract Suspension. A Department may lift the Suspension if Available Funding is received. In the absence of foreseeable Available Funding, a Department may terminate the Contract.

(3) Scope of Contract Participants. A Procuring Department may draft a Request for Response (RFR) for specified Commodities or Services, or both, to include an option for additional Departments to purchase under the same terms of the RFR and may require Bidders to provide Responses specifying their ability to provide the specified Commodities or Services, or both, to other Departments in addition to the Procuring Department and the rates that will be used for the additional business given to the Contractor.

(4) Request for Responses (RFR).

(a) An RFR shall be used to solicit and select Responses from qualified Bidders under a competitive Procurement. The goal of all RFRs shall be to obtain the Best Value of Commodities or Services, or both, for the State. An RFR may include attributes of any of the methods of competitive Procurement formerly referred to as a request for proposals, request for qualifications or quotes, invitation for bids or good business practices.

(b) The Procuring Department shall draft an RFR which it deems appropriate, efficient and cost effective for the type of Procurement required, in accordance with policies and procedures issued by ANF, OSD and CTR. These policies and procedures may include total Contract value thresholds, minimum Procurement requirements and legal or regulatory restrictions, including limitations on the purchasing of certain types of restricted Commodities or Services or from certain restricted Bidders, and requirements and allowable preferences for purchasing of certain types of Commodities and Services.

(c) An RFR shall include the Acquisition Method to be used; whether single or multiple Contractors are sought; whether additional Departments will have access to the Procurement as outlined in 801 CMR 21.06(3); the anticipated duration of the Contract including anticipated renewal options; the available funding or anticipated compensation for the Contract, if relevant; detailed specifications or the anticipated goals or outcomes to be accomplished by the Procurement; instructions for submission of Responses; and a deadline date for submission of Responses.

(d) RFRs may be used to establish criteria which prospective Bidders must satisfy in order to be placed on a list of qualified Contractors. These criteria may include, but are not limited to, technical expertise, experience, quality of performance,

21.06: continued

location, availability of Commodities and Services, rates, prices, catalogs of Commodities or Services, or both, or other criteria relevant to a particular Procurement.

(e) Recycled and Environmentally Preferable Products and Services. OSD, in cooperation with relevant environmental departments, shall periodically establish policies and procedures that promote, to the greatest extent feasible, the statewide procurement and use of recycled products and environmentally preferable products and services (EPPs), and the reporting thereof, by Procuring Departments and Contractors. These policies and procedures shall include, but not be limited to, designating EPPs and establishing minimum standards specifications for their procurement and use. RFRs may provide for additional points for any RFR Response in which a offers to provide EPPs as part of Contract performance, and for any RFR Response in which a Bidder offers to utilize EPPs or implement environmentally preferable practices as part of the performance of its business.

(f) Any Response to an RFR submitted by a Bidder shall be considered a firm offer and shall remain effective unconditionally for a minimum of 90 days unless a longer period is specified in an RFR, or unless extended by the Department upon prior notice to Bidders.

(5) Identification of Bidders or Public Notice. A Procuring Department shall be responsible for identifying Bidders capable and willing to provide the Procuring Department and the State with the Best Value of Commodities or Services, or both. A Procuring Department shall identify potential Bidders through public notice, newspaper or electronic advertisements or other methods identified by ANF or OSD as appropriate for a particular Procurement, or as required by law.

(6) Procurement Amendments. A Procuring Department may, at any time prior to the execution of a Contract, and without penalty, amend a Procurement or change the Procurement requirements, scope, budget or Procurement schedule upon notice to Bidders.

(7) Procurement Cancellation. A Procuring Department may for any reason, and at any time prior to the execution of a Contract, and without penalty, notify Bidders of a cancellation of a Procurement and the rejection of all Responses.

(8) Corrections or Clarifications to a Submitted Response. A Procuring Department shall determine whether to allow a correction of minor informalities in a Response. Minor informalities are matters of form rather than substance and include clerical errors or minimal or insignificant mistakes that can be corrected without prejudice to other Bidders. A Procuring Department may, upon written request of a Bidder, allow a correction of a minor informality in a Response which is clearly evident, such as a typographical error, transposition error or arithmetical error where the correct answer is obvious, or if the mistake is discovered by the Procuring Department, the Procuring Department may note the correction on the Response. If a Procuring Department requires a clarification of any particular section of a Response the Department must provide all Bidders that submitted Responses with the same notice and opportunity for clarification of the identified section in the Response. Clarifications are explanations of what is stated in a Response and may not be used as an opportunity to submit supplemental information or a change to a Response, unless the Department specifically requests these submissions or changes as part of the clarification of all Responses. No correction or clarification of Response prices, terms and conditions or the submission of supplemental information prejudicial to the interests of other Bidders or to fair competition shall be permitted.

(9) References. A Procuring Department shall have the right to request references at any time during the Procurement process and at any time during the period of Contract performance. A Procuring Department may verify any references included in a Bidder's Response and conduct any other reference or credit checks as the Procuring Department deems appropriate. The Procuring Department may consider any written references, including documentation of performance records of a Bidder on file at the Procuring Department or solicited from any other Department or entity, documentation of reference checks or other documentation solicited by or submitted to the Procuring Department during the Procurement process.

21.06: continued

(10) Disqualification. A Procuring Department shall disqualify any Response that the Department determines to be unresponsive, including, but not limited to:

(a) Responses which are received after the deadline for submission specified in an RFR.

(b) Responses that fail to meet, address or comply with material requirements in an RFR, including instructions for submission, content or format.

(c) Responses which indicate collusion or unfair trade practices by one or more Bidders agreeing to act in a manner intended to avoid or frustrate any of the provisions of 801 CMR 21.00 or any other law or regulation.

(d) Responses submitted by a Bidder, or which identify a subcontractor, currently subject to any State or federal debarment order or determination. If the identified subcontractor is replaceable without a material effect on the Bidder's Response, the Bidder may be given the opportunity to select another subcontractor prior to execution of the Contract.

(11) Best and Final Offer, Evaluation of Responses and Selection of Bidder(s). The following options shall be available to a Department even if these options have not been included as part of an RFR:

(a) Best and Final Offer. At any time after submission of Responses and prior to the final selection of Bidders for Contract negotiation or execution, a Procuring Department shall have the option to provide Bidders with an opportunity to provide a Best and Final Offer and may limit the number of Bidders selected for this option.

(b) Evaluation of Responses and Selection of Bidder(s). A Department shall have the authority to evaluate Responses and select a Bidder(s) that it determines has offered the Best Value Response to the goals and performance requirements outlined in the RFR.

(12) Notification of Selected Bidders. A Procuring Department shall determine the timing and method of notifying Bidders of the Bidder(s) selected for Contract negotiation or the Contractor(s) that has executed a Contract. Notice may be limited to those Bidders who submitted Responses to an RFR.

(13) Press Conferences or News Release Restrictions. No Bidder shall make any press conference, news releases or announcements concerning its selection or non-selection for a Contract prior to the Procuring Department's public release of said information or prior to the written approval of the Procuring Department.

(14) Debriefing. An RFR may contain the opportunity for non-successful Bidders to request a debriefing to be conducted after Contract execution with Selected Bidder(s). Debriefings are designed to identify the weak areas of a Bidder's Response and suggest improvements for future Procurements. Comparisons with other Responses will not be made during a debriefing. If an RFR is silent as to an opportunity for a debriefing, the Procuring Department shall have the option to grant or deny a debriefing and may limit the number of debriefings granted.

(15) Dispute Resolution Procedures for Human and Social Service Procurements. OSD may issue policies and procedures for conducting debriefings and appeals for Human and Social Service Procurements.

(16) Decisions made pursuant to the provisions of 801 CMR 21.00 are not subject to the provisions of M.G.L. c. 30A, §§ 10 and 11.

21.07: Contract Negotiation, Execution and Effective Start Date

(1) Contract and Contract Amendment Negotiation. The Department may negotiate with Selected Bidder(s) prior to execution of a Contract, and with Contractors after a Contract has been executed, as follows:

(a) The language of the RFR shall determine what elements of Contract performance or cost, within the scope of the original RFR and a Bidder's or Contractor's Response, may be negotiated. If the RFR is silent as to what can be negotiated, the Procuring Department and a Selected Bidder or Contractor may negotiate only the details of

performance identified within the scope of the original RFR and the Bidder's or Contractor's Response, and may not increase or change the scope of performance or costs.

(b) The Department and a Selected Bidder or Contractor may negotiate additional language which clarifies their understanding of, but does not change, the language of the Contract or Contract performance identified within the scope of the original RFR and the Bidder's or Contractor's Response

(c) Notwithstanding 801 CMR 21.07(1)(a), the Department and a Selected Bidder or Contractor may negotiate a change in any element of Contract performance or cost, identified in the original RFR or the Bidder's or Contractor's Response, which results in lower costs or in a more cost effective or better value than was presented in the Bidder's or Contractor's originally selected Best Value Response

(2) Contract Execution.

(a) The identification of a Selected Bidder(s) shall create no contractual obligation on the Procuring Department or the State. Performance may not begin, until a Contract is properly executed. The execution of a Contract is conditioned upon the Procuring Department's acceptance of a Selected Bidder's Response excluding any clauses or sections that are stricken by the Department as unacceptable and including any additional negotiated language as authorized under 801 CMR 21.07(1).

(b) Commonwealth Terms and Conditions. An authorized signatory of a Bidder must execute a Commonwealth Terms and Conditions, which is executed only once and must be filed as prescribed by CTR. A Commonwealth Terms and Conditions will be incorporated by reference into and shall apply to any Contract for Commodities or Services, or both, that is executed by the Bidder and any Department of the State.

(c) Standard Contract Form. An authorized signatory of the Contractor and the Department must execute a Standard Contract Form for Procurements under 801 CMR 21.00 in accordance with policies and procedures issued by ANF, OSD and CTR. The Contract shall incorporate by reference a Commonwealth Terms and Conditions and will include the RFR, the Bidder’s Response, excluding any clauses or sections that are stricken by the Department as unacceptable and including any additional negotiated language as authorized under 801 CMR 21.07(1). Contracts must be filed as prescribed by CTR.

(d) A Selected Bidder's Response shall be disqualified if the Procuring Department determines that the Bidder:

1. is intentionally or unreasonably delaying the timely execution of a Commonwealth Terms and Conditions or the Standard Contract Form or is unable to execute timely even for reasonable delays;
2. conditions execution of a Commonwealth Terms and Conditions or the Standard Contract Form upon the Procuring Department's acceptance of additional material or amended Contract terms and conditions, or specifies that the Bidder's Response is "non-negotiable", "all-or-nothing" or that there can be "no substitutions";
3. negotiates in bad faith;
4. refuses to execute a Commonwealth Terms and Conditions or the Standard Contract Form;
5. demands that the Department execute the Bidder's Contract form instead of a Commonwealth Terms and Conditions or the Standard Contract Form; or
6. is unable to reach final agreement on contractual terms with the Department within a reasonable time as determined by the Department.

(e) If a Selected Bidder's Response is disqualified, for any reason, the Procuring Department may negotiate a Contract with the next Best Value qualified Bidder(s).

(3) Contract Effective Start Date. Notwithstanding verbal representations by the parties, or an earlier start date listed in the Standard Contract Form, the effective start date of a Contract shall be the latest of the following dates:

(a) the date the Standard Contract Form has been executed by an Authorized Signatory of the Contractor;

21.07: continued

(b) the date the Standard Contract Form has been executed by an Authorized Signatory of the Procuring Department;
(c) the date of Secretariat or other approval(s) required by law or regulation, including approval of legal services contracts by the Governor's Chief Legal Counsel and, for litigation services, by the Office of the Attorney General; or
(d) a later date specified in the Standard Contract Form.

21.08: Contract Funding and Compensation

(1) The Contractor shall only be compensated for performance delivered to and accepted by the Department in accordance with the specific terms and conditions of a properly executed Contract. All Contract payments are subject to Available Funding, as described in 801 CMR 21.06(2), and shall be subject to automated intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. Contract payments for Human and Social Services are also subject to the provisions of 808 CMR 1.00. A Department shall be under no legal obligation to compensate a Contractor, or to obtain additional funding for any performance, costs or other commitments which are made outside of the scope of a Contract.

(2) Emergency and Exceptional Circumstances. Notwithstanding 801 CMR 21.07(2)(a) and (3) and 801 CMR 21.08(1), compensation for performance commenced prior to the contract effective start date shall be allowable in unanticipated, rare emergency or exceptional circumstances for the period from the date of the occurrence of such circumstance until a Contract is executed, which shall be documented by the Department as part of the Procurement File in accordance with policies and procedures issued by ANF, OSD and CTR.

(3) Payments cannot be issued until a properly executed Contract, with all requisite approvals, has been filed as prescribed by the CTR.

21.09: Quality Assurance

ANF, OSD, and CTR shall establish policies and procedures for conducting reviews of Department compliance with 801 CMR 21.00 and quality of Contractor performance.

21.10: Integration

801 CMR 21.00 shall be interpreted consistent with, and Procuring Departments shall comply with, state or federal general or special laws, regulations, executive orders and other authorities mandating additional requirements related to the procurement of Commodities and Services, including policies and procedures issued by ANF, OSD and CTR.

21.11: Severability

If any provision of 801 CMR 21.00 is declared or found to be illegal, unenforceable or void, then Departments, Bidders and Contractors shall be relieved of all obligations under that provision only, and all other provisions of 801 CMR 21.00 shall remain in full force and effect.

REGULATORY AUTHORITY

801 CMR 21.00: M.G.L. c. 7, §§ 4, 4A and 22; c. 29, §§ 27B, 29A, 29B and 29F; M.G.L. c. 30 §§ 51, 52 and 65; St. 1993, c. 110, § 274, as amended; and Executive Orders 279 and 350.

808 CMR 1.00: COMPLIANCE, REPORTING AND AUDITING FOR HUMAN AND SOCIAL SERVICES

Provision	***Brief Description of the Change***
1.02	Definitions. Added new definitions for Commercial Fee, Contract Revenue and Sponsored; revised the definition of Restricted Funds.
1.03(4)(a) and (b)	Price Limitation. This language, requiring contractors to charge the lowest fee to the Commonwealth for its programs, clarifies the sliding fee scale aspect as pertaining only to Commonwealth eligible clients who are on a sliding fee scale. It also permits the contractor to supplement the fees for other clients if it has enough donor restricted funds to do so.
1.03(5)	Reimbursement as Full Payment. This technical correction clarifies the last sentence, "Any Client Resources or third party payments made on behalf of a Client, not expressly recognized or anticipated in the computation of the Authorized Price, shall reduce the amount of the appropriate Department's obligation for service rendered to the Client". Change this phrase to "payment."
1.03(6)	Commercial Fee. This language, pertaining to profits by for-profit contractors, has been expanded to emphasize the requirement of a prospective Commercial Fee. If a Commercial Fee has not been prospectively determined, then there is no allowable Commercial Fee. The language extends this requirement to for-profit special education approved private programs.
1.06(1)(b)	Price Determination for Eligible Programs. Changed the word "will' to "may" ("…DPS will establish a subsequent year price for the Program by adding a per student annual adjustment…"). This change makes the regulatory language consistent with the language of DPS' enabling legislation which recognizes that DPS is not required to take action and, if DPS does not take action, the result will be a stay of tuition prices for the following year. The legislation states, "The prices determined by the division of purchased services…shall be set annually by the first Wednesday in February for the next fiscal year. If said division fails to determine said …prices on or before the first Wednesday in February, said prices in effect shall continue to be in effect for the next fiscal year." The word "may" is more consistent than "will" with the above statutory language in the case where OSD fails to take action by the statutory deadline.
1.06(3)(a)	Price Authorization for New or Reconstructed M.G.L. 71B Approved Private School Programs. Added language per Outside Section 177 of the FY '03 budget requiring notice by special education programs who intend to apply for reconstruction.

808 CMR 1.00: COMPLIANCE, REPORTING AND AUDITING FOR HUMAN AND SOCIAL SERVICES

Section

1.01: Purpose, Application and Authority
1.02: Definitions
1.03: General Provisions
1.04: Recordkeeping and Reporting Requirements
1.05: Non-Reimbursable Costs
1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs
1.07: Severability

1.01: Purpose, Application and Authority

(1) Purpose. 808 CMR 1.00 governs contract compliance, financial reporting and auditing requirements applicable to all procurements of Human and Social Services and to M.G.L. c.71B Approved Private Schools subject to the authority of the Division of Purchased Services (DPS). 808 CMR 1.00 also describes the methods used by DPS in authorizing prices for M.G.L. c. 71B Approved Private School special education Programs.

(2) Application. 808 CMR 1.00 applies to Contractors and Subcontractors providing Human and Social Services to any Department and to all Contractors operating Programs approved by the Department of Education (DOE) under M.G.L. c. 71B and to their independent auditors, and to any Executive Office, Department, Agency, Board, Commission or Institution of the Executive Department, but excluding the Legislative and Judicial Branches, the Constitutional Offices, the Public Institutions of Higher Education and independent public authorities. Where a Contractor utilizes a Subcontractor to provide some or all of the Human and Social Services or in a Program approved by DOE under M.G.L. c. 71B, the subcontract between the Contractor and the Subcontractor shall require that all provisions of 808 CMR 1.00 shall apply to the Subcontractor as well. As 808 CMR 1.00 applies to services purchased pursuant to M.G.L. c. 71B, it also applies to Commonwealth Local Education Authorities (LEAs). DPS shall issue policies, procedures, and forms related to contract compliance, accounting principles, auditing standards, and pricing as may be determined necessary by DPS to implement the provisions of 808 CMR 1.00 and 801 CMR 21.00, which are in addition to the terms of 808 CMR 1.00.

(3) Authority. 808 CMR 1.00 is adopted pursuant to M.G.L. c. 29, § 29B and St. 1993, c. 110, § 274, as amended, and any successor provision thereto.

1.02: Definitions

Unless the context requires otherwise, terms used in 808 CMR 1.00 shall have the following meaning:

Administration and Support Costs. Administration and Support Costs (management and general) include expenditures for the overall direction of the organization, general record keeping, business management, budgeting, general board activities, general legal expenses and related purposes. "Overall direction" includes the salaries and expenses of the chief officer of the organization and the chief officer's staff. If such staff spends a portion of its time directly supervising fundraising or Program service activities, such salaries and expenses are considered indirect fundraising or Program costs and should be prorated (allocated) among those functions by position title or type of expense.

Authorized Price. A price which has been agreed upon in a contract or, in the case of M.G.L. c. 71B Programs, the price authorized by DPS. For health care services (including Title XIX), as defined in M.G.L. c. 118, § 2 (b), the Authorized Price shall be set by the Division of Health Care Finance and Policy or the Division of Medical Assistance.

Base Year. The Fiscal Year which may be designated by DPS for the purpose of its Program pricing activity under 808 CMR 1.06.

1.02: continued

Capital Item. A Capital Item is:

(a) an asset or group of assets of nonexpendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the capitalization level established and certified by the Contractor in accordance with generally accepted accounting principles for financial statement purposes; or

(b) a repair, betterment or improvement or a group of repairs, betterments or improvements of non-movable assets which costs more than $500 in aggregate and which adds to the permanent value of an asset or prolongs its useful life for more than one year.

Client. An individual, group of individuals, or the family or other person who provides support to such individuals, who is eligible for or receiving Human and Social Services. Also referred to as a consumer.

Client Resources. Revenue received in cash or in kind from Clients to defray all or a portion of the cost of services. These may include supplemental social security income received by the Contractor to defray the room and board expense of residential Clients, Clients' food stamps, or payments made by Clients according to ability to pay, such as a sliding fee scale.

Commercial Fee. A prospectively negotiated earnings allowance derived from a net surplus of Contract Revenue and reimbursable operating costs associated with Human and Social services provided by a for-profit contractor to the Commonwealth pursuant to 808 CMR 1.00. Payments and related expenses received from other governmental payors, allocated administrative revenue and payments from the general public derived from clients, parents or guardians for services rendered to clients not Sponsored by any governmental entity are not considered in the establishment of the for-profit earnings allowance.

Commercial Income. The difference between gross revenues and gross expenses resulting from the production of commercial products and services by Clients.

Contractor. An individual or organization which enters into a contract with a Department or the State to provide Human or Social Services or which operates Programs approved by the Department of Education under M.G.L. c. 71B.

Contract Revenue. Revenue derived from payments for Human and Social services furnished in Commonwealth supported programs from the Commonwealth purchasing department, client resources and third party payments made on behalf of the client from Medicaid, Medicare, insurance companies, health maintenance organizations and other payors.

Days. Calendar days, unless otherwise specified.

Department. Any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch, excluding the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities. The term also includes Massachusetts Local Education Authorities (LEAs) when purchasing M.G.L. c. 71B Approved Private School Programs.

Department of Education (DOE). The Massachusetts Department of Education established by M.G.L. c. 15, § 1, including its departments and divisions.

Division of Purchased Services (DPS). The office within the Operational Services Division of the Executive Office for Administration and Finance.

Fiscal Year of the Commonwealth. The 12 month period beginning on July 1 and ending on June 30th.

1.02: continued

Human and Social Services. Services provided by a Contractor to assist, maintain or improve the personal, mental or physical well-being of Clients. This may include, but is not limited to, social, habilitative, rehabilitative, health, mental health, mental retardation, special education, vocational, employment and training and elder services.

Local Education Authority (LEA). A local school district or public school defined pursuant to M.G.L. c. 71B.

M.G.L. c. 71B Approved Private School. A private day or residential school approved in accordance with DOE regulation 603 CMR 18.00 or successor thereto. Also referred to as Approved Private School.

Maximum Obligation. The maximum dollar amount of the Department's contract to pay for Human and Social Services.

Off-Setting Revenue. The sum of the following revenues and support items. These revenues and support items must be received during the price year and must be dedicated for use in the same Program that also receives Commonwealth funds.

(a) any Contractor revenues and support (including but not limited to public and private grants, gifts, contributions, bequests, or any income therefrom, income from endowments, funds received from the Massachusetts Department of Education's Bureau of Nutrition, or similar funding) to the extent that revenues and support are restricted to use in the Program;
(b) the amount of unrestricted revenues and support voluntarily designated by the Contractor to defray the cost of Program services to a Department;
(c) the fair market value of any public employees assigned to work in the Contractor's Program (including salaries, fringe benefits and travel allowances) and/or the occupancy of public facilities to the extent that they are available to the Program without charge or at less than fair market value;
(d) any revenues and support (including but not limited to Supplemental Social Security Income, Food Stamps, Emergency Aid to the Elderly, Disabled and Children (EAEDC), reimbursements from third-party payers, Client sliding fee scale payments) received by or available to the Contractor on account of Clients;
(e) the amount of Commercial Income that the Contractor or Department may designate;
(f) the value of revenues and support used to defray non-reimbursable costs; and
(g) not-for-profit Contractor surplus revenue retention funds accrued in excess of the limitations of 808 CMR 1.03(7) which may be utilized at the discretion of the Department to reduce the Authorized Price or Maximum Obligation of the Commonwealth.

Office of Child Care Services (OCCS). An office of the Commonwealth established by M.G.L. c. 28A.

Program. The delivery of one or more discrete services in an organized and coordinated fashion in order to achieve contract objectives or a M.G.L. c. 71B private special education Program approved by DOE.

Reimbursable Operating Costs. Those costs reasonably incurred in providing the services described in the contract and/or, in the case of a Program approved under the provisions of M.G.L. c. 71B, in providing the services mandated by DOE or specifically included in an Authorized Price, with the exception of costs enumerated in 808 CMR 1.05 and costs excluded in the Authorized Price. Operating costs shall be considered “reasonably incurred” only if they are reasonable and allocable using the standards contained in Federal Office of Management and Budget Circular A-122 or A-21, or successors thereto.

Related Party. Any person or organization satisfying the criteria for a Related Party published by the Financial Accounting Standards Board in Statement of Financial Accounting Standards No. 57 (FASB 57).

1.02: continued

Restricted Funds. Those temporarily and permanently Restricted Funds derived from charitable contributions, as defined in the Uniform Financial Statements and Independent Auditor's Report (UFR), which have been designated to a specific use by their donor. Funds which have been restricted as to application by the Contractor's governing body are not considered restricted.

Sponsored. The financing of the delivery of a program of Human and Social services or a Human and Social service to a Client.

Subcontractor. An individual acting as a sole proprietor of an organization or organization which provides some or all of the needed Human or Social Services or operates a Program on behalf of a Contractor, provided, however, that the term Subcontractor does not include an individual (including a client) or a firm providing personnel services or non-direct client services, unless specifically provided for in the service contract or agreement. This term also includes sub-Subcontractors. The term human and social service as used in 808 CMR 1.02: Subcontractor does not include management and business support activities.

Submit or Submission. Unless otherwise provided, to deliver a document electronically, by hand or by depositing it with the US Post Office or other delivery service, postage pre-paid.

Uniform Financial Statements and Independent Auditor's Report (UFR). A uniform reporting system, established by DPS, consisting of basic financial statements prepared and audited in accordance with generally accepted accounting principles (GAAP) and generally accepted governmental auditing standards (GAGAS), supplemental schedules and other information as deemed necessary.

1.03: General Provisions

(1) Client Identification. No documents submitted to DPS shall include information that identifies a Client by name or by other means that includes personally identifiable information. Client identification numbers or another numbering scheme should be utilized.

(2) Waiver of Regulations. Upon request, DPS may consider waiving the applicability of one or more provisions of 808 CMR 1.00, provided that all such requests: are in writing and signed by an authorized signatory; specify the transactions to which such waiver would apply and the specific provisions of 808 CMR 1.00 which are to be waived; and are accompanied by documentation and justification deemed sufficient by DPS to support the need for relief. Waivers do not affect the responsibility of a Department or Contractor to comply with other applicable regulations or statutes.

(3) CMR 1.00 Prohibitions. The failure of a Department or DPS to identify violations of 808 CMR 1.00 in determining or authorizing a price shall not be deemed a waiver of violations of 808 CMR 1.00 which are identified later.

(4) Price Limitations. The Commonwealth cannot be charged a rate or authorized price which is higher than the lowest fee charged to the general public or third party payor for human and social services except as follows:

(a) Where a client receiving Sponsored services from the department is charged a fee that the contractor has collected and the fee is calculated based upon that department's approved sliding fee scale; or

(b) Where a provider has sufficient restricted charitable contributions designated by their donor to be used to offset the difference between the fee charged to a private paying client and the rate charged to the Commonwealth.

1.03: continued

(5) Reimbursement as Full Payment. Each Contractor shall, as a condition of accepting payment made by one or more Departments for services provided, accept the Authorized Price as full payment and discharge of all obligations for the services provided. There shall be no duplication or supplementation of payment from sources other than those expressly recognized or anticipated in the determination of the Authorized Price. Any Client Resources or third party payments made on behalf of a Client, not expressly recognized or anticipated in the computation of the Authorized Price, shall reduce the amount of the appropriate Department's obligation for payment.

(6) Commercial Fee. For-profit contractors with authorized prices furnished via all compensation structures in all types of contracts are to be reimbursed in an amount not to exceed the contract reimbursable operating costs incurred by the contractor for the services provided to the Department pursuant to 808 CMR 1.00. Departments are permitted to prospectively negotiate a for-profit earnings allowance for the purpose of furnishing a Commercial Fee to for-profit contractors, which is in excess of the contract reimbursable operating costs for the services being procured. Departments are not required or expected to furnish a Commercial Fee, which is in excess of contract reimbursable operating costs to for-profit Contractors. Each contract executed between a department and a for-profit contractor must either a) explicitly indicate when a Commercial Fee has not been established by indicating that the earnings allowance is zero or b) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract. If a contract contains language that does not establish either an earnings allowance of zero or a specific negotiated earnings allowance, then the for-profit contractor may not retain a Commercial Fee from such a contract. In addition, the for-profit contractor may not retain a Commercial Fee from a contract with deficit results of operations or from a cost reimbursement contract. Departments shall consider several approaches in developing a reasonable for-profit earning allowance in accordance with DPS policies and procedures issued pursuant to 808 CMR 1.00 and 801 CMR 21.00. The provisions of this language also apply to M.G.L. c. 71B approved private special education Programs and contracts that utilize non-negotiated unit rates established by Departments and the Division of Health Care Finance and Policy. DPS shall determine the Commercial Fee, if any, prospectively for M.G.L. c. 71B approved private special education Programs. Departments shall monitor the amount of Commercial Fee from the net surplus from Contract Revenues (or revenues received by M.G.L. c. 71B private special education Programs) and reimbursable costs retained by each for-profit Contractor in any given year and recoup funds or reduce future prices when appropriate in accordance with this regulatory provision and other guidance issued by DPS.

(7) Not-for-Profit Contractor Surplus Revenue Retention. If, through cost savings initiatives implemented consistent with programmatic and contractual obligations, a non-profit Contractor accrues an annual net surplus from the revenues and expenses associated with services provided to Departments which are subject to 808 CMR 1.00, the Contractor may retain, for future use, a portion of that surplus not to exceed 5% of said revenues. The cumulative amount of a Contractor's surplus may not exceed 20% of the prior year's revenues from Departments. Surpluses may be used by the Contractor for any of its established charitable purposes, provided that no portion of the surplus may be used for any non-reimbursable cost set forth in 808 CMR 1.05, the free care prohibition excepted. DPS shall be responsible for determining the amount of surplus that may be retained by each Contractor in any given year and may determine whether any excess surplus shall be used to reduce future prices or be recouped.

(8) Procurement of Contractor Furnishings, Equipment and Other Goods and Services. All procurements of furnishings, equipment and other goods and services by or on behalf of a Contractor shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Capital Items, as defined in 808 CMR 1.02, shall be acquired through solicitation of bids and proposals consistent with generally accepted accounting principles.

1.04: Recordkeeping and Reporting Requirements

(1) Recordkeeping. The Contractor and its Subcontractors shall keep on file all data necessary to satisfy applicable reporting requirements of the Commonwealth (including DPS, the Division of Health Care Finance and Policy and Departments), and financial books, supporting documents, statistical records, and all other records which reflect revenues associated with and costs incurred in or allocated to any Program of services rendered under the Contract. The Contractor and its Subcontractors shall maintain records of all types of expenses and income or other funds pertaining to the Program paid to the Contractor by every source, including from each Client. Books and records shall be maintained in accordance with generally accepted accounting principles as set forth by the American Institute of Certified Public Accountants (AICPA); which for not-for-profit Contractors shall be the Industry Audit Guide for Audits of Voluntary Health and Welfare Organizations, unless otherwise provided in the UFR. In addition, personnel records shall be maintained for each employee in accordance with generally accepted accounting principles recommended by the AICPA and sufficient to meet the requirements of M.G.L. c. 151, the Fair Labor Standards Act of 1938 and contract terms. If the Contractor or a Subcontractor receives any federal funds from the Commonwealth, directly or through subcontracts, the Contractor or Subcontractor shall also keep data necessary to satisfy Federal Office of Management and Budget (OMB) Circular A-133, or successor provision and shall also maintain books and records in accordance with OMB Circular A-110 and OMB Circular A-122, or successor provisions.

(2) Annual Audit. Each Contractor and Subcontractor shall, on or before the 15th day of the fifth month after the end of its fiscal year, Submit electronically to DPS a UFR or a certification of exemption, in accordance with the standards and instructions contained in the UFR. The UFR and related materials submitted by a Contractor to DPS shall be certified under pains and penalties of perjury as true, correct and accurate by a Massachusetts independent public accountant engaged by the Contractor or by an authorized signatory for the Board of Directors or officers of the corporation, the Executive Director, or Chief Financial Officer of the Contractor.

(3) Other Reporting Requirements. In addition to reports required by contract, secretariats are authorized to develop and implement procedures and reporting requirements for Contractor qualification and risk management purposes.

(4) Related Party Transactions. Notice of all Related Party transactions (including the relationship of the Related Party and a description of the nature and amount of the transaction) shall be made in writing to DPS and the Department(s) prior to their execution. In the case of an M.G.L. c. 71B Approved Private School Program, notification shall be given to DPS and DOE. If disclosure was made through a response to a Request for Response pursuant to 801 CMR 21.00, within an executed contract, or through other formal means, such disclosure will satisfy the requirements of 808 CMR 1.04(4). Prior written disclosure shall not be required where the total value of transactions with a Related Party is less than $100 within the year, and shall not be required where the transaction is a gift to the Contractor from an official, administrator or manager of the Contractor.

(5) Inventory of Equipment and Furnishings and Other Goods. Any Contractor in possession of Capital Items, as defined in 808 CMR 1.02 shall label, maintain and keep on file a written inventory of the property in accordance with generally accepted accounting principles. The Department may specify additional inventory requirements for Capital Items acquired with funds from the Commonwealth. Upon termination of the Contractor's contracts with the Department, Capital Items acquired with Commonwealth funds under a capital budget shall be subject to the following disposal standards:
(a) if the Department holds title, the item shall be returned to the Department or transferred to another Contractor, as directed by the Department;
(b) if the Contractor holds title and the item has been fully depreciated it shall be retained by the Contractor, or;
(c) if the Contractor holds title and the item has not been fully depreciated, the item and its title shall be returned to the Department, or transferred to another Contractor, or the item may be retained or sold by the Contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale, as determined by the Department.

(6) Requests for Additional Information. Each Contractor and Department shall Submit such additional information as DPS may from time to time require, no later than 21 Days after the date of the postmark of a written request or the date an electronic request is sent.

(7) Extensions. At its discretion, DPS may in exceptional circumstances grant one extension of the filing deadline for Submission of the reporting requirements contained in 808 CMR 1.04(2) or (6). Extension requests for 808 CMR 1.04(2) must be received electronically. All requests for extensions must be received by DPS prior to the original due date. An extension is deemed to be denied if not granted in writing by DPS prior to the original due date.

(8) Access and Examination of Records. A Contractor shall make available for review, inspection and audit all records relating to its operations and those of its affiliates,

subsidiaries and Related Parties and shall permit timely and reasonable access to its appropriate personnel for the purpose of interview and discussion related to those records and associated policies to any contracting Department, Executive Office, DPS, the Office of the State Auditor, the federal government or their representatives. Audit of records by DPS or Departments shall be conducted according to the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions", as published by the United States General Accounting Office.

(9) Field Audits and Quality Control Reviews. DPS may coordinate and conduct field audits of Contractors and quality control reviews of auditor's reports and work papers in the possession of the Contractor or its independent auditor. DPS may photocopy work papers and related documents, as deemed necessary.

(10) Audit Resolution Policy. DPS will maintain an audit resolution policy in accordance with generally accepted government auditing standards.

(11) Penalties.

(a) Application. DPS, Secretariats and Departments have authority to pursue remedial measures and assess penalties under the provisions of 808 CMR 1.04(11). In addition, DPS or Secretariats may require Departments or the Office of the Comptroller to take action necessary to carry out any penalty assessed by DPS or Secretariats. The availability of penalties under 808 CMR 1.04 shall not limit the Commonwealth's rights to pursue other remedies available by law, regulation, contract or the audit resolution policy.

(b) Failure to Comply with 808 CMR 1.04(1),(2),(3),(6),(8), (9) or (10). If a Contractor fails to comply with 808 CMR 1.04(1), including correction of deficiencies, 808 CMR 1.04(2), (3), (6), (7), (8), (9) or (10) in a timely manner, regardless of the stated reason, the Contractor may be subject to penalties up to and including: delay of payment, disallowance of payment of expenses relative to which documentation sufficient to meet the governmental agencies' inspection or auditing standards is not provided, restriction on bidding for new contracts, restriction from receiving additional funds or price increases, determination that the Contractor is ineligible for the ready payment system under 815 CMR 3.00, or debarment from doing business with the State. In addition, Contractors of special education services shall be deemed ineligible for an increase to prices authorized pursuant to the provisions of 808 CMR 1.06.

(c) Failure to Comply with 808 CMR 1.04(4), 1.04(5) or 1.05. If, after a hearing, DPS finds a violation of 808 CMR 1.04(4), 1.04(5) or 1.05, DPS may order that the contract(s) directly affected by such violation be terminated or may assess a civil penalty of not more than $2,000 or 10% of the Contractor's annual Maximum Obligation under such contract(s), whichever is greater. If DPS determines after a hearing that a Contractor has committed repeated willful violations of 808 CMR 1.04(4), 1.04(5) or 1.05, DPS may debar the Contractor for a period not to exceed five years.

1.05: Non-Reimbursable Costs

Funds received from Departments may only be used for Reimbursable Operating Costs as defined in 808 CMR 1.02. In addition, funds may not be used for costs specifically identified in 808 CMR 1.05 as non-reimbursable. Expenditures not in accordance with 808 CMR 1.05 are subject to recoupment, intercept, offset, and where appropriate, the Authorized Price is subject to adjustment, as determined by the Commonwealth.

(1) Unreasonable Costs. Any costs not determined to be Reimbursable Operating Costs as defined in 808 CMR 1.02 or any amount paid for goods or services which is greater than either the market price or the amount paid by comparable Departments or other governmental units within or outside of the Commonwealth.

(2) Certain Depreciation.

(a) Depreciation for assets to the extent that the assets have previously been depreciated by the Contractor.

(b) Depreciation which is computed by a method other than the following: an historical cost basis with a straight line method; using a schedule of asset service lives pursuant to DPS policy; and charging one half of the annual depreciation expense in each of the years of acquisition and disposal.

(c) Depreciation on idle, excess, or donated assets or on that portion of an asset's historical cost basis which was paid for from Restricted Funds.

(d) Depreciation on assets acquired under a capital budget approved by a Department and held in trust for the Commonwealth of Massachusetts or depreciation on assets acquired under a capital budget approved by a Department to which the Contractor holds title under the terms of a contract.

(3) Certain Interest.

(a) Any interest paid or accrued upon funds advanced or borrowed from any owner, partner, officer, stockholder, Related Party, or affiliated or parent organization which exceeds the prime rate plus 1% as published in The Wall Street Journal for similar obligations issued at the same time and for the same amount of time.

(b) Any interest paid or accrued to inter-fund borrowing.

(c) Any interest paid or accrued during the reporting year which is not supported by documentation and certification to demonstrate that payment of interest and repayment of principal are required under a definite schedule, or upon demand, pursuant to a written contract.

(d) Any interest or penalties incurred because of late payment of loans or other indebtedness, late filing or payment of federal and state tax returns, municipal taxes, unemployment taxes, social security, and the like.

(e) Any interest paid or accrued upon funds advanced or borrowed to the extent of income received or accrued from the investment of Restricted Funds which were available to defray all or a portion of the expenses to which borrowed or advanced funds were applied.

(4) Current Expensing of Capital Items. All costs attributable to the current expensing of a Capital Item.

(5) Certain Salaries and Consultant Compensation. Those salaries, wages, and consultant compensation considered to be excessive by DPS, in light of salaries, wages and consultant compensation of other comparable Contractors.

(6) Bad Debts. Those amounts (whether estimated or actual) which represent the portion of an account or note receivable that proves to be entirely uncollectible despite collection efforts including legal action, and any related legal costs.

(7) Taxes. Federal corporate income taxes and the income related portion of the Massachusetts corporate excise tax.

(8) Related Party Transaction Costs. Costs which are associated with a Related Party transaction are reimbursable only to the extent that the costs do not exceed the lower of

1.05: continued

either the market price or the Related Party's actual costs. Notwithstanding the above provision, Related Party transaction costs are reimbursable up to market price when the following conditions are satisfied:

(a) the transaction is for a good or service which the Related Party sells to the general public;
(b) the Related Party's transactions with the Contractor in the reporting year comprise less than 10% of the Related Party's annual sales of that good or service to the general public (excluding sales to other parties also related to the Related Party under FASB 57); and
(c) the Contractor has approved the transaction by vote of independent directors, or a committee of independent directors, following full disclosure of the Related Party's interests.

Further, costs associated with a Related Party transaction which would not be Reimbursable Operating Costs to a Contractor under 808 CMR 1.02 and 808 CMR 1.05 are non-reimbursable. Transactions with a Related Party totaling less than $100 annually may be reimbursed at market prices.

(9) Certain Fringe Benefits.
(a) Fringe benefits determined to be excessive in light of salary levels and benefits of other comparable Contractors and fringe benefits to the extent that they are not available to all employees under an established policy of the Contractor. Disparities in benefits among employees attributable to length of service, collective bargaining agreements or regular hours of employment shall not result in the exclusion of such costs.
(b) Employer contributions to pension, annuity, and retirement plans which have been denied approval by the Internal Revenue Service.

(10) Fundraising Expense. The cost of activities which have as their primary purpose the raising of capital or obtaining contributions, including the costs associated with financial campaigns, endowment drives, and solicitation of gifts and bequests. However, if a Program which receives Commonwealth funds does not, or cannot be reasonably expected to, receive federal funds, the fundraising expenses specifically for raising capital or obtaining contributions for that Program may be off-set against the revenue generated by the fundraising activity except no loss will be reimbursable. In those circumstances, the Contractor must maintain and make available for review, subject to donor restrictions on confidentiality, accounting systems which adequately document and segregate those fundraising activity expenses and revenues associated with Programs which receive Commonwealth funds from other Contractor Programs in accordance with generally accepted accounting principles.

(11) Travel Allowances. Any amount advanced, paid, or accrued to reimburse the Contractor's employees for the use of a private motor vehicle on official agency business in excess of the amount allowed under the United States Internal Revenue Code §§ 61 and 62.

(12) Non-Program Expenses. Expenses of the Contractor which are not directly related to the social service Program purposes of the Contractor.

(13) Security Deposits. Money deposited by the Contractor with a lessor of real property as security for full and faithful performance of the terms of a Contractor's lease.

(14) Free Care. Costs associated with free service and use.

(15) Research. The costs related to the conduct of grants, contracts, investigations, or Programs directed at the understanding, cause or alleviation of physical, mental or behavioral conditions. All costs of salaries, supplies, equipment, and overhead which are directly related to research are to be excluded. Data gathering and Program analysis are not considered to be research.

1.05: continued

(16) Management Agency Fees. Fees charged to the Contractor by a management agency which exceed the costs the Contractor would have incurred had it not entered into a management agreement.

(17) Costs Resulting from a Change of Assets.

(a) Any costs related to a change of Program ownership that has not been recognized by the Commonwealth because of one or more of the following conditions:

1. The transfer of Program ownership occurred between Related Parties;
2. The transfer of Program ownership was not made for reasonable compensation;
3. The transfer of Program ownership was not a genuine transfer of all the powers and rights of ownership;
4. The transfer of Program ownership did not show an intent to sell the assets or the transfer increased the cost basis of either the transferor or transferee; or
5. In the case of a financing agreement between the transferor and the transferee, the agreement was not designed to bring about a complete transfer of Program ownership or there was not compliance with the terms of the agreement.

(b) When a change of Program ownership has been recognized by the Commonwealth, as follows:

1. For land, costs that exceed the lower of the acquisition cost or the basis allowed the immediate prior owner.
2. For furnishings and fixtures and equipment, costs that exceed the lower of the acquisition cost or the basis allowed the immediate prior owner, reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as a Reimbursable Operating Cost.
3. For buildings, costs that exceed the lower of the acquisition cost, 100% of the most recent 100% property valuation reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as Reimbursable Operating Costs to the immediate prior owner, or an independent appraisal made by a qualified appraiser. Appraisals using the income approach to establish value will not be recognized.

(c) Where there has been an exchange of assets by a Related Party, costs in excess of the cost previously allowed to the Contractor with the Related Party relationship for the exchanged assets.

(d) Where there has been an exchange of assets between Contractors and such exchange results in a sale-lease back, costs in excess of the transferor’s allowable costs for the exchanged assets.

(18) Lobbying Costs. Funds used to compensate or reward lobbyists, consultants or staff to promote, oppose, or influence legislation, or influence the governor's approval or veto thereof or to influence the decision of any member of the Executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto, and any costs associated with lobbying activities. This prohibition shall apply where the lobbyists, consultants or staff, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation, approval or veto, or regulations, whether or not any compensation in addition to the salary for such employment is received for such services.

(19) Certain Reporting Year Expenditures. Reporting year expenditures in the operating fund for which Restricted Funds were available but not used.

(20) Itemized Deductions. All expenses not qualifying as itemized business deductions under the United States Internal Revenue Code.

(21) Litigation Costs. All costs incurred in connection with the prosecution or defense of claims against the State or any of it subdivisions, including, but not limited to, legal, accounting, and consulting costs. Reasonable expenses of a successful price appeal under 808 CMR 1.06(6) will not be considered non-reimbursable.

1.05: continued

(22) Unallowable Costs under OMB Circular A-122 and A-21, or Successor Provisions. Costs which are not allowable under OMB Circular A-122 and A-21, or successor provisions, are non-reimbursable to Programs which receive federal financial assistance.

(23) Luxury Items. All costs associated with luxury items including, but not limited to luxury passenger automobiles as defined in the Internal Revenue Code §§ 4001 or 4002, airplanes, boats, vacation homes, alcoholic beverages, charitable contributions and donations, and all non-Program entertainment expenses.

(24) Salaries of Officers and Managers. Salaries of officers and managers to the extent they exceed the rate paid to state managers in job group M-XII, step seven.

(25) Mortgage Principal. Mortgage principal on an amortized or other basis: no Department shall reimburse a Contractor for the principal portion of any note secured by a mortgage on property owned directly or indirectly by the Contractor.

(26) Undocumented Expenses. Costs which are not adequately documented in the light of the American Institute of Certified Public Accountants statements on auditing standards for evidential matters.

(27) Administration and Support Costs. Costs which are otherwise non-reimbursable under the provisions of 808 CMR 1.05 may not be reimbursed through Administration and Support Costs.

(28) Payments by the State for Contracted Services in Support of or in Opposition to Unions or Employee Organizations. Pursuant to M.G.L. c. 7, § 56, costs associated with any attorney, consultant or other person to advise, consult or provide any other service to such contracting person or entity relative to persuading employees thereof to support or oppose any organization of said employees or any other employee self-organization or concerted activity for mutual aid or protection. 808 CMR 1.05 shall not apply to the costs of attorneys or consultants to assist in collective bargaining with a union or other employee organization recognized as said employees' bargaining agent or to administer a collective bargaining agreement.

1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs

808 CMR 1.06 sets forth the eligibility and procedural requirements applicable to M.G.L. c. 71B Approved Private School Programs seeking Massachusetts approved prices. 808 CMR 1.06 does not limit the prices a Contractor may charge to other purchasers of a Program, however, pursuant to 808 CMR 1.03(4) no price authorized under 808 CMR 1.06 may exceed the lowest price charged by a Contractor to other purchasers of the Program. In the calculation of an Authorized Price for an M.G.L. c. 71B Approved Private School Program, DPS shall not apply unrestricted funds or unrestricted revenue not specifically designated for such calculation by the Contractor. Any voluntary use of unrestricted funds or unrestricted revenues shall be governed by an annual written agreement between the Contractor and DPS. Any price authorization made as a result of such a written agreement shall not extend beyond June 30 of the Fiscal Year for which the price is authorized.

(1) Annual Price Authorization for Approved Private School Programs Located within the Commonwealth.

(a) Eligibility for a Price Increase. In order for an Approved Private School Program to be eligible for an increase to its currently Authorized Price, the Contractor must have filed a UFR or appropriate documentation of exemption for the designated Base Year in accordance with 808 CMR 1.04 or predecessor regulation and the instructions to the UFR.

1.06: continued

(b) Price Determination for Eligible Programs. If a Program has been determined to be eligible for a price increase in accordance with 808 CMR 1.06(1)(a), DPS may establish a subsequent year price for the Program by adding a per student annual adjustment amount to the current Authorized Price as follows:

1. Where the Program's Authorized Price has been calculated pursuant to 808 CMR 1.06(3) or recalculated pursuant to 808 CMR 1.06(4) or predecessor regulation as a result of a revision by DOE of the Programs approved staffing and other components since the Base Year, the per student annual adjustment amount will be determined by multiplying the current Authorized Price by a percentage factor, as determined on an annual basis by DPS, which reflects adjustments to employee compensation.

2. Except as provided above in 808 CMR 1.06 (1)(b)(1)., the per student annual adjustment amount will be determined by multiplying the current Authorized Price by a percentage factor, as determined on an annual basis by DPS.

3. Unless otherwise provided in 808 CMR 1.06, the price as determined in 808 CMR 1.06(1)(b)(1). or 808 CMR 1.06(1)(b)(2). will be the annual price authorized for the subsequent Fiscal Year.

(c) Price Determination for Other Programs. If a Program does not satisfy the criteria for a price adjustment under 808 CMR 1.06(1)(a), DPS will authorize a price for the Program equal to the current Program price, unless otherwise provided in 808 CMR 1.06.

(d) Additional Price Adjustments.

1. Adjustments to Account for Surplus Revenues and Audit Findings. Where a Contractor has accumulated a surplus in the Base Year in excess of the limitations contained in 808 CMR 1.03(7), or an audit of the Program by the Office of the State Auditor has determined that Program funds are subject to recoupment or DPS has determined that Department funds have been expended by the Program on non-reimbursable costs, DPS may adjust the Program price to recoup such excess surplus or inappropriate expenditures. Such adjustments may reduce the base upon which future years' prices are determined.

2. Adjustments for Failure to Comply with Audit Requirements. DPS will rescind any price increase authorized under 808 CMR 1.06 and will adjust the Authorized Price accordingly if, by June 1:

a. the Contractor has failed to correct UFR filing deficiencies identified by DPS; or

b. DPS has not received a corrective action plan incorporated into an administrative agreement which has been prepared and signed in accordance with the DPS Audit Resolution Policy relative to material and reportable internal control and compliance findings contained in its UFR for the Base Year.

(e) Adjustments to Reflect Price Increases Due to Extraordinary Circumstances. The Program price authorized under 808 CMR 1.06(1) may be prospectively adjusted for increases subsequently granted under 808 CMR 1.06(4), however any adjusted price shall not exceed the greater of the price authorized under 808 CMR 1.06(1), or that granted under 808 CMR 1.06(4).

(f) Annual Adjustment Limitation. No price authorized under 808 CMR 1.06(1) except a price authorized under 808 CMR 1.06(1)(e) may exceed the price in effect for the current Fiscal Year plus the annual adjustment percentage determined annually by DPS.

(g) Prices authorized pursuant to 808 CMR 1.06(1) will be authorized on or before the first Wednesday in February of each year and shall become effective on July 1 following authorization.

(2) Annual Price Authorization for M.G.L. c. 71B Approved Private Schools Located Outside the Commonwealth of Massachusetts. Any price authorized pursuant to 808 CMR 1.06(2) shall be effective on the date of authorization by DPS, or the effective date as determined by the state in which the Program is located, whichever is later. Prices authorized by DPS under 808 CMR 1.06(2) shall remain in effect until superseded by DPS.

1.06: continued

(a) If an Approved Private School Program is located outside of the Commonwealth of Massachusetts in a state which has an established state rate or price setting mechanism, DPS will authorize as the price to be paid by Commonwealth Departments the price established, authorized or approved by the state in which the Program is located, provided that the price is the lowest charged by the Contractor for the Program. In order for DPS to authorize a price, the following must be submitted to DPS by the Contractor:

1. A UFR or certificate of exemption for the most recent reporting year, in accordance with the UFR instructions;
2. A certification from the Contractor that the price requested to be authorized is the lowest charged by the Contractor for the Program; and
3. A copy of the price authorization or approval by the state in which the Program is located, including the effective dates of the price.
4. If the requested price is not the lowest charged by the Contractor for the Program, the Contractor must identify the amount of the lowest price charged, which will then be authorized by DPS.

(b) If an Approved Private School is located outside the Commonwealth of Massachusetts in a state where there is no established state rate or price setting mechanism, DPS will determine and authorize a Program price pursuant to the provisions of 808 CMR 1.06(1) or (3), as applicable.

(3) Price Authorization For New or Reconstructed M.G.L. c. 71B Approved Private School Programs.

(a) Upon the request and recommendation of DOE, DPS will review a proposed Program price for a new or reconstructed M.G.L. c. 71B Approved Private School Program. A new Program is one approved by DOE for the first time as such. A reconstructed Program is one currently approved by DOE but the service configuration of which has been altered and those alterations have been approved by DOE. DPS may require that information sufficient for its review, including format of the information, be submitted with the DOE request and recommendation. After review, DPS may authorize the proposed price, authorize an adjusted price, or suspend action pending the receipt of additional information.

If the proposed price is for a reconstructed M.G.L. c. 71B Approved Private School Program, the school must notify all entities, including state departments and superintendents of Local Education Authorities, which currently purchase the Program, that it will be requesting an increase, including the amount of the requested price, by December 1. DPS will authorize an adjusted price no earlier than July 1 of the following fiscal year upon receipt of DOE approval and a completed application from the Approved Private School program. If the application process continues into a subsequent fiscal year(s) and the reconstruction includes changes which result in a price higher than the original requested tuition price, an additional notification process to all entities named above must occur by December 1 for each subsequent year until the price is authorized by DPS.

(b) A price authorized under the provisions of 808 CMR 1.06(3) for a new M.G.L. c. 71B Approved Private School Program is subject to review and adjustment after six months based upon a review and analysis of the Contractor's actual expenditures. Within 60 days of the last day following the sixth month of the effective date of the price, or the date that the Program becomes operational, whichever is later, the Contractor must submit, in UFR format, actual expenditure and revenue reports according to the instructions in the UFR, including an accountant's review report (AICPA Professional Standards Statement on Auditing Standards No. 71 (SAS No. 71)). Within 60 days of the receipt of the required materials, DPS shall notify the Contractor of any adjustments to be made to the Authorized Price.

(4) Price Adjustment for M.G.L. c. 71B Approved Private School Programs - Extraordinary Relief.

(a) Conditions for Consideration of Extraordinary Relief. Where an Approved Private School experiences additional expenses for its Program during the price year which are

1.06: continued

necessary for the provision of the mandated program of services and which it cannot absorb within its Authorized Price, the Contractor may apply to DPS for a price adjustment for the Program during the price year if the expenses are necessary to:

1. meet federal or state statutory, or local regulatory requirements, including DOE or OCCS regulations and licensing requirements not currently included in the Authorized Price, or
2. account for unanticipated emergencies beyond the reasonable control of the Contractor.

(b) To be eligible for consideration for extraordinary relief the conditions described in 808 CMR 1.06(4)(a) must have resulted from unforeseen events occurring after July 1 of the current Fiscal Year.

(c) Required Documentation. To be eligible for consideration for extraordinary relief, the Contractor's request must include the following:

1. a detailed description of the situation which has caused the Contractor to seek extraordinary relief;
2. price year income and expenses to date for the Approved Private School Program(s) for which extraordinary relief is being sought;
3. a copy of the Contractor's most recently completed fiscal year UFR;
4. a copy of the Approved Private School Program budget(s) for the current fiscal year using the components contained in the UFR and instructions thereto;
5. a listing of the Approved Private School Program purchasers for the current Fiscal Year, including the number of students for each purchaser;
6. the average enrollment, by month, of the Approved Private School Program(s) for the most recently completed 12 month period;
7. substantial evidence that the Contractor's resources are insufficient to cover the expenses for which extraordinary relief is sought, including substantial evidence that the Contractor has exhausted all programmatic and financial resources. For the purposes of 808 CMR 1.06(4)(c)(7), "programmatic and financial resources" shall not include unrestricted funds or revenues as defined in the instructions to the UFR which have not been specifically designated for use by the Approved Private School Program by the Contractor, but shall include, and not be limited to, surplus revenues as determined by DPS under 808 CMR 1.03(7).
8. evidence, for each cost for which extraordinary relief is sought, that the Contractor acted prudently, reasonably and in compliance with the law;
9. citations or notices of violations of federal, state or local statute or regulation supporting the request, or a statement from the appropriate authority that it requires the expense or item for which extraordinary relief is being sought;
10. documentation that the current operating expenses are in compliance with the reimbursable cost standards contained in 808 CMR 1.02 and 1.05;
11. the Contractor's requested price;
12. documentation that the Contractor has notified all entities which currently purchase the Approved Private School Program that it has requested extraordinary relief, and the amount of the requested price; and
13. where a Contractor's request includes expenses for additional Approved Private School Program staff, a staff listing, prepared using position titles contained in the instructions to the UFR and containing the number of proposed full time equivalents for each position title. Such a staff listing shall include a statement, signed by an authorized representative of DOE and/or OCCS indicating that the agency's regulation requires the listed staffing level and the number of students the staffing is intended to serve.

(d) Submission. The Contractor shall Submit its request, together with all the required documentation under 808 CMR 1.06(4)(c)(1) through (13) to DPS, with a copy to DOE. A request will be deemed incomplete until all of the required documentation is submitted, and no action will be taken by DPS on an incomplete application. DPS may request additional or clarifying information from the Contractor. Should these requests not be satisfied within 21 Days of the postmark of such request, extraordinary relief shall not be granted.

1.06: continued

(e) Adjusted Price. DPS will take action on a complete request within 60 Days of the receipt of materials required under 808 CMR 1.06(4)(d). Should DPS determine that the Contractor's request meets the requirements of 808 CMR 1.06(4)(a), (b) and (c) and that extraordinary relief should be granted, DPS will develop and authorize a price subject to the following conditions:

1. any requested expenses which do not qualify under 808 CMR 1.06(4)(a)(1) or (2) will not be included;
2. any requested expenses which are deemed to be non-reimbursable by DPS using the criteria contained in 808 CMR 1.05 will not be included;
3. any requested adjustments to administrative expenses will not be included;
4. the additional amount included in any adjusted price for any given item will not exceed the amount of the difference between the Contractor's expense for the item in the most recently completed Fiscal Year, and the current year's anticipated expense, on a per student basis; and
5. no adjusted price will be effective prior to the date of authorization, and no price shall include expenses incurred prior to the date of authorization.

(5) Administrative Review.

(a) DPS may conduct a review of Approved Private School Programs and/or Authorized Prices for good cause, including but not limited to the following reasons: failure to incur costs for items included in the initial price authorization process or later adjustments, failure to provide the approved or required Program services, failure to implement approved or required programmatic or non-programmatic changes included in the price year Reimbursable Operating Costs, or use of Department funds on non-reimbursable costs as defined in 808 CMR 1.05, as determined by DPS.

(b) DPS shall initiate administrative review by notifying the Contractor that it intends to conduct an administrative review and the reason(s) for the review. DPS may require the Contractor and/or Department(s) to Submit books, records and other information it deems necessary for its review. Such requests shall be in writing, and requested materials shall be submitted to DPS within 21 Days of the request.

(c) DPS shall notify the Contractor and the Department(s) of the results of the administrative review. The review may result in an amendment to an Authorized Price.

(6) Contractor Right to Appeal.

(a) Any Contractor aggrieved by the action of DPS relative to action taken under 808 CMR 1.06(1), (2), (3), (4) or (5)(c), who desires a review thereof, may file an appeal with the Division of Administrative Law Appeals within 30 Days of notice of DPS's action. The question on appeal shall be whether DPS, in taking the challenged action, has properly applied its regulations.

(b) The pendency of an appeal under 808 CMR 1.06(6) does not limit DPS's right to undertake an administrative review of any Authorized Price or to take any other corrective action.

(7) Price Authorization in Special Cases.

(a) Individual Prices. DPS will develop, issue, and amend, as necessary, instructions for the authorization of individual prices for services to students enrolled in Approved Private School Programs when that student has a need for additional or unique services which are not provided by the Approved Private School Program.

(b) Specialized Placement Price Authorization. DPS will develop, issue and amend, as necessary, instructions for the development and authorization of prices for individual students who are placed, after approval by DOE pursuant to 603 CMR 28.500 or successor provisions thereto, by a Department in a private school which has not been approved under M.G.L. c. 71B. These placements are also referred to as "sole source" placements.

1.06: continued

(c) Special Circumstances. With the consent of DOE and the Contractor, DPS may authorize a price determined in any manner consistent with St. 1993, c. 110, § 274, as amended, should DPS determine that price determination methods under 808 CMR 1.06 are inapplicable to the private school or produce a result which is inconsistent with St. 1993, c. 110, § 274, as amended.

(d) Critical Direct Care Positions for M.G.L. c. 71B Approved Private School Programs. Upon application to DPS by an Approved Private School Program, DPS may adjust the current Authorized Price to accommodate compensation adjustments for the following direct care positions, as defined in the Fiscal Year 1999 UFR Audit and Preparation Manual:

Direct Care/Program Staff I;
Direct Care/Program Staff II;
Direct Care/Program Staff Supervisor;
Teacher, and
Special Education Teacher.

All Authorized Price adjustments will be governed by the DPS Critical Direct Care Staff Compensation Policy for M.G.L. c. 71B Approved Private School Programs. All requests for Authorized Price adjustments under 808 CMR 1.06(7)(d) will include a statement, signed by an authorized representative of DOE, indicating that the number of staff in each position for which an adjustment in compensation is sought is consistent with DOE approval.

Any funds received pursuant to an adjustment in the Authorized Price made under 808 CMR 1.06(7)(d) will be used for the purpose requested. Any such funds not so used, as determined by DPS through the Administrative Review process set forth in 808 CMR 1.06(5), will be subject to recoupment.

1.07: Severability

The provisions of 808 CMR 1.00 are severable. If any provision of 808 CMR 1.00 or its application is held to be illegal, unenforceable or void, Departments and Contractors shall be relieved of the obligations under that provision and all other provisions shall remain in full force and effect. Such invalidity shall not be construed to affect the application of the provision under circumstances other than those held invalid.

REGULATORY AUTHORITY

808 CMR 1.00: M.G.L. c. 29, § 29B; St. 1993 c. 110, § 274, as amended by St. 1993, c. 151, § 113, St. 1993, c. 296, § 3 and St. 1993, c. 495, § 99.

FY_____ Contractor Name:_____ If Federal Funds, CFDA #:_____

PURCHASE OF SERVICE - ATTACHMENT 3: FISCAL YEAR PROGRAM BUDGET

Program Name:	Document ID#:	MMARS Code:	Program Type	UFR Prog. #

		Current		Amend. Change		New				
		FTE	Amount	FTE	Amount	FTE	Amount	COST REIMBURSEMENT ONLY		
	Program Component							**Offset	Source	Reimbursable Cost
UFR Title #	Direct Care/Program Support Staff/Overtime/ Shift Differential & Relief (Titles 101-141)									
	SUBTOTAL STAFF									
150	Payroll Taxes									
151	Fringe Benefits									
T	**Total Direct Care/Program Staff**									
Title	Occupancy									
301	Program Facilities									
*** 390	Fac. Oper/Main/Furn									
T	**Total Occupancy**									
UFR Title	Other Direct Care/Program Support									
201	Direct Care Consultant									
202	Temporary Help									
203	Clients/Caregivers. Reimb/Stipends									
206	Subcontract Dir.Care									
204	Staff Training									
205	Staff Mileage/Travel									
207	Meals									
208	Contracted Client Trans.									
*** 208	Vehicle Expenses									
*** 208	Vehicle Depreciation									
209	Incid. Health/Med Care									
211	Client Per. Allowances									
212	Prov. of Material Good									
214	Direct Client Wages									
214	Other Commercial Prod. & Svs.									
*** 215	Program Supplies/Mat									
T	**Total Other Direct Care/Program**									
Title	Direct Admin Expenses									
216	Program Support									
*** 410 & 390	Other Direct Administrative Expenses									
T	**Total Direct Administrative Exp.**									
T	**SUBTOTAL PROGRAM COSTS**									
*** 410 T	**Agency Admin. Support Allocation**	%	$							
T	**PROGRAM TOTAL**									

Commercial Fee, if applicable (for informational purposes only; not to be included in the price paid by the Commonwealth) %___$___:N/A for Cost Reimbursement

**** A. $ _____ Subtotal of offsets which are for non-reimbursable costs.**

**** Non-reimbursable costs must be shown in detail on Attachment 5 when the program is subject to the provisions of Federal OMB Circular A-122 and/or 808 CMR 1.00.**

***** Contractor's Board approved capitalization level relative to any negotiated expense costs in lines 208, 215, 390 or 410 is $_____**

12/19/03

COMMERCIAL FEE POLICY GUIDANCE
PURSUANT TO 808 CMR 1.01(2)

Location: Chapter 4 How to Draft A request for Response - Section 6 Anticipated Expenditures and Compensation Structures

Action: Please replace the section entitled "Commercial fees for for-profit contractors" starting on page 59 with the following:

Commercial fees for for-profit contractors pursuant to 808 CMR 1.01(2). A number of human and social service contractors are organized on a for-profit basis. In order to avoid confusion and subsequent audit findings, departments must be explicit in the contract about the amount of fee in excess of cost, if any, that can be earned by a for-profit contractor. Each contract executed between a department and a for-profit contractor must either a) explicitly indicate when a commercial fee has not been established by indicating that the earnings allowance is zero or b) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract. This requirement of explicitly stating either zero ("0") or the percentage or dollar amount negotiated applies to all available compensation structures and all types of POS contracts with the exception of cost reimbursement contracts.

The amount of fee that a contractor may retain must be noted, for informational purposes only, on POS Attachment 3, Fiscal Year Program Budget. A commercial fee may not be added into the price (rate) paid by the Commonwealth. In those contracts where an Attachment 3 is not used, the amount of the commercial fee, if any, must be included within the contract specifications.

Departments may consider several approaches in developing a reasonable commercial fee. To arrive at a commercial fee, departments may agree upon a fee based on the maximum obligation of the contract or the total payments made by the department or a percentage of the surplus as defined in 808 CMR 1.03(6). In addition, when determining what is a reasonable fee, departments may want to consider profit margins of the for-profit industry as a whole, if available, or the limitations on surplus funds generated by not-for-profit contractors of human and social service programs (see 808 CMR 1.03(7)).

It is important to remember that, regardless of the fee derived by the above methods prospectively, for-profit contractors may not retain a commercial fee from a contract with a deficit operating result. In addition, cost reimbursement contracts cannot, by their nature, have a commercial fee identified. Cost reimbursement contracts only pay for actual costs incurred by the provider, and thus do not allow for any surplus.

The provisions of the Commercial Fee also apply to Chapter 71B Approved Special Education Programs for which the Operational Services Division will prospectively negotiate a commercial fee with the private schools. Departments with questions as to an appropriate commercial fee are encouraged to contact OSD or their secretariat.

12/19/03

COMMERCIAL FEE POLICY GUIDANCE
PURSUANT TO 808 CMR 1.01(2)

Location: Chapter 6 For POS Only: Audit and Compliance Requirements – Limits on Earnings or Surpluses

Action: Please replace the section entitled "For Profit Earnings/Commercial Fee" starting on page 108 with the following:

For-Profit Earnings/Commercial Fee

For-profit contractors who provide human and social services to the Commonwealth may earn a commercial fee on their contracts. However, this fee must be negotiated and agreed upon by the department and the contractor before contract execution, even if it is anticipated to be zero. Each contract executed between a department and a for-profit contractor must either a) explicitly indicate when a commercial fee has not been established by indicating that the earnings allowance is zero or b) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract.

The commercial fee as defined in 808 CMR 1.02 and the provisions of 808 CMR 1.03 applies to all compensation structures and types of contracts available to POS contractors with several exceptions. One exception to the type of compensation structure that may contain a commercial fee (other than zero), is a cost reimbursement structure. Cost reimbursement contracts pay for actual costs incurred by the provider, and thus do not allow for any surplus. In addition, a for-profit contractor may not retain a commercial fee from a contract with deficit operating results. The for-profit contractor may only retain the portion of a surplus as defined in 808 CMR 1.03(6) that is attributable to Commonwealth revenues in a POS contract or Chapter 71B tuition price from the excess of Commonwealth revenues that has been prospectively negotiated as the commercial fee pursuant to 808 CMR 1.03(6).

To arrive at a commercial fee, departments may negotiate contract language that permits a contractor to retain an agreed upon amount of fee based on the maximum obligation of the contract or the total payments made by the department or a percentage of the surplus as defined in 808 CMR 1.03(6). In determining a reasonable fee, departments may want to consider comparable industry standards for earnings allowances and the standards for surpluses that non-profit contractors can retain. It is important to note that, regardless of the fee derived by the above methods prospectively, and as articulated in 808 CMR 1.03(6), a commercial fee is considered a discretionary earnings allowance that is in excess of the actual costs for the services being procured.

An explicit limit on the amount of fee that a contractor may retain must be noted, for informational purposes only, on POS Attachment 3, Fiscal Year Program Budget. A commercial fee may not be added into the price (rate) paid by the Commonwealth. In those contracts where an Attachment 3 is not used, the amount of the commercial fee, if any, must be included within the contract specifications.

The provisions of the Commercial Fee also apply Chapter 71B Approved Special Education Programs for which the Operational Services Division will prospectively negotiate a commercial fee with the private schools.

HANDBOOK UPDATE 6
Issued December 22, 2004

The purpose of this update is to present changes to the handbook which are delineated below. This update has been added to the front of the *Procurement Policies and Procedures Handbook*. The original handbook document has not been changed.

Please note: Although the locations of the changes are specified in the "Action Required" fields below, OSD does not expect departments to be physically trying to incorporate the changes into their existing hard copy handbooks. The most up-to-date forms and specifications are always available in the Comm-PASS library as well as on the OSD Forms page.

However, it is important for departments to download the updated forms and specifications from the Comm-PASS library into their department Comm-PASS library. Further, departments must be familiar with the handbook updates and adhere to the policy changes. The Quality Assurance unit will conduct its reviews according to the most up-to-date policies.

The changes are summarized below:

World Trade Organization Threshold

New Amount	***Old Amount***	***Action Required/Location of References Within the Handbook***
$477,000	$483,000	Change the amount on page 36.

Tax Compliance Procedures

Topic	***Brief Description of the Change***	***Action Required/Location of References Within the Handbook***
Tax Compliance Certification Instructions form	This form has been deleted.	Delete the *Tax Compliance Certification Instructions* form from your Comm-PASS library. Delete the *Tax Compliance Certification Instructions* form on page 197. Remove references to the form on pages 180 and 238.
Policy and procedure	*Policy change:* As an alternative to obtaining a *Certificate of Good Standing* from the Department of Revenue, PMTs may now allow the bidder to "self-certify" that it is in compliance with Commonwealth tax laws. If the PMT requires a *Certificate of Good Standing*, the text in the handbook provides an update to the process.	Delete the reference on page 80. Replace the narrative on page 86 with the attached narrative. Note: this narrative no longer pertains to the *Tax Compliance Certification Instructions* form (which has been deleted).

Form Changes (forms are attached to this update and are in the Comm-PASS library as well as on OSD's Forms page)

Form	***Brief Description of the Change***	***Action Required/Location of References Within the Handbook***
New: *Contractor Authorized Signatory Listing* This form is attached to the update for your reference.	This form replaces the *Contractor Authorized Signature Verification Form.* *Policy change:* The form is required for all procurements, regardless of size (not just for large procurements). It need only be signed once by the contractor. A copy must be attached to the record copy of each resulting contract. Although this form is still a required attachment to the Request for Response, it may be completed by the bidder either as part of the response or at contract execution. Departments may access additional policy guidance in the Comptroller's Knowledge Center at http://knowledgecenter.osc.state.ma.us/KC/Home.asp (under Procurements/Contracts: Policies/Procedures – Contractor Authorized Signatory Listing).	Download this form from the Comm-PASS library to your department Comm-Pass library. Replace the actual form on page 187. Replace references to the name of the form on pages 32, 180, 220 and 238. Replace the reference and policy guidance on page 79 with the guidance contained in this chart. Delete the narrative regarding the form on pages 81 and 82. Delete the words "over $50,000" in the Contract Signatures section on page 88.
New as of June 2004: *Purchase Order for Commodities and/or Services* This form is attached to the update for your reference.	This form has replaced the *Equipment Services Confirmation Form.* The associated policy of this form has been included in the OSD 04-23, *Policies and Guidance regarding MMARS.*	If you have not already done so, download this form from the Comm-PASS library to your department Comm-PASS library. Replace the actual form on page 176. Replace references to the name of the form on page 19. Delete the words "Optional use." Replace reference to the name of the form on page 88. Replace the word "may" with "must." Replace references to the name of the form on pages 92 and 154.

Text for page 86

Tax Compliance Certification

In addition to the certification of tax compliance which occurs once the bidder executes the Commonwealth Standard Contract Form and Instructions, the Procurement Management Team (PMT) may also require the bidder to demonstrate compliance with Commonwealth tax laws pursuant to M.G.L. c. 62C, §§ 49A, 51 and 52 and M.G.L. 181, § 16. The PMT may allow the bidder to do this with a self-certification or may require a *Certificate of Good Standing* which has been issued by the Massachusetts Department of Revenue (DOR) within the past year. See www.mass.gov/dor for more information. Bidders that are based in Massachusetts or derive an income in Massachusetts are encouraged to apply for a *Certificate of Good Standing*, even if the PMT has not required it. DOR's Certificate Unit of the Taxpayer Service Division, which issues these certificates, is located at:

Massachusetts Department of Revenue, Certificate Unit
P.O. Box 7066, Boston, MA 02204

Bidders can apply for a Certificate of Good Standing from DOR in one of 2 ways: 1) apply online 2) complete a paper application (fax to DOR at 617- 887-6262). DOR will notify the requestor if there are any remaining liabilities or tax requirements. Certificates will be issued only if the organization is in full compliance. Since all applications require extensive research, the bidder should allow sufficient time to process. For more information on the certificate contact the Certificate Unit at (617) 887-6550.

Issued May 2004

COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING

CONTRACTOR LEGAL NAME:
CONTRACTOR VENDOR/CUSTOMER CODE:

INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

NOTICE*:* ***Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.***

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

AUTHORIZED SIGNATORY NAME	TITLE

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

_____ Date:
Signature

Title: Telephone:

Fax: Email:

[Listing can not be accepted without all of this information completed.]
A copy of this listing must be attached to the "record copy" of a contract filed with the department.

Issued May 2004

COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING

CONTRACTOR LEGAL NAME:
CONTRACTOR VENDOR/CUSTOMER CODE:

PROOF OF AUTHENTICATION OF SIGNATURE

This page is optional and is available for a department to authenticate contract signatures. It is recommended that Departments obtain authentication of signature for the signatory who submits the Contractor Authorized Listing.

This Section MUST be completed by the Contractor Authorized Signatory in presence of notary.

Signatory's full legal name (print or type):

Title:

X_____
Signature as it will appear on contract or other document (**Complete only in presence of notary**):

AUTHENTICATED BY NOTARY OR CORPORATE CLERK (PICK ONLY ONE) AS FOLLOWS:

I, _____ (NOTARY) as a notary public certify that I witnessed the signature of the aforementioned signatory above and I verified the individual's identity on this date:

_____, 20 _____.

My commission expires on:

AFFIX NOTARY SEAL

I, _____ (CORPORATE CLERK) certify that I witnessed the signature of the aforementioned signatory above, that I verified the individual's identity and confirm the individual's authority as an authorized signatory for the Contractor on this date:

_____, 20 _____.

AFFIX CORPORATE SEAL

COMMONWEALTH OF MASSACHUSETTS
PURCHASE ORDER
FOR COMMODITIES AND/OR SERVICES

* ☐ COMMODITY/EQUIPMENT ☐ SERVICE

☐ THIS PURCHASE ORDER CONFIRMS AN ORDER THAT WAS PREVIOUSLY PLACED. PLEASE DO NOT DUPLICATE.

***Purchase Order Issue Date:**	***Purchase Order Number:** **Contract Number:**	
Requested Delivery Date:	**Call to Schedule Delivery Appointment:** ☐ **yes (tel.)** ☐ **no**	**Freight Terms:** ☐ **Freight on Board - Destination** ☐ **Other (Specify)_____**

Vendor Information

***Name:** ***Address:** ***City, State, Zip Code:**	**Contact Person:** **Telephone:** **Fax:** **Email:** **Quote Number (if applicable):**

Department Information

***<u>Ship to</u> Department Name:** ***Contact Person:** ***Address:** ***City, State, Zip Code:** ***Telephone:** **Email:** **Delivery Instructions:**	***<u>Bill to</u> Department Name:** ***Contact Person:** ***Address:** ***City, State, Zip Code:** **Telephone:** **Email:** **Prompt Payment Discount** (Terms & %)**:**

<u>Instructions to the Vendor:</u>

1. **The vendor's invoice must include the following minimum information: Purchase order number, quantity and description of item(s) shipped, unit of measure, unit price, total dollar amount of any discount, total price and the vendor's invoice number.**
2. **The purchase order number must appear on the vendor's packing list.**
3. **See attached specifications, if any, related to this purchase order. If this purchase order is for services, please see the section entitled Engagement of Services below. Additional specifications are not necessary if the details of the performance are covered in the contract.**
4. **Vendor assumes risk of loss for commodities in transit. All commodities are subject to inspection upon delivery. Commodities delivered after the Requested Delivery Date above may be rejected. Rejected commodities will be returned at the vendor's expense.**

*** Engagement of Services (may be required for services):** If this Purchase Order is for the provision of services which have been negotiated with the vendor, provide a brief description here of those services (attach detailed specifications, if appropriate). Also, include the dates of service, the number of hours and the hourly rates associated with this engagement. The vendor must sign this form for the engagement of services. Note: This form or additional specifications are not required if the RFR and contract contain all of the required Purchase Order information.

Line #	Vendor Item Number	Item Description	Unit of Measure	Quantity	Unit Price	Subtotal (Quantity x Unit Price)	** Discount	Total Price (Subtotal minus Discount)
1								
2								
3								

Department Approval **Signature: _____** ***Printed Name:** ***Date:**	**Subtotal:** **Shipping and Handling:**
*** Vendor Approval (only required for the Engagement of Services)** ***Signature: _____** ***Printed Name:** ***Date:**	**Total Order Amount:**

* Indicates required field. ** Discount includes any Prompt Payment Discounts.

PROCUREMENT POLICIES AND PROCEDURES HANDBOOK
EXECUTIVE SUMMARY OF CHANGES

JULY 2000

The Operational Services Division (OSD) is pleased to present the revised *Procurement Policies and Procedures Handbook* for your reference. The handbook has been updated throughout the text to incorporate all changes to policy and procedures that have been implemented since the last publication. Changes to the text also include updated telephone numbers, addresses and other clerical changes.

This executive summary of changes contains a description of policy updates and revised forms. It also reviews handbook updates that have been issued over the past two years and are now in the book. Finally, it highlights aspects of the procurement process that, although unchanged, have been emphasized in the book for your further consideration.

Departments may direct questions regarding this handbook to Operational Services Division staff at (617) 720-3300. Comm-PASS users may call the Comm-PASS help desk at 1-888-MA STATE (1-888-627-8283).

The handbook is being distributed through e-mail to department Chief Fiscal Officers (CFOs). This handbook may also be downloaded from the OSD home page at: www.state.ma.us/osd. Any future updates to this handbook will be posted on the Internet at that site.

Tell Me What's New!

Multi-State EMall ™: *See Chapter 4, How to Draft a Request for Response (RFR)*

The Multi-State EMall is a web-based tool that allows departments to order commodities over the Internet. Eventually, departments will be encumbering funds, generating payments and creating their own purchasing reports through this powerful technological enhancement. As eCommerce technology evolves, the Multi-State EMall is expected to support the procurement of services as well.

Currently, the participation in the Multi-State EMall is growing among statewide contractors and departments. Participation in the Multi-State EMall is a required provision in all new statewide Requests for Responses for commodities. All Commonwealth departments will be activated to conduct applicable purchasing in the Multi-State EMall. Further, departments are encouraged to enroll their contractors in the Multi-State EMall during contract renewal negotiations.

Purchasing Delegation Information - Incidental, Credit Card and Encumbrance:
See Chapter 7, Quality Assurance, and appendix entitled Incidental Purchasing Quick Reference Guide.

As presented in *OSD Update 00-48*, departments have been reviewed by the Operational Services Division and the Office of the Comptroller Quality Assurance Team to determine purchasing limits in three areas:

- Incidental purchase (up to $5,000 depending on the department and object code incidental purchase limits).
- Credit card (authority to make purchases using a credit card up to a specified limit).
- Encumbrance delegation (up to $50,000).

Please note that since the publication of *OSD Update 00-48*, the incidental purchase object code limit for C05, Contracted Student Interns, and C08, Contracted Professional Internships, has been reclassified from $5,000 to $0.00. Further, although no change has occurred to the incidental purchase object code limit for the "98" series (Reimbursement for Travel and Other Expenses, C98, J98, H98, M98 and N98), this series is currently under review. Any changes to the "98" series will be issued via a handbook update.

Electronic Funds Transfer (EFT): *See Chapter 4, How to Draft a Request for Response (RFR Section 10, RFR Attachments).*

EFT continues to be very beneficial to both vendors and the Commonwealth. Contractors are strongly encouraged to receive their contract payments through the electronic funds transfer (EFT) method of payment. The benefits of EFT include nearly instantaneous payment, among other things. As such, the EFT authorization form is now a required attachment to the Request for Response. Bidders who are not already enrolled may complete the authorization form and submit it with their response. Departments are also encouraged to enroll contractors in the program during contract renewal negotiations. The EFT form has been revised to highlight the availability of payment information for vendors on the Internet at the Office of the Comptroller's VendorWeb site: http//massfinance.state.ma.us.

RFR – Specifications

This edition of the handbook has separated the required and optional RFR specifications. Further, the document containing the required specifications has been presented as a ***required*** attachment to the RFR. Please note that the specification concerning contract expansion is now required.

☞ *For POS Only:* A new required specification has been added regarding filing requirements for the Uniform Financial Statements and Independent Auditor's Report (UFR).

Also, clarifying language has been added to the optional specifications concerning prompt payment discounts and alternatives.

World Trade Organization Government Procurement Agreement: *See Chapter 3, How to Do a Competitive Procurement.*

The World Trade Organization Government Procurement Agreement has adjusted the dollar threshold under this agreement to ***$483,000*** (down from $507,000). This means that departments must advertise any notice of intent to solicit responses or RFR with a total dollar value equal to or exceeding this amount for 40 days before the RFR deadline. Also, departments are reminded that procurements which fall into this category must contain a notice stating the procurement is covered by the agreement.

Additional Environmentally Preferable Product Information: *See Chapter 4, How to Draft a Request For Response (RFR Section 10, RFR Attachments) and the appendix.*

In line with the Commonwealth's efforts to promote products and practices which reduce environmental impacts, departments are encouraged to use this new optional RFR attachment to solicit information from bidders regarding their environmental efforts.

☞ **For POS Only - Purchase of Service Attachments:** *See Chapter 4, How to Draft a Request For Response (RFR Section 10, RFR Attachments) and the appendix.*

The required versus optional use of these forms has been clarified. Attachment 1: Program Cover Page, formerly optional, is now required at the time of contract execution.

☞ **For POS Only - Regulation 808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services:** *See the appendix.*

This regulation, effective 2/18/2000, was updated to incorporate changes to 808 CMR 1.06, Price Authorization for M.G.L c. 71B Approved Private School Programs.

Which Forms are New or Have Changed? *See the appendix.*

Which Form?	***What's New/Changed?***
New: Additional Environmentally Preferable Product Information	Documents bidders' environmental efforts. This form is optional for departments.
Changed: Request for Verification of Taxation Reporting Information (W-9)	Simplifies the completion of the form for type of account and organization type.
Changed: Authorization for Electronic Funds Transfer	Highlights the benefits of EFT and directs vendors to the CTR's VendorWeb site: http//massfinance.state.ma.us. This form is now a required RFR attachment.
Changed: Contract Review Form	Updates items regarding contract processing.
Changed: Equipment/Services Confirmation Form	Removes references to statewide contracts, making this optional form available for all contracts.
Changed: Tax Compliance Certification Instructions	Updates current instructions and removes the fee requirement.

Remind Me About the Other Updates!

This revised handbook has fully integrated the updates issued over the past two years. The highlights of these updates are:

1. **Purchase of Service (POS) Capital Items Procurement Policy:** *See the appendices for the forms and policy*. This update introduced this policy which has affected purchase of service procurements. It offered alternatives for contractors when purchasing furnishings and/or equipment for human and social service programs. The update included an appendix delineating the policy and two forms: a revised Purchase of Service Attachment 3: Fiscal Year Program Budget, and a re-issue of Attachment 6: Capital Budget.
2. **Massachusetts Burma Statute:** A Federal Court ruling declared that the Massachusetts Burma Statute, which gave preference to vendors who did not conduct business in Burma, was unconstitutional. As such, references to this statute and associated requirements were removed.
3. **Request for Response/Contract Duration:** *See Chapter 4, How to Draft a Request for Response, and the appendix.* This update introduced an appendix containing detailed guidance and options for flexible and restrictive RFR language regarding the total anticipated duration of procurement, including options to renew. It stressed that the duration specified in the Request for Response takes precedence over any conflicting duration that may have been stated elsewhere.
4. **Section 11, Indemnification of the Commonwealth Terms and Conditions:** *See Chapter 4, How to Draft a Request for Response, and the appendix.* This update contained the addition of new language in the RFR provisions which interprets this section of the Commonwealth Terms and Conditions as it applies to Information Technology procurements within certain expenditure classification object codes.
5. **Use of Procurement by Single or Multiple Departments:** *See Chapter 4, How to Draft a Request for Response, and the appendix.* This update listed and described the five procurement options for departments. The update, which included an appendix, offered extensive guidance regarding posting and finding these types of procurements on Comm-PASS, the procurement file, contract filing and contract management. This appendix has been further expanded to include additional guidance on agreements between the Operational Services Division and a department which has been designated by OSD to conduct a statewide procurement.

Note: This update included a very important RFR filing option. If the RFR has been posted on Comm-PASS, the department may document the existence of the RFR through either:

a) A hard copy of the RFR, OR
b) A **screen print** of the Comm-PASS closed solicitations summary page.

What Else?

The following highlights do not reflect any policy changes. Rather, we have added text to the book to encourage departments to consider the following in order to enhance the procurement process.

Open Enrollment: *See Chapter 4, How to Draft a Request for Response (RFR Section 3 - Request for Single or Multiple Contractors).*

Open enrollment of qualified contractors allows new bidders to submit responses after the initial selection period for the procurement. Departments are encouraged to consider incorporating this powerful leveraging tool into their RFRs. Having this option in the RFR may foster competition and promote better pricing since new contractors may encourage existing contractors to lower their prices.

Prompt Pay Discounts: *See Chapter 4, How to Draft a Request for Response (RFR Section 7 - Performance and Contract Specifications), Chapter 5, Contract Execution and Management (Payments) and the appendix (Optional RFR Provisions).*

Departments are encouraged to solicit discounts from bidders in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice. An expedited payment may enable departments to save money.

Environmentally Preferable Products (EPP) Program: *See Chapter 4, How to Draft a Request for Response (RFR Section 7 - Performance and Contract Specifications) and throughout the handbook.*

Reminders about Executive Order 350, the Clean State Program, have been placed throughout the handbook to emphasize the importance of this initiative. These reminders provide practical suggestions at critical points in the procurement process.

The Commonwealth of Massachusetts
PROCUREMENT POLICIES AND PROCEDURES HANDBOOK

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CHAPTER 1 INTRODUCTION

The procurement system in Massachusetts is designed to be flexible in meeting the Commonwealth's dynamic need for commodities and services. In order to optimize, adjust and streamline the system in response to newly gained experience and a rapidly changing environment, periodic reviews and continuous process improvement are essential. This *Procurement Policies and Procedures Handbook* is the result of the ongoing procurement experience. The handbook covers the procurement of commodities, services, including the purchase of human and social services.

Under our procurement system, departments conduct procurements in a customer and business friendly environment. Best results are achieved by custom building procurements to meet individual department needs. The Operational Services Division (OSD) and departments work as partners through the Procurement Management Teams (PMTs) to develop solid contracts that meet the customer needs, thus meeting the mission statement of procurement in the Commonwealth:

The overall goal of the procurement process
is to satisfy the customer,
defined as the state department
or other governmental entity,
and ultimately the public,
acquiring the commodity or service.

This introduction provides the philosophical basis and framework for conducting procurements. The information contained in this chapter underlies every aspect of the procurement process delineated in this handbook. This chapter includes:

- How this handbook is organized
- The regulations covering procurements
- Procurement principles - "best value"
- The role of the Operational Services Division (OSD)
- The role of the Office of the Comptroller (CTR)
- The role of Procurement Management Teams (PMTs)
- The role of departments
- Procurement snapshot
- Chapter summary

HOW THIS HANDBOOK IS ORGANIZED

This handbook follows the logical sequence of a procurement from the planning stages to conducting the procurement (including detailed instructions on how to write a Request for Response or RFR), to awarding contracts and managing contract performance. Each chapter focuses on a major component of the process and provides guidance, policy and step-by-step instructions where warranted. The appendices contain regulations, forms and other information referenced in the chapters. Additionally, web addresses have been included where appropriate.

Readers will find two kinds of direction in this handbook. By far the largest portion is advisory in nature, with an emphasis on explaining the meaning of certain regulatory provisions, providing examples of best practice and suggesting strategies for effective contract management (e.g., look for the words "should," "may," "recommend," or "consider"). However, in some cases, mandatory language such as "must", "requires" or "shall" is used. These policy determinations are binding upon departments and contractors.

This handbook uses the phrase "commodities and services" when describing the procurement of commodities and services, including human and social services. Procurement for human and social services is also known as "purchase of service" or POS. In some instances, ***"☞ For POS Only"*** precedes a section or selected text. This phrase in intended to alert readers to

the areas in which the procurement of commodities and services and the procurement of human and social services differ. For the purposes of this handbook, "☞ *For POS Only*" refers to human and social services classified under the "MM3" or "M03" object codes in the Office of the Comptroller's *Expenditure Classification Handbook.* Where questions arise, please contact OSD.

THE REGULATIONS COVERING PROCUREMENTS

What Is Covered by the Regulations

Absent a superseding law or regulation, 801 CMR 21.00, Procurement of Commodities or Services, including Human and Social Services, covers the acquisition of ALL commodities and services by departments within the Executive Branch.

☞ *For POS Only:* In addition to 801 CMR 21.00, 808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services, covers special education pricing as well as reporting requirements for human and social service contractors.

Commodities and Services Which Are Not Covered

- Horizontal Construction (The Executive Office for Transportation and Construction and the Massachusetts Highway Department are the oversight departments for horizontal construction under the "NN" subsidiary of the Office of the Comptroller's *Expenditure Classification Handbook.*)
- Vertical Construction (The Division of Capital Asset Management is the oversight department for vertical construction under the "NN" subsidiary of the Office of the Comptroller's *Expenditure Classification Handbook.*)
- Real Property Sales and Leasing (The Division of Capital Asset Management is the oversight department for real property transactions.)
- Interdepartmental Service Agreements and Chargebacks (The Office of the Comptroller is the oversight department for these agreements and chargebacks; 815 CMR 6.00 is the governing regulation.)
- Grants and Subsidies (The Office of the Comptroller is the oversight department for grants and subsidies within the "PP" subsidiary of the *Expenditure Classification Handbook*; 815 CMR 2.00 is the governing regulation.)

Who Is Not Covered by the Regulation

Since 801 CMR 21.00 is an Executive department regulation, it is not required for non-Executive departments, *although the voluntary use of 801 CMR 21.00 is strongly encouraged*. Non-Executive departments, such as the legislative and judicial branches, the constitutional offices, the elected offices, the public institutions of higher education, the military division and independent public authorities may elect to share in the benefits offered under 801 CMR 21.00.

Using the Office of the Comptroller's *Expenditure Classification Handbook*

The Office of the Comptroller issues a handbook of expenditure subsidiaries and object codes known as the *Expenditure Classification Handbook* (which is helpful in determining coverage of 801 CMR 21.00). Subsidiaries are identified under letter categories such as "JJ - Operational Services." Object codes are more specific expenditure breakdowns within a subsidiary, such as "J50 - Instructors/Lecturers/Trainers." This handbook is available electronically at: www.state.ma.us/osc/overview.htm.

In addition to a description of the types of expenditures that should be classified under specified subsidiaries and object codes, the *Expenditure Classification Handbook* provides helpful information on relevant legal citations, regulations, restrictions and contract and encumbrance requirements. Departments should review the *Expenditure Classification Handbook* for information on the specific object codes which are covered under 801 CMR 21.00.

PROCUREMENT PRINCIPLES - BEST VALUE

801 CMR 21.00 empowers departments to procure commodities and services at the **"best value"** for the department and the Commonwealth. Departments may pursue procurements that achieve a balance of interests and offer the best "deal" or "value" by developing solicitation evaluation criteria that measure factors beyond cost. A procurement is considered in the best interest of the Commonwealth (providing the best value) when it balances the nine guiding principles of procurement.

A best value procurement:

- Supports the achievement of required performance outcomes;
- Generates the best quality and economic value;
- Is timely;
- Minimizes the burden on administrative resources;
- Expedites simple purchases;
- Allows flexibility in developing alternative procurement and business relationships;
- Encourages competition;
- Encourages the participation of quality vendors; and
- Supports Commonwealth and department procurement planning.

A Best Value Procurement Supports the Achievement of Required Performance Outcomes

801 CMR 21.00 enables a procuring department to focus on determining what it needs and the best way to get it. Two questions that a department should ask are, *What is the desired outcome?* and *What is the best way to obtain this outcome?* A procuring department is then able to design a procurement process that obtains the desired results in the most efficient and effective manner.

A Best Value Procurement Generates the Best Quality and Economic Value

Procurement research has revealed that the "lowest" cost is not necessarily the best value for a particular procurement. Procuring departments should consider other factors when determining how to procure commodities and services. In certain cases, a commodity or service of higher quality, with greater options or incentives or a longer life span may be a better value and long-term investment of public funds, even if the initial expenditure is higher.

Instead of asking questions such as, *What is the minimum necessary to cover immediate needs?* or *What is the minimum that will have to be spent to get this done?* Departments are encouraged to consider the "investment" aspect and potential future gains associated with a procurement and the expenditure of public funds.

For example, replacement, administrative, maintenance and repair costs or other operational costs including disposal/recycling and final disposition may add significantly to the overall cost of an item in the long run and make the lifetime cost more expensive. By determining this lifetime cost, e.g., life-cycle analysis, departments can decide what makes the best economic sense for the long term, or for the Commonwealth as a whole, in addition to satisfying the immediate needs of the department.

A Best Value Procurement Is Timely

Achieving best value procurements is defeated if the procurement process is cumbersome and inefficient. Although this handbook defines several minimum procedural steps for a procurement, procuring departments are empowered to design a procurement process that achieves results within their required time frames. Simple procurements may be done quickly, allowing departments to devote the appropriate amount of time to more complex or larger procurements. Procurement schedules can shift and adjust to meet changing needs, unusual circumstances and new opportunities.

A Best Value Procurement Minimizes the Burden on Administrative Resources

A good procurement system should minimize the administrative burden on procuring departments and contractors. In order to maximize limited administrative resources, procurements should be efficient and effective. A department may devote staff and administrative resources proportionate to the complexity, priority and cost of a procurement.

A Best Value Procurement Expedites Simple Purchases

Small procurements presenting little systemic risk are permitted to follow expedited procedures. An example of an expedited process, referred to as an "incidental purchase," is a one time procurement with a value that does not exceed the lesser of either a department's incidental purchase limit or the object code incidental purchase limit. Although departments are encouraged to shop for a reasonable price, a competitive procurement is not required if the item is not on a statewide contract. This enables departments to shop quickly and efficiently and to devote only a minimal amount of time and resources to these simple procurements.

Statewide contracts, which contain typical or common commodities and services, are procured on behalf of all departments by OSD Procurement Management Teams (PMTs) or by a department which has been designated by OSD to do the procurement on behalf of all departments. A department is able to choose an item or service identified under the statewide contract without having to conduct a separate competitive procurement. Statewide contracts have also been developed to encourage a "market basket" or catalog of items, so that departments are able to shop for what they need quickly from complete lists and/or catalogs. Further, the Multi-State EMall lets departments buy commodities over the Internet with the click of a mouse! The Multi-State EMall is described in Chapter 4, How to Draft a Request for Response.

Streamlining the procurement process has been further enhanced by the elimination of certain processing steps (through delegation by OSD and the Comptroller's Office). Eligible departments have been given the authority to process all completed solicitations and contracts up to a specified dollar level without secondary transaction approvals, depending on the department's delegation authority.

A Best Value Procurement Allows Flexibility in Developing Alternative Procurement and Business Relationships

The needs of a procuring department and the Commonwealth are constantly evolving. 801 CMR 21.00 supports the use of innovative purchasing arrangements such as the use of buying groups or longer-term relationships with certain contractors (as in multi-year contracting). In addition, departments are able to develop procurement processes that facilitate procurement goals. Creative examples of alternative procurement relationships include OSD-designated statewide contracts in which one department conducts the procurement for all users, multiple department procurements/limited user contracts in which two or more departments jointly procure commodities and services, and single department procurement/multiple department user contracts in which one department opens the procurement up to future users.

By gathering valuable procurement information, learning about industry trends and calling upon the collective expertise of departments and bidders, procuring departments can foster new creative business partnerships and relationships. Departments are encouraged to work with OSD to develop new methods or approaches to competitive procurement that will meet their immediate needs as well as benefit other departments.

A Best Value Procurement Encourages Competition

801 CMR 21.00 supports the concept of competitive procurement and the positive benefits it achieves in prices, quality, customer service and public benefit. Competition among contractors is healthy and results in better choices for commodities and services. Fostering healthy competition ensures that bidders will continue to strive for excellence in identifying and meeting department needs.

In addition to best value considerations, procurements should focus on getting the "best deal" for a particular department. Departments may now challenge contractors to offer the most competitive rates available, in effect, "beating" any prices around in order to win or maintain a contract.

A Best Value Procurement Encourages the Participation of Quality Vendors

A successful procurement process encourages stable, high-quality vendors to do business with the Commonwealth. Consequently, departments must develop realistic procurements which are fair to vendors. This balance goes hand in hand with competition. If procurements are seen as too costly or too restrictive, vendors may be deterred from bidding and competition could be decreased, shrinking the pool of available quality vendors. Procurements should create a "win-win" relationship so that all parties believe that the relationship is mutually beneficial.

Procurements should be drafted to encourage the participation of qualified small, minority and women-owned business (M/WBE) enterprises. Departments should strive to be creative in their purchasing and solicitation development to promote the greatest participation of M/WBEs within specific industries. M/WBE participation should be one of the evaluation criteria that a department uses for its best value considerations.

Departments are also encouraged to invite firms owned by socially, physically or economically disadvantaged individuals to participate in the process. Procurements should also be drafted to encourage contractors to provide environmentally preferable products and services (EPPs), in accordance with the Commonwealth's environmental policy objectives as outlined in Executive Order 350, the Clean State Program.

Building strong business partnerships and exchanging information promotes efficiency and growth. A department may also find that allowing bidders to offer their own best value solution produces more effective outcomes.

A Best Value Procurement Supports Commonwealth and Department Procurement Planning

Through the development of department procurement plans and categorical commodity and service descriptions on Comm-PASS (Commonwealth Procurement Access and Solicitation System), a framework has been established for procurements with a potential for broad application, regardless of whether a procuring department is procuring for itself, on behalf of other departments, or as part of an multiple departmental initiative. Departments are encouraged to think about their needs and to seek out the advice of the OSD Procurement Management Teams. Letting the teams know what is needed to effectively carry out a department's mission may result in the discovery of other departments with comparable needs or existing contracts.

THE ROLE OF THE OPERATIONAL SERVICES DIVISION (OSD)

The Operational Services Division (OSD) is an oversight agency whose primary role is to coordinate the procurement activity for commodities and services, where appropriate, for the Commonwealth. The emphasis is on teaming with customers, enhancing service delivery, providing technical assistance and facilitating procurements. To successfully accomplish the coordination of procurements, OSD formed cross-functional Procurement Management Teams (PMTs) with departments to share in the responsibility for creating and monitoring best value contracts for commodities and services. PMTs are described more fully later in this chapter. OSD also serves as advisor to all departments in their day-to-day procurement processes.

OSD works with the Office of the Comptroller (CTR) to ensure that the process is working well and serving the needs of its customers within the parameters established by 801 CMR 21.00 and the policies and procedures contained in this handbook. Further, the CTR has provided enhancements to the service contracting process covered under 801 CMR 21.00. Departments may be granted additional delegation authority jointly by the Office of the Comptroller and OSD. The Office of the Comptroller and OSD conduct Quality Assurance reviews of departments to assess whether their procurement and contracting activities are in compliance with 801 CMR 21.00 and the accompanying procurement and contracting guidelines.

In addition, the Office of the Comptroller continuously implements system enhancements to allow departments greater flexibility in processing transactions in the state accounting system, the Massachusetts Management Accounting and Reporting System (MMARS).

Departments may contact OSD or CTR for assistance, to share knowledge and information, communicate concerns and receive advice and counsel on procurement and contract issues. Departments may offer feedback to and request training from both OSD and CTR.

The following sections further delineate OSD's role, including the development of procurement groups, maintenance of Comm-PASS, outreach and training and Quality Assurance (in conjunction with the Office of the Comptroller).

Procurement Groups

Commodity and service classifications are combined into distinct "procurement groups," each encompassing a broad spectrum of potential commodities and services that may be procured. The Procurement Management Teams (PMTs) manage these procurement groups throughout the life of a procurement, i.e., initiation, award and monitoring contract performance.

The procurement groups are not determined by product, commodity vs. service, or likely buyer, but rather by a more common sense and flexible approach. These broad-based procurement groupings combine common commodities and services which could likely be supplied by one or a few large bidders or in which a number of departments might have a strong common interest. As such, although certain categories contain only services, none of these groups is fixed; they may be further combined, expanded, or may even overlap, depending on the nature of the procurement.

For example, the facilities group combines all related materials, repairs and operations used to support any facility. The human and social services group may also be further broken out into smaller groupings of service types, profiles of clients served, etc.

An example of a human and social services procurement team is transportation. All purchasers of transportation services meet to discuss procurement strategies and opportunities. Such groupings can be analyzed to determine which facets logically belong together in one or a few statewide contracts. A list of the procurement groups and a crosswalk of these groups to object codes are contained in the appendices. A current list of existing contracts is available at: www.state.ma.us/osd/statewid.

Maintenance of the Commonwealth Procurement Access and Solicitation System - Comm-PASS

OSD requires that Requests for Responses (RFRs) with a total contract value over $50,000 (large procurements) be published on the Internet via Comm-PASS (www.comm-pass.com). OSD also encourages departments that want to advertise RFRs with total contract values of $50,000 or less (small procurements) to utilize Comm-PASS. Comm-PASS serves a broad functional purpose and is accessible over the Internet. The advertising module is linked to the actual solicitation making it easier for bidders to receive solicitation documents quickly, 24 hours a day, 7 days a week.

This system allows the Commonwealth to reach a larger number of bidders, thereby enhancing the chances of increasing competition for high quality commodities and services. Departments and the PMTs may easily publish amendments and changes to solicitations on-line. (Please see Chapter 8, Comm-PASS, for further information.)

TRAINING AND OUTREACH

Training

OSD provides a variety of training programs about the procurement process to departments, municipal entities, not-for-profits, quasi-public agencies and vendors. After initial training, OSD provides ongoing assistance and specialized trainings in other areas of the procurement process and related fields. Information regarding OSD training can be found on the Training and Outreach web site at: www.state.ma.us/osd/mlg. htm.

Below is a selection of OSD trainings with brief descriptions.

Comm-PASS Overview Training: This training provides statewide procurement personnel a live demonstration of Comm-PASS, explains how Comm-PASS fits into the overall procurement process and provides a step-by-step review of the process involved in developing procurement. It is an excellent introduction to the Comm-PASS web site and the procurement process.

Comm-PASS Internal View Certification Training: This training is designed to give participants the skills for uploading, amending, reviewing and maintaining their departments' procurement files on Comm-PASS. As such, it is designed for experienced computer users who are familiar with the Internet and the Comm-PASS web site. This training is targeted to individuals who have strong computer skills, Internet access and have been designated by their department to be responsible for uploading and maintaining procurement information.

Introduction to the RFR Process Training: This training helps Commonwealth procurement staff develop a solid understanding of the basics of the procurement process. From the formation of a Procurement Management Team (PMT) to effective contract management, it focuses on all phases of RFR development and the accompanying regulations, policies and procedures. The fee for this intensive two day course includes all necessary materials and is offered at various locations throughout the Commonwealth.

Delegation Information Session: This training is conducted jointly by OSD and the Office of the Comptroller. It is designed specifically for Chief Fiscal Officers of departments seeking increased delegation. However, other staff involved in procurement may also attend. This session provides participants with basic information regarding procurement and delegation responsibilities.

OSD Outreach Training Seminar: This offering is for departments, municipal entities, not-for-profits and quasi-public agencies. It showcases and promotes the use of statewide contracts. It also orients users to the navigation of Comm-PASS and other important state web sites. The instructors specifically address the unique questions and concerns the participants may have regarding various procurement functions.

Statewide Training And Resources (STAR) Exposition: A different cluster of interesting trainings is offered each year to STAR attendees. Examples include Communication Skills, Stress Management, Affirmative Market, and Accessing Statewide Contracts 101. Each year's training agenda for the STAR Exposition is announced via mailings, e-mail and on all OSD web sites two months before the show.

Training questions and concerns may be directed to OSD at:

Telephone:	(617) 720-3300
TDD:	(617) 727-2716
Fax:	(617) 727-4527

Outreach

OSD also serves as an important information resource to those departments, municipal entities, not-for-profits, quasi-public agencies and vendors wanting to take advantage of various procurement opportunities. OSD provides summaries of statewide

contracts and other contract awards which may be of interest to those entities. These and other outreach efforts help these entities attain best value procurements, while benefiting the Commonwealth in maximizing and leveraging its procurement power.

Representatives from departments, municipal entities, not-for-profits and quasi-public agencies may also be members of Procurement Management Teams. These representatives significantly contribute to the decision making of the teams by identifying their needs early in the contract planning stage, thus assuring that their longer term procurement needs are met.

Opportunities for maximizing the value of a procurement are available and have proven rewarding for departments which have gone the extra step to investigate the possible avenues for "teaming" with other entities, including cities and towns.

OSD also actively participates in procurement organizations and tradeshows targeting different audiences. OSD often has a booth at these tradeshows, with representatives from Comm-PASS, statewide contracts, the Multi-State EMall, the environmental program and other areas.

Outreach questions and concerns may be directed to OSD at:

Telephone:	(617) 720-3300
TDD:	(617) 727-2716
Fax:	(617) 727-4527

QUALITY ASSURANCE PROGRAM

The foundation and success of this procurement system is based on all participants complying with the regulations and the accompanying procurement guidelines detailed in this handbook. To support and promote that foundation, a Quality Assurance Program was developed jointly by OSD and CTR.

This Quality Assurance Program assesses departments' compliance in their procurement and contracting activities. The results of an assessment provide the department with approval for additional delegation authority and/or identifies areas needing improvement.

The Quality Assurance Program's function is to ensure that departments 1) are equipped with the necessary tools to procure commodities and services in compliance with 801 CMR 21.00 and 2) are aware of available resources to assist in their procuring and contracting activities. These functions are achieved through site visits, in-house reviews, training, and e-mail and phone communication.

For additional information please see Chapter 7 of this handbook. Commonwealth Intranet users may visit the web site at: www.osd.state.ma.us/qa.

THE ROLE OF THE OFFICE OF THE COMPTROLLER (CTR)

The Office of the Comptroller (CTR) is a control department accountable for numerous aspects of the Commonwealth's fiscal operations. These responsibilities are executed with the cooperation of the Operational Services Division, the Executive Office for Administration and Finance and other oversight departments. One of the main responsibilities of CTR is to work jointly with OSD to define ways in which financial and contractual operations are conducted between departments and contractors. CTR establishes specific guidelines on encumbering funds and payments for the procurement of commodities and services through the Massachusetts Management Accounting and Reporting System (MMARS). CTR provides Chief Fiscal Officers, MMARS liaisons, and contract managers with relevant information and clear procedures for managing the various types of Commonwealth contracts. To ensure that Commonwealth managers are equipped with the appropriate resources to conduct business, CTR distributes the following:

- Expenditure Classification Handbook
- Closing and Opening Instructions
- GAAP Reporting Instructions
- Fixed Assets Subsystem User Guide
- Internal Control Guide (for departments)

CTR, in conjunction with OSD, also provides financial, legal, and technical assistance to all departments regarding the procurement process. In summary, CTR's primary procurement related responsibilities are:

- Defining the accounting and financial reporting requirements of the Commonwealth.
- Developing the systems, policies and procedures for departments.
- Ensuring that all obligations (commitments) of the Commonwealth are properly accounted for and paid in accordance with applicable state laws.
- Communicating concerns and taking corrective action, as necessary, to ensure a successful procurement process.
- Providing guidance and training to departments in internal controls and procurement.
- Implementing the Quality Assurance Program in conjunction with OSD.
- Training eligible departments for participation in the credit card program.

THE ROLE OF PROCUREMENT MANAGEMENT TEAMS (PMTS)

Procurement Management Teams, formed around broad procurement groupings (see appendix for a list of the procurement groups) are the bodies which decide how a procurement will be accomplished. They develop the procurement scope and specifications, conduct the solicitation, develop evaluation criteria and negotiate the contract(s). Through contract management, these teams continue to monitor contractor performance and the level of customer satisfaction throughout the life of the contract. Depending on the size and complexity of the group, most large procurements are managed by the Procurement Management Team. Virtually all members of an OSD PMT are drawn from departments which have an interest or expertise in those particular commodities and services. Departments recognize that participation on an OSD PMT requires a commitment of time and effort. Further, these participants act as decision makers for their department throughout the procurement process.

OSD Procurement Management Teams (OSD PMTs) consist of OSD staff members with extensive procurement experience within a procurement grouping and various department procurement and program specialists. Each team has a designated Procurement Team Leader (PTL), and each member has equal input into the decisions made by the team on behalf of all Commonwealth departments. The members are active (not just advisory) participants in all procurements relating to that particular team.

In short, the PMT concept puts the customer in the "driver's seat" and closer to the bidder. Department staff assigned to OSD PMTs have "hands on" management control. OSD provides administrative support to its PMTs through Procurement Team Coordinators (PTCs). Participation, coupled with administrative support, assists departments without unduly hindering them with the logistical burdens of completing a procurement.

Departments also conduct their individual procurements or joint procurements with other departments under the same structure, bringing together program area experts and procurement staff from within the department and naming a Procurement Team Leader to guide the team throughout the process. Departmental PMTs are encouraged to follow the same general requirements of the OSD PMT model. Like OSD PMTs, department PMTs must monitor contractor performance and customer satisfaction at the department level. Thus, these teams also exist for the life of the contract. Department PMTs may also recruit members from other departments or from OSD. Note: Departments are responsible for establishing PMTs and

conducting their own solicitations for RFRs valued at $50,000 or less. The role of the PMT is to work under the management and oversight of a procuring department (OSD or a department responsible for conducting a procurement) to:

- research and analyze identified needs within the procurement grouping to determine the breadth and scope of activity for a defined period of time
- establish a schedule to carry out the RFRs that the team will conduct within the defined period of time
- communicate to customers (departments users) the schedule of events for procurements
- determine the best Request for Response (RFR) approach for each solicitation
- define and develop the technical and business specifications for each RFR
- conduct the solicitation
- exercise the Best and Final Offer option, if appropriate
- select the winning bidder(s)
- negotiate special contract provisions
- manage/review contractor performance on an ongoing basis
- provide assistance to customers conducting multi-departmental or departmental RFRs (primarily an OSD PMT function)
- research the availability of minority and women-owned firms and encourage participation in ways that strengthen and develop M/WBE businesses
- reach environmental and other socio-economic goals

Procurement Management Team Members

In general, PMT members:

- Are responsible for: establishing and managing successful contracts on behalf of their customers, in accordance with established statutes, regulations, and policies and procedures.

- Are responsible for: gathering and analyzing information relevant to the goals of the PMT, including research to determine industry standards.

- Are responsible for: developing specifications; drafting solicitations; conducting bidders' conferences, on-site visits and oral presentations; developing evaluation criteria, reviewing responses; selecting bidders; negotiating and awarding contracts; and overseeing contract management, service delivery and outcomes.

- Are responsible for facilitating communication among OSD, departments and bidders.

In addition to the above, OSD PMT members:

- Identify departments with similar procurement needs to determine the need to establish statewide contracts.

- Respond to inquiries and questions from departments, seek input from relevant OSD staff, and disseminate information of general interest.

- Are responsible, with the assistance of the requesting department, for conducting department or multiple department procurements in excess of $50,000, when the department(s) requests that the PMT act as its agent for the solicitation.

- Gather all relevant department procurement information and analyze it to determine likely candidates for statewide contracts, OSD-designated statewide contracts or multiple department/limited department user contracts.

- Create the team's RFR schedule, which establishes the focus and direction the team plans to take in developing and implementing statewide contracts. It determines which contracts should be developed by a limited number of departments that share a common need, and those that are truly unique to a particular department (which, in turn, should be conducted by or on behalf of that department only). This planning tool provides valuable information to OSD PMTs and allows them to focus energy and attention on implementing contracts that yield the highest possible return.

- Provide, through participation on a PMT, direct access to information by departments, thus ensuring their procurement needs are met.

- Administer statewide contracts which are contracts procured on behalf of all departments for specified commodities and services which may be used by any department. Regulation 801 CMR 21.04 establishes OSD as the primary procuring department for statewide contracts, with the provision of designating another department to conduct a procurement of behalf of all departments. Through the OSD PMTs, significant attention is focused on establishing quality statewide contracts that customers want to access when purchasing commodities and services.

Procurement Team Leaders (PTLs)

In general, Procurement Team Leaders:

- Are responsible for the direct oversight, management and implementation of all procurements conducted within their PMT. The leader oversees the entire procurement process, provides direction, and works cooperatively with PMT members**.**
- Lead the development effort of the PMT and/or procurement group.
- Represent their PMTs and are responsible for information sharing among other PMTs and leaders.
- Secure administrative resources.
- Are the primary points of contact with all matters related to the PMT's RFR schedule, contract management, request for assistance, and customer satisfaction.
- Are the liaisons between a dissatisfied customer and a contractor.
- Coordinate the development of customer satisfaction instruments and conduct periodic contractor review meetings with team members.
- Are responsible for the direct oversight, management and implementation of all procurements conducted within their procurement groups.
- Manage the development of their procurement groups' activities based upon receipt of a variety of procurement information, including department submissions of procurement plans that fall within the scope of their procurement groups.
- Manage and update their PMTs' Intranet web sites at: www.osd.state.ma.us.

Procurement Team Coordinators (PTCs)

Department Procurement Team Coordinators:

- Serve as the designated liaisons to OSD.
- Have the authority to act on behalf of the department head for procurements. In many instances these individuals are the departments' Chief Fiscal Officers or Chief Operating Officers.

- Are the primary receiver of all correspondence and inquiries from OSD, ensuring clear lines of communication with each department.
- Convey departmental questions, comments and concerns to OSD.

OSD Procurement Team Coordinators:

- Are OSD staff who are responsible for carrying out the administrative activities necessary within a PMT to successfully complete the RFR process.
- Handle the distribution of information to customers and vendors.
- Provide any other necessary administrative support that a PMT may require.

THE ROLE OF DEPARTMENTS

Under the delegated authority of the procurement process, departments have an enormous impact on the number and types of RFRs in which they participate, or perhaps lead, including department specific (with the option of opening up the procurement to other departments), multiple department, statewide and statewide with OSD designation.

What Departments Are Required to Do

- Conduct procurement business consistent with the statutes, regulations, and policies and procedures governing procurement.
- Accept responsibility for delegated procurement authority and be accountable for the actions of all members of the department under 801 CMR 21.00 and this handbook.
- Utilize all established statewide contracts for the purchase of commodities and services.
- Conduct all commodity and service procurements of the department with a total value of $50,000 or less.
- Maintain a procurement file for all RFRs conducted by the department.
- Make all incidental purchases.
- Maintain RFR and contract information on Comm-PASS.

What Departments Are Asked to Do

- Develop annual procurement plans.
- Utilize the Procurement Management Team (PMT) concept in department procurements to facilitate good, solid procurements based on the Commonwealth procurement principles.
- Participate in relevant OSD PMTs from which they derive a benefit.
- Work cooperatively with OSD to facilitate a strong business relationship that yields best value contracts.
- Communicate with the OSD PMTs concerning department procurement needs, satisfaction, concerns, and suggestions for continued improvement of the procurement process.

What Else Departments Can Do

- Conduct their own procurements over $50,000.
- Lead OSD-designated procurements for statewide contracts when the department is the primary purchaser of the commodity or service. Departments may also participate with other departments to conduct a multiple department procurement. Departments may also consider letting other departments (not identified in the RFR) use their procurements.

Active Procurement Management

Departments are very active in managing statewide (with OSD) and their own competitive procurements. OSD and PMT assistance in the technical and procedural methods of procurement should be relied upon by all departments, since the collective expertise of department team members and OSD staff can make procurements much easier. Departments, with PMT representation, can influence how a contract is established, resulting in a contract that meets the exact needs of the department. In addition, departments who participate in OSD PMTs have instant access to an individual with detailed knowledge of the contract. This individual can immediately assess and address a contractor's performance against established performance measures and initiate corrective action, if necessary.

Communication

OSD and the Procurement Management Teams rely on departments to inform them of planned procurements. This crucial information sharing can prevent procurement duplication, assist departments in executing the procurement and help departments on important contract management issues.

Also, two-way communication gives departments a "big picture" view of different types of procurements happening all over the Commonwealth. This access to current and future endeavors enables departments to use other contracts. In addition to the continuous communication between OSD, PMTs and departments, the following sources contain a variety of procurement information:

- OSD Internet homepage: www.state.ma.us/osd.
- Purchase of service (human and social services) homepage: www.state.ma.us/osd/pos/dps.htm
- Intranet sites developed by PMTs and available to Commonwealth personnel: www.osd.state.ma.us.
- Comm-PASS Internet system: www.comm-pass.com.
- OSD Updates: www.comm-pass.com/ or www.state.ma.us/osd.
- OSDiscussions (quarterly procurement news): www.state.ma.us/osd.
- MMARS News
- MMARS memoranda (www.state.ma.us/osc).

Accountability

The procurement process provides departments with flexibility and decision making authority coupled with increased responsibility and accountability in the handling of their day-to-day procurements. The procurement file, which documents all activity related to procurements, becomes a very important record of accountability. It is the responsibility of the department to follow the procurement principles and to work within the regulations and procedures to ensure all procurements are done fairly and properly. It is up to the departments to demonstrate that rules are followed, since for many contracts, the documentation will stay at the department and be subject to OSD/CTR Quality Assurance checks and reviews.

CONFLICT OF INTEREST LAW

The Conflict of Interest Law, M.G.L. c.268A, is one of several laws that govern dealings with public officials and employees. Contractors must certify compliance with M.G.L. c.268A in each Commonwealth Standard Contract Form. A summary of the requirements is included below. Additional information can be obtained from departmental legal counsel or the State Ethics Commission, (617) 727-0060 (www.state.ma.us/ethics/web268A.htm).

- Bribery - A contractor may not offer or give anything to a public official in exchange for that official agreeing to perform or not perform an official act.
- Registered Executive and Legislative Agents - If a contractor's responsibilities involve interaction with the state legislature, the Executive branch, or independent authorities, the contractor should contact the Secretary of the Commonwealth's office regarding the requirement to register as an executive or legislative agent. Registered agents may not give anything to a public official or policy-making public employee, or to an immediate family member of a public official or policy-making public employee.
- Gifts & Gratuities - Even if a contractor is not a registered agent, the contractor may not give a public official or any public employee anything "of substantial value" for or because of the official's duties. State employees may, under appropriate circumstances, attend vendor sponsored seminars or trade shows where the state will benefit by receiving information about products, new techniques, business trends, and other matters of concern to state purchasing.
- Hiring Public Employees - Except in rare instances, a contractor may not pay or otherwise compensate a public employee in connection with any matter that is "of direct and substantial interest" to their public employer.
- Hiring Former Public Employees - Former public employees and their business partners may never accept pay or other forms of compensation in connection with matters in which they participated as public employees. Also, even if they did not personally participate in the matters, there is a one year period before former public officials may personally appear before government departments in connection with matters that had been under their official responsibility.

PROCUREMENT SNAPSHOT

This section is intended to provide an outline of the major procurement concepts, thresholds and transactions. These topics are discussed in greater detail in Chapters 2 through 5.

Request for Responses (RFR) - A Flexible Concept in Competitive Procurement

A Request for Response (RFR) is the mechanism used to communicate contract performance specifications to potential bidders. An RFR may also be referred to as a "solicitation." A flexible and comprehensive RFR may minimize problems and risks which may arise during the contract performance. RFRs are drafted by a procuring department to fit a particular procurement based upon the complexity and total value of a contract. The goal of RFRs is to obtain best value commodities and services and to define the expected outcomes. Unless a procurement meets requirements for an authorized competitive procurement exception, an RFR shall be used for all competitive procurements.

Decisions Required for Developing a Request for Response (RFR)

A. Type of procurement (department commodity and service needs);
B. Current available sources of commodity or service, or circumstances that would obviate need for procurement:

- Current statewide contract for required commodity or service
- Other department authorized to provide commodity or services
- Another department with similar contract that allows purchases by additional departments
- Authorized competitive procurement exceptions 801 CMR 21.05

- Incidental purchases, based on the department's incidental purchase limit and the incidental purchase limit for the object code of the commodity or service
- Legislative or statutory exemption from competitive procurement
- Emergency contracts
- Collective purchasing with other states, federal agencies
- Interim contracts
- Contract employees

C. Acquisition method (outright purchase, license, lease-purchase, lease, rental, or fee for services);
D. Single contractor or multiple contractors;
E. Single or multiple department users of contract terms and prices;
F. Expected duration (includes initial period plus options to renew);
G. Expected dollars (total dollar value of contract for expected duration).

Thresholds for RFR Distribution to Potential Bidders

Large Procurements with Total Contract Value > $50,000

- Advertised in Comm-PASS (Commonwealth Procurement Access and Solicitation System).
- Bidders obtain RFR electronically through Comm-PASS.
- Written responses required (sealed written responses required, mail or personal delivery).

Small Procurements with Total Contract Value ≤ $50,000

- RFR distributed in writing to at least three potential bidders (by fax, mail, personal delivery, electronic).
- Written responses required (fax, mail or personal delivery).
- May advertise in Comm-PASS for wider circulation.

Contract Categories

Statewide Contract

- Procured by OSD on behalf of all state departments. OSD is responsible for contract execution, retention, archival and disposal.
- OSD is responsible for data entering the statewide contract number on either the Master Service Agreement Tables (MSER) or the Price Agreement Tables (PASM.).
- Available to all departments and other governmental entities.
- Executive departments must use statewide contract if procurement needs are covered.

OSD-Designated Department Statewide Contract

- Procured by a department designated by OSD on behalf of all state departments. Through an agreement with OSD, the department is responsible for contract execution, retention, archival and disposal.

- OSD is responsible for data entering the statewide contract number on either the Master Service Agreement Tables MSER) or the Price Agreement Tables (PASM) and for entering the contract on the Multi-State EMall, if applicable.

- Available to all departments and other governmental entities.
- Executive departments must use the OSD-designated department statewide contract if procurement needs are covered.

Multiple Department Procurement/Limited Department User Contract

- Procured by a group of departments. One department is selected to be responsible for contract execution.
- The RFR names the participating departments and indicates these departments will be using the procurement under the same terms and conditions as outlined in the applicable RFR.
- Departments are encouraged to notify the relevant OSD PMTs of their intent to conduct procurements that may be suitable for additional departments to use.

Single Department Procurement/Multiple Department User Contract

- Procured by one department with the option of allowing other departments to use the procurement.
- Each user department is responsible for contract execution, retention, archival and disposal.
- Departments are encouraged to notify the relevant OSD PMTs of their intent to conduct procurements that may be suitable for additional departments to use.

Department Contract

- Procured by one department for its own use.

Contract Transactions and Processing

All obligations and expenditures must be processed in the state accounting system (MMARS). Pre-encumbrance and encumbrance transactions are processed to reserve funds for obligations/contracts and may be accomplished through the Multi-State EMall, if applicable. Transactions for all payments for commodities received and services rendered are processed in MMARS. Orders placed through the Multi-State EMall are also integrated to the MMARS system for encumbrance and payment processing.

All encumbrance transactions must be processed according to the accounting prescriptions set forth in the CTR's *Expenditure Classification Handbook*. The transactions described later in this section include: SR, PO, PG, PD, SP, SC, SM, LO, PV, and RP. These transactions initiate the outright purchase, lease, rental, fee for service or license for commodities and services covered on 801 CMR 21.00 and 808 CMR 1.00.

See Chapter 5 for further detail on contract execution and management. A descriptive list of pertinent MMARS transactions and associated requirements for documentation and approval follows.

Transactions Definitions

The following is a brief description of transactions as they relate to 801 CMR 21.00. Two transaction matrices follow as reference guides. For more detailed transaction instructions, consult the MMARS procedure manual.

Pre-encumbrances: SR sets aside funds for a specific future procurement.

***Service Request* (SR):** is used when secretariat authorization is required by law. This authorization confirms the use of funds for specific services. A properly processed SR will generate the MMARS 670A document which must be authorized by the secretariat and the department and filed as prescribed by the Office of the Comptroller (CTR).

Encumbrances: PO, PG, PD, SP, SC, SM, and LO encumber funds for specific procurements.

***Miscellaneous Encumbrances* (PO):** is used for the purchase of commodities and services not on a statewide contract which are considered incidental depending on the department's incidental purchase limit and the object code incidental purchase limit. The transaction creates no output document. The minimum documentation for this purchase is the vendor's invoice.

***Price Agreement* (PG):** is used to order commodities from statewide contracts and references a statewide contract number from the PASM table. The transaction creates a purchase order to be forwarded by the department to the contractor to confirm the purchase. The PG can be used for any dollar value.

***Department Purchase Order* (PD):** is used to order commodities which are not on a statewide contract. Before initiating a PD, the department's procurement process must be complete and a Standard Contract Form and the Commonwealth Terms and Conditions must be executed. The transaction creates an output document to be forwarded by the department to the contractor to confirm the purchase. The PD can be used for any dollar value.

***Special Purchase Order* (SP):** is used by non-executive departments to order commodities not on a statewide contract. Before initiating, the department's procurement must be complete and a Standard Contract Form and the Commonwealth Terms and Conditions must be executed. The transaction creates an output document to be forwarded by the department to the contractor to confirm the purchase. The SP can be used for any dollar value.

***Service Contract* (SC):** is used for the procurement of all services. The transaction creates no output document from MMARS. If the procurement is from a statewide contract, the transaction must reference the statewide contract file number on the MSVR table. If the procurement is not from a statewide contract, the transaction is initiated after the department's RFR process is complete, if applicable, and a Standard Contract Form and the applicable Commonwealth Terms and Conditions has been executed. When legally required, this transaction must reference an SR.

***Service Modification* (SM):** is used when a department amends a contract for services. If the procurement is not from a statewide contract, the department must execute the Standard Contract Amendment Form before initiating the SM transaction. A properly processed SM will generate the MMARS 671A document which must be authorized by the department head and the secretariat, if applicable, and filed as prescribed by the Office of the Comptroller (CTR).

***Lease Order* (LO):** is used for the procurement of leases, including Tax Exempt Lease Purchase (TELP), lease and rental of commodities. This transaction does not create an output document from MMARS. If the procurement is from a statewide contract, the transaction must reference the statewide contract file number on the MSVR table. If not, the department completes the RFR process and executes a Standard Contract Form and the Commonwealth Terms and Conditions prior to initiating the transaction.

Note: *"Openorder" Vendor Code*: The use of an Openorder Vendor code on an encumbrance is not considered a procurement. Openorder is an encumbrance that allows reservation of funds for multiple vendors. It is an accounting treatment and does not take the place of a procurement method. Evidence of appropriate procurement and contract for each contractor must be kept in the department's procurement file.

Payments: PV & RP process payments for commodities and services according to the Commonwealth's Bill Paying Policy.

***Payment Voucher* (PV) & *Ready Payment* (RP):** are used after commodities or services have been received and approved by a department for payment. An PV or RP should reference a specific encumbrance. Payments are selected by MMARS according to the scheduled payment date and forwarded to Treasurer's Office for disbursement. Refer to the CTR's *Daily Disbursement Manual* and MMARS Memo #289, "Commonwealth's Bill Paying Policy" for more details.

Threshold and Transaction Matrix

Procurement Value	Procurement Process	Procurement Responsibility	Contract Forms	Transactions	Secondary Approvals
Large procurement: (Greater than $50,000)	RFR on Comm-PASS; may also be distributed in newspapers (optional) or as required by statute	Departments may request assistance from OSD in conducting procurement or request that OSD conduct procurement on department's behalf	One ***Commonwealth Terms and Conditions**** signed once by each contractor Recorded on MMARS Vendor File Incorporated by reference into all contracts One ***Standard Contract Form*** for each procurement Standard Contract Amendment Form Equipment/Services Amendment Confirmation Form can be used with contracts (optional)	PD, PG, SP, SR/SC, SM, LO	YES
Small procurement: (Equal to or less than $50,000)	RFR distributed to minimum of 3 qualified bidders; may also be distributed on Comm-PASS and newspapers (optional) or as required by statute	Departments must conduct their own procurements OSD/PMT groups are available to provide assistance or answer questions regarding procurements			YES However, departments with successful reviews showing compliance with procurement and contract requirements may be offered increased delegation.
Incidental purchase: (Depends on the department's incidental purchase limit and the object code incidental purchase limit)	Reasonable price	Department	Invoice	PO**	NO

* Procurements for human and social services have separate and different Commonwealth Terms and Conditions.
** Unless on statewide contract.

Transaction Matrix

The purpose of this transaction matrix is to give direction to user departments for purchasing commodities and services. When the "Contract Documentation Required" column indicates that a statewide contract is required, it assumes that there is a statewide contract executed and on file with the Operational Services Division and available in either the Master Service Agreement Table (MSVR) or the Price Agreement Table (PASM).

Incidental Purchases *	**Transaction**	**Secondary Approval**	**Contract Documentation Required**
Commodity on statewide contract	PG	N/A	Price Agreement referencing a statewide contract
Commodity not on statewide contract	PO	N/A	Invoice
Commodity leases on statewide contract	LO	N/A	Statewide contract
Commodity leases not on statewide contract	PO	N/A	Invoice
Services on statewide contract	SR/SC, SC	N/A	Statewide contract
Services not on statewide contract	PO	N/A	Invoice
≤$50,000 - Small Procurements	**Transaction**	**Secondary Approval**	**Contract Documentation Required**
Commodity on statewide contract	PG	N/A	Price Agreement referencing a statewide contract
Commodity not on statewide contract	PD, SP	** Yes	*** Standard Contract Form, RFR and response
Commodity leases on statewide contract	LO	N/A	Optional use of the Equipment Services Confirmation Form
Commodity leases not on statewide contract	LO	** Yes	*** Standard Contract Form, RFR and response
Services on statewide contract	SR/SC, SC	N/A	Optional use of the Equipment Services Confirmation Form
Services not on statewide contract	SR/SC, SC	** Yes	***Standard Contract Form, RFR and response
>$50,000 - Large Procurements	**Transaction**	**Secondary Approval**	**Contract Documentation Required**
Commodity on statewide contract	PG	N/A	Price Agreement referencing a statewide contract
Commodity not on statewide contract	PD, SP	Yes	***Standard Contract Form, RFR and response
Commodity leases on statewide contract	LO	N/A	Optional use of the Equipment/Services Confirmation Form
Commodity leases not on statewide contract	LO	Yes	***Standard Contract Form, RFR and response
Services on statewide contract	SR/SC, SC	N/A	Optional use of the Equipment/Services Confirmation Form
Services not on statewide contract	SR/SC, SC	Yes	*** Standard Contract Form, RFR and response

* Depending on the department's incidental purchase limit and the object code incidental purchase limit .

** Unless department has been granted a higher encumbrance authority.

*** The contractor must sign the applicable Commonwealths Terms and Conditions prior to executing the Standard Contract Form. The applicable Commonwealth Terms and Conditions only needs to be signed once in order for the contractor to do business with any Commonwealth department. It should be forwarded to the Office of the Comptroller for recording in the MMARS Vendor File.

CHAPTER SUMMARY

This introduction has discussed the foundation of the procurement process. It has set forth the guiding principles of best value, an explanation of OSD's role (further expanded into the Procurement Management Team model used by both OSD and departments), CTR's role and the departments' role. The chapter concluded with a snapshot of the procurement process.

The next chapters describe in detail how to do a competitive procurement and how to draft a Request for Response. These chapters are followed by the procedures for contract execution and administration. After the procurement has been conducted and a contract is in place, compliance and accountability are addressed. The Quality Assurance chapter delineates the methods by which all departments are held accountable for complying with the procurement regulations and the policies and procedures in this handbook. Finally, a chapter on Comm-PASS summarizes the requirements for public posting of information throughout every step of the procurement process. The appendices contain regulations, standard provisions, forms and other helpful procurement information.

CHAPTER 2 EXCEPTIONS TO COMPETITIVE PROCUREMENTS

A *competitive procurement* is required for the acquisition of *any* commodity or service or both unless the procurement qualifies as a *competitive procurement exception under 801 CMR 21.05, as follows*:

- Incidental purchases
- Legislative exemptions or legal prohibitions due to a general, special law or other existing legal obligation
- Emergency situations that require the immediate acquisition of a commodity or service
- Collective purchasing arrangements
- Interim contracts to prevent a lapse in contract performance
- Hiring contract employees

All contracts executed under 801 CMR 21.05, Competitive Procurement Exceptions, must have written justification and documentation available for review in the procurement file. Insufficient documentation or abuse of the competitive procurement exceptions may result in withdrawal of procurement approval authority or other sanctions.

Departments should note that an exception from competitive procurement does not relieve a department from complying with the remaining provisions of 801 CMR 21.00, this handbook or other requirements in policy, law or regulation. This includes but is not limited to: consultation with relevant PMT groups, maintenance of a procurement file, execution of an approved contract form, contract management and quality assurance.

INCIDENTAL PURCHASES

801 CMR 21.00 recognizes the fact that conducting a competitive procurement for certain types of purchases is neither cost-effective nor an efficient use of administrative and staff resources. Therefore, to maximize available resources, encourage best value in purchasing practices and support timeliness, some purchases may be considered incidental in nature. A purchase qualifying as an Incidental Purchase under the following guidelines does not require either a competitive procurement or a Commonwealth Terms and Conditions/Standard Contract Form unless determined to be appropriate by the Department.

An incidental purchase is defined as a one-time purchase, or a series of purchases for a one-time non-recurring need. The total dollar value can not exceed the department or object code (OBJ2).

Departments are always encouraged to shop around for best value prices. Pursuant to Executive Order 390, the Affirmative Market Program, Departments should always consider using SOMWBA certified Minority and Women-Owned Business Enterprises (M/WBE) for incidental purchases. A listing of SOMWBA certified business is located at: www.state.ma.us/somwba. These purchases would assist the department in reaching their Affirmative Market benchmark.

How to Determine when a Purchase is Incidental

To determine if a purchase is "incidental" the following four questions should be considered:

1. *Is the purchase available from a Statewide Contract?*

Executive Departments must use available Statewide Contracts, unless the Statewide Contract does not meet the Department's specific need. Any small purchase that is available on Statewide Contract does not qualify as an "incidental

purchase". If the Statewide Contract does not meet the Department's needs it should be documented in the procurement file for future reference and the OSD Procurement Team Leader notified as a courtesy.

2. Is the total cost of the purchase below your department's incidental purchase limit?

Each department is granted a department incidental purchase limit based on a periodic assessment of procurement and fiscal performance conducted by the Quality Assurance Team. The Team is comprised of staff from the Operational Services Division and the Office of the Comptroller.

A department may have their department incidental purchase limit raised to the highest limit based on a high level of performance in the areas reviewed, (thereby demonstrating a low risk to the Commonwealth) or a department's incidental purchase limit could be lowered to $0 due to very significant concerns identified by the Quality Assurance Team. The results of the Quality Assurance reviews are shared with department heads and Chief Fiscal Officers.

A department is authorized to make incidental purchases up to the LESSER amount of either the department's assigned incidental purchase limit OR the object code incidental purchase limit for the intended purchase. For example, if the department's incidental purchase limit is $1,000 and the incidental purchase object code limit for an anticipated purchase is $5,000, then the department is only authorized to make incidental purchases in that object code up to $1,000.

3. Is the total cost of the purchase below the object code's incidental purchase limit? (MMARS OBJ2 table)

All object codes governed by 801 CMR 21.00 have been assessed to determine the statutory limitations, legal restrictions and risk to the Commonwealth. The exceptions are: Tax Exempt Lease Purchases, entitlement programs and loans and special payments. These exceptions were determined based upon special contracting and prior approval requirements. This information can be accessed through the OBJ2 table on MMARS or through an appendix (Object Code Limits for Incidental Purchases) in this handbook. (Please also see the exception for M.G.L. c. 29, s. 29A for consultant services below.)

A department may make incidental purchases up to either the incidental purchase object code limit OR the department's incidental purchase limit, whichever is LESS. For example, the department's incidental purchase limit is $5,000 and an anticipated purchase is $4,000. However, the object code incidental purchase limit on the OBJ2 table is only $2,500. The department is authorized to make purchases in that object code up to $2,500.

<u>Exception for M.G.L. c. 29, s. 29A Consultant Contracts.</u>

Please note that there is one exception to these general rules for consultant services governed by M.G.L. c. 29, s.29A (certain HH and NN object codes). Although the object code incidental purchase limit for these objects codes is $5,000, the amount listed under the OBJ2 table is $1,000. The OBJ2 table is set at $1,000 because any M.G.L. c. 29, s. 29A consultant service purchase exceeding $1,000 must use the SR/SC transaction and the Commonwealth Terms and Conditions/Standard Contract Form. However, despite the limit of $1,000 on the OBJ2 MMARS table, consultant services with a total value of $5,000 or less are still a procurement exception.

For example, if the department's incidental purchase limit is $2,500, the department is only authorized to make incidental purchases of M.G.L. c. 29, s. 29A consultant services up to $2,500. No procurement is required for these purchases up to $2,500. However, since the OBJ2 table is set at $1,000, any purchase in this object code that exceeds $1,000 requires the SR/SC transaction and an executed Commonwealth Terms and Conditions/Standard Contract Form.

4. Is the duration of the need one time, non-recurring?

In order to qualify as an incidental purchase a commodity or service purchase must be for a one-time non-recurring need. When a department knows that repeated or multiple purchases for the same commodity or service are planned or are a possibility, the commodity or service must be procured through a competitive RFR procurement and contract process. For example, the rental of tables and chairs for $850 for a one time conference would qualify as an incidental purchase. Rental of

tables and chairs for $850 for an annual conference would not qualify as an incidental purchase, because the purchase is a recurring need. Additional examples to assist you in making determinations about incidental purchases are provided in the appendix entitled, "Incidental/Non-Incidental Purchase Examples".

Transactions and Documentation Requirements for Incidental Purchases

For most incidental purchases, only the invoice for the purchase is required. However, individual departments may determine it is in the best interest of the department to execute a Commonwealth Terms and Conditions/Standard Contract Form.

Please note that the Office of the Attorney General has determined that departments may not sign vendor contracts, invoices, or other documents containing contractual terms. Departments that choose to sign these types of documents do so at their own risk and will be responsible for any associated costs and damages.

The PO transaction is the most commonly used encumbrance for incidental purchases. However, if a department chooses to encumber funds using an SC, LO, PD or SP transaction, then a Commonwealth Terms and Conditions/Standard Contract Form must also be completed and retained on file at the department for these incidental purchases.

Exception for M.G.L. c. 29, s. 29A Consultant Contracts

As stated earlier, a department may make incidental purchases for M.G.L. c. 29, s. 29A consultant services up to $5,000 OR the department's incidental purchase limit. However, any purchase exceeding $1,000 must use the SR/SC transaction and the Commonwealth Terms and Conditions/Standard Contract Form.

See the Transaction Matrix and the Transaction and Threshold Matrix in Chapter 1 for other quick reference guides.

Quality Assurance Reviews and Incidental Purchase Limits

Prior to granting an increase to a department's incidental purchase limit, the Operational Services Division, in coordination with the Office of the Comptroller, reviews departments' implementation and compliance with current guidelines and determines the risk their overall procurement performance presents to the Commonwealth. Please see the chapter on Quality Assurance for details on the implementation of the incidental purchase limit.

LEGISLATIVE EXEMPTION OR LEGAL PROHIBITION FROM COMPETITIVE PROCUREMENT

Sometimes the funding source (the state legislature or the federal government) will exempt a department from a competitive procurement through the enactment of a general or special law. A legislative exemption may recognize, through statute or line item, a unique business relationship that it desires the department to pursue or may specifically name the contractor that may be awarded a contract. A similar arrangement may be required through a legal prohibition such as a court order or contractual obligation. A copy of the legislative language should be included as part of the procurement file.

EMERGENCY CONTRACTS

801 CMR 21.00 recognizes that unforeseen circumstances are inevitable and departments need to be able to immediately procure emergency commodities or services. An emergency contract is appropriate whenever a procuring department head determines that unforeseen circumstances require the immediate acquisition of commodities and services to:

- avoid substantial harm to the functioning of government
- provide necessary or mandated services
- avoid a threat to the health, welfare or safety of persons
- avoid a threat of serious damage to property

Secretariats may establish a policy for administering emergency contracts for departments within the secretariat (see 801 CMR 21.05 (3)). Departments are encouraged to work with the relevant OSD PMT group(s) or with other departments to develop contingency plans for emergencies or for assistance when an emergency has arisen.

A department's poor procurement planning, the desire to "use up" unexpended funds at the end of a fiscal year or other foreseeable circumstances are not appropriate or adequate justifications for an emergency procurement.

- Whenever possible, departments should make an effort to shop around for competitive prices or quotes for the emergency procurement.
- Departments should enter into emergency contracts for the period necessary to alleviate the immediate risk of harm, damage or safety. In certain circumstances, removal of clients receiving services through emergency human and social service contracts may be clinically contraindicated or could negatively impact clients. In those cases, departments may establish emergency contracts for a time period consistent with the needs of the individual(s) served. Departments should incorporate performance measures into emergency contracts wherever appropriate.

Departments are cautioned that extending emergency contracts to include other items that are not related to the immediate solution of the emergency is not appropriate. For example, an emergency contract to serve a specific client or group of clients should not be extended to include other additional clients for whom services are required. Similarly, an emergency contract to repair or replace a broken pipe should not be extended to include fixing other pipes or plumbing unrelated to the emergency or which present no emergency threat. These repairs need to be covered under a standard competitive procurement. This doesn't prevent the department from asking the emergency contractor to submit a price for the needed repairs; however, this should be included as the start of a competitive procurement.

Note: Departments are required to execute a contract with the entity selected to perform the contract. The department should have the appropriate version of the Commonwealth Terms and Conditions and a Standard Contract Form executed as soon as possible after the need for the emergency commodity or service arises.

COLLECTIVE PURCHASE

801 CMR 21.05(4) recognizes, through the collective purchasing competitive procurement exception, that opportunities for maximizing the value of a procurement are available through "teaming" with other entities in the procurement process. Under this competitive procurement exception, departments may execute a contract for the provision of commodities or services when an existing contract has already been established by federal agencies, other states or any other public entity.

INTERIM CONTRACTS

Interim contracts serve a transition function when either (1) an existing contract has been terminated or (2) the existing contract will end but the new procurement has not yet been completed. Under either scenario, departments may also be faced with an interruption in contract performance. Interruptions may occur due to the inability of a contractor to fulfill the full needs of the department, the contractor's bankruptcy or a shutdown due to a fire, labor dispute, etc.

Interim Contracts Due to Early Termination of an Existing Contract

When an existing contract has been terminated prior to its expiration, a department may approach the pool of bidders who submitted responses under the original procurement. A department may offer a contract for full or part performance to the

bidder that submitted the next best value response. The contract offer is limited by the contents of the original solicitation and the bidder's original response for the remaining duration of the original procurement.

If the bidder is willing to negotiate within the scope of the original procurement, a department may execute a contract. If a bidder does not want the contract or wants to substantially change the original response to increase costs or prices, the department may extend the offer to the bidder that submitted the next best value response. In the event the department is unsuccessful in negotiating a contract with the original pool of bidders, the department should proceed with a competitive procurement unless the potential lapse in services creates an emergency situation.

- Departments are encouraged to contact their respective legal counsel and OSD PMTs for assistance and advice when terminating or suspending contracts or pursuing interim contracts.

Interim Contracts Due to Delay in New Procurement

Interim contracts may also be used to prevent a lapse in performance when a procuring department has commenced a new competitive procurement, prior to the termination date of an expiring contract, but due to unforeseen delays has not completed the procurement by the expiration date of the contract. An interim contract amendment, extending the dates of performance, must be executed PRIOR to the scheduled termination date of the contract and may extend the contract ONLY for the minimum period necessary to complete the procurement. (Use the Standard Contract Amendment Form, located in the appendices.) This period should not exceed three months and departments should begin planning new procurements at least 6 months prior to the expiration of a contract (earlier for more complex procurements). The procurement file should document that the procurement was commenced timely and that the delay was unforeseen and legitimate.

CONTRACTS WITH INDIVIDUALS: CONTRACT EMPLOYEES ONLY

Procuring an Individual Contractor - Contract Employees vs. Independent Contractors

A department is required to complete an Internal Revenue Service SS-8 form for every procurement intended to result in a contract with an individual. The IRS requires departments to make a distinction between "independent contractors" and "contract employees" in accordance with the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) and Chapter 494 of the Acts of 1991. The SS-8 process or test is performed on the performance requirements for a contract that will be awarded to an individual contractor(s).

- Independent contractors exercise independent contract decision making and do not work under the direct supervision and control of a department.

- Contract employees work under the direct supervision and control of a department on a day-to-day basis and do not exercise independent decision making.

Individual contractors who do not meet the independent contractor standard will be considered by the IRS to be contract employees and fall within the 801 CMR 21.05(6) exception of contract employee. The SS-8 test is required to determine employee work status for purposes of federal employment taxes and income tax withholdings. Contract employees must be paid through a contractor payroll system which automatically makes mandated tax deductions.

If the result of the SS-8 test reveals that the performance requirements will result in hiring an independent contractor, then a competitive procurement is required. Please refer to 801 CMR 21.06 and Chapters 3 and 4 for assistance in conducting a Request for Response (RFR) competitive procurement.

The following steps will assist departments in determining whether a contract with an individual falls within the 801 CMR 21.05(6) exception of contract employee:

Determine the Business Needs of the Department

Upon determining that the department is authorized to contract for the required performance in accordance with legal and fiscal authority, the department should develop a description of the required contract performance that meets the business needs of the department. Departments may review similar performance requirements or functions within state government and/or outside government to develop the contract performance specifications.

If Business Needs Require an Individual - Apply IRS SS-8 Test

If a department determines that the type of contract performance requires an individual contractor, the department must determine if the individual contractor will be functioning as a contract employee or an independent contractor. To make this determination a department applies the IRS SS-8 test to the contract performance requirements or functions developed for that contract, not a specific individual. (See MMARS Memo series #159, 159A & 159B for more information.)

The following requirements apply:

- An individual may not be used as a substitute for a state position and may not supervise employees in state positions.
- A contractor is required to maintain the security and confidentiality of any records or data of the department used by the contractor in the performance of a contract.
- A contractor may not be placed in a position that will allow or create the perception that a contractor can make decisions or commitments on behalf of a department.
- Departments may not delegate signature authorization or transaction approval responsibility to a contractor.

Selection Process for Contract Employees - Recruitment

When the SS-8 test of the contract performance requirements determines that the individual will be under the direct supervision and control of the department and will be classified as a contract employee, then the selection of that contract employee may be made through a recruitment and interview process, as follows:

1. <u>Determine the compensation of the contract</u>
   - Review similar performance requirements or functions within state government or outside government to establish a compensation rate or range which may depend upon a candidate's experience and qualifications.
   - Since this type of contractual relationship does not generally include benefits (there are a few exceptions established in law) such as health insurance, sick, vacation or holiday pay, departments have the option to adjust or include within the compensation rate or range a percentage or adjustment for fringe benefits.
   - Whatever the department determines as the total compensation for the anticipated contract duration, including any potential performance merit increases during the period of the contract, should be included as part of the performance requirements or functions developed for the contract.
2. <u>Contract posting</u>
   - Departments should post, advertise or solicit contract candidates as deemed appropriate (e.g., colleges and universities, newspapers, trade journals, electronically, etc.) and in accordance with any internal procedures on recruitment developed for that department.
   - The contract posting should include the description of performance requirements or functions, any minimum qualifications, the compensation rate or range, expected duration and possible options to renew and instructions for how and when candidates should respond to the contract posting.

3. Selection of a contractor

- Selection of a contract employee should be in accordance with the department's standard interview process and the performance requirements or functions and minimum qualifications identified in the contract posting.

4. All contract employees must:

- Execute the Commonwealth Terms and Conditions (once) which will be filed at the Office of the Comptroller;
- Execute the Standard Contract Form as outlined in 801 CMR 21.07 and this handbook. The Standard Contract Form attachments should include a copy of the contract posting or an alternative attachment containing the description of contract performance requirements or functions, any minimum qualifications, the compensation rate or range and a copy of the contractor's resume or statement of qualifications and any options to renew;
- Complete and attach a Consultant Contractor Mandatory Submission Form (see appendix) if the individual contractor will be performing consultant services pursuant to M.G.L. c.29, s.29A under the "HH" or "NN" subsidiaries;
- Note: Contracts with contract employees who perform consultant services pursuant to M.G.L. c.29, s.29A under the "HH" or "NN" subsidiaries must establish a maximum limit of the Commonwealth's obligation for the services and require prior written approval by the secretary of the department's executive office (as indicated on the SR transaction). No payment may be made to any consultant for services provided prior to the date that the SR has been approved by the secretary and the contract has been filed as prescribed by CTR.
- Be paid on a Commonwealth payroll system with appropriate deductions based on their W-4 form and other deductions as appropriate (i.e., Medicare tax, alternative retirement);
- Be issued a W-2 form annually.

5. Once the contract execution has been completed

- After contract execution, annual or other options to renew this contract are exercised at the department's option by executing a Standard Contract Amendment Form prior to the termination date of the contract.

Note: Departments that plan to continue a contractual relationship in the next fiscal year with an individual performing under a current contract (who has previously been determined to be a contract employee after completion of the IRS SS-8 test) may bypass the posting and selection processes as outlined above, if desired, but shall follow the contract requirements outlined in section 4 above. Annual or other options to renew this new contract shall be made in accordance with this section.

WHAT ABOUT "SOLE SOURCE" PROCUREMENTS?

"Sole source" procurements are unpopular with contractors, except the contractor being granted the sole source contract, and counterproductive for departments because they eliminate competition and the "pool" from which departments select quality contractors. This prevents qualified contractors, including small, minority or women owned businesses and businesses owned by individuals with disabilities from competing for Commonwealth contracts.

801 CMR 21.00 does not recognize sole source procurements. Although sole-source procurements have been successfully implemented in other procurement markets, past practice has indicated that this exception was subject to abuse, and was often used as a last resort, "last minute" method to procure contracts.

Sole source contracts do not promote the defined procurement principles. The publication of a Request for Response (RFR) is an excellent and quick way to solicit responses from potential qualified bidders who may not be immediately apparent or known to the department.

The concept of open and fair public competitive procurement is designed to provide a broad "opportunity" for bidders to compete for Commonwealth contracts. The only way to guarantee this opportunity is adequately furnished is to ensure that at least *some* method of competitive procurement is used to solicit a reasonable number of qualified bidders.

The goal of competitive procurement is to supply the department with a group or "pool" of the most qualified bidders to provide the best quality of contract commodities or services at the least or most reasonable cost to the Commonwealth. This is especially relevant given the competitive economic climate, the reduction of many department appropriations, and the Commonwealth's commitment to the cost-effective provision of governmental services.

It is also foreseeable that certain bidders may be the only bidders that appear to be available or authorized to provide a commodity or service. Unique licensing restrictions or training requirements may limit the availability of qualified bidders. For example, a contractor may sometimes restrict maintenance services on lease equipment to only licensed repairmen of the contractor. In other situations, the majority of qualified bidders reside out of state, and contracting for certain commodities or services would be inefficient or costly.

Even in these situations, where there *appears* to be no other qualified bidders, a department must attempt at least some form of verification. If the RFR elicits only one response the department may proceed with a contract. If additional qualified bidders respond to the RFR, then the basis for a competitive procurement is established. A new competitive procurement will be necessary at the end of this contract, since there is no guarantee that other equally or more qualified bidders have not entered the competitive marketplace since the contract was first awarded.

A DEAL TOO GOOD TO PASS UP

Departments are sometimes approached unsolicited by a bidder and presented with a great "deal." The deal may appear so beneficial or advantageous that rejecting the deal in favor of completing a competitive procurement may be disadvantageous, wasteful or unjustifiable.

One of the procurement principles supported by 801 CMR 21.00 is the creation of new business relationships. However, prior to accepting these offers, or proceeding with a contract, departments must conduct adequate research to determine if the deal is legitimate and whether it should be pursued by the department or jointly with the PMT.

A department must publicize the potential contract, using a Request for Response (RFR) advertised electronically in Comm-PASS, and/or newspapers, to determine if there are any other interested bidders willing and able to offer a comparable deal. The format and time period for RFR responses may be brief (e.g., 5 days) to make this process simple.

The RFR should be designed either to solicit interest in bidding on an RFR or the actual submission of an RFR response with a comparable or better deal which will be evaluated for a possible contract award. If no other interest is generated in response to the RFR, the department can proceed with a contract.

If interest is generated, however, the department must either conduct a competitive procurement, or evaluate the submitted responses to select a bidder, depending upon how the RFR was written. This process of notice, fairness and competition supports the procurement principles and at the same time enables the department to benefit from a creative new business relationship without an unreasonable delay.

CHAPTER 3 HOW TO DO A COMPETITIVE PROCUREMENT

INTRODUCTION

801 CMR 21.00 enables departments to effectively balance their public purpose commitments with legislative mandates, federal requirements, employment responsibilities and operational constraints. Under the procurement regulation, departments have a significant amount of discretion in building and implementing their own procurements. The competitive procurement process described in this chapter and in Chapter 4 applies to all competitive procurements, other than those identified as competitive procurement exceptions in Chapter 2. This includes procurements of commodities and services from vendors, including independent contractors (determined by the IRS SS-8 process as described in Chapter 2).

The competitive procurement process begins with identifying the procurement objectives and then considering what internal controls are needed to ensure that the objectives are met and are in accordance with Chapter 647 of the Acts of 1989 entitled "An Act Relative to Improving the Internal Controls within State Agencies". Considering what internal controls are needed is established by conducting a control assessment. The definition of internal controls and other guidance for conducting control assessments and establishing internal controls are available in the Office of the Comptroller's Internal Control Guide for Departments, Chapter 647 of the Acts of 1989 and the American Institute of Certified Public Accountants' Statement on Auditing Standards number 78.

This chapter provides an overview of how to do a competitive procurement, including Requests for Information (RFI). Adequate and strategic planning are essential in the development of a quality procurement. Departments are encouraged to conduct a comprehensive needs assessment to determine the type, quality and quantity of commodities and services required from the RFR. Decisions regarding the duration, funding availability, desired performance measures, pricing approaches, contract evaluation and monitoring requirements should all be resolved during the planning phase of the procurement. This chapter briefly describes the Request for Information as a tool used in the planning of a procurement. It then goes on to describe the requirements, including step-by-step instructions, for the competitive procurement process.

A special note: The procurement process is not necessary if the commodity or service is available from an existing statewide contract. Further, you may use another department's procurement if they have so indicated in their Request for Response.

Requests for Information (RFI) - An Optional Planning Tool

One approach for conducting a needs assessment for the commodity or service being procured is to solicit input from a broad spectrum of interested parties through the distribution of a Request for Information (RFI). An RFI is an optional process that may be used by departments as a mechanism for gathering information. Although the decision to conduct an RFI is optional, departments are strongly encouraged to solicit input from interested parties if it believes that by doing so, the procurement process or the quality of the commodities or services (including desired performance levels) will be enhanced.

Notice of an RFI is usually published on Comm-PASS in an effort to solicit information, comments and advice from other departments, contractors or interested parties. RFIs are traditionally used to identify industry standards, best practices, potential performance measures, cost or price structures or to generally ascertain the level of interest of prospective bidders in current or future procurements.

An RFI may result in the submission of documents from vendors or an informal meeting where groups of current and potential contractors, along with department staff, identify issues, standards, potential problems and solicit other helpful information. Departments are under no obligation to incorporate any of the comments or recommendations made at the RFI meeting into the RFR document and participation in the RFI process cannot be a prerequisite to submitting a response to an RFR.

Minimum Requirements for the Competitive Procurement Process

In an effort to establish consistent procurement process standards, minimum steps have been developed to assist departments during a procurement process. The main focus of the competitive procurement process is best value. The requirements outlined in this chapter are designed to assist a department in conducting a complete and efficient procurement process without unnecessary restrictions. These minimum steps are listed below, followed by detailed descriptions.

1. Designate a Procurement Team Leader and Procurement Management Team
2. Create a procurement file
3. Draft Request for Response (RFR) (This cornerstone of the procurement process will be discussed in fuller detail in the next chapter.)
4. Draft evaluation criteria
5. Distribute RFR to potential bidders
6. Designate open solicitation phase (with optional inquiry period)
7. Evaluate responses
8. Conduct contract negotiations
9. Notify all respondents of contract execution
10. Conduct debriefings as appropriate

STEP 1 - DESIGNATE A PROCUREMENT TEAM LEADER AND PROCUREMENT MANAGEMENT TEAM

The designation of a Procurement Team Leader and a Procurement Management Team (PMT) is the first critical step in conducting a procurement.

A Procurement Team Leader:

- Determines how many people are needed to develop and implement a successful RFR (Procurement Management Team);
- Determines the scope of the RFR, duration, funding and appropriate method of distribution;
- Determines how to accomplish the necessary procurement steps timely so that the contract is ready when needed;
- Ensures communication and distribution of information to any other PMT members; answers questions, obtains technical, legal and fiscal assistance from the PMT, OSD, CTR and other departments; coordinates the competitive process; and
- Is responsible for managing and documenting the procurement process.

A PMT is cross-functional and includes any individual involved in the development and management of the RFR and resulting contract(s). Members of the team should have some knowledge, experience or expertise with the commodities or services being procured and should include staff or individuals with programmatic, administrative, legal, fiscal/budget and contract management experience, where appropriate.

Another reason to utilize the cross-functional team approach and include a variety of department staff in the procurement process is to make sure that both procuring staff and user staff understand and agree to the clear goal of the procurement and the contract expectations. The size of a PMT is determined by the size, scope and complexity of the procurement being conducted. Small dollar or simple procurements may need only one or two PMT members, while more complex procurements may require greater resources to explore all procurement options.

PMTs may decide it is helpful to have two sets of team members; those members who actually rank and select bidders, “voting members,” and those who provide advice and counsel, “advisors.”

Traditionally, voting members are restricted to state employees of the procuring department and any other PMT members who will be using the contracts. However, if OSD or another procuring department requires outside assistance, consultants may be hired as advisors and/or may participate as voting team members. When outside consulting assistance is purchased the consultant(s) may **not** compete for the business being solicited in the RFR, or other associated RFRs with which the consultant has been involved. Outside consultants should also sign a non-disclosure agreement.

The PMT members may consult with any internal department personnel or seek guidance from other state departments or consultants for clarifying particular areas of the RFR (technical specifications, qualification requirements, cost or payment structure, etc.). It is advisable that the nature of the inquiry and other relevant information be documented in the procurement file.

STEP 2 - CREATE A PROCUREMENT FILE

Pursuant to 801 CMR 21.06(1), each procuring department is required to maintain a paper or electronic procurement file for each procurement. The procurement file serves as the central repository for all information concerning the development and release of an RFR, bidder selection, contract negotiation, the award of a contract and debriefings. The department must identify the individual(s), usually the Procurement Team Leader, with responsibility for the creation, maintenance and on-going contract management of each procurement file. Disposal of the procurement file must be handled in accordance with the Secretary of the Commonwealth.

The procurement file is used for two primary purposes:

1. to provide an accurate record of the procurement process (the RFR development, evaluation and selection process); and
2. to serve as a contract management tool to be used by departments to monitor and document contract performance and contract activity.

Each department is responsible for the development of a document management system that is consistent with its organizational structure and supports easy document retrieval. Documents may be filed in one procurement file or may be organized into separate procurement and contract management files. In either case, the contents of the file(s) should be detailed enough to enable an individual with no knowledge of the process to reconstruct an accurate picture of the procurement process and contract performance. If departments elect to maintain procurement and contract files electronically, the location of all information must be available.

When reviewing a contract or a procurement, the OSD/CTR Quality Assurance team, OSD auditors, auditors for the single state audit, the State Auditor's Office or the Attorney General's Office (in the event of litigation) will require the entire contents of the procurement file. The file should carefully identify the location of the items listed below for easy retrieval and review.

The following is a listing of some of the most common items that should be contained in a procurement file (if applicable) at the completion of the process:

- The four components of the contract:
  - Standard Contract Form (executed) - Original or certified copy with applicable attachments, amendments and other negotiated items. Note: if the *record copy* is on file at the Office of the Comptroller or at OSD, the procurement file must contain a copy. See Chapter 5 for further guidance in this area.
  - Copy of Commonwealth Terms and Conditions (applicable version) or verification that this form has been filed on the MMARS Vendor File.
  - Request for Response (including all applicable attachments). This requirement is met by either a hard copy of the RFR or, if the RFR was posted on Comm-PASS, a screen print of the Comm-PASS closed solicitations summary page verifying the location of the RFR (including the RFR Reference Number) on Comm-PASS.
  - Selected bidder's response (including any negotiated items and additional conditions)
- Notes, minutes or other related materials generated during the RFR development and selection process.
- Record keeping related to purchase and use of Environmentally Preferable Products.

- Copies of written questions and answers provided by the PMT.
- List or sign-in sheet at bidder's conference (if offered).
- Notification list (if applicable).
- Any correspondence to and from bidders distributed manually or posted on Comm-PASS.
- Evaluation criteria and any amendments (with reasons for the amendments).
- Responses from non-selected bidders.
- Notes from bidder presentations and demonstrations.
- Notification of contract execution.
- Completed evaluation forms and any minutes or notes from evaluation committee meetings.
- Contractor Authorized Signature Verification Form (large procurements).
- Affirmative Action Plan or Form (large procurements).
- Clarification documents (if required).
- Reference checks.
- Recommendation for selected bidder(s).
- Requests for and any correspondence resulting from any debriefing requests.
- Documentation related to payments, performance, contract monitoring and evaluation (see Chapter 5 for additional detail).
- ☞ *For POS Only:* Requests for and any correspondence resulting from appeals.

The following table specifies the procurement file recordkeeper for five types of procurement options.

Use of procurement	*Procurement file is maintained by:*
Statewide contract procurement conducted by OSD	OSD
Statewide contract procurement conducted by OSD-designated department	OSD-Designated Department
Multiple department procurement/limited department user contracts	Lead department
Single department procurement/multiple department user contracts	Each department
Single department procurement/single department user contract	Department

Please see the appendix entitled Use of a Procurement by a Single or Multiple Departments for comprehensive guidance about the maintenance of the procurement file.

STEP 3 - DRAFT REQUEST FOR RESPONSE (RFR)

The next step in the process is the drafting of the RFR document. Please refer to the next chapter for specific guidance on this step.

STEP 4 - DRAFT EVALUATION CRITERIA

The Procurement Management Team (PMT) must, at a minimum, develop evaluation criteria prior to reading or evaluating bidder responses. These criteria will be used to evaluate responses, rank bidders and select a qualified and cost-effective contractor(s). It is advisable that the PMT draft evaluation criteria PRIOR to the distribution of an RFR. This is good practice, since the RFR should clearly reflect the best value requirements to be evaluated. A PMT may elect to include the evaluation criteria in the RFR if it determines that additional guidance to prospective bidders is in the best interests of the procurement and could result in enhanced or higher quality responses.

Departments have significant flexibility regarding the type of criteria established for each RFR. Departments may choose to develop a comprehensive evaluation tool that details the specific areas to be evaluated, criteria to be used in scoring, and the relative importance or weight associated with each component. Departments may choose an alternative approach and develop general areas to evaluate such as oral presentation, quality assurance, accreditation status, warranty, references, years of experience, past and proposed performance or proposed cost. Either approach is acceptable as long as the areas that form the basis of the evaluation criteria are referenced in the RFR document itself.

The evaluation criteria should be drafted to enable the Procurement Management Team to fairly evaluate bidders and determine which bidder(s) should be selected based upon a best value determination. The PMT should also prioritize the key parts of an RFR response in order of importance, which may include but are not limited to, cost, qualifications of bidders and responses to solution-based issues. The evaluation criteria may take a variety of sources of information into consideration such as the written response, the oral presentation, past performance of the bidder, references or recommendations, individual satisfaction surveys and departmental and monitoring reports.

In order to ensure fairness in evaluations, the evaluation criteria or considerations used to select or disqualify a bidder must reflect requirements or considerations that are specified in the RFR. The language of the RFR will determine the scope of the evaluation criteria and the flexibility the PMT will have when evaluating responses, so the PMT should be careful not to draft the RFR and evaluation criteria to be unduly restrictive. Bidders must have notice in the RFR document of any requirements. The RFR should clearly state the consequences of failing to meet these requirements such as loss of points or disqualification.

Considerations that are not included in the RFR may not be used in the selection or ranking of a bidder. For example, if bidders will receive additional credit or will be ranked higher for offering a Boston regional office location, having certain national accreditation, or meeting the unique linguistic and cultural needs of the consumers, these criteria should be included as part of the RFR so that bidders know they have the opportunity for additional points or a higher rank if they offer these options. Conversely, if this information was not requested in the RFR, bidders who failed to offer these options may not be penalized.

A Procurement Management Team should use caution when basing consideration of prior performance strictly on government or previous contracts with another state department. This limitation should be used as a basis for selection only if government experience is necessary for contract performance. Similar experience is a fairer basis for selection and gives qualified bidders an equal chance to compete for the Commonwealth's business.

Similar caution should be exercised when a department is conducting a procurement and one of the bidders is currently under contract for the same commodities or services. Familiarity with department operations and the lack of time needed for startup should only be one set of considerations and should not be used to effectively exclude new qualified bidders from competing for the contract.

If necessary, the evaluation criteria may be modified based upon modifications to the RFR as the procurement progresses through its various stages. However, any amendments should be completed *prior* to the date the responses are due for submission and must be finalized prior to the review of any responses. Reasons for amendments to an RFR and/or evaluation criteria should be documented and included in the procurement file.

Affirmative Market Program - Minority and Women Business Enterprise (M/WBE) Participation

When drafting evaluation criteria, departments are strongly encouraged to consider the intention of Executive Order 390, which states, ***"it is the intention of this Executive Order that the principles underlying the Affirmative Market Program be incorporated into the fabric of general management in state government."*** To achieve this, departments must coordinate the purchasing efforts of their Affirmative Market Coordinators *and* their procurement, purchasing and fiscal staff. This coordination is essential to ensure that Affirmative Market considerations are included as part of the department's projected expenditures and overall procurement and purchasing plan.

M/WBE participation should be seriously considered for all procurements, whether incidental, small or large. Incidental purchases and small RFRs are a great opportunity to open doors for new M/WBE firms to do business with the Commonwealth. When identifying qualified bidders for incidental purchases and small RFRs, departments should seek to include one or more SOMWBA (State Office of Minority and Women Business Assistance) certified firms as part of the bidder distribution list. A directory of SOMWBA certified firms is available at: www. magnet.state.ma.us/somwba.

Large procurements present an excellent opportunity to help build M/WBE capacity within industries where M/WBEs may be under-represented. Building M/WBE capacity in these industries helps ensure a larger pool of qualified bidders for the future. Building capacity does not necessarily mean creating new businesses to service a specific RFR. Rather, the goal is to create partnering opportunities that allow existing M/WBE firms to expand into related industries.

RFRs must contain a provision that strongly encourages bidders to submit responses that provide for (in order of importance): 1) the development and growth of M/WBEs within the primary industries affected by the RFR; 2) building of traditional subcontracting relationships with M/WBE vendors; and 3) using M/WBEs for ancillary business activities, i.e., those outside of the primary industries affected by the RFR. Departments should award the highest number of points for responses that clearly illustrate how the proposed business relationship(s) will result in the development and growth of M/WBEs within the primary industries. A lesser number of points should be awarded for traditional subcontracting relationships. The least number of points should be awarded for ancillary uses of M/WBEs.

Departments should consider M/WBE participation as a best value criterion and should incorporate a percentage that gives M/WBE participation a significant, but not overriding, weight relative to other evaluation criteria. As a general guideline, a range of value between 15%-20% of the total available points will give M/WBE participation significant, but not overriding, weight. In industries with significant numbers of M/WBEs, departments might want to adjust this percentage upward. Similarly, departments might want to adjust this number downward due to a particularly specialized procurement. Higher percentages are an effective way to promote the development of new business relationships with M/WBE firms.

A Minority Business Enterprise (MBE) or a Woman Business Enterprises (WBE) is defined as a business that has been certified as such by SOMWBA. There are firms currently competing for state contracts, or that may be interested in competing on state contracts, that are not currently SOMWBA certified. Departments can assist in promoting increased M/WBE participation by directing these firms to SOMWBA for certification. Required RFR language is included in the appendices. For further information on certification please contact SOMWBA at (617) 727-8692 or: www.state.ma. us/somwba.

STEP 5 - DISTRIBUTE RFR TO POTENTIAL BIDDERS

This handbook establishes requirements for distributing RFRs to potential bidders based on procurement value thresholds, small or large. The total procurement value is calculated as the total anticipated expenditures for the duration of the contract (initial duration and all options to renew). A procurement will include anticipated multiple purchases of the same commodity or service from one or multiple contractors. This calculation of the total anticipated expenditures for the total duration of the contract(s) is necessary even if the intended payment mechanism for multiple contract(s) will be made under an “Openorder” vendor code.

When determining whether to do a small or a large procurement, departments should try to “shoot high” in their estimates and consider whether it is likely that the total expenditures for a procurement will exceed $50,000 during the life of the contract (initial duration and options to renew).

If there is any chance that the expenditures could exceed $50,000, the department should follow the procedures for a large procurement. Splitting contracts to avoid the large procurement threshold or conducting multiple small procurements for the same or similar performance with the same contractor(s) may be considered inappropriate and sanctionable by OSD/CTR during Quality Assurance reviews of these contracts. Please see the transaction and threshold matrices in Chapter 1 for a snapshot of requirements and appropriate MMARS transactions pertaining to small and large procurements.

Distribution of RFRs for Small Procurements - Total Contract Value ≤ $50,000

An RFR for a small procurement may be distributed on Comm-PASS. If Comm-PASS is not used, it must be distributed in writing to at least three potential bidders in the business of providing the required commodities or services. Additional distribution should be made whenever possible to enhance competition for the commodities or services sought. An RFR for a small procurement may also be distributed by fax, e-mail, mail or by hand. The RFR may also be advertised in other commercial publications (newspapers, trade journals) at the option of the department, or if required by statute. The period of time between the release of an RFR and the required response is at the discretion of OSD or the department but must be reasonable. All bidders must be given a reasonable amount of time to respond to the RFR to ensure fairness. Written responses from bidders are required (personal delivery, fax or mail).

Reminder: Departments should make every effort to include at least one (or more) SOMWBA certified M/WBE firm as part of the bidder distribution list.

What if a PMT Has Difficulty Identifying Three Bidders for a Small Procurement?

The following are some options available to a department or PMT that is having difficulty identifying at least three potential qualified bidders:

- Advertise the RFR on Comm-PASS.
- Consult the Comm-PASS Business Registry to determine if there are any vendors that have identified themselves as providing the required commodities or services at: www.comm-pass.com.
- Consult the SOMWBA certified business list at: www.state.ma.us/somwba.
- Consult the relevant OSD PMT for assistance in identifying other departments that have made similar purchases.
- Consult the Yellow Pages for similar businesses.
- Advertise the RFR in newspapers, journals etc.

The best method of locating bidders depends on the particular circumstances of the procurement and is determined by the PMT. The PMT should document its efforts to identify at least three potential qualified bidders and maintain this documentation in the procurement file. There is no requirement that a minimum number of RFR responses be received by the PMT. As long as the RFR has been distributed to at least three (3) potential bidders, and at least one (1) qualified bidder has responded with a response that is acceptable to the PMT, a contract may be executed with that qualified bidder. Finally, written responses from bidders are required (personal delivery, fax or mail).

Distribution of RFRs for Large Procurements - Total Contract Value > $50,000

RFRs for large procurements must be advertised on Comm-PASS. The distribution of RFRs to bidders is now paperless and is controlled by the bidder. Bidders are able to access the Comm-PASS system through the Internet and should obtain RFRs electronically by downloading all relevant RFR files. RFRs for large procurements may also be advertised in other commercial publications at the option of the department, or if required by law. However, these additional advertisements should refer bidders to Comm-PASS to obtain the RFR electronically. Departments may also distribute paper copies of RFRs but this method of distribution is not recommended.

Other Considerations for Distributing the RFR

World Trade Organization Government Procurement Agreement

The purpose of the World Trade Organization Government Procurement Agreement, which was entered into by the United States and other countries effective January 1, 1996, is to encourage worldwide trade by ensuring fairness, non-discrimination, and equal treatment of laws, regulations and procedures in the government procurement process.

All procurements for commodities and services by Executive departments are covered by this agreement if the total potential aggregate value of the procurement is at least $483,000 over the entire life of the procurement including all options to renew. Certain exemptions from the agreement include transportation services, public utilities services including certain telecommunications services, printing services, research and development services, disadvantaged persons and depressed area development, products of prison labor, promotion of the environmental quality of Massachusetts and certain federally related projects.

If the agreement does apply to a particular procurement, additional requirements must be satisfied in order for the procurement to be in compliance with the agreement. Advertisement requirements generally indicate that the intent to solicit responses or the completed RFR be advertised for forty (40) days prior to the due date. The forty (40) days may include both the notice of intent and the time the RFR is available. In certain situations, if justified, this time may be reduced. For example, for recurring contracts, the notice may be reduced to 24 days.

Note: When advertising the notice of intent or the RFR, the advertisement must include a statement which indicates the procurement is covered under this agreement.

Reasonable Accommodation and Americans with Disabilities Act (ADA)

The Procurement Team Leader may provide reasonable accommodations, including the provision of informational material in an alternative format to qualified bidders with disabilities or other hardships. Requests for accommodation are addressed on a case by case basis. A bidder requiring accommodation must submit a written statement which describes the bidder's disability and the requested accommodation to the contact person for the RFR as early in the procurement process as possible in order to allow departments sufficient time to accommodate the request.

There are a variety of state and federal laws and regulations that prohibit discrimination in employment and contracting due to disabilities, including the Americans with Disabilities Act (ADA). The ADA prohibits state and local governments from discriminating on the basis of disability in contracting for commodities and services. A department may not refuse to contract with or penalize a qualified bidder with a disability or a qualified bidder firm owned by or employing individuals with disabilities.

For more information on the ADA, improving accessibility to procurements by bidders with disabilities and other requirements please contact:

The Massachusetts Office on Disability
One Ashburton Place, Room 1305
Boston, Massachusetts 02108
(617) 727-7440 Voice/TDD - (617) 727-0965 Fax
(800) 322-2020 Voice/TDD

Notification List (Only if Paper RFRs Are Distributed)

The key to fairness is providing the same information and opportunity to all bidders within the scope of the RFR. It is important that the PMT maintain the integrity of the procurement process. Regardless of whether the PMT is conducting a small or a large procurement, care should be taken so that no actions by the PMT give any bidder an unfair advantage over other bidders. As such, the notification list is a list of all prospective bidders that requested and received a copy of the RFR. The requirement to maintain a notification list applies only when a department chooses to distribute paper copies of the RFR.

Bidders are responsible for requesting each RFR and providing departments with the their name, mailing address, telephone number and facsimile number. The list is maintained by the procuring department for the purpose of notifying and distributing to potential bidders any RFR amendments or changes to the procurement process.

If a department chooses to provide, in addition to Comm-PASS notice, manual distribution of the RFR and any subsequent amendments and notices, departments assume full responsibility for ensuring that any notice of change is provided to all known bidders. Note: If the RFR was distributed solely on Comm-PASS, there is no need for a notification list.

STEP 6 - DESIGNATE OPEN SOLICITATION PHASE (WITH OPTIONAL INQUIRY PERIOD)

Bidders' Conferences

The PMT may conduct one or more bidders' conferences in which members of the PMT respond to bidder questions regarding an RFR. The date and time of any bidders' conferences should be specified in the RFR.

Bidders' conferences provide an opportunity for a procuring department to interact face-to-face with potential bidders. They also provide the unique opportunity to address specific questions or concerns with prospective bidders, share information, encourage collaboration and networking, if appropriate, identify any problems with the procurement and make amendments early in the procurement process if necessary. Conferences may also be helpful if a department wants to present or distribute additional information, schematics, plans, reports or other data or diagrams that are not easily transferable or distributed by hard copy or through Comm-PASS. A bidders' conference can often assist departments in determining the staff resources needed to evaluate responses by determining the amount of interest in a given procurement. Finally, bidders may come to the bidders' conference to ascertain their competition or to establish contacts for potential partnering or subcontracting arrangements.

Procuring departments are required to keep a record of attendees at a bidders' conference, which is easily done through a sign-in sheet upon entry. Procuring departments should record (manually or electronically) the minutes of a bidders' conference, with special attention to the questions asked and any answers provided. Since the procuring department need not issue written answers to questions raised at the bidders' conference, oral answers to questions presented at a bidders' conference will be binding unless the department specifies that only written answers distributed in response to posed questions will be binding. If a department chooses to distribute written answers to questions presented at a bidders' conference, such answers must be posted on Comm-PASS (if the RFR was posted on Comm-PASS) and mailed or sent by facsimile to all bidders to whom a RFR was distributed in paper format.

Procurement Management Team Contact with Potential Bidders

Procurement Management Team members should limit direct or indirect contact with any potential bidder(s) during a procurement, or with any other person with significant connections or relationships with a potential bidder, in order to avoid compromising the procurement. A Procurement Team Leader should make an effort to ensure that there are *NO* obvious connections or prior personal or business relationships between the Procurement Management Team members and any potential bidders. It is important that any *perception* of a conflict of interest or involvement with a potential bidder by a Procurement Management Team member be specifically addressed and documented in writing by the team since this *perception* may be used to challenge a contract award. A Procurement Team Leader may inquire about any potential conflicts of PMT members, and members must be instructed to notify the Procurement Team Leader if any such conflicts arise during the procurement process.

If a potential conflict of interest arises during the RFR process, a team member may voluntarily withdraw from participation in the procurement. The Procurement Team Leader may obtain a State Ethics Commission ruling to determine whether the potential conflict may jeopardize the procurement, and whether or not the Procurement Management Team member should withdraw from the procurement. The advice of department legal counsel is a valuable asset in this area.

Bidders must follow the RFR instructions on any allowable inquiries that may be made to the Procurement Team Leader. If a potential bidder contacts a PMT member directly or indirectly, either to seek answers to questions, or to obtain additional information about the procurement outside of the parameters defined by the RFR, the team member should *DECLINE ANY CONTACT* with the bidder and immediately inform the Procurement Team Leader of the attempted contact. Depending upon the motivation for the contact, the Procurement Team Leader may decide to disqualify or penalize the bidder for any unauthorized contacts or to contact that bidder in an attempt to give appropriate assistance. If a potential bidder is currently under contract with a procuring department, the PMT members should limit their contact with the bidder to only what is necessary for contract performance. No information or discussions should refer to the procurement unless the RFR explicitly allows discussion.

Submission of Written Questions

An RFR may invite bidders to submit written questions concerning an RFR. This opportunity may be in addition to or in place of a bidders' conference. The date and time for submission of written questions should be specified in the RFR. Written questions may be accepted by the PMT by mail, facsimile, electronically or personal delivery as specified in the RFR. Written questions received after the deadline for submission must not be considered.

Prospective bidders are responsible for confirming actual receipt of written questions by the Procurement Team Leader. Written answers to questions must be posted on Comm-PASS if the RFR was distributed on Comm-PASS and provided to those bidders who received the RFR in paper format.

Procurement Amendments

Pursuant to 801 CMR 21.06(6), a PMT may, at any time prior to the execution of a contract, for any reason and without penalty, amend a solicitation (RFR) or change the procurement requirements, performance specifications, budget or procurement schedule upon notice to bidders. Notification must be posted on Comm-PASS if the RFR was distributed on Comm-PASS and provided to those bidders who received the RFR in paper format.

If an amendment is made after the deadline for submission of responses and before the response evaluation period has started, the department shall provide notice in the same manner as stated above and allow a reasonable time for the acceptance of amended or new responses from the bidders who submitted responses and any new responses from other bidders.

Procurement (RFR) Cancellation

Pursuant to 801 CMR 21.06(7), a Procurement Management Team may, at any time prior to the execution of a contract, for any reason and without penalty, notify bidders of a cancellation of a procurement and the rejection of all responses. Cancellation of a procurement is done when available funding has been eliminated, when circumstances requiring the procurement have significantly changed or when the commodities or services are no longer needed.

Procurements are sometimes canceled when there has been an indication of collusion, price fixing or other unfair trade or anti-trust violations.

If all the responses received are priced too high for the department's available funding, a department has the choice of canceling the procurement, amending the procurement or requesting a Best and Final Offer to obtain more reasonable pricing.

Record Receipt of Bidder Responses

The Procurement Management Team is responsible for recording the receipt of all responses to the RFR. All responses to all RFRs must be in writing and submitted in accordance with the directions outlined in the RFR. Although it is acceptable to receive faxed responses for small procurements, large procurement RFR responses may not be faxed. Procuring departments should record the bidder's name and address and the date/time that the response was received.

Ideally, procuring departments should use a time clock which records the day, date and time the response was received. If a time clock is not available, procuring departments should sign in all responses manually, detailing the information normally recorded when using a time clock.

Additionally, for manual receipt of response(s) to RFRs, a designated employee of the procuring department or the PMT should be assigned to receive all responses and record the receipt of response(s) in a log-in book, or whatever the department deems appropriate per its internal control manual.

Early Responses and RFR Openings

Early responses for large procurements must be kept in a locked and secure place until the day and time of the RFR opening. After the deadline date for responses, the Procurement Team Leader or designated member opens the responses, in the presence of any interested parties, and identifies all those who submitted a response. It is advisable to have a second PMT member present during an opening. This person serves as a witness to the events of the opening in case of complaints regarding some unfair practice or occurrence at the opening. The identification of who submitted a response is usually all that can be reasonably expected for complex RFRs and those that require a review of technical and business specifications prior to reviewing the response.

Responses to small procurement RFRs may be reviewed by the PMT immediately upon submission or at any time during the selection process. Unlike large procurement RFRs, the PMT does not have to wait to review the responses until the deadline date and time submission. However, PMT members must not disclose information about the responses received to potential bidders. The final selection of a contractor(s) should not be made until the deadline date and time for submission of responses, and following the review of all timely submitted responses.

STEP 7 - EVALUATE RESPONSES

Departments should review all responses to determine whether minimum submission requirements have been met and continue evaluating only those responses meeting those requirements.

The evaluation process used by departments is a critical aspect of the RFR process. Departments have great flexibility to develop evaluation procedures that are most appropriate to the RFR being issued, taking into consideration the type of commodity or service, available funding, service availability requirements, cross-agency and intra-agency participation and other factors that might determine whether a department conducts an abbreviated or more comprehensive evaluation process.

Internal evaluation procedures should include:

- the process to be used for determining compliance with minimum submission requirements.
- the process to be used in scoring and evaluating responses.
- the composition of the evaluation committee (single person vs. multiple reviewers) based on the total dollar value, complexity, type of commodities and services requested in the RFR or other factors.
- definition of the composition, roles and responsibilities of the individual(s) participating in the evaluation process.
- the process for training the individual(s) participating in the evaluation process.
- the process to be used to ensure that the individual(s) participating in the evaluation process are free from conflict of interest and have no financial or personal interest.
- requirements for documentation of the evaluation process including scoring sheets, list of reviewers, written comments, written reports or recommendations summarizing the evaluation process, rankings of responses and selection recommendations.

All responses received by the deadline should be evaluated by the PMT. A sequence for review may be:

- Determine if the response is in conformance with the requirements of the RFR or requires disqualification.
- Consider any requests for corrections of responses.
- Conduct oral presentations or demonstrations if required by the RFR, or if desired, to evaluate bidders or clarify responses.
- Evaluate responses pursuant to the evaluation criteria (a Sample Response Evaluation Scorecard is available in the appendix).
- Confirm and verify references and conduct any additional reference or performance checks.
- Consider whether bidders should be afforded a Best and Final Offer option.

Disqualification of Responses

Pursuant to 801 CMR 21.06(10) a Procurement Management Team may disqualify responses including, but not limited to, those responses that:

- are received after the deadline for submission specified in the RFR.
- fail to meet, address or comply with material requirements in the RFR, including instructions for submission, content or format.
- indicate collusion or unfair trade practices by one or more bidders agreeing to act in a manner intended to avoid or frustrate any of the provisions of 801 CMR 21.00 or any other general or special law or regulation.
- are submitted by a bidder, or which identify a subcontractor, currently subject to any state or federal debarment order or determination. (However, if the identified subcontractor is replaceable without a material effect on the bidder's response, the bidder may be given the opportunity to select another subcontractor prior to the execution of the contract.)

Note: The Procurement Management Team makes the final determination of whether a response is deemed unresponsive and is disqualified. With the exception of accepting late responses (please see section on late responses) a PMT shall have full discretion over whether a response should be deemed unresponsive and disqualified.

Late Responses

In fairness to all bidders, Procurement Management Teams must not (except in rare circumstances) accept late responses to an RFR. They may not be considered for evaluation and should be segregated from all other timely responses. However, under exceptional circumstances, a PMT may want to consider a late response, i.e., state government was closed due to inclement weather conditions, postal and courier services were delayed due to strikes or other unforeseen "Acts of God." Whenever this exception is granted, the Chief Fiscal Officer must formally approve the acceptance of a late response. This approval and a detailed justification must be placed in the procurement file.

Corrections or Clarifications to a Submitted Response(s)

Pursuant to 801 CMR 21.06(8) a procuring department has full discretion to determine whether to allow a response correction or clarification. Bidders must be accorded fair and equal treatment with respect to any opportunity for correction of minor informalities in a response. That is, a PMT may review submissions from any bidder to correct a minor mistake in their response.

Mistakes in responses which are clearly evident, such as typographical errors, transposition errors or arithmetical errors where the correct answer is obvious, may: 1) be corrected by the bidder if the bidder requests to do so, or 2) be corrected by the bidder at the request of the PMT. However, procuring departments must be careful that a bidder is not correcting a response in order to obtain an unfair advantage or submit a lower cost in order to win the award. Procuring departments must limit corrections to minor informalities which are matters of form rather than substance (such as clerical errors or insignificant mistakes that can be corrected without prejudice to other bidders).

If a procuring department requires a clarification of a particular section of a response from a bidder, the procuring department must provide the same opportunity for clarification of the identified response section to all bidders that submitted responses. Sometimes this opportunity is provided during oral presentations when bidders can be asked specific questions about their responses. If oral presentations are not conducted, all bidders who submitted responses must be provided with notice of an opportunity to clarify the identified section in the RFR.

This situation may arise when a review of responses reveals that a section of the RFR was unclear and several bidders misunderstood what was intended. Ambiguities are usually identified during the RFR inquiry period, but if there was no inquiry period, or if the ambiguity was not identified during the inquiry period, the PMT may choose to amend the RFR to

clarify the section and all bidders who submitted responses should be given the opportunity to revise their responses on that section of the RFR. A department will not be expected to go through the extra work to clarify the RFR if only one bidder misunderstood the RFR or if the ambiguity is not a material element of the procurement.

No correction or clarifications of response prices, terms and conditions or the submission of supplemental information prejudicial to the interests of other bidders or to fair competition shall be permitted. Departments and PMTs must be careful to protect the integrity of the competitive procurement process by treating all bidders fairly and equally during the procurement process.

Oral Presentations or Demonstrations

Oral presentations are an optional phase of the evaluation process. Oral presentations provide an opportunity for bidders to highlight the strengths and unique aspects of their responses and provide answers to questions regarding their responses. If a department intends to offer the opportunity to give oral presentations as part of the evaluation process to some or all of the bidders, it should clearly state so in the RFR.

Oral presentations are generally scheduled after the initial determination by the department of which responses met the minimum submission requirements. If they choose, departments have the option to limit the invitation to make oral presentations to the top ranked bidders only.

Departments are responsible for conducting oral presentations in a manner that is fair. The time allotments and format should be the same for all presenters, however the location, dates and times for presentations are at the discretion of the department. The oral presentation is not an opportunity for bidders to submit new information or modify an already submitted response; rather, the purpose is to clarify issues that would enable departments to better understand and evaluate responses. Oral presentations and demonstrations are particularly helpful in bidder evaluations when the RFR is for complex services, a large information technology procurement or when a solution-based RFR has been issued.

The Procurement Team Leader may waive the location and other requirements of an oral presentation upon the written request of a bidder due to special hardships, such as a bidder with disabilities or limited resources. In these circumstances the PMT may conduct oral presentations through an alternative written or electronic medium (e.g., telephone, video conference, TTY or Internet). A bidder's failure to agree to an oral presentation may result in disqualification from further consideration. Oral presentations may be recorded manually or electronically by the department as a matter of public record.

References

Pursuant to 801 CMR 21.06(9), a Procurement Management Team may verify any references included in a bidder's response and conduct any other reference or credit checks as the procuring department deems appropriate. The procuring department may consider any documented references, including documented performance records of a bidder on file at the procuring department or solicited from other departments or entities.

The PMT may conduct reference checks in a manner that it deems most appropriate and efficient, however all reference checks must be documented in writing by the PMT. Departments should use the same script or format of questions when conducting reference checks so that the results are consistent and fair to all bidders. (A sample Reference Review Form is included in the appendices that can be modified as needed.) The Procurement Management Team may decide whether or not to accept unsolicited references. Reference checks may be made at any time during the procurement process or during the life of the contract.

Reviewing Bidders for Certain Northern Ireland Business - Application of the Mandatory Provisions of the Northern Ireland Statute to Procurements

All RFRs must contain a Northern Ireland "notice and certification" provision and every response must contain a Northern Ireland Notice and Certification. The RFR language and mandatory form, Northern Ireland Notice and Certification are

located in the appendix. As required by M.G.L. c.7 s.22C, no state agency or authority may procure commodities or services from any contractor employing ten (10) or more employees in an office or other facility located in Northern Ireland unless the bidder certifies that it does not discriminate in employment, compensation or the terms, conditions and privileges of employment on account of religious or political belief; that it promotes religious tolerance within the workplace and the eradication of any manifestations of religious and other illegal discrimination; and is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Reviewing Bidders for Debarments - What Is Debarment?

Debarment may occur, by the federal government or the state, whenever a contractor's activities or contracting performance has been egregious. No department shall knowingly accept a response or award a contract to any contractor, or approve a subcontract to any party which is currently subject to any state or federal debarment order or determination, including but not limited to M.G.L. c.29, s.29F. A federal debarred vendor list is produced monthly and is available via a link from the OSD homepage at: www.state.ma.us/osd.

Best and Final Offer (BAFO)

Pursuant to 801 CMR 21.06(11), a Procurement Management Team may provide bidders with an opportunity to provide a Best and Final Offer (BAFO). The BAFO process represents an optional step in the bidder selection process and is not part of the contract negotiation process. BAFOs may be useful when no single response addresses all the specifications, when the costs submitted by all bidders are too high, when two or more bidders are virtually tied after the evaluation process or when all bidders submitted responses that are unclear or deficient in one or more areas.

The PMT may restrict the number of bidders invited to submit a BAFO, or may offer the option to all bidders. In either case, the PMT should provide the same information and the same submission requirements to all bidders chosen to submit a BAFO. Departments are required to develop and distribute to selected bidders the written terms for a BAFO with specific information on what is being requested, submission requirements with timelines and information on the basis for evaluating responses and determining the successful bidder(s). Bidders may be asked to reduce costs or provide additional clarification to specific sections of the RFR.

Selected bidders are not required to submit a BAFO and may submit a written response notifying the PMT that their response remains as originally submitted. The terms of the BAFO may not identify either the current rank of any of the bidders selected for a BAFO or the lowest costs currently proposed. The Procurement Team Leader will have full discretion to accept or reject any information submitted in a BAFO. OSD recommends that departments consider how the BAFO option will be evaluated. Departments may evaluate the submissions of BAFOs as an addition to the scores already received by bidders on their original RFR responses or may develop a new evaluation process based entirely on the BAFO submission. Departments should articulate in the evaluation criteria the process to be used in evaluating the BAFO.

Selection of Bidders for Contract Negotiation

The PMT members shall rank the bidders based upon the evaluation criteria, reference checks, oral presentations and BAFO, if conducted. The Procurement Management Team is not required to automatically select a bidder based upon the lowest cost or the highest qualifications unless these were the primary criteria for selection. When multiple bidders are to be selected, the pool of qualified bidders are ranked based upon the evaluation criteria.

If the PMT uses score sheets, care should be taken to verify calculations and score tabulations to ensure accuracy. The scoring procedures should provide the same opportunity and fairness for all responses. Score sheets must be retained and included as part of the procurement file. If a PMT member has information that may significantly affect the selection or non-selection of a bidder, that member should submit written documentation of this information to the Procurement Team Leader for a determination prior to distribution to other PMT members, or prior to consideration of this information during the selection process.

The selection must be fair and impartial and based upon the procuring department's documented decision of which bidder best meets its conception of best value as defined by the procurement. The Procurement Management Team should include the final score sheets or bidder selection justification documentation as part of the procurement file. Final approval of a selection resides with the department head and Chief Fiscal Officer, unless the PTL is authorized to make the final selection.

STEP 8 - CONDUCT CONTRACT NEGOTIATIONS

Pursuant to 801 CMR 21.06(12), a PMT shall determine the timing and method of notifying bidders of the bidder(s) selected for contract negotiations or the contractor(s) that have executed a contract. Once a bidder(s) is selected for contract negotiation, the procuring department may assign one or more staff to conduct negotiations prior to the decision to formally execute a contract. The identification of a selected bidder(s) does not create a contractual obligation on the procuring department or the Commonwealth until negotiations are successfully concluded and a contract is executed by both parties.

The following sections provide guidance on negotiating contracts with selected bidders. Departments are encouraged to include programmatic, Affirmative Market, fiscal and legal staff during contract negotiations.

What Is Negotiable

Pursuant to 801 CMR 21.07(1), the PMT may negotiate with selected bidder(s) prior to execution of a contract based on what is specified in the RFR. The better value standard described in 801 CMR 21.07(1)(c) allows the department and a selected bidder, or a contractor, to negotiate a change in any element of contract performance or cost identified in the RFR or the bidder's response which results in lower costs, or a more cost-effective or better value commodity or service than was presented in the bidder's original selected response.

In summary, as long as the subject of negotiation results in a better value within the scope of the RFR than what was proposed by the bidder in the original selected response, it is negotiable.

Additional Negotiated Items Agreed to by Both Parties

Pursuant to 801 CMR 21.07(1)(b), the PMT and a selected bidder, or a contractor, may negotiate additional language which clarifies their understanding of, but does not change, the language of the contract or contract performance identified in the original RFR and a bidder's response.

Clarifications provide a more detailed description of the language in an RFR, the bidder's or contractor's response, additional terms and the meaning of terms in the applicable Commonwealth Terms and Conditions and the Standard Contract Form. Clarifications are used to fill in the gaps and "spell-out" the understanding of the department and the contractor regarding their respective contract responsibilities. Clarifications may not be used to have the effect of negating, modifying or replacing language in the applicable Commonwealth Terms and Conditions and the Standard Contract Form.

The following are examples of ACCEPTABLE clarifications or additions to a Standard Contract Form. These terms clarify, but do not change, the intent of the contract language or the rights of the department:

- For the purposes of this contract, the term "records" in the contract shall include performance records with the dates and times of all service calls, the reasons for the calls and how these were resolved.
- For the purposes of this contract, "normal wear" shall mean natural forces acting upon equipment while it is operated within product specifications. Normal wear shall not include negligence, misuse, external forces or the use of commodities or services that are not compatible with the contractor's stated specifications.
- The contractor and department agree that "notice" under this contract may be delivered initially by fax but shall not be effective until the date of postmark of First Class Postage Prepaid, addressed to the contract manager of either party at the address listed in the contract.

The following selected examples are NOT ACCEPTABLE clarifications or additions to a contract since they materially change the intent of the contract language and the rights of the department:

- For the purpose of this contract the term "contractor" shall not include subcontractors.
- The contractor shall not be responsible for delays in performance or negligence of a subcontractor.
- Pursuant to the certification which states that "The contractor represents that it is qualified to provide the performance specified in the contract and possesses or shall obtain all requisite licenses and permits," shall be modified by adding at the beginning of this sentence, "To the best of its knowledge and belief."
- The section entitled "Indemnification" in the **Commonwealth Terms and Conditions** shall be deleted and replaced with the following language, "[any alternative language of Bidder...]."
- The contractor may change the costs in the cost section at any time without prior notice.
- The contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to the price of the particular commodity or service sold hereunder with respect to which losses or damages are claimed.
- For the purposes of this contract, the choice of law shall be California.
- The department shall indemnify, hold harmless and defend the contractor against all claims for loss or damages arising from performance of the contract.

What Is Not Negotiable

Under no circumstance may a department negotiate a change to the Standard Contract Form or the applicable Commonwealth Terms and Conditions. Acceptance of a standard form or contract for filing should not be construed as an approval of any conflicting language that may have been inserted therein or attached thereto. In addition, departments may not negotiate for any new commodities or services that are outside the scope of the original RFR.

Further, an authorized signatory of a bidder must execute an applicable Commonwealth Terms and Conditions and Standard Contract Form issued jointly by ANF, CTR and OSD for small and large procurements under 801 CMR 21.00. (Please see the appendix for copies and refer to the RFR attachments in Chapter 4 for more information.)

The department and the contractor may not negotiate the terms of the applicable Commonwealth Terms and Conditions. Any contract attachment which contains conflicting language shall be superseded by the language of the applicable Commonwealth Terms and Conditions.

Since the applicable Commonwealth Terms and Conditions and the Standard Contract Form are available electronically, it is important to state that any changes or electronic alterations by either the department or the contractor to the official version of these forms, as jointly published by ANF, CTR and OSD, shall be void.

Please note that the Office of the Attorney General has determined that departments may not sign vendor contracts, invoices, or other documents containing contractual terms. Departments that choose to sign these types of documents do so at their own risk and are responsible for any associated costs or damages. In certain circumstances, however, the PMT may wish to consult with the OSD legal office regarding software license agreements or other contractual issues.

A selected bidder's response may be disqualified if the PMT determines that the bidder:

1. is intentionally or unreasonably delaying the timely execution of the applicable Commonwealth Terms and Conditions or the Standard Contract Form;

2. conditions execution of the applicable Commonwealth Terms and Conditions or the Standard Contract Form upon the procuring department's acceptance of additional material or amended contract terms and conditions, or specifies that the bidder's response is "non-negotiable," "all-or-nothing" or that there can be "no substitutions,"
3. negotiates in bad faith;
4. refuses to execute the applicable Commonwealth Terms and Conditions or the Standard Contract Form;
5. demands that the department execute the bidder's contract form instead of the applicable Commonwealth Terms and Conditions or the Standard Contract Form;
6. is unable to reach final agreement on contractual terms with the department within a reasonable time as determined by the department.

Unsuccessful Negotiations

If the procuring department is unable to satisfactorily negotiate the programmatic, fiscal or administrative terms of the contract with the initially selected bidder in a reasonable period of time, then the department may disqualify that bidder and begin negotiations with the next qualified bidder. A department may also choose to cancel the procurement and either begin again or pursue any other option permitted under the regulation.

801 CMR 21.07(2)(d) spells out the circumstances when a procuring department would disqualify a selected bidder's RFR response during the negotiation process. This also applies to negotiations occurring in the context of competitive procurement exceptions under 801 CMR 21.05.

☞ *For POS Only:* Other Negotiation Considerations

Department staff who are responsible for negotiating human and social service contracts also need to be familiar with and understand the limitations imposed on such contracts by statute (including M.G.L. c.29 s.29B, St. 1993, c.110, s.274, as amended), regulation (including 808 CMR 1.00) and funding source (legislative language or federal grant language). It also prohibits reimbursement for commodities and services that are not directly required for the specific client service being purchased.

Department negotiators should also carefully review 808 CMR 1.00, especially sections 1.03 on price and reimbursement limitations and 1.05 on non-reimbursable costs. (See also the sections on compensation structure and contractor compliance discussed in Chapters 4 and 6.) While the failure of a department to identify contract terms that do not conform with such provisions does not relieve the contractor of its obligation to comply, it is obviously better for both parties if such problems can be avoided.

STEP 9 - NOTIFY ALL RESPONDENTS OF CONTRACT EXECUTION

Pursuant to 801 CMR 21.06(12), departments may determine the timing and method of notifying unsuccessful bidders of the outcome of the procurement. Notification should be provided to all bidders who submitted responses and posted on Comm-PASS if the RFR was posted on Comm-PASS.

Final decision-making authority resides with the department head and Chief Fiscal Officer, or, if authorized, the PTL.

Press Releases

Pursuant to 801 CMR 21.06(13) no bidder shall participate in any press conference, news release or announcement concerning its selection or non-selection for a contract prior to the procuring department's public release of said information or prior to the written approval of the procuring department. Violation of this section may be considered grounds for disqualification.

Public Records Requests

All responses and related procurement documents submitted or presented as part of an RFR shall become the property of the Commonwealth (M.G.L. c.4 s.7 ss.26 and M.G.L. c.66, s.10). These materials make up the procurement file and include such items as the sign-in sheet from a bidders' conference and bidder information (if submitted in conjunction with a response).

Public records requests may be submitted at any time and departments must respond within ten days with either an offer to provide the requested materials or the appropriate exemption under M.G.L. c.4 s.7 ss26. Depending on the circumstance, the provision of information may be delayed (see exemption below) in order to maintain the integrity of the procurement process. M.G.L. c.4 s.7 ss.26(h) provides for delays in providing information at specific points in time during the procurement process:

> [Requests may be denied for] "proposals and bids to enter into any contract or agreement until the time for the public opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person."

Public records requests and PMT responses should be documented in the procurement file. Information that is requested by multiple interested parties or bidders may also be posted on Comm-PASS and requesters may be referred to Comm-PASS to obtain copies.

PMTs may assess a reasonable charge, in accordance with the Secretary of the Commonwealth regulation 950 CMR 32.06, for the preparation and shipping of this information. PMTs should require payment prior to production (checks are payable to the Commonwealth of Massachusetts). All payments must be deposited in the general fund.

The Commonwealth is under no obligation to return any responses or materials submitted by a bidder in response to an RFR, including bidder "trade secrets" and financial information (which are not exemptions in the public records law). This public ownership of materials applies even if the bidder has submitted a non-disclosure or other statement asking the Commonwealth to retain the security or confidentiality of the trade secret information. For more information about public records requests, refer to the Secretary of the Commonwealth's homepage at: www.state.ma.us/sec.

Records Retention

The procurement file should be retained for a period of seven years (after the contract has expired) or other terms determined in a disposal schedule issued by the Records Conservation Board pursuant to M.G.L. c.30, s.42. Also see MMARS Memo 287, for contract retention period (currently seven years). For questions on records retention, please contact the Records Conservation Board, (617) 727-2817.

STEP 10 - CONDUCT DEBRIEFINGS AS APPROPRIATE

Pursuant to 801 CMR 21.06 (14) an RFR may contain provisions for a non-successful bidder to request a debriefing from the Procurement Team Leader. A debriefing is offered as a courtesy to bidders, rather than a requirement, and allows the requesting bidder the opportunity to ask questions regarding the evaluation of its response. Debriefings are designed to identify any weak areas of a response and suggest improvements for future procurements.

If an RFR does not contain the opportunity for a debriefing, a PTL (for commodities and non-human and social services) shall have the option of whether to grant or deny a debriefing request and shall be under no obligation to provide a debriefing.

☞ *For POS Only:* Departments must provide an opportunity for debriefing to non-successful bidders. Non-successful bidders must request and participate in a debriefing as a prerequisite to filing an administrative appeal. If a debriefing is conducted, PMTs must specify the individual to whom requests for debriefings should be directed. In order to facilitate the exchange of information in a timely manner, PMTs must identify timeframes for both receipt of debriefing requests (within 14 days of the notification of contract execution) and scheduling of debriefing meetings (within 14 days of the receipt of the request). These timeframes may be modified at the discretion of the PMT. Written documentation of what was discussed at the debriefing must be placed in the procurement file.

☞ *For POS Only:* Department Appeals

Pursuant to 801 CMR 21.06(15), non-successful bidders may, after having completed the debriefing process, submit a formal appeal to the PMT or procuring department. Each PMT is responsible for the development of appeal procedures that are designed to promote and protect the principles of fundamental fairness as well as to minimize the administrative burden on both PMTs and bidders.

The initiation of an appeal by a bidder may introduce an element of uncertainty into the competitive process for the selected bidder, the PMT, other purchasers of the service, families and the individuals being served. For that reason, PMTs are encouraged to develop procedures for hearing procurement appeals that are streamlined and expeditious. Pending appeals at the department level shall not prohibit the department from proceeding with procurement activities and executing contracts.

Appeal procedures, must at a minimum, include the following information:

- the person within the department to whom requests for an appeal should be directed;
- any time limitations for requesting an appeal;
- specific grounds for appeal.

OSD recommends departments state that appeals will only be considered when they allege that either:

a) the department failed to comply with applicable purchase of service regulations and guidelines. These would be limited to the requirements of 801 CMR 21.00 or any successor regulations, the *Procurement Policies and Procedures Handbook*, policies and procedures issued by OSD and the specifications of the RFR; or

b) there was a fundamental unfairness in the procurement process.

Administrative appeals are not subject to the formal procedures specified in the State Administrative Procedures on Adjudicatory Procedures and Appeals (M.G.L. c.30A, ss.10 and 11). However OSD does encourage departments to provide an opportunity for a hearing or face to face meeting between the parties, as appropriate. Departments may reject appeal requests based on grounds other than those stated above. Information on procedures for appeals to OSD must be included the RFR (see RFR – Required Specifications in the appendix).

CHAPTER 4 HOW TO DRAFT A REQUEST FOR RESPONSE (RFR)

The Request for Response is the heart of every procurement process. Regardless of how well every other element of the procurement process flows, a weak or limited RFR may prevent a procuring department from achieving its procurement goals. Therefore, this chapter has been designed to assist Procurement Management Teams (PMTs) and procuring departments in drafting an RFR to accomplish their goals. This chapter provides step-by-step instructions for drafting an RFR and answers the following questions:

What does an RFR look like?
What are the minimum contents of an RFR?
What other RFR and contract specifications should I consider?

A special note: The procurement process is not necessary if the commodity or service is available from an existing statewide contract. Further, you may use another department's procurement if they have so indicated in their Request for Response.

WHAT DOES A REQUEST FOR RESPONSE LOOK LIKE?

The simple answer is, "However you want it to look." A Request for Response is the mechanism used to communicate contract performance specifications to potential bidders. An RFR may also be referred to as a "solicitation." The bids, quotes, responses or other submissions from bidders, in whatever format they are submitted, are all characterized as responses.

The RFR is the place to include *all* information concerning a procurement. "It's in there," should be the answer to questions raised about a procurement. An RFR that is complete and detailed can withstand subsequent challenges.

RFRs are drafted by a procuring department to fit a particular procurement based upon the complexity and total value of a contract. *An RFR may be a paragraph, a page or multiple pages, depending on the procurement.* Not only can RFRs be "built to suit," they may also be "built to grow" depending on the changing or expanding procurement needs of a department.

LISTING OF MINIMUM CONTENTS OF A REQUEST FOR RESPONSE (RFR)

This section identifies the minimum information constituting an RFR, including:

1. Description or purpose of the procurement
2. Acquisition method (fee-for-service, outright purchase, rental, term lease, Tax Exempt Lease-Purchase or license)
3. Request for single or multiple contractors
4. Use of a procurement by a single or multiple departments
5. Anticipated duration of contract including renewal options
6. Anticipated expenditures and compensation structures
7. Performance and contract specifications
8. Instructions for submission of responses
9. Deadline for responses and procurement calendar
10. RFR attachments/required specifications

A Request for Response (RFR) checklist has been developed to assist departments in drafting an RFR (please see the appendices).

RFR SECTION 1 - DESCRIPTION OR PURPOSE OF PROCUREMENT

This section of the RFR should outline a department's anticipated plan, purpose or goals for the delivery of commodities or services. This is a good place to present an overview of the procuring department, including any history or experience the department has had with the same type or similar commodities and services.

This section of the RFR is designed to brief potential bidders about the environment, circumstances and obstacles that a selected contractor(s) will face. Bidders submit responses based upon the information contained in the RFR. Many contractors have no experience with state government or the unique business needs and day-to-day problems that departments face.

Therefore, this section of the RFR provides bidders with a sketch on how the procuring department or the Commonwealth as a whole operates and what the selected contractor(s) should expect during performance.

For many procurements, this section will be brief, especially for simple, routine purchases. A separate section of the RFR can be created to elaborate on the details of the contract and performance specifications (RFR Section 7). Depending on the size and complexity of the RFR, this section may combine the summary with the complete specifications described in RFR Section 7.

RFR SECTION 2 - ACQUISITION METHOD

Services - Fee for Service Contracts

A fee for service acquisition method is another term for a service contract. Service contracts may be either unit-based or project based (explained in detail later in this chapter). Depending upon the type and predictability of use of the service, a service contract will either be a rate contract or a maximum obligation contract.

Service contracts may have both service components and commodity components (such as materials), however, the commodity components of a service contract must be in addition to the services. Maintenance service contracts may be structured with separate rates for time and materials, or a service call rate that includes both. Certain maintenance is periodic and may be more cost-effective through one-time service calls.

Other types of service contracts, including contingency fee contracts, are discussed in further detail in this chapter (see discussion of compensation structures in RFR Section 6).

Commodities - Consumable and Durable Items

Consumable commodities are products such as paper, pens, light bulbs, food etc. that are usually acquired through an outright purchase acquisition method.

These commodities are consumed by procuring departments and have a limited useful life. Certain types of equipment are also considered consumable commodities because the useful life of the equipment is short (less than one year). These commodities are considered to have an insignificant purchase cost.

Durable commodities (such as informational technology (IT) equipment, furniture, vehicles, power tools, etc.) have a useful life that generally exceeds one year. Some durable commodities also have an insignificant purchase cost. Capital commodities are durable commodities that have a useful life of more than one year *and* a significant cost.

These commodities are capitalized and carried on the Commonwealth's financial statements. Durable commodities may also have an ownership value. They are appropriate for outright purchase, Tax Exempt Lease Purchase (TELP), term leasing and rental acquisition methods.

Acquisition of Durable Commodities

When deciding to acquire durable commodities, procuring departments and PMTs should assess their requirements and weigh and compare their available options. Options for the acquisition of durable commodities are:

1. **Outright Purchase** - Immediate ownership (When the value of the commodity is $15,000 or greater, this is considered a Commonwealth fixed asset.)

2. **Rental** - Temporary short term use without ownership (limit 6 months).

3. **Term Lease** - Temporary use without ownership for over 6 months. (These leases must be reviewed for categorization as capital or operating.)

4. **Tax Exempt Lease-Purchase (TELP) -** Purchase of commodity with financing and ultimate ownership. (This should be reported as a capital lease. When the value of the commodity is $15,000 or greater, it is considered a Commonwealth fixed asset for which an FA transaction must be entered at the time of acquisition.)

5. **License** - Temporary use without ownership of intellectual property or software.

Note: Other Acquisition Methods: Departments must use one of the acquisition methods identified above unless another method is legislatively authorized and approved by OSD or CTR.

To Buy or Not to Buy? When Should a Department Consider Ownership of a Commodity Versus Using that Commodity for a Fee?

Only the procuring department can best assess their requirements when considering the above acquisition methods. Although procuring departments are in the best position to evaluate their requirements, a sound business decision and obtaining best value should guide the decision when selecting the appropriate acquisition method.

The appendix offers detailed guidance to assist departments in making the correct and best choice of the above finance methods. In addition to addressing departmental needs, this guidance addresses requirements of the Office of the State Comptroller and the Operational Services Division.

RFR SECTION 3 - REQUEST FOR SINGLE OR MULTIPLE CONTRACTORS

The RFR must indicate whether the procuring department plans to award a single contract or multiple contracts as a result of the procurement. This will depend on the procuring department's needs, the market and availability of bidders, and other factors. If the department is uncertain, the RFR should indicate that either choice is a possibility, and bidders should respond accordingly.

Multiple Contractors

There are various approaches departments can take to ensure adequate coverage of needs through the use of multiple contractors. Qualified contractor lists, including open and rolling enrollment contracts (described more fully below), are one way to obtain a selection of vendors.

Qualified Contractor Lists

An RFR may be used to select pools of contractors that are qualified to provide specified commodities and services based upon their technical expertise, experience, quality of performance, location, availability, rates, prices, catalogs or other criteria relevant to a particular procurement. Thus, departments have a ready source of contractors whenever the commodities or services are required.

When the commodities or services are not already covered under an existing statewide contract, departments may conduct a competitive procurement to solicit multiple qualified bidders. This may occur when a department has special regional needs or the pool of qualified bidders can effectively handle the small volume needs of one department, but not the needs of all departments under a statewide contract.

A single RFR resulting in agreements with multiple contractors will not guarantee work for any contractor, and a department is under no legal obligation to use all of the qualified contractors that have signed a contract. However, departments may want to allocate work among the contractors either by rotation or by another basis designed to promote competition.

A procuring department that plans to execute contracts with similarly qualified contractors for the provision of commodities or services may indicate in the RFR that the department intends to use only one or a few of the contractors, and the rest are merely to be kept on-call in case one of the other contractors is unavailable. Being open with bidders about potential use will promote more realistic responses and contract prices. This will also provide the contractors with advance notice that there is no guaranteed work, and that the purpose of the contract is to pre-determine qualifications, contract terms, prices and the contractor's availability to provide commodities or perform services.

Qualification of bidders is one method of identifying multiple contractors by first establishing a set of criteria which prospective bidders must satisfy in order to be placed on the list of qualified contractors.

The distinguishing factor that establishing qualified contractor lists has from other competitive procurements is the primary selection criteria are those factors other than cost, reflecting the capability of the selected bidder(s) to adequately perform the contract. Such criteria include, but are not limited to, financial stability, past performance, professional references and testimonials. The criteria used for selection should be fair and impartial.

Depending upon how the RFR is drafted, the PMT may have the option to limit the number of contractors on the list, selecting only those who meet the minimum qualifications and provide best value. The RFR and the evaluation criteria should clearly indicate these options for selection. The department is then able to select any contractor on the list.

Based upon how the RFR was drafted, departments may negotiate the details of their procurement requirements which may include prices (if these were not established as part of the qualification process) as well as other basic terms. The agreed to terms of a negotiation should be in writing and kept in the procurement file to ensure that there is agreement between a qualified contractor and a department for the expected delivery of commodities and services and the established price. The RFR may also contain the flexibility to add products or services based on new technologies as well as new products which meet environmental criteria.

The RFR may also include an option to enable the department to get quotes or estimates for a particular project or performance requirement from several of the contractors on the list in order to get the best rates or performance options. This is not a new procurement, and all the necessary contract documentation is already on file. This option provides a built in way to encourage continuing competition among the contractors on the list. The quotes must be provided within the parameters of the RFR and these contractors' original responses.

Open and Rolling Enrollment Qualified Contractor Lists

An RFR for multiple contractors may also be set up as either an open enrollment or rolling enrollment list. The open enrollment method allows new bidders to submit responses after the initial selection period at specified intervals or as deemed necessary by the PMT while the rolling enrollment method allows bidders to submit responses at any time during the procurement duration. As with all RFRs, the request should include language that enables a PMT to negotiate final prices or performance specifications defined in the RFR throughout the life of the contract.

Since the open enrollment method allows new bidders to submit responses after the initial selection period, departments should consider incorporating this powerful leveraging tool into their RFRs. Not only is this option often important in meeting departmental needs under statewide contracts, the ability to add contractors to other types of contracts throughout the life of the procurement may foster competition and better pricing because new contractors may encourage existing contractors to lower their prices. As such, even though the procuring department may have no intention of opening up the procurement

during the period of the contract, having the option to do so may greatly benefit the department in certain circumstances. Under an open enrollment process, the original RFR should state how often additional responses will be reviewed. As usual, the PMT receives responses for the initial RFR procurement until the deadline date for submission. Those responses are evaluated through the selection process and bidders are selected for contract negotiation and execution. Also, like other multiple contractor RFRs, the RFR may state the PMT's option to limit the number of contractors on the list as long as the evaluation criteria are clearly stated.

For RFRs for clients services or for commodities or services needed regionally (such as clients in residence) PMTs should consider including the option to open an RFR to meet specific client or regional requirements as needed at the option of the PMT.

PMTs should ensure that responses received during the open enrollment period (after the initial selection process) are handled in the same manner as any other RFR response. Receipt should be accurately recorded and the responses kept in a secure place until the PMT convenes to review responses. Late responses on an open enrollment for which the close date has elapsed may not be held for the next open procurement. In such cases, the PMT should return the response and late bidders may resubmit their responses during the next open enrollment period.

Under a rolling enrollment process, the RFR never closes, but allows bidders to respond at any point during the life of the solicitation.

RFR SECTION 4 - USE OF A PROCUREMENT BY A SINGLE OR MULTIPLE DEPARTMENTS

RFRs should be drafted using one of the following five (5) options identifying whether the RFR will be used only by the procuring department or by multiple departments:

1. **Statewide Contracts Conducted by OSD (this procurement option is only available for OSD use).** Procurements conducted and managed by OSD/PMT on behalf of the Commonwealth resulting in statewide contracts that are available to all departments and other OSD approved eligible entities. Departments can purchase from a statewide contract without having to execute additional contract documentation.
2. **Statewide Contract Conducted by OSD-Designated Department (this procurement option is available to any department with PRIOR approval by OSD).** Procurements conducted and managed by a department (formally designated by OSD) on behalf of the Commonwealth resulting in statewide contracts that are available to all departments and other OSD approved eligible entities. Departments can purchase from a statewide contract without having to execute additional contract documentation.
3. **Multiple Department Procurement/Limited Department User Contracts (this procurement option is available to all departments).** Procurements conducted and managed by a self-selected group of departments which chooses one of the departments to act as the procuring department to post the RFR and execute contracts and contract amendments on behalf of the group. Similar to a statewide contract, any department identified in the RFR, or later approved by the PMT, can purchase from the contract without having to execute additional contract documentation if this option was specified in the RFR.
4. **Single Department Procurement/Multiple Department User Contracts (this procurement option is available to all departments).** Procurements conducted and managed by a procuring department for its own needs (if those needs cannot be met by an existing statewide contract) that can also be used by other departments and OSD approved eligible entities. Subsequent departments may use the RFR and winning bidder response(s) as the procurement basis for the execution of contracts.
5. **Single Department Procurement/Single Department User Contract (this procurement option is available to all departments).** Procurements conducted and managed solely by the procuring department for the purchase of commodities and services to meet only the procuring department's needs if those needs cannot be met by an existing statewide contract**.** If the RFR is silent as to use by additional departments or OSD approved eligible entities, then the RFR is limited to use only by the procuring department.

Note: For additional information, RFR drafting considerations, contract filing requirements and related transactions, please refer to the appendix Use of a Procurement by a Single or Multiple Departments and its accompanying quick reference matrix.

RFR SECTION 5 - ANTICIPATED DURATION OF CONTRACT INCLUDING RENEWAL OPTIONS

While 801 CMR 21.00 does not prescribe any set limits for procurement duration, the RFR should identify the total *"anticipated duration"* of the contract(s), including anticipated options to renew. The dates of the total anticipated duration specified in the RFR take precedence over any other dates that may be published on Comm-PASS or appear elsewhere. **Please see additional guidance on drafting this section of the RFR in the appendix, *Request for Response/Contract Duration*)**. The RFR should also specify the circumstances under which the department would choose to exercise its option to renew, such as performance or price considerations. Therefore, determining the appropriate duration requires the consideration of a variety of factors, including, among other things:

- type of commodities or services required;
- length of time the contract will be required (temporary or long term);
- type and duration of the appropriation(s) funding the contract (state, capital, trust, federal);
- language of the appropriation(s) funding the contract; and
- best value procurement principles.

The RFR should specify a definite total period or duration of the contract which can not be open-ended or ambiguous. The department and the contractor will be limited to that total period. However, the department may choose to include language in the RFR that restricts or allows for flexibility in the initial duration period of the procurement. Phrases such as "up to one year" or "year" provide the greatest flexibility for the initial duration while other phrases are more restrictive. Examples of restrictive initial duration language would be "fiscal years" and language which indicates a specific set of dates. The considerations the choice of language regarding initial duration are discussed more fully in the appendix, *Request for Response/Contract Duration.*

Under 801 CMR 21.00, there is great flexibility to structure the procurement process and contract duration in the RFR. A procuring department may establish a *"multi-year"* contract which could be executed by the parties once for the full period or partial period of the total anticipated duration identified in the RFR, subject to appropriation. Any contract that is executed for more than one fiscal year, or that crosses at least two fiscal years, is considered a multi-year contract.

Departments have flexibility to decide what is a reasonable contract duration for the specific commodities and services being procured. Additional factors such as type of commodity or service, market factors (limited vs. extensive competition), size of procurement and needs of the procuring department should be considered when determining the contract duration. The RFR must identify the total anticipated duration of the contract(s) which includes the initial contract period and any anticipated options to renew. For example, a procuring department may choose to identify an anticipated duration of one fiscal year with two additional options not to exceed one year each. If the department is satisfied with performance, then it may exercise one or more of the remaining options to renew to continue contract performance.

On the other hand, if issuing a residential RFR for highly medically fragile individuals, a department might consider the long-term stability needs of those consumers and the capital investment required of contractors and decide on an initial contract period of six years with an option to renew for three additional years subject to certain conditions such as satisfactory performance.

When considering longer term contracts, the PMT should think about:

- The desire and commitment to longer term funding and programmatic decisions;

- The source of funds and relative funding stability;
- The limitations on the number of funding sources or other accounting variables. For example, MMARS supports a maximum of thirty (30) lines per transaction, including all out years;
- The degree of potential change in the nature of the commodities and services being procured;
- Contractor stability;
- The capability of staff to plan and negotiate longer term agreements up front;
- The ability to construct or modify contract management systems to support multi-year contracts;
- The history of a client in a service delivery setting, if applicable;
- The length of any prior contractual period, including renewal options, and the likelihood that new bidders will participate.

In addition to the factors indicated above, the PMT should also:

- Structure the duration of the RFR to match the anticipated need for commodities or services;
- Evaluate the selected duration to ensure it is consistent with the best value procurement principles;
- Ensure that all contracts, including those which exceed five years, contain a mechanism that demonstrates clear performance measurement criteria and ensures continuing quality and competitive rates and a notice that procuring department(s) may negotiate a better value at any time during the contract period.

Although the duration of any contract procured under 801 CMR 21.00, including any options to renew, shall be the period determined by the PMT to be necessary to obtain the required commodities or services at the best value for the procuring department and the state, ***the duration is subject to available funding for the contract.*** Available funding is defined as an "annual appropriation, capital, trust or federal funds which have been appropriated or authorized for the purposes of the contract." The exception to this general rule applies to contracts that allow for multiple users and, as such, are not limited by one department's appropriation. Each department using the contract is limited by its own appropriation levels and availability of funding within the appropriation.

In addition, 801 CMR 21.06 (2) specifies certain limitations on duration, irrespective of what the contract identifies as a duration. These types of limitations arise from statutorily set requirements such as annual appropriation accounts which are limited to each fiscal year, or limitations set on capital appropriations, retained revenue accounts and federal grant appropriations.

RFR SECTION 6 - ANTICIPATED EXPENDITURES AND COMPENSATION STRUCTURES

This aspect of the RFR should be determined in conjunction with the acquisition method (discussed earlier in this chapter) of the commodities and services and the anticipated duration of the contract as discussed in RFR Section 5 above. These factors are considered together in creating an RFR which provides enough information so that bidders can offer their best response.

Anticipated Expenditures

In some instances, identifying the total available funding ensures that bidders will not provide unaffordable responses. However, PMTs may be reluctant to potentially structure bidders' responses to match an amount specified in the RFR. Further, a PMT may not want to limit the RFR to the maximum obligation cited.

Procurement Management Teams may want to issue an RFR that identifies the total available funding for a project and evaluate bidders based on the amount of service, or the number of items the bidders is willing to provide for the available dollars. Providing the total funding available may also make sense if the PMT is releasing a solution-based RFR for responses. Contracts resulting from this type of RFR are considered maximum obligation contracts.

RFRs that result in the establishment of rate contracts (price per unit or service) do not specify a maximum obligation. Bidders may want to know the estimated number of units, and may have difficulty pricing units if this information is not provided. As such, bidders may develop a higher price (to cover their risk of providing a lower volume of units) if the anticipated number of units is not identified. Departments do not always know in advance how many units will be required

over the course of a contract period. Sometimes departments procure for the availability of a commodity or service, if needed by the department (e.g., temporary modular units for inmates or the availability of homeless shelter beds). Departments should try to include any historical usage for these units by the department, or an amount of anticipated usage. Note: Regardless of whether the RFR specifies the anticipated amount of expenditures, it must indicate if federal funds will be used to fund the contract and any resulting federal requirements for the contractor.

Compensation Structures

The regulatory framework of 801 CMR 21.00 supports the development of a variety of compensation structures, including the development of performance based methods of payment and other incentive based or risk sharing models. In addition to anticipated expenditures, procuring departments and PMTs should consider the structure for compensation under the contract when developing the RFR. Procuring departments are responsible for developing RFRs that yield high quality commodities and services at reasonable prices. Generally, competition is the vehicle for ensuring the Commonwealth pays a reasonable price for those services. In general, given the flexibility of the procurement process, PMTs and departments are encouraged to develop innovative compensation structures that directly support the achievement of outcomes. This section provides guidance to departments in structuring compensation terms to obtain the best value.

Rate or Maximum Obligation Compensation Contracts

Contracts are split into two basic compensation categories, “rate contracts,” that are unit based contracts which specify no maximum obligation in the RFR or the contract, and “maximum obligation contracts” which may be unit based, project based (or a combination of both), may incorporate other compensation structures and do specify a maximum obligation in the RFR or the contract.

Rate Contract

A rate contract is used when the rate per unit of performance (commodity or service) is known, but the number of units, or contractors, is either unknown or unpredictable. Departments can use a rate contract when they require flexibility or are unable to accurately predict (despite historical data):

- how many units of performance (commodities or services) will be required;
- how many contractors will be needed;
- when contractors will be needed;
- how long contractors will be needed.

A common type of rate contract is a statewide contract. Examples of rate contracts (which are not necessarily statewide) include contracts for snow and ice removal, messenger services, maintenance and repair supplies, or price per hour of counseling. The use of these services is fairly unpredictable and, as such, are accessed when needed.

The contractor’s total compensation under a rate contract is determined based upon the number of units requested by the department (which are actually delivered to and accepted by the department) multiplied by the rate or fee per unit of performance. Note: Departments using rate contracts must be cautious when requesting goods and services to ensure that such requests do not exceed the Departments current appropriation or other funding for this purpose.

Maximum Obligation Contract

The maximum obligation structure is used for either unit based or project based compensation when the contractor(s) is known and performance is predictable and measurable. Even if a maximum obligation is not established as part of the RFR process, a resulting contract may contain a maximum obligation if the extent of performance and costs are known. Adjustments to the maximum obligation can be made during the period of the contract through contract amendments under the terms authorized in the RFR. A maximum obligation contract does not guarantee an amount of funding to a contractor. It is the maximum amount a contractor can be paid if all commodities and services specified in the contract are delivered.

Compensation Considerations

Focus on outcomes, not costs, wherever possible.
Developing a compensation structure should be more than a formulaic exercise designed to reduce payments to the contractor to a manageable form. Appropriate price development supports the delivery of the desired outcomes or outputs for the commodity or service. This is not intended to mean that all contracts should contain a *payment mechanism* based on the delivery of outcomes, but that generally, the *compensation* should focus on the value of the outcomes rather than solely on the contractor's operating costs.

Use research and analysis to determine, in advance, a range of reasonable costs.
Although an individual contractor's costs are important when reviewing compliance with contract or regulatory terms, they may be particularly relevant to the compensation structure for procurement of commodities and services in two instances: (1) as a guide to assist departments in determining the reasonableness of the proposed price and (2) to assist departments in determining whether subsequent contract negotiations should include adjustments to that price.

During RFR development, procurement staff should familiarize themselves with the potential range of prices for the commodity or service being procured. In order to accomplish this, a variety of tools can be utilized by staff to determine whether the price which is proposed either in the RFR or in a bidder's response is reasonable, provides the best value to the department and supports the achievement of desired outcomes.

No single tool will provide all the assurance that a department needs to determine whether or not a proposed price accomplishes these purposes, and often these judgments will have to be made using the best information available, even though imperfect.

Often, it will be possible to investigate and analyze the prices paid to contractors by other departments for the same or similar commodity or service. In these cases, discussions with contract management staff can provide insight into particular compensation characteristics of the desired outcome. It may also be possible to analyze the prices for the commodity or service (or outcome) in the broader marketplace. In these instances, factors such as geography, availability of alternate resources, consumer access and other issues may have to be weighed in determining the value of the outcomes. Other tools might include a review of the rate tables available through MMARS and an analysis of the history of the current contractor's actual costs in delivering the commodity or service.

The flexibility offered to departments in the design of an RFR and the potential for true multi-year contracting provide an opportunity to refocus the compensation structure from one-year-at-a-time to a longer term view. Compensation structures should take into account such variables as may evidence themselves during the term of the contract, rather than on the current contract year. These considerations may be extremely important in performance based payment structures, where it might be expected that a contractor's performance will improve over time and departments may choose to introduce the concept of incentive payments for long term success.

Departments may also want to consider a different risk sharing arrangement for the first year of a contract than for the fifth year. In many circumstances, it is desirable for departments to review anticipated compensation for "out-years" as well as the current contract year.

Generally, departments are encouraged to analyze and develop a compensation structure which best supports the delivery of outcomes, encourages efficiencies and effectiveness of services and provides for the best value to customers. Several compensation structures are described below as a way to assist departments in thinking about how a compensation structure can best support these objectives.

☞ *For POS Only:* Another tool available to determine the value of the outcomes is the analysis of the actual costs experienced by a group of similar programs through the use of the data contained in Uniform Financial Statements and Independent Auditor's Reports (see Chapter 6 for more information). In these instances, additional factors, such as differences between the services of similar programs and those services being procured should weigh in the decision process.

Common Compensation Structures

This section describes some of the compensation structures available to PMTs and departments, including, but not limited to:

- Unit based compensation
- Project based compensation
- Cost reimbursement structure
- Risk sharing structure
- Capitated structure
- Contingency fee structure

Unit Based Compensation

A unit based compensation structure is used when contract rates are set by the unit (per hour, day, week or item of service delivery). Units are customarily independent components of a contract. The number of units can be increased or decreased based upon the department's needs. A department is only obligated to pay for the units requested and actually performed or delivered to the department in accordance with the terms of the contract.

The unit rate structure is valuable in circumstances in which a performance based system is not feasible. For example, a service whose desired outcomes are long term in nature (i.e., may take longer than one year to accomplish or measure) may be best suited to a structure using unit rates although, with greater flexibility to develop contracts for longer than five years, performance pricing may still be an option worth considering. Two additional types of unit based compensation, accommodation rate, and non-negotiated unit rate, are described below.

Accommodation rate.

An accommodation rate is one which defines the unit as the *availability* of commodities and services (rather than their actual delivery). In these instances, the availability of the service (i.e., shelter bed), usually regardless of utilization, is the critical factor. Departments can choose to devise a price based on the unit availability, rather than on actual delivery of a unit.

Non-negotiated unit rate.

Departments may choose to specify in the RFR, in appropriate circumstances, unit rates which it is willing to pay for a particular commodity or service on an ongoing or as needed basis. Bidders agree to this price when submitting responses. As such, these rates are not negotiated with the contractor. An example of this is the requirements of the Prevailing Wage Law (M.G.L. c.149, s.26) Certain licensed professionals and trade persons must be paid according to the current prevailing wage rate, as determined by the Department of Labor and Workforce Development. This wage rate may not be negotiated by a department. (See also RFR Section 7 on prevailing wage requirements.)

Departments can also choose to issue an RFR which describes a unit price ☞ *For POS Only*: In some instances, departments must use certain prices, such as when purchasing human and social services, whose prices are determined under regulations of the Division of Health Care Finance and Policy, or when purchasing special education programs whose prices are authorized by OSD under 808 CMR 1.06.

Project Based Compensation

Project based compensation is used when contract performance can not be divided neatly into severable units. Compensation is factored based upon the total, all-inclusive cost of performance. The project based structure is intended to be a flat rate or all inclusive amount (all related costs, overhead, administrative costs, time, materials, etc.).

Project based compensation requires the bidder to provide an actual or estimated cost for the completed contract performance based on the department's description of the performance. Payment may be based on a schedule of predetermined events, such as the achievement of outcomes or the accomplishment of certain milestones. Payment may also be made contingent upon completion and acceptance by the department of the entire project.

Bidders calculate estimates based on the performance outlined in the RFR. It is extremely important that the RFR description of performance for a project based contract be as detailed and accurate as possible. Likewise, contractors who underestimate their costs despite clearly defined RFR specifications may not request additional compensation. A contractor is paid a predetermined amount. Although it may not be possible to price and pay for many commodities and services on a performance basis, where it is possible and reasonable, such efforts are strongly encouraged.

Note: PMTs may specify a combination of unit based and project based structures, if appropriate.

Cost Reimbursement Structure

Cost reimbursement is a structure in which the department reimburses the contractor for costs actually incurred in rendering services up to the stated maximum obligation. This compensation structure provides the least support for the delivery of outcomes, since its focus is on the individual components of expense, and, therefore should be limited in use. Departments are encouraged to reduce their reliance on the cost reimbursement structure. Use of this compensation structure may be warranted if:

- The program is a new or reconfigured service and detailed cost information is necessary to determine future price;
- Departments have a documented need to closely monitor expenditures;
- A complete budget is required to meet federal standards;
- Categorical information is insufficient to evaluate the comprehensiveness of the services and adequacy of resources to achieve performance measures;
- There exists no reasonable opportunity to utilize an alternative structure which will support the delivery of desired outcomes.

Risk Sharing Structure

Often, departments may not be able to precisely determine the reasonableness of a particular compensation structure, or the department desires a system whereby it does not alone assume the expense of increases in certain costs. In these circumstances, an arrangement can be constructed in which the department and the contractor share in the risk of cost overruns or cost savings. For example, the department may agree to assume 60% of the contractor's cost over a specified amount in year one, provided that certain outcomes have been achieved. On the cost savings side, the department may allow the contractor to retain 10% of savings which are directly attributable to the contractor's efficiency, provided certain outcomes are achieved in year one, and increase that percentage by an additional percentage point for each of the remaining contract years. In this way, the department and the contractor share, in a very real way, the achievement of the specified outcomes in the most efficient and effective manner possible.

Capitated Structure

In some instances, it might be desirable for a department to issue an RFR for a range of services for a group of consumers, rather than a specific program of services which would be the same for all participants. In such an RFR, all services required by a particular consumer would be provided, either directly or indirectly, by the contractor, but the bundle of services required by different consumers would vary in both substance and intensity. Departments are able to devise "capitated" payment structures, in which they would pay the same per consumer amount on a monthly or annual basis regardless of the particular service needs of each individual consumer. In theory, the continuum of service needs of the consumers would be satisfied within the confines of the capitated payment system.

Capitated pricing structures appear to be best suited to services or bundles of services where there is a broad range of need among the consumers being served, there is the ability to move consumers to less restrictive or costly services or there exists a significant volume of consumers being served. Capitated pricing structures could be considered when multiple departments combine their purchasing power into a single procurement. Frequently, capitated pricing structures include provisions for volume discounts or risk sharing between the department and contractor.

Contingency Fee Structure

Contingency fee contracts must be legislatively authorized and the financing arrangements and accounting mechanisms approved by the Comptroller. Two examples of statutes which authorize the use of contingency fee contracts are M.G.L. c.29, s.29D; 815 CMR 9.00 (Debt Collection), and M.G.L. c.29, s.29E, 815 CMR 8.00 (Non-Tax Revenue Maximization).

Contingency fee contracts allow contractors to be paid a percentage fee from the proceeds of revenues that are identified and collected on behalf of the Commonwealth. Pursuant to the Massachusetts Constitution and M.G.L. c.30, s.27, all fees or other money collected on behalf of the Commonwealth must be deposited daily into an authorized Commonwealth (MMARS) account established through the Treasurer's office. Therefore, contractors are not authorized to retain a portion of any funds generated or collected on the Commonwealth's behalf, but must deposit all money, invoice for the appropriate contingent fee amount and receive payment from the department.

Legislatively authorized contingency fee contracts may be procured under 801 CMR 21.00. Due to the complexity of contingency fee contracts, the RFR must be reviewed by the Office of the Comptroller prior to its issuance. There may be additional legislative or regulatory requirements for these types of contracts that the PMT may not be aware of which must be added to any RFR that is issued with a contingency fee compensation structure.

☞ *For POS Only:* Additional Compensation Structure Considerations

There are several other items which should be noted by human and social service departments when developing a pricing system. Several of these common issues are discussed below.

Utilization factor for unit rates. Departments may choose to take anticipated program utilization into account when developing prices in a unit rate compensation structure. In many programs, a utilization factor may be appropriate if the department recognizes that there may be vacancies in the program during the contract term which may impair the contractor's ability to provide services to other consumers in the program. The exact utilization factor that is negotiated should be based on the program's prior utilization history, if available, or the average for all programs of the same type.

The inclusion of a utilization factor in unit rate contracts may result in a situation where a specific contractor is serving consumers at a higher utilization level than negotiated or anticipated and thus reaches the maximum obligation of the contract (or "bills out") before the end of the contract period. In this case, the contractor is required to provide services up to the total capacity purchased by the contract (see line 5 of POS Attachment 4: Rate Calculation/Maximum Obligation Calculation Page located in the appendices) for the remainder of the contract period with no additional funding. The application of a utilization factor does not result in the contractor delivering "free" services; rather, in these cases, a contractor has merely been fully reimbursed for the costs associated with the program in a shorter period of time than the full contract duration.

On the other hand, departments may be able to reasonably project that a program may be fully utilized during the contract period, and the use of a utilization factor would not be appropriate. As a general rule, utilization factors of 85% to 100% are considered reasonable. Utilization factors of less than 85% are discouraged, except in exceptional circumstances.

Commercial fees for for-profit contractors. A number of human and social service contractors are organized on a for-profit basis. In order to avoid confusion and subsequent audit findings, departments must be explicit about the amount of profit, if any, that can be earned by a for-profit contractor.

Departments may consider several approaches in developing a commercial fee. POS Attachment 3, Fiscal Year Program Budget, can be used to build a price with an explicit limit on the amount of gross profit the contractor may make.

Alternatively, departments may negotiate contract language that permits a contractor that generates cost savings to retain an agreed upon amount of profit based on total payments made by the department. In addition, departments may want to consider profit margins of the industry as a whole, if available, or the limitations on surplus funds generated by not-for-profit contractors of human and social service programs (see 808 CMR 1.03(7)). Other approaches would look at a contractor's projected return on assets or return on equity. Departments with questions as to an appropriate commercial fee are encouraged to contact OSD or their secretariat.

Program Budgets. Program budgets by their nature tend to focus attention on the costs or component costs of a program rather than on outcomes. During the RFR process, however, program budgets may provide important information to departments in evaluating responses and consequently may be requested. Except for those required as a result of a cost reimbursement compensation structure, program budgets are not required to be attached to human and social service contracts. Contractors, consistent with good practice, should use program budgets to manage expenditures and to plan future needs. Additional information on budget options for POS is available in the appendix (Fiscal Specifications for Purchase of Service Budget Attachments.)

Compensation Structure Limitations

Furnishings or Equipment Required for Contractor Performance

During the RFR development phase, departments should consider whether the awarded bidder will need furnishings or equipment purchased as part of the resulting contract. Generally, the cost of purchasing any capital items is factored into the unit rate. However, in some instances, such purchases require more attention. Departments may approach the purchase of furnishings or equipment required for the contracted services in one of two ways depending on who (the department or the contractor) will own the furnishings or equipment.

If the department intends to retain ownership of the items, it should procure them through the state accounting system according to 801 CMR 21.00. The department then may make the equipment available for use by the contractor for the duration of the contract. These assets must be returned to the department at the termination of the contract. Department ownership should be highlighted in the RFR and must be clearly specified in the resulting contract. If departments choose this approach they should be aware that the assets should be recorded and retained on their inventory and/or fixed asset system while on loan to the contractor. For more information, see MMARS Memo entitled "Additional Guidance on Fixed Asset Acquisition."

If the department does not intend to own the furnishings or equipment, these items should be purchased by the awarded contractor with whom the ownership will reside.

☞ *For POS Only:* See document entitled "Purchase of Service (POS) Capital Items Procurement Policy" located in the appendix, for specific guidance on procurement of capital items of furnishings and equipment for human and social service programs.

☞ *For POS Only:* Other Limitations

There are a few limitations on departments' ability to negotiate the compensation for human and social service programs. See also Chapter 6. Those limitations include:

- **Health care, special education and other authorized rates**. Departments must use prices for programs where those prices have been established pursuant to an independent price setting authority, such as the Division of Health Care Finance and Policy or, in the case of certain special education services, OSD.

  Under M.G.L. c.118G, the Division of Health Care Finance and Policy is responsible for establishing rates of payment for "health care services" which includes many services which have been traditionally procured by departments through the purchase of service system.

Departments must utilize the prices established by the Division of Health Care Finance and Policy for services or programs under its jurisdiction when executing a contract for those services or programs. Further, OSD authorizes, pursuant to 808 CMR 1.06, prices for M.G.L. c.71B approved private school programs. Departments must utilize the prices authorized by OSD when buying slots in one of these approved programs;

- **The Commonwealth must receive the lowest price**. The negotiated price may not be greater than the lowest price charged by the contractor for the same service to any other public or private purchaser (see 808 CMR 1.03 (4));
- **No balance billing**. The negotiated price must be accepted by the contractor as full payment (see 808 CMR 1.03 (5));
- **Restrictions on the use of client funds or third party payments**. Any client resources or third party payments not specifically anticipated in the price and defined in the contract must go to reduce the department's contract obligation (see 808 CMR 1.03(5));
- **Prices may not include any non-reimbursable costs.** Prices may not include items which are considered non-reimbursable under the provisions of 808 CMR 1.02 and 808 CMR 1.05.

RFR SECTION 7 - PERFORMANCE AND CONTRACT SPECIFICATIONS

In comparison with the RFR Section 1, Description and Purpose of the Procurement, which outlines the overall goals of the procuring department, this section of the RFR contains the details of performance and any contract specifications. If the procurement is relatively simple, this section may be combined with RFR Section 1.

Specifications of the RFR

In this section of the RFR, the PMT provides a description of the commodities or services it wishes to procure. Departments should provide enough information so that bidders can conceptualize and respond to the elements of the RFR but not be so prescriptive as to preclude creativity and innovation in the bidder's response. PMTs determine the specific information to be included in this section of the RFR and may include the following:

- Goals and purpose of the procurement;
- Commodities or services being procured;
- Specific service components or bidder requirements without which a response would be considered incomplete or unacceptable;
- ☞ *For POS Only:* Overview of the needs and characteristics of the individuals to be served;
- ☞ *For POS Only:* Specific requirements including, but not limited to, staffing patterns and qualifications, hours of operation, linkages or affiliations, specialized equipment, training, supplies or site requirements.

The PMT should also take care to consider any statutory, legislative or funding source requirements or restrictions that may impact on the specifications of the RFR. For example, an appropriation being used to fund the resulting contracts may requires certain reports, which should be specified in the RFR.

Provide Sufficient Detail: Depending on the complexity of the commodities or services being bid, this portion of the RFR may be as short as a paragraph or may require numerous pages. In this section departments should also indicate specific information or attachments, if any, that are required in the bidder's response.

The procurement specifications are very important in drafting an RFR, since this section is the primary mechanism for providing bidders with a complete and detailed description of the services required and the commodities to be delivered or provided to or on behalf of a department. Care should be taken to include as much information as possible to clearly identify the range of required performance, including *any planned, possible or potential future activities, related additional commodities or services or natural extensions* of the contract that *might* be added to the contract at a later date. If these factors are specified, a procuring department will be able to take advantage of any of the items or services identified in the RFR without having to conduct a separate competitive procurement.

However, if an RFR is drafted narrowly and a department requires commodities or services which were not part of the original RFR, these will probably be considered outside the parameters of the original RFR and will require a separate RFR. This does not mean a PMT cannot make changes or adjustments during the contract performance. What this means is the PMT should provide all bidders with notice in the RFR that changes and adjustments to the contract may occur during performance.

The quality of the RFR document can impact every aspect of a procurement process. Consequently, departments should consider and resolve a multitude of both programmatic and fiscal considerations prior to the issuance of a competitive RFR. For example, RFR language should be *specific, clear, and detailed* so that a reasonable person, with no experience with the RFR or the contract, will be able to understand the expected performance requirements and what the terms mean, without outside information or explanation. If you have unusual or institutionalized language or interpretations of certain words outside of their normal usage, be sure to define those terms clearly. This will ensure that bidders understand the RFR's meaning and intention, and there are no ambiguities to be deliberated later.

Defining the dimensions of an RFR, and ultimately contract performance, is extremely important because it becomes the basis upon which bidders submit responses. Some departments fear publicizing or "giving away" too much information about their internal operations, activities and goals either in an RFR or a contract. This fear may result in RFRs which are ambiguous and which will not attract the volume of quality bidders necessary to stimulate competitive responses that provide the best value.

Define Contract Performance Expectations: Defining expected contract performance in the RFR is important not only from the department's perspective, but is equally important for bidders. Bidders need to determine whether the contract will be a cost-effective business opportunity, and whether they are capable of handling specified and potential performance requirements. Unless a bidder can reasonably quantify the amount of time, staff and resources that will be invested in performance in relation to potential profits the bidder will be reluctant to bid on a contract.

Procuring departments should try not to leave the details of performance, those that are *known* to the department at the time of the procurement, to be resolved during contract negotiation or during the period of the contract. Oftentimes, these "details" may substantially change the expectations of the contractor and will require unanticipated and protracted negotiations. This not only delays contract execution but ultimately delays contract performance and may involve higher contract costs. Performance contracting is discussed more fully in the next section.

Restructure Existing Ways of Doing Business: Before departments begin drafting an RFR, they should take time to develop their procurement strategy and consider ways to restructure a commodity or service procurement in order to introduce innovative procurement approaches. Examples of innovative approaches include collaborative or bulk purchasing arrangements, volume discount incentives, discounts for the expedited payments by the department ("prompt pay discounts"), consumer directed procurements, voucher purchase initiatives and other non-traditional approaches to procurement.

Require Vendor Web Site for eCommerce and the Multi-State EMall: PMTs may also require bidders to establish and maintain a web site for corporate information, product literature, product alert notifications, introduction of new products, product ordering (web-based catalog) and industry web links. The maintenance of a web site is a required provision of statewide contracts. If departments do not make the web site a mandatory requirement for their procurements, they may elect to offer additional points to those bidders having an established web site. This encouragement sets the stage for purchasing all commodities and services via the Multi-State EMall, the Commonwealth's web-based procurement system. OSD and PMTs are available to advise and consult on any procurement initiative developed by departments.

Specify Changes to Performance and Contract Specifications which Require a Formal Standard Contract Amendment:
The RFR must specify the types of amendments (formal and administrative) that may occur to contracts. Formal amendments require a Standard Contract Amendment Form to be executed by the department and the contractor and are subject to recordkeeping requirements. Administrative changes do not require a formal amendment; however, they must be documented in the procurement file. The requirements for executing amendments, including limitations on amendments, should be clearly stated in the RFR. Certain changes, if clearly delineated in the RFR, may be considered administrative changes which do not require a formal contract amendment. Such changes may include, but are not be limited to: certain programmatic changes

(which are not so significant that the services no longer reflect was originally procured), clerical changes (but not a change in contractor identity) and budget variations which do not result in an increase to the maximum obligation. The RFR should state the degree to which shifting in line items may be considered administrative. Please note that a formal amendment is required for increases to the maximum obligation even when the RFR states that expansion funding is anticipated and may be incorporated into the contract.

Anticipate Expansion Need:
During the life of a contract, additional funding may become available either through increased federal or state appropriation, private foundation grant or the re-distribution of existing resources. Where a department determines that sufficient expansion capacity, expertise and quality performance are available through existing contracts, it may elect to increase some or all existing contracts rather than conduct a new procurement. Language must be included in the RFR which permits discretionary increases within the terms of existing contracts to accommodate additional funding should a department choose to exercise this option.

In the event the department needs or desires additional commodities or services, the contract terms will already have been negotiated, and the department will only be required to execute a contract amendment to reflect the additional services and commodities required. This effectively reduces potential delays or a lapse in services that would result from having to complete a new competitive procurement.

"Less is *NOT* more" in RFRs:
The investment of additional time and effort to present "the big picture" of the procuring department's overall plan to potential bidders, and carefully documenting the progress and justifications for procurement decisions, will produce more realistic and cost-effective responses and reduce the likelihood of a challenge.

- ***"If you know it, put it in the RFR!"***

Drafting an RFR for Performance Contracting

Performance contracting is designed to ensure that contract dollars spent by the Commonwealth on the purchase of commodities and services are, in fact, producing the desired results and meeting the requirements of the contract. Performance contracting re-focuses our attention away from the inputs or methodologies (How many staff are funded in the Contract? What curriculum is being used?) towards the change, results or end products achieved by the contractors. (Did individuals get jobs? Are they living in permanent housing? Are children healthier? Were products delivered on-time? Was the quality equal or superior to that specified in the contract?) Performance contracting systems measure the impact of the commodities or services provided to the Commonwealth either directly or on behalf of citizens in publicly funded programs through the development of measurable indicators. These indicators attempt to go beyond the more traditional ways used by the Commonwealth in evaluating programs, such as cost and numbers of people served, by attempting to measure the changes that occurred as a result of services being delivered. Clearly defined standards regarding the quality, quantity and timeliness of product delivery also provides objective data in evaluating contract performance. For all commodities and services contracts, contract managers can use performance contracting to improve program performance, identify programs that work and those that do not, direct resources to those models or contractors that produce the desired results, improve service quality by sharing best practices throughout the system and support contract management decisions.

The effective implementation of performance contracting requires us to focus on the following questions:

- What is the outcome, change or product that I am looking for as a result of this contract?
- How will I measure and evaluate if the result has been achieved?
- How will contractor performance affect my management decisions?

This section has been designed to provide guidance to departments on developing effective performance based contracts. Additional information may also be found in the appendix.

Definition of Performance Contracting

"Performance contracting" is the process of identifying and measuring the results, outcomes or products obtained from a contract through the use of measurable indicators.

The following terms form the framework of the Commonwealth's performance based contracting system:

Outcomes:

Outcomes are the ***results or accomplishments*** that occur (at least partially) because of the service provided through the contract. An outcome may be defined as a measurable change or transformation in a person's life or the end product or deliverable expected. An outcome for a job placement program might be the percentage of individuals finding employment; for an immunization program, it might be an increase in the percentage of fully immunized children; for a teenage pregnancy prevention program, it might be a decrease in the percentage of teenagers having a baby; for an office supplies contract, it might be the percentage of orders delivered within 24 hours or the percentage of complaints resolved within a specified timeframe.

Outputs:

Outputs are the ***quantity of services*** or work conducted. Output measures for a service might include the numbers of participants, the number of vaccinations given, the number of service calls or the number of training sessions conducted.

Note: An outcome is different from an output. For example, a teenage pregnancy prevention program might identify the desired outcome from the program to be a ***reduction in the teenage pregnancy rate***. The outputs identified might be the ***number*** of teenagers seen in clinics**,** the ***number*** of telephone calls to an information hotline or the ***number*** of training sessions conducted. One measure (the outcome) focuses on the result or impact of the service while the other measure (the output) provides information on the actual quantity of services delivered.

Efficiency measures:

Efficiency measures examine the cost of an outcome or output. Examples might be the cost per participant, cost per job placement, cost per service call or cost per training session. An efficiency measure, when compared to other contractors delivering the same service, makes it possible to begin evaluating whether the Commonwealth is paying a reasonable price for the service.

Effectiveness measures:

Effectiveness measures examine whether the outcomes achieved were worthwhile and contained long term benefit. In other words, effectiveness measures look at the extent to which the program yielded the desired outcomes. Was there a long term impact in the lives of teen parents in terms of improved economic stability, staying in school and obtaining an education, and reducing unintended repeat pregnancies? Were families placed in permanent housing able to remain out of emergency shelters? If the intent of a procurement is to reduce costs over time, was that achieved?

The RFR specifications must state the anticipated outcomes or results with as much specificity as possible. For example, an RFR might identify a 50% job placement rate for all participants as the desired outcome; however, a better approach might include qualitative standards such as 50% job placement into jobs that pay at least minimum wage, include full health benefits and are maintained for at least 30 days.

Outcomes, outputs, efficiency and effectiveness measures all provide valuable information that can assist departments in their contract management and decision-making process. Departments are strongly encouraged to incorporate all four types of performance measures into RFRs and contracts whenever possible.

Expectation of Performance Measures

All procurements are expected to contain quantifiable and clearly defined performance expectations. If the certainty or detail of such specifications is not known or available in the procurement, an RFR must include a specific outline of the anticipated goals or outcomes to be accomplished by the procurement. While generally the conversion to performance contracting will occur through the competitive bidding process, for on-going contracts, departments may develop and negotiate performance measures with existing contractors and incorporate them formally into contracts through the amendment process. In some cases, it may be appropriate to develop a small number of specialized performance measures that may be unique to a specific geographic area or, in the case of statewide contracts, a specific department.

In some cases, it may be difficult to identify concrete outcomes or "results" for a service. For example, training and education services might be provided with the goal of disseminating information and modifying people's behavior, however, it may be difficult or impossible to track participants and determine whether the training helped people to think and act differently. In these cases, the development of outcome measures to evaluate the impact of the training effort such as pre/post test scores or output measures such as the number of people served or the number of training sessions should be developed. If a department is unable to identify performance outcomes for a specific service type, a meeting with OSD and other departments may be useful to stimulate new ideas and share best practices.

☞ *For POS Only:* Performance measures are generally standardized by service type (i.e., all programs within a MMARS program code use the same performance measures). All contracts must contain quantifiable performance measures that clearly articulate the "results" and level of performance that is expected from the contract.

Using Performance Data

Throughout procurement and contract management, performance data may be used in at least three ways:

- **Evaluation of a Bidder's Response.** Departments are encouraged to consider and evaluate a bidder's past and current performance in all competitive procurements. Additional points or weight should be given to those contractors who consistently achieve the desired results and points withheld or deducted for poorly performing contractors or for non-performance.
- **Extension of Contract Duration.** Under 801 CMR 21.06 (2), departments have the option to establish an initial contract duration with an option to extend or renew the contract for a period of time determined by the department in the RFR. Contractor performance should be a primary consideration in determining whether to extend a contract for an additional period of time or conduct a competitive procurement. Contractor performance should also be a consideration at the time of contract review when decisions are made to increase, decrease or maintain the level of funding.
- **Sanctions and Contract Terminations.** Departments have several options to address contractor non-performance. Initiation of corrective measures, contract reductions or other sanctions may be considered for contractor non-performance. Non-performance should also be an important factor in the decision to terminate a contract. Refer to the applicable Commonwealth Terms and Conditions, 801 CMR 21.00 for contract remedies and termination provisions.

  (☞ *For POS Only:* Also refer to 808 CMR 1.00.)

Departments must provide documentation in the procurement file that supports a decision to continue contracting with a non-performing contractor.

In addition to recognizing exemplary performance in the RFR evaluation criteria and in determining whether to exercise the option to renew a contract beyond the initial duration, departments may introduce monetary incentives for exemplary performance by negotiating performance payments for a level of performance that exceeds the goal contained in the contract. For example, a department may negotiate a price for achieving an outcome, such as placement of ten individuals into competitive jobs but may also introduce a monetary incentive that provides additional compensation for additional job placements beyond the initial ten. Departments may also consider eliminating or reducing routine reporting requirements for those contractors with consistent exemplary performance. Secretariat or department recognition through a formal process could also be considered. Departments are encouraged to develop their own plan for performance recognition.

Performance Dates and Deadlines

The RFR should identify "*any applicable performance dates, deadlines, schedule of delivery dates"* or other time constraints that must be met by the contractor. Depending upon the commodities or services being provided, a procuring department will normally specify delivery dates or deadlines for performance. Without specified dates, custom and trade practice will determine the interpretation of this portion of the RFR, and a failure to specify deadlines may result in otherwise *avoidable* delays.

Unless a contract specifies that "time is of the essence," all contract performance shall be considered under the concept of reasonable time for performance and contractors will be held to specified performance dates.
Performance deadlines are extremely important when non-performance or a delay in performance will result in irreparable harm or financial loss to the department or a disruption in the delivery of department services. Some examples of specifying performance times follow.

- A deadline to have a training manual or examination complete prior to the date of training or exam,
- Having clients transported timely to appointments or between facilities at a specified hour,
- Responding to maintenance and repair requests within 24 hours.
- Having patient or client commodities available within terms of contract.

Additional Performance Considerations

Mandatory vs. Optional Specifications

Departments should be careful when drafting specifications to clearly indicate which RFR requirements are "mandatory" (a bidder must provide or the response may be deemed unresponsive) rather than "desired" (not absolutely necessary but preferred). If a department specifies a mandatory specification, an option to include an "equivalent alternative" should also be provided. This allows bidders to propose reasonable alternatives that fulfill the department's procurement goals but may not necessarily be the exact method or form the department had anticipated. Departments may rank bidders based upon the quality of their responses to mandatory and desired specifications and may award additional points (extra credit) for bidders that offer more than what is required or desired.

Expected Contract Deliverables

The actual "products" or "results" to be supplied during performance of a contract are commonly known as the contract *"deliverables."* In most cases, *deliverables* are tangible products or end results, such as a report, software, lab test results, a transcription, photographs, a plan or research data developed specifically for a department.

The Commonwealth is entitled to own and copyright *deliverables* that are purchased or commissioned with Commonwealth funds. Contractors often seek to obtain the right to copyright and sell a product developed for a department in order to make a profit. Any deliverable developed by a contractor for a department and purchased with Commonwealth funds is owned by the Commonwealth and may not be copyrighted by the contractor or used for any other purposes unless the RFR specifies the option to bidders.

Other *deliverables* are not products but "performance targets" such as a contract requiring the contractor to interview and gather data from a specified number of data subjects; conducting a specified number or quota of training or exam sessions; surveying a specified number of acres or performing a required number of lab tests or medical consultations. These performance targets are pre-determined by the department and the contractor is compensated based upon the successful completion of these goals.

The department is not limited to specifying only the expected *deliverables*, but should also include any other ancillary or *potential deliverables* that are *possible* or *foreseeable* extensions of the contract.

RFRs will also identify "performance requirements" or "benefits" which cannot be classified as "deliverables" because the Commonwealth will have no ownership rights. For example, a contract to purchase a software license is not a "deliverable" but a benefit because the Commonwealth has no ownership rights to the software but is granted the use of the software. Any product or service provided under a contract to which the Commonwealth has no ownership right (due to copyright, patent or ownership by the contractor) shall be considered a contract "performance requirement" or "benefit" and not a contract deliverable.

Since the contract will be limited to the *deliverables* or potential deliverables and other performance requirements identified in the RFR and the selected contractor's response, the department should encourage bidders to identify potential deliverables and include terms and conditions, prices and restrictions as part of their response. The department will be able to take advantage of discounts or other price incentives if these additional deliverables are identified as part of the original RFR or the selected contractor's response.

It is important for a department to determine whether or not the contract products will be classified as *"deliverables"* (which will become departmental property at the termination of the contract), or whether the department has no interest in ownership, but just the use of the product which would be classified as a *"non-deliverable"* or performance requirement.

Departments should carefully weigh the risk of relinquishing any rights to products that have been created or developed with Commonwealth funds, since the Commonwealth may be entitled to recoup a share of any profits that are made from its investment in such development.

Failing to provide a statement specifically identifying ownership rights in the RFR may result in unresponsive responses, disputes and delays in contract negotiation and performance, and disputes or litigation to determine ownership rights. Departments should consult legal staff when considering defining ownership rights of contract deliverables.

Bidder Qualifications

What information do you want to know about a bidder? The RFR may require bidders to provide information about their technical capabilities, experience in providing a specific social service or expertise in serving a particular population. A department may decide to ask bidders to provide organizational information relevant to the procurement.

A department may use this section of the RFR to require bidders to present:

- A profile of their firm's operations, qualifications and the organization capabilities. Departments may request samples of products or copies of reports to verify statements regarding capabilities.
- A detailed description of the bidder's resources and experience relevant to the RFR performance requirements including specific expertise in serving specific populations and/or verification that the bidder is authorized to sell or distribute specific commodities or services.
- A statement on the historical development of the bidder's organization.
- An organization chart.
- A statement on the experience of staff and the total number of employees (distinguishing between administrative staff, management, principal partners or officers), field, technical and customer support.
- Compliance with environmental regulations and/or any other environmental practices that may benefit the Commonwealth.
- The location of the offices from which the work will be managed and the number of staff employed at each office.
- The number of years bidder has been in business and/or the number of years bidder has been in the business identified in the RFR (which may be separate and distinctly different from their main business line).
- Key personnel of the business and key personnel assigned to meet the Commonwealth's needs under the contract. (A resume or statement of qualifications must be attached to all consultant contracts pursuant to M.G.L. c.29, s.29A.) Departments should carefully review resumes of key personnel to ensure that the skills of the individual meet those required in the RFR.

Contract or Project Managers

The RFR may require bidders to designate a contract or project manager who shall be responsible for oversight and management of contract performance and shall act as the contact person for receipt of notice and other communications between the parties. The RFR may state that the contract or project manager may not be changed without prior written notice to the department or that an agreement must be executed between the contractor and the department prior to the change.

Identification of Subcontractors

A department should decide whether contractors will be authorized to use a subcontractor(s) to complete contract performance, and if so, include this provision in the RFR. The Commonwealth may require a bidder to provide a copy of any subcontract and any additional supporting documentation, verifying that the subcontractor is in good standing (e.g., has complied with tax requirements and has not been debarred).

Prior approval of the department is required for any subcontracted service of the agreement. All subcontracts should be in writing and contain provisions which are functionally identical to, consistent with, and subject to the provisions of a contract. Unless otherwise provided by law, the Commonwealth is not bound by any provisions contained in any subcontract.

Contractors are responsible for the satisfactory performance and adequate oversight of their subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.

Reminder: Departments should encourage the development of M/WBE subcontracting arrangements with prime vendors or other M/WBEs when developing Requests for Responses. RFRs should encourage bidders to submit responses which incorporate the use of M/WBE subcontractors. Departments should also encourage bidders to use subcontractors who are able to provide environmentally preferred alternatives which meet the department's needs at a reasonable cost.

Business References

A department may require bidders to provide business references. The references should be entities for which the bidder has provided commodities or performed similar services, or which otherwise demonstrate the bidder's capability to meet contract performance.

Bidders are usually required to include a list of the organizations, including points of contact (name, address and telephone number). The procuring department has the right to verify all references provided by a bidder and to conduct any other reference or credit check as the PMT deems appropriate during the procurement process.

Written references, including documented performance records of a bidder on file with the Commonwealth or submitted to the procuring department during the RFR process, may also be considered.

Financial Statements - Audited or Un-audited

An RFR may require a financial statement from bidders. This statement is used to evaluate the financial stability of the bidder. Bidders may be required to submit copies of financial statements to demonstrate the bidder's organization is in a sound financial condition or that appropriate corrective action is being taken to resolve all identified financial problems.

Bidders may also be required to disclose details of any criminal investigation, indictment or other litigation against the firm which might adversely affect its ability to complete its obligation pursuant to the RFR requirements. Departments can find additional information and tips on reading and understanding financial statements in the appendix.

☞ ***For POS Only:*** Regulation 808 CMR 1.00 governs the compliance, reporting and auditing requirements for human and social services. Departments should review the regulations and refer to Chapter 6 in the handbook on Audit and Compliance Requirements for additional information.

Other RFR Considerations

Although departments have great flexibility and discretion in developing a competitive procurement, there is specific language that is required, either by statute, regulation or policy which must appear in all procurements conducted under 801 CMR 21.00. A copy of the required RFR specifications that must appear in all procurements can be found in the appendix. Departments can also find in the appendix a list of optional RFR specifications that departments may wish to consider incorporating into competitive procurements based on the type of commodity or services being procured. This section also provides guidance on some of these optional specifications that departments may consider when crafting the performance and contract specification section of their RFRs.

Year 2000 Compliance

Despite a successful transition to the year 2000, the Y2K issue should still be considered by procuring departments for all procurements that include products, services and systems that use day/date data. Examples include any device with a computer based controller, fire alarm systems, security systems, copiers, information technology systems and services, and many others.

Year 2000 compliant means information technology that accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations. Furthermore, year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time data with it.

To ensure that your department's year 2000 needs are being met, use the year 2000 RFR language, located in the appendix, for all RFRs that have products, services and systems that use day and date information.

In addition to the required language, departments should also consider added protections for large scale or important day/date sensitive systems, including:

- Testing: Some contracts may require additional clauses because the contract involves a higher risk of loss for the Commonwealth if the underlying system is not year 2000 compliant. For instance, if you are entering into contracts for mission critical systems, date sensitive applications or large scale deployments, you may wish to include additional contract language that requires testing to prove year 2000 compliance prior to acceptance. This language should be closely tailored to the specific contract.

- Insurance: It may also be necessary to include language in these types of contacts that requires proof of insurance or some other guarantee, such as performance bonds, in the event of Commonwealth losses due to non-compliance.

Identifying a "Market Basket" or "Catalog" of Bidder Commodities and Services

The RFR may require bidders to submit responses to RFR specifications in a variety of ways. One option is to require bidders to submit a "catalog" or "market basket" approach to their available commodities and services.

One example is that a procuring department prepares an RFR for specific commodities or services from bidders that provide a much broader spectrum. In the RFR the PMT may request that the bidder also offer a specialized or discount rate for other items that are available from the bidder, thereby creating a "market basket" of available commodities or services in addition to those specifically requested in the RFR. The department may accept the discount and purchase these items, as needed, as part of the resulting contract. Departments may also restrict those items, based on environmental considerations and availability on other contracts.

For example, a PMT looking for advertising services could require bidders to submit a response based upon specified

advertising projects and also ask bidders to provide a full range of their related commodities and services. A department looking for employment assessment services could also request bidders to submit a response for follow-up services, as needed, such as resume writing, employment support groups and job placement services. A bidder(s) could be selected on how well it could meet the immediate needs of the department and also on how comprehensive a package and at what value it could offer the department for future projects.

Since all bidders are provided with the same opportunity to respond to the specific project as well as the "catalog" approach, all bidders have the same opportunity to compete for the Commonwealth's business.

Identification of a More Cost-Effective or Best Value Alternative

If a department has no experience with the type of commodities or services being procured, the RFR may require bidders to "educate" the department as to the *"available"* or *"best"* commodities or services to fulfill the contract requirements of the department. This option can also be used when a department has developed specifications, but wants to ensure that the specifications do not inadvertently inflate contract costs when a more cost-effective alternative is available. For example, departments purchasing refrigerators or other appliances may require bidders to include energy costs in addition to the purchase price.

Also, departments looking for advertising services or employment assessment services could require bidders to submit a response based upon specified advertising projects or group of consumers and also ask bidders to indicate whether an alternative approach to meeting the required performance measures and providing the specified services would be more cost-effective in fulfilling the specified procurement goals.

This approach is similar to the "market basket" approach previously described, but is designed with a built-in cost-savings element. Bidders may still respond and be evaluated based upon the department's identified specifications.

However, the department may receive an added benefit if bidders propose more cost-effective and innovative solutions to the specified goals. These bidders also benefit, since the RFR can give additional points or evaluate and select bidders based upon the more cost-effective best value portions of a response.

This is more of the business partnership approach that the procurement principles support. The goal is to obtain the most efficient way to fulfill the department's goals, rather than merely responding to or fulfilling what the department has asked for. This is especially important when the department is unclear about how to do something, but is clear on the ultimate goal to be achieved. By clearly defining a department's contract goals and needs, this option provides a unique opportunity for bidders to submit comprehensive responses and options from which a department is able to choose. This approach also supports a more flexible RFR since the department and the contractor are able to negotiate any options identified within the RFR and the bidder's response.

Use of Contractor Owned Materials During Performance

Sometimes the products are already owned or copyrighted by the contractor and are merely provided to the department to fulfill contract requirements. These products should be identified as contractor material, performance requirements or benefits. A common example of a "benefit" is computer software that is owned and copyrighted by a contractor but is adapted or redesigned specifically for a department. The department would contract for this redesign and for a license to use the software. The contract might also include provisions for additional design plans, upgrades and maintenance.

Another example of contractor owned material would be a training manual or training materials that are already owned and published by a contractor prior to the contract with a department. The department would purchase the manuals and have a license to use the manuals, however, the contractor would maintain ownership and copyright in the content and design of the manuals. The contractor has more of an interest in ownership and copyright of the design and content of the manuals, since these tools can be adapted for a variety of different clients. The Commonwealth is entitled to own and copyright deliverables that are purchased or commissioned with Commonwealth funds. Therefore, bidders should specify any products (which the bidder owns) that will be used or provided for performance.

Brand Name or Equivalent

Brand name or substantially equal specifications may be used when the PMT determines that:

- no specification for a common or general use item is available;
- time does not permit the preparation of another form of specification not including a brand name specification;
- the nature of the product or the nature of the department's requirements makes use of a brand name or equal specification suitable for the procurement; or
- use of a brand name or equal specification is in the department's or Commonwealth's best interests.

When using brand name as part of your specification, procuring departments should use "or equal," to substantiate that equivalent products will also be considered and include additional specifications, i.e., particular design, performance and other characteristics of the brand name to ensure that product identified is the product required.

Use of brand name only specifications or specifications which restrict a commodity to pre-determined brand or design specifications are the most restrictive forms of competitive procurement. The use of brand name or pre-determined specifications should only be used if essential to the procuring department's needs or the Commonwealth as a whole. One example would be establishing a standard for facility water meters necessary to obtain statewide energy discounts, a computer component or platform necessary for a the statewide implementation of a wide area network (WAN) or a specific curriculum or vocational assessment tool necessary to meet accreditation requirements. A procuring department should consult with OSD prior to issuing an RFR with brand name only specifications. When a brand name or equal specification is used in an RFR, the solicitation should contain language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

Prevailing Wage Requirements

The Department of Labor and Workforce Development administers M.G.L. c.149, s.26 which covers contractor wages under state contracts. When contracting with certain "licensed professionals and trade persons" departments must require contractors to pay "prevailing wage rates."

Some covered services include, but may not be limited to: new construction, demolition, repair and maintenance, carpentry, electrical, plumbing, painting, moving, trash removal, janitorial and cleaning services, locksmiths, printing and clothing.

Departments can obtain additional information about whether a procurement must require prevailing wages by contacting:

The Department of Labor and Workforce Development Occupational Safety 399 Washington St. 5th floor Boston, Massachusetts 02108 (617) 727-3452	or	The Office of the Attorney General Fair Labor and Business Practices Division 200 Portland Street Boston, MA 02114 (617) 727-2200

If prevailing wage requirements apply to the procurement being conducted, the RFR must require bidders to submit responses based upon the payment of prevailing wages. The wage rate schedule must be included in the RFR, otherwise non-complying bidders will be able to substantially undercut complying bidders in violation of M.G.L. c.149 and the selection process will not be fair.

If for any reason a bidder submits a response that was not based upon the payment of prevailing wages, the bidder will be held to its original response and may not seek additional compensation from the department when required to verify the payment of prevailing wages.

Consultant Services

Consultant services involve specialized skills which are generally not available or performed by state employees of a department, and are identified in the "HH" and "NN" subsidiaries of the Office of the Comptroller's *Expenditure Classification Handbook.* Contracts for consultant services are governed by M.G.L. c.29, s.29A. Note: Consultant contracts for organizations and/or individuals may not be used as substitutes for state positions.

The RFR must :

- Specify the duration of services, description of work to be done and other information to establish the maximum limit of the Commonwealth's obligation for the services.
- Require the Consultant Contract Mandatory Submission Form (See RFR Section 10 regarding RFR attachments later in this chapter and the appendices.)

Risk of Loss, Performance Bonds and Insurance

Pursuant to M.G.L. c.29, s.30, Commonwealth departments are prohibited from insuring Commonwealth property. Therefore, contractors are required to bear the risk of loss for any deliverables, department personal data, department data or materials and contractor materials provided by or used by the contractor in the performance of a contract.

The risk of loss for deliverables may not shift to a department until possession, ownership and full legal title to the deliverables is transferred to and accepted by a department. Contract prices usually reflect the contractor's expenses for providing adequate insurance to cover this risk of loss.

Procuring departments may require bidders to submit performance bonds as a condition of submitting a response or as a condition of receiving a contract. Performance bonds are usually based upon a percentage of the contract price and are designed to be collected by a department in the event the contractor breaches the contract or defaults on performance.
Performance bonds are required for certain types of procurements, such as construction, and departments should verify whether their type of procurement requires or warrants a performance bond. In other circumstances, performance bonds should be used sparingly and only in high risk situations, since this requirement usually increases the contract price to the Commonwealth. Surety bonds may be required when a contractor may be handling Commonwealth funds (such as revenue maximization contracts) to insure the Commonwealth against a potential loss of these funds, or the failure of the contractor to timely remit the funds to the Commonwealth.

A Certificate of Liability Insurance (professional or personal injury) may also be required to show evidence of insurance coverage for professional malpractice and/or personal injury which results in connection with the performance of a contract. These policies usually name the Commonwealth as a party insured and are used to pay for damages that the Commonwealth might be expected to pay due to the contractor's acts. Bonds and certificates of insurance are usually required to be kept in effect until 90 to 120 days after the last payment under the contract.

Any contractor that exercises independent judgment or decision making (doctors, attorneys, arbitrators) should carry professional malpractice or personal injury insurance. Other positions, such as temporary help, should also be covered by their employers. When contracting with individuals who also happen to work for a corporation, professional corporation, partnership or other entity, departments should ensure that these individuals' contract activities are also covered under the entity's policy. In most instances, contract activities will be outside of the scope of standard insurance policies, therefore, these individuals must obtain separate policies. Independent decision making, even if daily activities are under the supervision and control of a department, will take these individuals outside the protections of the Commonwealth under M.G.L. c.258. Regardless of their named status in a contract, independent decision-making implies independent contractor status and these individuals must be covered by valid policies during the period of the contract.

A PMT should consider whether the type of procurement or risks associated with contract performance warrant the use of a performance, surety bond or liability insurance.

Record Keeping Requirements - Security Issues

The Commonwealth Terms and Conditions requires contractors to maintain records, including but not limited to books, files and other compilations of data, in such detail as shall properly substantiate claims for payment or as required under a contract, and may inspect those records, as necessary.

These records must be kept by the contractor for a minimum retention period of seven (7) years beginning on the first day after the final payment under a contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving the contract. See also Chapter 2 on Records Retention.

The Commonwealth Terms and Conditions also requires contractors to comply with M.G.L c.66A for any personal data or public records held or used by the contractor during performance.
An RFR may also:

- require a contractor to agree to take all reasonable and necessary steps to protect the physical security of any personal data or other department data or materials used by the contractor;
- define physical security to include preventing unauthorized access, dissemination, misuse, reproduction, removal or damage to personal or department data while used by the contractor or while in the contractor's possession;
- require the contractor to immediately notify the department both orally and in writing if access to or copies of personal or department data are requested through a public records law request, or a subpoena, or at any time the contractor has reason to believe that any such data has been improperly accessed, disseminated, misused, copied or removed;
- identify requirements for return of data at the conclusion of a contract.

For POS Only: See Chapter 6 for information on record keeping.

Invoice and Payment Specifications

The RFR may outline the procedures and requirements for the submission of invoices and the relevant supporting documentation to be submitted by contractors. (Where to send invoices; who to send them to; when to send invoices in order to be paid timely; procedures for final invoices; what documentation needs to be attached.) Also see Chapter 5 on payment systems.

Depending upon the procurement, the RFR may require completion and acceptance of performance prior to the submission of invoices. RFRs may also require monthly invoices that reflect an established recurring payment, such as for a term lease, maintenance contract or tax exempt lease-purchase.

Electronic Funds Transfer

Departments should include a provision in the RFR about the use of electronic fund transfers. Contractors and departments alike favor the use of electronic payments which are significantly more cost-effective than payments distributed by check and through the mail.

Multi-State EMall ™

The RFR must also contain specifications if ordering will involve the Multi-State EMall. The Multi-State EMall is a web-based tool that automates essential business processes in the procurement function. Through the Multi-State EMall, users locate commodities, route order requests for approval, and submit authorized orders to web-enabled suppliers. Users will be encumbering funds, generating payments, and creating reports about purchasing activity. As eCommerce technology evolves, the Multi-State EMall is expected to support the procurement of services as well.

The Multi-State EMall is a cooperative procurement system. All Commonwealth departments will be activated to conduct applicable purchasing in the Multi-State EMall. In addition, all eligible public entities, including cities and towns, public and quasi-public authorities, UFR-qualified human service providers, and other states may exercise the cooperative provisions of Commonwealth contracts to join the Multi-State EMall as buyers. Vendors qualify to join when they hold a contract with any member buying entity, i.e. municipalities, authorities, other states.

Please note, in addition to all standard terms and conditions, Multi-State EMall vendors holding contracts with the Commonwealth of Massachusetts adhere to the Multi-State EMall operating rules that address Multi-State EMall-specific issues. These principles are incorporated in new contracts, as appropriate.

The business and technical requirements should be included to inform bidders about system requirements, security requirements, ordering procedures, invoicing, payments and other administrative procedures. The RFR may also ask bidders to identify other information, such as invoice and billing information and reports.

Electronic Data Interchange

The RFR must also contain specifications if ordering will involve Electronic Data Interchange (EDI) system between contractors and user departments. Similar to requirements for the Multi-State EMall, business and technical requirements as well as other required information should be included in the RFR.

Prompt Payment Discounts

Departments are encouraged to solicit discounts from bidders in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice. An expedited payment may enable departments to save money. MMARS memo #289, Commonwealth's Bill Paying Policy, supports this practice.

Environmentally Preferable Products Program (EPP Program)

Required Specifications for Designated Items

All departments issuing RFRs must comply with the "Mandatory Designated EPP" environmental specifications established by OSD and listed in the appendix. When offering such commodities as part of this RFR, all bidders must agree to meet the minimum environmental standards, whether or not those standards are explicitly stated in the RFR. To determine compliance with this provision, department and bidders may contact OSD or view the environmental web page at: www.state.ma.us/osd/enviro/enviro.htm for regulations and guidelines. Specifying and purchasing environmentally preferable products (EPPs) helps departments comply with Executive Order 350, the Clean State Program.

Departments should not use language that precludes the purchase of an EPP, unless a determination has been made that the EPP alternative will not meet the department's needs. Any such determination must be documented in the procurement file.

Additional Points for EPPs

- Departments are encouraged to offer additional points for responses which:

- offer environmentally preferable products (including packaging) or services such as those which contain recycled content or promote toxic use reduction, energy efficiency, water conservation, waste prevention or other environmental criteria.

- document the use of environmentally preferable products or services or engage in environmentally preferable practices as part of conducting the bidder's business, including recycling, source reduction, use of recycled products, energy efficiency, water conservation and other resource conservation and/or pollution prevention.

- demonstrate the cost-effectiveness of a product(s) due to lower operating costs, increased durability or other features which lower the cost of the product as a result of environmental or other features.

Response Submissions

- Bidders should be encouraged to submit information which identifies any and all environmental attributes of the product or services being procured, even when such attributes have not been required. Departments may use this information to develop specifications in the future which incorporate EPP criteria.
- Departments should request bidders to certify the recycled content of their commodities, if required.
- In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, departments should encourage bidders to comply with some or all of the following guidelines:
  - All copies should be printed double sided.
  - All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% or on paper made with tree-free fibers (i.e. paper made from raw materials other than trees, such as kenaf). All bids should note the level of recycled content contained in the paper being used.
  - Unless absolutely necessary, all bids and copies should minimize or eliminate the use of non-recyclable or non re-usable materials such as plastic report covers, plastic dividers, vinyl sleeves and GBC binding. Three-ringed binders, glued materials, paper dividers, paper clips and staples are acceptable.
  - Bidders should submit materials in a format which allows for easy removal and recycling of materials
  - Bidders are encouraged to use other products which contain recycled content in their bid documents. Such products may include binders, folders, paper clips, diskettes, envelopes, boxes, etc. Where appropriate, vendors should note which of these products are made with recycled materials.
  - Bidders should not submit unnecessary samples, attachments or documents unless specifically requested.

EPPs and Best Value

- When a department pursues the procurement of commodities or services not designated by OSD as environmentally preferable, and has identified an EPP which provides best value, they may specify mandatory or desirable EPP requirements in their RFRs by following the EPP RFR guidance. Departments should consider specific environmental criteria which are relevant to the products or services being solicited by the RFR, or develop their own criteria based on available research and information.
- An RFR may indicate that an EPP will be considered best value even when the purchase price is greater than that of a non-EPP. When considering best value, PMTs and departments are strongly encouraged to examine a wide range of financial implications and environmental criteria related to the commodity purchase price, as well as operational and disposal costs. RFRs may also consider other environmental and health benefits which provide best value to employees, customers and the public, such as an improved work environment, environmental protection and resource conservation. Departments should consider the costs and benefits of EPPs over the life of the product to determine their true cost.
- When evaluating environmental criteria included in an RFR, departments may reserve the right not to execute contracts with bidders offering EPPs if these commodities or services are not best value for the Commonwealth. Such determination may be based on the excessive cost of a commodity or service, its unavailability, or the absence of sufficient performance guarantees.
- However, departments may only make such determinations following clear documentation on how such EPPs do not constitute a best value for the Commonwealth. All such determinations must be documented in the procurement file.

Documenting Usage of EPPs

- In order to fulfill EPP tracking goals, departments are encouraged to include language in RFRs which requires awarded contractors to report on the quantity and value of EPPs purchased by the department. Alternatively, departments may choose to track EPP purchases themselves.

- This type of tracking helps to meet the reporting requirements of the Clean State Program and assists OSD in any statewide reporting it may conduct. Record keeping should be on a fiscal year basis and should include the total amount of the product purchased (e.g., cases, cubic yards, etc.) as well as its total dollar value.

Substituting or adding EPPs to an Existing Contract

Departments should include language in all RFRs which stipulates that negotiations between the department and contractor may occur during the contract term to permit the substitution or addition of EPPs when such products become available at a competitive cost, are readily available and satisfy the department's performance needs.

RFR SECTION 8 - INSTRUCTIONS FOR SUBMISSION OF RESPONSES

In order to prevent confusion about the submission of responses, it is important the RFR contain clear and unambiguous directions regarding the timing and submission of responses. The following guidelines should be consulted prior to drafting this portion of the RFR:

The RFR Should Identify any Response Format Requirements

- The RFR should contain specifications for paper size or type, how responses should be packaged, and whether the qualification and the cost sections of a response must be packaged separately.

- The RFR should indicate how many copies of the responses are required in addition to the original. Procuring departments may ask bidders to provide a copy for each member of the Procurement Management Team unless this requirement is deemed an unnecessary burden on the bidder.

- Departments have the discretion to establish any page limits on response submissions. Page limits can be designed to streamline the procurement process and require prospective bidders to focus on those aspects of the commodities or service delivery that are critical in evaluating a bidder's response. If a department establishes page limits, the RFR instructions for response should also clearly state the consequences of exceeding the page limits.

The RFR Must Instruct All Bidders Where and How to Submit Their Responses

- If responses are required in hard copy printed format, either delivered in person or by mail, the RFR should include the address of the receiving department, its floor and room number as well as the name of the person designated to receive the responses. Sealed, hard copies are required for all large procurements > $50,000.

- If responses may be received by fax (small procurements only ≤ $50,000), the RFR should include the fax number of the receiving department and the name of the person designated to receive the faxed responses.

- If electronic submissions are to be accepted in response to a large procurement, the RFR should specify that these submissions are in addition to and NOT in lieu of hard paper copy responses.

  Note: Solely electronic response to large procurements are not authorized at this time.

Joint Response from Multiple Bidders

The RFR may specify that two or more bidders may submit a joint response to a competitive procurement solicitation. A jointly submitted response must designate only one primary contractor. The remaining joint bidders may be designated as subcontractors or as members of a joint venture. The primary contractor will be legally responsible for ensuring full performance under a contract.

RFR SECTION 9 - DEADLINE FOR RESPONSES AND PROCUREMENT CALENDAR

The procuring department must designate those dates that are critical for the procurement. Deadlines are necessary so the procurement is completed on a timely basis in order to obtain best values for the procurement.

An RFR always contains procurement duration timeframes. It generally may also contain the procurement calendar, including specific and estimated dates. The procurement duration has been discussed in RFR Section 5, Anticipated Duration of Contract Including Renewal Options of this chapter. Additional guidance is available in the appendix. For the purposes of fair competition, all relevant dates associated with the procurement schedule, definite and/or estimated, should be identified in the RFR. The following example identifies some of the procurement calendar dates that an RFR may identify:

Release of RFR..... April 1, 2000

Bidders' Conference..... April 15, 2000

Submission of Written Inquiries.....April 22, 2000 at 2 p.m.

Response to Written Inquiries ..... (estimated) April 29, 2000

Submission of Responses Deadline Date..... May 10, 2000 at 2 p.m.

Oral Presentations/Demonstrations.....(estimated) Week of May 20, 2000

Notification to Bidders of Evaluations ..... (estimated) June 1, 2000

Start Date of Contract ..... (estimated) July 1, 2000

The timing of the procurement calendar should be reasonable in order to give bidders sufficient time to respond, as well as giving the procurement team an adequate opportunity to evaluate responses. The procurement calendar should be calculated based upon the expected start date of the contract, and then work back to the current date. (It should also incorporate the notification requirements of the World Trade Organization Government Procurement Agreement discussed in Chapter 3). Dates are always subject to change, due to delays or unforeseen circumstances, and may be modified as needed at any time during the procurement process.

Deadline for Submission of Responses

It is absolutely critical that bidders are clearly instructed as to the required deadlines for receiving responses. The procuring department may want to state that the department's time stamp or time entry for receipt of responses will be the controlling time, given any discrepancies raised by a bidder.

Note: In fairness to all bidders, Procurement Management Teams must not accept late responses to an RFR, unless, under exceptional circumstances, the PMT grants an exception due to state government having been closed because of inclement weather conditions, postal and courier services having been delayed due to strikes or other unforeseen "Acts of God." Whenever this exception is granted, the Chief Fiscal Officer must formally approve the acceptance of a late response. This approval and a detailed justification must be placed in the procurement file.

The RFR itself must be provided to bidders in a prompt, non-discriminatory and competitive manner and must allow adequate time for bidders to prepare and submit responses. In addition, the RFR must contain all information necessary to fairly enable vendors to submit responses to the RFR including:

- address to submit response
- address to request further information
- response due date, time and place
- complete description of commodities and services requested
- all technical, economic and financial requirements or information required
- payment terms
- all additional terms & conditions
- whether pre-award negotiations procedures will be involved
- start and completion dates for deliveries of commodities and services
- statement, if applicable, that the World Trade Organization Government Procurement Agreement covers the procurement

Post award requirements include the publication within 60 days of the award (in accordance with OSD requirements), full details of the award including award date, nature and quantity of commodity and service, name and address of the procuring department, name and address of the awarded bidder, value of awarded contract or highest and lowest awarded contracts and the type of procurement.

RFR SECTION 10 - RFR ATTACHMENTS/REQUIRED SPECIFICATIONS

The chart on the following page lists RFR attachments (with required or optional uses). Descriptions of each attachment follow. These attachments are included in the appendix. RFRs that are posted exclusively on Comm-PASS may direct bidders to Comm-PASS for selected forms.

ATTACHMENT	GUIDANCE FOR USAGE
RFR - Required Specifications RFR – Optional Specifications	Required attachment to the RFR. Departments must attach these specifications to the RFR. Optional attachment to the RFR. Departments may attach these specifications to the RFR.
Standard Contract Form	Required attachment to the RFR. Departments must either: 1) Require bidders to execute as part of the response, or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution. If the Standard Contract Form is not required in the response, the RFR may include a response cover sheet to be signed by an authorized signatory for the bidder.
Contractor Authorized Signature Verification Form	For large procurements: Required attachment to the RFR. For large procurements: Bidders must complete form or submit appropriate signature verification documentation as part of response.
Commonwealth Terms and Conditions	Required attachment to the RFR. Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with CTR), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).
For POS Only: Commonwealth Terms and Conditions for Human and Social Services	Required attachment to the RFR. Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with CTR), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).
W-9 (Massachusetts Substitute W-9 Format)	Required attachment to the RFR. Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with CTR), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).

ATTACHMENT	GUIDANCE FOR USAGE
For POS Only: Purchase of Service Attachments: ▪ Attachment 1: Program Cover page ▪ Attachment 2: Performance Measures ▪ Attachment 3: Fiscal Year Program Budget ▪ Attachment 4: Rate Calculation/Maximum Obligation Calculation Page ▪ Attachment 5: Non-Reimbursable Cost Program Offset Schedule ▪ Attachment 6: Capital Budget	Optional attachments to the RFR. Departments have the option to require bidders to complete as part of their response or complete at time of contract execution. Attachments 1 and 2 are required at contract execution. Attachments 3, 4, 5, and 6 may be required at contract execution, depending on specific requirements.
Consultant Contractor Mandatory Submission Form	Required attachment for RFRs for consultant contracts paid in "HH" or "N01"-"N14" object codes. Bidders must complete form as part of response.
Affirmative Action Plan - Employers	For large procurements: Required attachment to the RFR. For large procurements: Bidders must complete form or submit appropriate documentation as part of response. (*For POS Only:* This requirement may be fulfilled via a secretariat qualification process for POS contracts; as such, it is not required as an attachment or part of the response for POS RFRs.)
Authorization for Electronic Funds Payment (EFT)	Required attachment to the RFR Departments should encourage vendors to complete the authorization form unless it is already on file with CTR).
Northern Ireland Notice and Certification	Required attachment to the RFR. Bidders must complete form as part of response.
Additional Environmentally Preferable Product Information	Optional attachment to the RFR. Departments have the option to require bidders to complete as part of their response. This form is optional throughout the procurement process.
Business Reference Form	Optional attachment to the RFR. Departments have the option to require bidders to complete as part of their response. This form is optional throughout the procurement process.
Tax Compliance Certification Instructions	Optional attachment to the RFR. Departments have the option to require bidders to complete as part of their response. This form is optional throughout the procurement process.

Information on RFR Attachments

RFR - Required Specifications

Certain specifications must appear in all Commonwealth competitive procurements conducted under 801 CMR 21.00. These required specifications address bidder communication, reasonable accommodation, best value and the Affirmative Market Program, among other things.

The RFR Specifications also contain optional specifications that departments may choose to include. These include, but are not limited to, prompt payment discounts, alternatives and contract expansion.

RFR - Optional Specifications

The RFR may also contain optional specifications that departments may choose to include. These include, but are not limited to, prompt payment discounts, alternatives and contract expansion.

Standard Contract Form

An authorized signatory of the contractor and the department must execute a Standard Contract Form for procurements under 801 CMR 21.00. The contract incorporates by reference the applicable Commonwealth Terms and Conditions and includes the RFR, the bidder's response, excluding any clauses or sections that are stricken by the department as unacceptable and including any additional negotiated language as authorized under 801 CMR 21.07(1). If an original or certified copy of this package is filed with the Comptroller or OSD, the department should maintain a copy as part of the procurement file (see Chapter 5 for further guidance). Acceptance of a standard form or contract for filing should not be construed as approval of any conflicting language that may have been inserted herein or attached thereto.

The department and the contractor may not negotiate the language contained in the Standard Contract Form. Any contract attachment which contains conflicting language shall be superseded by the language of the Commonwealth Terms and Conditions.

Since the Standard Contract Form is available to departments and bidders electronically, it is important to state that any changes or electronic alterations by either the department or the contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.

The Office of the Attorney General has determined that departments may not sign vendor contracts, invoices, or other documents containing contractual terms. These forms may contain language that conflicts with the Standard Contract Form, as well as state law or policy. Further, bidder contract forms often contain clauses on choice of law for another state, limits to liability, indemnification of the contractors, penalties and other provisions that are adverse to the department's interests. Departments that choose to sign these types of documents do so at their own risk and will be responsible for any associated costs and damages.

There is a provision in the Commonwealth Terms and Conditions and the Standard Contract Form which states that the language in the Commonwealth Terms and Conditions and the Standard Contract Form shall supersede any conflicting language attached, including a bidder's contract form, purchase order or invoice form.

Contractor Authorized Signature Verification Form

This form is required for large procurements and any contract with a value > $50,000.

All contract documents that require a formal signature must be executed by an authorized signatory of the department and the contractor. Departments are responsible for verifying the following:

1. that the individual executing a contract (or other related document) is authorized to legally bind the contractor, AND
2. that the signature that appears on the contract was actually made by that person.

If the department fails to verify these two things, the contract may be deemed void and performance requirements of the contracts may not be binding. (For the same reasons, departments should also verify the authorized department's signatory and authorization. See MMARS Memo #278.) The verification of a contractor's authorized signatories through the Contractor Authorized Signature Verification Form is **required** for large procurements and must be submitted as part of the RFR response.

Contract signature verification may be accomplished in several ways, depending upon what type of entity is involved:

Individuals: Individuals have two options to verify signature authorization:

1. Official sample of signature. Signature verification may be accomplished by submitting a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature; OR
2. Notarization. In the alternative, the bidder may have their signature notarized using the Contractor Authorized Signature Verification Form.

Corporations: Corporations have two options to verify signature authorization:

1. Authorization and clerk certification: The corporate clerk may witness (notarize) each of the authorized signatory's signatures (made in the clerk's presence) and simultaneously certify as clerk that each signatory is authorized to execute contracts and other documents and legally bind the corporation. Note: Clerks may not self-certify if they act as clerk and an authorized signatory. Alternative documentation should be submitted; OR
2. Authorization and official sample of signature or notarization (Complete both "a." and "b.")

a) Authorization. The bidder may attach a copy of a board of directors vote stating that each signatory is authorized to execute contracts and other documents and legally bind the corporation, AND:

b) Official sample of signature or notarization. (Select one option)

- Official sample of signature. Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing an example of the authorized signatory's signature, OR
- Notarization. Have each of the signatory's signature notarized (made in a notary's presence) using the Contractor Authorized Signature Verification Form.

Partnership or Other Entities:

1. Authorization. Attach documentation for each signatory of authorization to execute contracts and other documents and legally bind the partnership or other entity, AND
2. Official sample of signature or notarization: (Select one option)

- Official sample of signature. Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature; OR
- Notarization. Have their signature notarized using the Contractor Authorized Signature Verification Form.

Signature verification should be updated whenever the signatory(ies) for a contractor changes since the original submission. In addition, although not required for contract filing purposes, departments are responsible for verifying signatures on all contract amendments and other related documents during the period of a contract.

Signature verification documentation should be kept in the procurement file and copies attached to all contracts requiring this documentation for filing purposes.

Commonwealth Terms and Conditions

Please note there are two versions of the Commonwealth Terms and Conditions. All Commonwealth contracts for commodities and services, with the exception of contracts for human and social services, execute the Commonwealth Terms and Conditions. For human and social service contracts, the Commonwealth Terms and Conditions for Human and Social Services must be executed for transactions using object codes "M03" and "MM3." Contractors who hold contracts with the Commonwealth for both human and social services and commodities and non-human and social services must execute both versions of the document. Unless otherwise stated, references in the handbook to the Commonwealth Terms and Conditions apply to both versions of the document.

An authorized signatory of a bidder must execute a Commonwealth Terms and Conditions for small and large procurements under 801 CMR 21.00. Execution refers to the "distinct, verifiable signature or symbol of an authorized signatory of a contractor or a department which, when affixed to a document, is legally binding." The current practice for execution requires an original signature and date (by an authorized signatory). Although electronic signatures are not currently allowed for contract execution, 801 CMR 21.00 has been drafted to allow for this option when it becomes available.

The Commonwealth Terms and Conditions is executed only once by a bidder and filed with the Office of the Comptroller (CTR). The Commonwealth Terms and Conditions is incorporated by reference into any contract for commodities or services executed by the bidder and any department of the state. In addition, for a bidder to be awarded a contract, a Request for Verification of Taxation Reporting Information form (Massachusetts Substitute W-9 Format), that contains the contractor's correct Taxpayer Identification Number (TIN), name and legal address information, must also be on file with the Office of the Comptroller for the contractor. If the contractor has not previously filed this form with the Comptroller, or if the information has changed, a new W-9 form must be completed and returned to the CTR. See W-9 description below.

In order to record the filing of these forms on the MMARS Vendor File, a completed and properly executed Commonwealth Terms and Conditions and a W-9 form are to be submitted to:

Office of the Comptroller, 9th Floor
One Ashburton Place, Boston, MA 02108

The department and the contractor may not negotiate the terms of the Commonwealth Terms and Conditions. Any contract attachment which contains conflicting language shall be superseded by the language of the Commonwealth Terms and Conditions.

Please note, however, that pursuant to 801 CMR 21.00, the Executive Office for Administration and Finance, the Operational Services Division (OSD) and the Office of the Comptroller (CTR) have issued language which interprets Section 11, Indemnification, as it applies to Information Technology procurements within certain expenditure classification object codes. Please see RFR - Required Specifications in the appendix for the text of this interpretation and the affected object codes.

Since the Commonwealth Terms and Conditions form is available to departments and bidders electronically, it is important to state that any changes or electronic alterations by either the department or the contractor to the official version of this form, as jointly published by Executive Office for Administration and Finance (ANF), CTR and OSD, shall be void.

W-9 (Massachusetts Substitute W-9 Format)

A Request for Verification of Taxation Reporting Information Form (Massachusetts Substitute W-9 Format) **must** be distributed with every RFR. The W-9 contains the bidder's correct TIN (tax identification number), name and legal address information, and must be on file with the CTR for any contractor receiving payments through MMARS.

Bidders must fill out a W-9 form and return it with the executed Commonwealth Terms and Conditions and the bidder's response if:

- the bidder has not previously filed this form with CTR;
- the information contained on a previously filed form has changed.

☞ *For POS Only:* Purchase of Service Attachments

The following contract attachments have been developed specifically to document programmatic and fiscal specifications for human and social service procurements. Instructions for completion and a detailed explanation of the content of each attachment can be found on the Internet at: www.state.ma.us/osd/dps.htm.

- Attachment 1: Program Cover Page. Provides general contractor and program information and creates a historical "starting point" for all future contract amendments. This form is required for all human and social services contracts and may also be attached to the Standard Contract Amendment Form to document changes to the original contract.

- Attachment 2: Performance Measures. Documents negotiated performance measures. This form is required for all human and social services contracts.

- Attachment 3: Fiscal Year Program Budget. Reflects the budgeted total annual program costs associated with the fiscal year operation of a program. This form is required if federal funds are used to pay for the services.

- Attachment 4: Rate Calculation/Maximum Obligation Calculation Page. Provides a method of calculating a rate and maximum obligation for a program. It may be a required form, depending on department RFR specifications.

- Attachment 5: Non-Reimbursable Cost Program Offset Schedule. Provides information on non-reimbursable costs, the source of private funds used to offset those costs and identifies whether the non-reimbursable costs are a result of related party transactions. This form is required for all human and social service contracts if non-reimbursable costs appear in the budget.

- Attachment 6: Capital Budget. Designed to document capital expenditures, purchased either by the department or the contractor, that are required to support the delivery of contracted human and social services. This form is required for all human and social service contracts with capital expenditures.

Consultant Contractor Mandatory Submission Form

An RFR to procure consultant contracts must attach the Consultant Contractor Mandatory Submission Form, or reference its availability on Comm-PASS in the "Forms and Information" section. Consultant contracts include ANY contract paid out of the "HH" subsidiary or "N01"-"N14" object codes. A completed Consultant Contract Mandatory Submission Form is required to satisfy several statutory requirements.

This form requires the consultant, whether defined as a contract employee, independent contractor or company, to:

1. Identify other contracts with Massachusetts departments
2. Identify financially interested parties
3. Provide resumes of key personnel

a) Identification of Other Contracts with Massachusetts Departments
Pursuant to M.G.L. c.29, s.29A, consultant contractors are required to identify income that is due, or will become due, to the contractor for commodities or services rendered to the Commonwealth, any political subdivision or public authority, during the period of the proposed contract.

b) Identification of Financially Interested Parties
Pursuant to M.G.L. c.29, s.29A and M.G.L. c.7A, s.6, consultant contracts are required to provide a list of all persons having a financial interest in this contract, including any person holding greater than one percent (1%) of the capital stock of the contractor.

c) Identification of Key Personnel
Resumes of identified key personnel should be attached to the response.

Affirmative Action Plan Form - Employers

This form is generally required for large procurements. Large procurement RFRs should attach or reference the Affirmative Action Plan Form to be completed by bidders that are employers. Pursuant to Executive Orders 227 and 246, any contract with a potential financial benefit of $50,000 dollars or more requires bidders to file an affirmative action plan. An affirmative action plan identifies the bidder's commitment to non-discrimination in employment and to procure commodities, services and supplies from certified minority and women-owned business enterprises, businesses owned by individuals with disabilities and businesses owned and controlled by socially or economically disadvantaged individuals. The RFR should identify the format for affirmative action plans if a format is required by the department's secretariat. If a format is not stated, PMTs may attach or refer bidders to Comm-PASS to use the Affirmative Action Plan Form. The Affirmative Action Plan Form provides bidders with the choice of attaching a copy of their plan or executing certification outlining their affirmative action commitment.

☞ *For POS Only:* The Affirmative Action requirement is usually addressed through procedures established and required by the various secretariats. Departments should consult with their respective secretariats to ensure compliance with all Affirmative Action requirements.

Authorization for Electronic Funds Payment

Contractors should receive their contract payments through an electronic funds transfer (EFT). The following are some of the benefits of using EFT:

- EFT payments significantly reduce payment delays and provide almost instantaneous payment;
- EFT payments save the Commonwealth a tremendous amount of processing time and money and are considerably more cost-effective than payments distributed by check;
- EFT payments are more environmentally friendly, as they eliminate the use of paper.
- EFT payments can increase contractor efficiency while reducing transaction costs.
- Payment information for vendors is readily available on the Internet at the Office of the Comptroller's VendorWeb site: http//massfinance.state.ma.us.

Northern Ireland Notice and Certification Form

This form is required for all RFRs. The Northern Ireland statute (M.G.L. c.7, s.22C) requires that bidders state whether they employ ten or more employees in Northern Ireland (with additional certifications, if appropriate). Please refer to Chapter 3 for further information regarding this statute and its implications when completing the procurement process.

All bidders must complete this form and submit it as part of their response, even if they have no business activity in Northern Ireland.

Additional Environmentally Preferable Product Information

In line with the Commonwealth's efforts to promote products and practices which reduce environmental impacts, departments are encouraged to use this attachment to solicit information from bidders regarding their use of environmentally preferable packaging, business practices, training, and independent environmental certifications. Bidders who demonstrate significant environmental efforts in any of the categories on this attachment may be eligible to receive extra points in the evaluation of the RFR.

Business Reference Form

A department may require bidders to provide business references. The references should be entities for which the bidder has provided commodities or performed similar services, or which otherwise demonstrate the bidder's capability to meet contract performance. The Sample Business Reference Form is located in the appendix and is available in the "Forms and Information" section of Comm-PASS.

Tax Compliance Certification Instructions

In addition to the certification of tax compliance which occurs once the bidder signs the Standard Contract Form, a PMT may require bidders to certify compliance with all Commonwealth tax laws, including M.G.L. c.62C, s.49A, as part of the RFR process. This may be done as a certification statement or departments may require a "Certificate of Good Standing" from the Department of Revenue which confirms the bidders' tax status. The sample instruction sheet is located in the appendix, and may be added to the RFR as an attachment or referenced as available in the "Forms and Information" section of Comm-PASS. This instruction sheet guides bidders through the application process. The request is submitted to:

Department of Revenue (DOR)
Taxpayer Services Division, Certificate Unit
P.O. Box 7066, Boston, MA 02204
(617) 887-6550, FAX back on demand (617) 887-6262 (for application and instructions)

Bidders should also be instructed that the issuance of a certificate usually takes a few weeks and that bidders should identify that the request is part of an RFR procurement. The RFR may condition the award of a contract upon receipt of the certificate.

THE RFR CHALLENGE

Once the RFR is drafted, departments should undertake a critical review and comparison of the document against the ten RFR sections discussed in this chapter and required for all procurements conducted under 801 CMR 21.00. Sometimes referred to as an RFR challenge, the process provides the opportunity to ensure that all the necessary information appears somewhere in the document and is clear, well-organized and comprehensive. Involving all members of the Procurement Management Team, including contract, fiscal, programmatic, affirmative marketing and legal expertise, will help in identifying any omissions or areas of potential confusion to bidders that could impact the procurement process.

CHAPTER 5 CONTRACT EXECUTION AND MANAGEMENT

CONTRACT EXECUTION

Once contract negotiations have been completed, a contract is prepared and signed by both the contractor and the department to document the final terms of the agreement. Contracts which are executed for a multi-year period must reflect terms which are applicable for that entire period. The department is responsible for securing all the necessary approvals for contract execution and for notifying the contractor once all approvals have been received.

The following chart displays the entity responsible for contract execution for the different procurement options:

Contract is Executed by:	***If the Type of Procurement is:***
Operational Services Division	Statewide contract procurement conducted by OSD
Department	Statewide contract procurement conducted by OSD-designated department
Lead department	Multiple department procurement/limited user contract
Each department	Single department procurement/multiple department user contract
Department	Single department procurement/single department user contract

Detailed guidance on contract execution responsibilities for the five procurement options, ranging from statewide to single department contracts, is available in the appendix (Use of a Procurement by Single or Multiple Departments).

Contract Documents

Procuring departments and contractors are required to use standard contract forms and the appropriate and applicable attachments. In general, a contract consists of:

- **Commonwealth Terms and Conditions, applicable version (original or confirmation that it exists on the vendor file);**
- **Standard Contract Form (original);**
- **Request for Response (RFR,) with applicable attachments ***
- **Selected bidder's response including any negotiated items and additional conditions (original);**

* The RFR is a required component of all contracts. Procuring departments are required to file a copy of each RFR as part of a contract. However, departments have two options for meeting the requirement of filing a copy of the RFR for large procurements and any other procurement posted on Comm-PASS.

1. File a complete copy of the RFR which includes all amendments, attachments and other publicly distributed RFR documents.
2. File a copy or screen print of the Comm-PASS closed solicitations summary page verifying the location of the RFR (including the RFR reference number) on Comm-PASS.

For any RFR that is not posted on Comm-PASS, procuring departments must file a copy of the RFR with the contract as described in the first option above. These options *do not change any existing requirements*, but merely provide an alternative

format for filing the RFR with the contract. This alternative is offered in an effort to utilize existing technology and limit the paper requirements. A review of the RFR can be performed on-line using Comm-PASS and can be printed from Comm-PASS at any time should a paper version be required.

Under certain circumstances, such as a procurement exception pursuant to 801 CMR 21.05, there will be no RFR and bidder's response, and instead a detailed scope of services and other appropriate documentation must be attached.

Please see Chapter 4, How to Draft a Request for Response (RFR), for detail about the forms and attachments.

Subcontracting of performance under a contract is permissible (see Chapter 4 for details); however, departments should exercise care in the authorization of subcontracts and may require additional information and terms as deemed necessary.

Note: The Equipment/Services Confirmation Form (located in the appendix) may be used to confirm the selection of equipment. Any terms and conditions and/or agreements included in or attached to the form that differ from or are in addition to the terms and conditions of the contract are superseded and shall be deemed void.

Contract Signatures

All contracts must be signed and dated by an authorized signatory for both parties. Originals are required; typed or stamped signatures or dates are not acceptable. All contracts over $50,000 require evidence of signature authorization and verification. Please refer to Chapter 4, How to Draft a Request for Response (RFR), and the section below on Contract Transactions and Processing for more specific information on contract signature requirements and procedures. In addition, should there be material changes to the contract (or amendment) after an original signature by either party, then both authorized signatories must initial the changed items. Further guidance is available in the appendix.

CONTRACT EFFECTIVE START DATE

A contractor may not begin performance until a Standard Contract Form is properly executed. Pursuant to 801 CMR 21.07(3), notwithstanding an earlier start date listed in the Standard Contract Form, or other representations made by the parties, the effective start date of a contract shall be the *latest* of the following dates:

- the date the Standard Contract Form has been executed by an authorized signatory of the contractor;
- the date the Standard Contract Form has been executed by an authorized signatory of the department;
- the date the contract has received secretariat or other approval required by federal or state general or special law or regulation; or
- a later date specified in the Standard Contract Form.

☞ *For POS Only:* The Secretary for Administration and Finance has authority under M.G.L. c.29, s.29B to approve payments for human and social services that were provided up to fifteen (15) days prior to secretariat authorization of those services. This authority to approve up to 15 days of "start date retroactivity" has been directly delegated by ANF to all secretariats with departments procuring human and social services. To exercise this delegation, departments must 1) receive approval from the secretariat in charge of their department and 2) provide written documentation in their procurement file. In addition, departments must attach documentation to the contract when submitted to CTR.

CONTRACT TRANSACTIONS AND PROCESSING

The Office of the Comptroller, under M.G.L. c.7A, has the authority to establish the process and filing requirements for MMARS transactions and contracts submitted by state departments. All contract obligations and expenditures must be processed in the state accounting system , MMARS (and the Multi-State EMall™, where appropriate) and must be processed according to the accounting prescriptions set forth in the Office of the Comptroller's *Expenditure Classification Handbook.*

A descriptive list of pertinent MMARS transactions, and associated requirements for documentation and approval, is located in the "Procurement Snapshot" section of Chapter 1.

Authorizations and Certification

Obligations and expenditures must be approved by the department head or his/her designee. All signature authorizations must be on file with the Office of the Comptroller. Transactions which are not approved by an authorized individual will not be processed by CTR.

MMARS Memo #278, "Filing of Signature Authorizations", provides the forms and instructions for establishing signature authorizations for departments and secretariats. Specifically,

- "Each Department Head must directly authorize individuals to be his/her designees for approval of fiscal documents or other transactions on the department's behalf."
- "Cabinet Secretaries must directly authorize individuals within their own department, or in other departments within the secretariat, to be his/her designee to approve legal obligations, fiscal documents or other fiscal transactions on the secretary's behalf (e.g., Secretariat sign-off which is required for consultant service contracts in the "HH" and "NN" subsidiaries pursuant to M.G.L. c.29, s.29A, and Human and Social Service contracts in the "MM" subsidiary pursuant to M.G.L. c.29, s.29B.)"
- "There can be no sub-delegation; designees cannot in turn, sub-delegate such authority to another."

MMARS pre-encumbrance, encumbrance and payment transactions must be dated and signed by an authorized signatory. This signature is interpreted as certification that the document upon which the signature appears and any attachments are accurate and complete and comply with all applicable general and special laws and regulations. Departments are required to file the appropriate MMARS output documents, which contain a specific certification statement, when available. If no output document is available, departments may use an input form or screen-print, with the appropriate certification typed in and signed. Further guidance is available in MMARS Memo #220 or from CTR.

Authority

Secondary MMARS approval from CTR (PEND 5) or OSD (PEND 3) is required for any encumbrance transaction which exceeds a department's incidental purchase limit. However, CTR and OSD may grant delegation to a department for all transactions up to a specified amount, as determined by the results of a Quality Assurance review. If the department has been granted encumbrance delegation, it retains the original contract and MMARS encumbrance transactions in its procurement file for contracts up to the specified amount. In order to receive delegation, departments must successfully complete a Quality Assurance review, attend appropriate training and sign a Delegation Transaction Certification Form accepting the responsibilities of delegation. For additional details on delegation, please see Chapter 7, Quality Assurance.

CONTRACT FILING

The original contract, including all constituent parts, as described earlier in this chapter, along with the appropriate MMARS transactions, is submitted to CTR (for service contracts) or OSD (for commodity contracts) unless approval authority has been delegated to the department. In addition, other supporting documentation, such as the signature verification for large procurements and justification for procurement exceptions, must be submitted with the contract. OSD or CTR staff review every contract transaction submitted for approval for compliance with established standards for signatures and dates, completeness, accuracy, and consistency of contract documents and forms. A copy of CTR's Contract Review Form is located in the appendix.

The Commonwealth Terms and Conditions should not be attached to the contract. The department must forward these documents along with a Vendor Update Form (VU form) to the Office of the Comptroller, Payee Unit to be processed.

For every contract, there must be a keeper of the official record for the Commonwealth. CTR or OSD is generally responsible for the retention and disposal of these records. However, departments that have received contract approval delegation or have been designated by OSD to execute statewide contracts on behalf of all departments, are the official recordkeepers of these documents.

Procuring departments are required to manage contracts in accordance with the following procedures:

1. If the original contract is on file with the procuring department, all original amendments must remain at the department to be filed in the department procurement file together with the complete original contract. The departments will have the record copy and be responsible for the records management procedures which include filing with the State Records Center. If an amendment transaction requires secondary approval (i.e., it goes to PEND status on MMARS) and the original contract is on file in the department, then the department must forward a copy of the amendment to CTR or OSD for processing and retain the original amendment in the department's file.

2. If the original contract is on file with CTR or OSD, all original amendments must also be filed with the respective office. CTR or OSD will have the record copy and will be responsible for records management. For information regarding the distinction between administrative changes and formal amendments, please see Chapter 4, How to Draft a Request for Response, Section 7, Performance and Contract Specifications. Further, the RFR must have clearly delineated the changes to the contract which would require formal amendments versus those which would be considered administrative in nature (not requiring a formal amendment).

Procedurally, if an encumbrance transaction (PD, LO or SC) is amended, the original amendment must be filed with the original contract, wherever that is located. If the amendment transaction goes to PEND status, and the original contract is with the department, forward a copy of the amendment to CTR or OSD for processing. If the original contract is with CTR or OSD, forward the original to the appropriate office for recordkeeping. This will keep the record copy intact.

An exception to the above is for encumbrance transactions (LO, SC and SM) that reference a valid statewide contract, OSD-designated statewide contract executed by a department or department master service agreement. In these cases, since departments have the authority to apply the PEND approval to the encumbrance, the department does not need to submit the encumbrance to CTR. Departmental Master Service Agreement Update Forms, along with the appropriate contracts or amendments must be submitted to CTR for entry into the MSA tables.

Detailed guidance on recordkeeping responsibilities for the five procurement options, ranging from statewide to single department contracts, is available in the appendix (Use of a Procurement by Single or Multiple Departments).

As the level of the procurement dollar threshold delegation increases for responsible departments, the requirements to send complete original contracts and amendments to CTR and OSD will decline and responsibility for the record copy at the department level will increase.

CONTRACT MANAGEMENT

Definition

The purpose of contract management is to ensure that departments are satisfied with contractor performance and that the contractor is in full compliance with all of the terms and conditions of the contract. Additionally, contract management supports the contractor to ensure that departments make payments in accordance with payment terms, are familiar with procurement processes of the Commonwealth and the automated systems that support the procurement and payment process, i.e., MMARS, EDI, Ready Payment, Recurring Payment, EFT, Multi-State EMall and Comm-PASS. Contract management is customer service. Its primary role is to assist and/or resolve any and all issues, concerns and problems that may arise from customers and contractors as it relates to contracts administered by the Commonwealth.

Contract Managers

A contract manager is a member of a Procurement Management Team within the procuring department, who is assigned responsibility for the oversight and management of the activity within a contract. Contract managers, among other tasks:

- Provide document processing and technical assistance to contractors and customers;
- Conduct market research and analysis to determine the strengths and/or weaknesses of the marketplace which will assist in determining the effectiveness of the contract and whether or not the terms, conditions and costs are competitive in the current environment;
- Facilitate Multi-State EMall participation, as appropriate;
- Generate usage reports to determine dollar volume and what services or products are being utilized and measure this information against projections;
- Measure contractor performance against established performance criteria to ensure compliance with the terms and conditions set forth in the contract;
- Confer with customers, contractors and potential bidders in order to exchange information and keep up to date with current needs and current products being offered by the industry;
- Coordinate and attend exhibitions and conferences to become familiar with new commodities and services for department use;
- Initiate contract negotiations and determine whether contracts should be extended;
- Confer with legal staff to determine corrective action, when necessary, to bring a contractor back into compliance with a contract; and
- Conduct user surveys to determine the effectiveness of existing contracts and the potential for new contracts.

Customer Satisfaction

In the introduction to the handbook, the mission of procurement in the Commonwealth was officially defined as: “The overall goal of the procurement process is to satisfy the customer...” Thus, contract managers are also responsible for actively soliciting and promptly responding to feedback concerning customer satisfaction.

In this context the definition of “customer” is the end-user department and especially the individual end-users themselves, including clients or service consumers. To support and continually enhance contract or procurement management, a contract manager must encourage customer feedback.

On their part, end-users should promptly, either formally in writing or through informal channels, inform both the department and other contract managers about their degree of customer satisfaction. Communication regarding contractor performance can be supported by encouraging participation in periodic reviews with contractors and sending out contractor performance rating surveys.

Procurement File Contents

During the life of the contract, additional information, which may be maintained electronically unless the original or a written signature is required, will be added to the procurement file. This is in addition to documents regarding the procurement process and contract execution. The file should be an accurate representation of all the facts, circumstances and details of both the procurement and ongoing contract performance/management. See Chapter 3 for information about creating a procurement file.

Contract management related documents may include:

- Copies of all invoices or where located (electronic or manual as required internally) including rejected invoices and notices to contractor with reasons for rejection;
- An accounting of all payments made or where located (electronic or manual);
- Copies of any written notices or other faxes, memoranda or correspondence with contractor;
- Documentation related to contractor legal name change or material change in identity, including Change in Contractor Identity Form, if applicable.
- Contract amendments and related transactions, if applicable;
- Equipment/Services Confirmation Form (if applicable);
- Documentation of contract monitoring and evaluation activities, such as performance reports, satisfaction surveys, site visit or audit documents, etc.;
- Information related to any contract disputes, including resolution;
- Documentation identifying any default, breach or unsatisfactory performance (notice should identify language in contract detailing performance requirements and how contractor is failing to comply); and
- Any other information or documentation about the contractor and contract performance, that the contract manager deems relevant.

Documentation Requirements for Incidental Purchases

Purchases which do not exceed a department's incidental purchase limit or the object code incidental purchase limit may be done without a competitive procurement. In order to document these purchases, a vendor's invoice, at a minimum, must be included in the procurement file. Please note the exception that any M.G.L. c. 29, s. 29A consultant contract with a purchase exceeding $1,000 must use the SR/SC transaction and the Commonwealth Terms and Conditions/Standard Contract Form. Each department should develop internal controls on procurement and documentation that are appropriate to the nature of incidental purchases that the department is likely to encounter.

See the Transaction Matrix and the Transaction and Threshold Matrix in Chapter 1 for other quick reference guides.

PAYMENTS

A contractor must submit invoices in accordance with procedures and requirements specified in a contract. The contractor shall be required to provide relevant supporting documentation to substantiate any claim for payment of an invoice or to support payments already made by the department.

Payments made by Commonwealth departments are required to be processed through the state accounting system, MMARS. 801 CMR 21.08(1) states that "The contractor shall only be compensated for performance delivered to and accepted by the department in accordance with the specific terms and conditions of a properly executed contract. All contract payments are subject to available funding, as described in 801 CMR 21.06(2), and shall be subject to automated intercept pursuant to M.G.L. c.7A, s.3 and 815 CMR 9.00. A department shall be under no legal obligation to compensate a contractor, or to obtain additional funding for any performance, costs or other commitments which are made outside of the scope of a contract." No payment may be made for any consultant services ("HH" and "NN" subsidiaries) provided prior to the date that the SR form has been approved by the secretary of the department's executive office.

Departments are required to review all invoices based upon the commodities or services and costs identified and agreed to in a contract and what was actually delivered to and accepted by the department. Acceptance will not be deemed final until made by the authorized department individual after reviewing the delivered commodities or services and determining performance requirements of the contract were met. The contractor shall only be compensated for commodities or services actually delivered or obligations lawfully incurred in accordance with the terms and conditions of a contract.

Contract payments should be consistent with the Bill Paying Policy issued by the Office of the Comptroller (see MMARS Memo #289). Departments typically process payment of an approved invoice within thirty (30) calendar days of its receipt, unless an alternative payment period is specified in a contract. However, departments should make every effort to take advantage of any prompt payment discounts that might be in the contract. These payments may be issued earlier than the general goal of within 30 days of receipt of the invoice. Expedited payments may enable departments to save money.

On the other hand, if payments are late, any interest owed to the vendor shall be determined in accordance with M.G.L. c.29, s.29 and the Office of the Comptroller regulation 815 CMR 4.00.

Upon written request, the contractor shall promptly reimburse a department for any overpayments made under a contract, or, unless otherwise prohibited by state or federal general or special law or regulation, a department may offset such overpayments from amounts due the contractor. Offsets may only be made from payments owed in the fiscal year in which the overpayments were made and may not cross fiscal years. Departments should verify the appropriateness of offsets vs. repayment with their fiscal staff and the Accounting Bureau of the Office of the Comptroller at (617) 727-5000.

Contractors are encouraged to receive payments through Electronic Fund Transfers (EFT). The Authorization for Electronic Funds Payment Form is included in the appendix.

Recurring Payment System

The Recurring Payment System is a payment mechanism in MMARS that enables a department to make predictable and system generated payments based on a Lease Order (LO) encumbrance. The Recurring Payment System is used for term leases that exceed twelve months, all Tax Exempt Lease Purchases (TELP) and space leases.

The Recurring Payment System is designed to allow for lease-defined payment schedules. There are multiple schedules available to departments (shown in the REST Table in MMARS) for a fiscal year and each schedule specifies a unique set of planned payment dates for that fiscal year. A Recurring Payment lease must be assigned a specific, valid payment schedule. For more information, contact CTR.

☞ *For POS Only:* Ready Payment System

For human and social services there is also an option to use the Ready Payment System, which is operated by the Office of the Comptroller in accordance with regulation 815 CMR 3.00. The *Expenditure Classification Handbook* specifies which object codes are eligible to use the Ready Payment System. Ready Payment offers eligible contractors an opportunity to select a regular (e.g., bi-weekly, semi-monthly) schedule of automatic estimated payments. Ordinarily payments will occur according to the selected schedule each month in which services are delivered and before billing for those services occurs. The contractor then submits an invoice within a specified time frame (typically within ten days after the end of the month) to the department. The MMARS system then performs a reconciliation against the total of the estimated payments made for that month which will then be added or subtracted from the next automatic estimated payment.

Assignment of Payments

A contractor may freely assign payments under a contract to a third party. The third party receiving payment is called an assignee. An assignee is not considered a “vendor” or a “contractor” and does not need to have a vendor code, W-9 form or applicable Commonwealth Terms and Conditions on file.

To process a request for an assignment of payments, the department must receive documentation that the contractor agrees to assign payments due under a particular contract(s) to an assignee. The department then submits to the Comptroller’s Payee Unit a Vendor Update Form (VU Form) for the contractor with an additional “payment address” stating “c/o” or “Attn.” and the assignee’s name and payment address. The department must also submit electronic fund transfer information, as applicable.

Assignment of payments are made on a contract by contract basis by a department, and not necessarily on a statewide basis for all payments due a contractor. In the event a payment is inadvertently issued to the contractor, the department should require the contractor to forward that payment to the assignee. The assignee has no rights against the department.

MONITORING AND EVALUATING CONTRACTOR PERFORMANCE AND COMPLIANCE

The Commonwealth has a responsibility to conduct monitoring and evaluation of the commodities and services it purchases. These activities can assist in identifying and reducing fiscal and programmatic risk as early as possible, thus protecting both public funds and clients being served.

Contract managers are responsible for monitoring contractor performance and other issues that arise during the life of the contract. In developing monitoring and evaluation procedures, the Commonwealth, through its departments or PMTs, should strive for methods which rely on, among other things, national or industry standards and which are coordinated, cost efficient and appropriate to the level of risk to the Commonwealth in the purchase of the commodities or services. The implementation of performance based contracting, discussed in Chapter 4 and the appendix, provides an objective framework for sound contractor performance evaluation.

The following are some tips that may provide assistance during contract monitoring:

Contract compliance:

- Periodically review language in the contract to verify the contractor is complying with terms of the contract;
- If state or federal laws or regulations are specified in the contract, the contract manager may ask for documentation from the contractor at any time to verify compliance. Examples include tax compliance, current worker's compensation contributions, current unemployment insurance policy or achievement of M/WBE goals (copies of checks to M/WBE subcontractors, etc.);
- If the RFR required bidders to include resumes of key individuals they planned to use to fulfill the requirements of the contract, departments should periodically check to be sure these same key individuals are, in fact, performing those contract requirements.

Contract performance:

- Document date, time and name of contractor representative who contacts the department regarding contract performance, questions, etc., and responses given;
- Review and require progress reports to verify if contractor is meeting targeted performance deadlines or ask for documentation to support that performance is on schedule;
- Conduct announced or unannounced site visits and record reviews;
- Solicit customer feedback on contractor performance, outcomes and value;
- Document date, time and name of contractor representative who contacts the department regarding contract disputes. If dispute is resolved with additional information, document how dispute was resolved. If dispute is not immediately resolved, or may involve contract interpretation, immediately contact the department legal staff for guidance (if the department has no legal staff, contact secretariat). If the dispute involves potential or a threat of litigation, the department legal staff should immediately consult with the Attorney General's Office Trial Division for guidance.

Contract deliverables and payment:

- Review all deliverables submitted or shipped to the department to ensure they are in compliance with contract specifications. Departments should be careful to instruct individuals signing for packages that it is necessary to, at a minimum, verify the type and number of items or packages received prior to signing for any shipping order. Some

contractors use shipping companies rather than delivering packages themselves, and it is important to verify at least the number of packages received. Final review and acceptance or rejection of the items delivered may be made later;

- Depending upon department established internal control procedures, the contract manager or the responsible accounts payable person promptly reviews invoices upon receipt and returns any rejected invoice with an explanation for its rejection. A department may hold or reject an invoice, upon notice to a contractor, until a contractor has completed required performance or corrected poor performance or in the event of a breach of contract or default;
- Withhold final payment or invoice until final performance is completed.

Contract termination or renewals:

- At least six months prior to the termination date of the contract (longer for complex procurements), determine any remaining available options to renew or begin new competitive procurement process;
- If exercising an option to renew, forward amendment documentation for completion and execution at least 30 days prior to termination date of contract;
- If the contract is being terminated, notify contractor of the termination date. Include any performance which has not been completed and a list of department data, personal data, files, equipment or other department property which must be returned to the department at termination of contract.

General:

- Review procurement file to verify that all documentation is available and its location, if electronic or in another file, is identified; and
- Require formal or informal audits of a contractor's records as specified in an RFR.

The contract manager may want to develop a checklist that can be attached to the procurement file, or an electronic file with an automatic date flag to remind the contract manager of deadlines and other reminders during the contract period. Contract managers should regularly evaluate the quality and overall success of the contractor in meeting the requirements of the contract, by asking:

- *Considering all factors, did the procurement generate the best value for the customer?*
- *Were customers or recipients of the service satisfied with the performance of the contractor?*
- *What are suggestions for improving service delivery and how can they be incorporated into the existing contract or future procurements?*

If a contractor's poor performance is serious enough to suggest contract termination, debarment or disqualification actions, documentation regarding customer satisfaction should be used to support the contract manager's decision.

Resolution of Customer Complaints

A key part of customer satisfaction is the resolution of customer complaints. Once received, the complaints should be responded to promptly and a resolution process begun. One suggested approach for resolving complaints might include the following:

- acknowledge complaint and get details from end-user/complainant;
- critically review RFR/contract for adequacy, specificity and clarity;
- informally contact contractor about specific complaint, RFR or contract language, and propose or invite solution, such as:
  1. ad hoc fix
  2. contract change if needed
  3. need for additional complaint details
  4. joint meeting with contractor and customer, if desired
  5. memo to file for documentation

Usually, this informal process will resolve most complaints. However, the contract manager may wish to follow-up with the customer in question, as well as other customers who have not complained, to ensure the problem is successfully resolved and not indicative of a pattern of poor performance. If no resolution occurs and the problem continues, more formal steps should begin as follows:

1. written notice from procuring department to contractor, indicating problem, solution, response time required, with a copy to PTL and OSD, if applicable;

2. follow-up meeting with contractor;

3. if no resolution, then formal corrective action plans may be initiated with written notice from the procuring department or OSD, as appropriate.

Breach of Contract

A breach of contract is generally considered a "violation" of the contract terms and conditions or a "default" or "failure to perform." A breach is "material" if the contractor violates a major requirement of the contract (e.g., transfer of performance to a subcontractor without department prior approval, lapse in Worker's Compensation or other mandatory insurance) or the contractor defaults on performance of a significant stated requirement of the contract (e.g., failure to deliver test packages on the day of the test as required, failure to submit mandatory programmatic or fiscal reports.)

The contract language determines the basic parameters within which a department may terminate or suspend contract performance or payments. This is where the time spent drafting the RFR can really assist a department. If the contract terms and conditions of performance are clear, complete and detailed, then the department will have an easier time determining when a breach or default has occurred.

Performance measurements are also helpful in determining breach or default. If a department has clearly specified how performance will be judged and what the expected standard of performance is, the contractor may be held to that standard. If no performance standards are identified, and no performance deadlines or thresholds are set, it is harder to argue that the contractor breached or defaulted on the contract. Procuring departments are advised that oral agreements, amendments or conversations are usually deemed unenforceable.

CONTRACT AMENDMENTS

In the purchase of commodities and services, many contracts need to be modified during their existence. An amendment is a change to the terms of a contract which is negotiated and executed by both parties. The unilateral modification of significant terms of the contract by either party can result in breach or default of the contract, therefore it is important for both the department and the contractor to review their contracts on a regular basis to ensure the terms remain current.

If circumstances produce the need to amend the terms of the contract in order to prevent default or breach, such as passage of a new law which affects either party's ability to perform as anticipated, and the parties cannot agree to amended terms, then the contract must be terminated. An amendment must be executed whenever there is a significant change to the terms of a contract.

The scope of any amendment is limited by the language in the RFR. Further, the RFR must have clearly delineated the changes to the contract which would require formal amendments versus those which would be considered administrative in nature (not requiring a formal amendment). Please see Chapter 4, How to Draft a Request for Response, Section 7, Performance and Contract Specifications. All amendments must be executed prior to the original termination date of the contract using the Standard Contract Amendment Form. This will be effective upon execution by both parties. In addition, any applicable attachments may be used to document the fiscal or programmatic changes to a contract through the amendment.

Amendment to Contract Dollars and/or Duration

The RFR language determines whether a department and a contractor will be able to negotiate amendments to contract dollars or duration. The RFR must specify a definite period or duration of the contract which can not be open-ended or ambiguous. If the RFR stated, for example, "two years initial duration plus two additional options to renew not to exceed one year each," the resulting contract will be limited to a maximum of four years. Increases above the maximum obligation or maximum duration identified in the original RFR (including options to renew) may be allowable with certain restrictions:

- If the RFR and a contractor's response proposed a maximum project all-inclusive cost of a completed project and there have been no changed circumstances made by the procuring department, a dollar increase for the identified project is NOT allowable. Contractors must perform based upon what they promised. If it costs the contractor more than planned, this is the risk that was assumed by the contractor. Extensions or time to complete performance are allowable, but there may be no additional costs in such circumstances.

- If the RFR and a contractor's response proposed a maximum project all-inclusive cost of a completed project and if the requested increase in cost is due to a change made by the department to the original project, through no fault of the contractor, and the change is within the scope of the original RFR or the contractor's response, an increase in maximum obligation is authorized to address the required change and the contract may be extended beyond the maximum termination date stated in the RFR (the end of the initial duration and all options to renew) for the minimum period necessary to complete performance of the project.

- If the maximum obligation or maximum number of units or services specified in the RFR is clearly specified as being an "estimate" and bidders were clearly notified in the RFR that these were negotiable during the contract period, the amendment is allowed at the procuring department's option, but the contract duration may not be amended to extend beyond the maximum duration specified in the RFR.

- If a maximum obligation was identified in the RFR only to identify current needs, and bidders were clearly informed in the RFR that additional performance might be requested if additional funding became available, or if required by the department, and the required performance is within the scope of the original RFR or the contractor's response, the maximum obligation may be increased based upon the needs of the department, but the contract duration may not be amended to extend beyond the maximum duration specified in the RFR.

- If a maximum obligation was identified in the RFR only to identify current needs and bidders were asked to provide responses with all available commodities and services and cost structures based both upon current needs and additional purchases, or a "market basket" or "catalog" approach, the maximum obligation or a change to the listing of "market basket" and/or "catalog" may be increased or decreased based upon the needs of the department, but the contract duration may not be amended to extend beyond the maximum duration date specified in the RFR.

- If the RFR and contracts do *not* specify a maximum obligation or do *not* specify a number of units, then specifying items or performance to be delivered and base compensation for the number of units requested by the department does not require a formal amendment but such requests must be made by written notification to the contractor (fax, mail or electronic).

Amendments to Contract Performance

From time to time, departments may want or need to modify the terms of performance. Departments may negotiate changes to the original performance measures, reporting requirements or payment methodologies tied to performance at any time during the contract duration as long as the changes are consistent with the specifications of the original RFR. The need to amend the performance terms may result from changes in available appropriation, in the type of individuals needing services or other factors that are beyond the control of the department or the contractor. If there is no change to the contract fiscal terms, no MMARS transaction is required; only the Standard Contract Amendment Form must be executed and filed in addition to any required or optional attachments.

Amendment to Contract Duration Only

While 801 CMR 21.00 does not prescribe any set limits for procurement duration, the dates of the total anticipated duration specified in the RFR take precedence over any other dates that may be published on Comm-PASS or appear elsewhere (please see additional guidance in the appendix, Request for Response/Contract Duration).

An increase or extension to the duration of a contract beyond the maximum period identified in an RFR is allowable only to enable a contractor to complete performance, as originally agreed. No additional dollars are allowable under this option. This option is only available to finish a contract, not extend it out over a longer period of time. There is no limitation on the extension of the duration, and a contractor may continue until performance is completed, provided the department agrees to the extension of duration. If payments are contingent upon the completion of performance, the department must take whatever action is necessary to ensure that sufficient payments are still available when performance is completed.

Changes to Informational Items Only

Contracts contain many pieces of information which are important for state accounting or other record keeping purposes, but which are not terms of the contract itself. Some of these include accounting information such as the appropriation account or object code information which do not affect contract terms. In these cases, departments must process the appropriate MMARS transaction, however no Standard Contract Amendment Form is required to be executed by either party.

Exercising Options to Renew

Exercising an option to renew may be made when the option to renew:

- was specifically identified in the original RFR;
- does not extend the duration beyond the maximum period identified in the RFR (see Request for Response/Contract Duration in the appendix);
- is executed under the same terms and conditions as stated in the original RFR and contract. However, a department and contractor may negotiate any of the details of performance which were identified in the contract, the RFR and/or the contractor's original response;
- is for a pre-determined time period specified in the original RFR; and
- is executed (via formal amendment) by the contractor and the department prior to termination date of contract.

If the contractor is not enrolled in electronics funds transfer (either because it was not required in the RFR or it was deemed inappropriate at the time) contract renewal provides an excellent opportunity for departments to encourage contractors to take advantage of this time and cost saving payment method. Further, contract renewal time offers contractors the opportunity to place the renewed contract in the Multi-State EMall, even if the RFR had not required participation.

Departments should extend an offer to renew the contract at least thirty (30) days (and preferably earlier) prior to the scheduled end date of the contract using the Standard Contract Amendment Form. Amendments for options to renew must be filed with the record copy of the contracts as prescribed by the Office of the Comptroller and OSD. Failure to have executed the option to renew by the scheduled end date of the contract will result in termination of the contract. Once terminated, a contract may not be "revived" retroactively and the department and contractor will be required to execute a new Standard Contract Form and all applicable attachments. Performance must be suspended and the contractor is not entitled to any compensation for performance requested and accepted by the department during any lapse between contracts.

CHANGE IN CONTRACTOR IDENTITY

A change in a contractor's identity occurs whenever the legal name, organizational structure, Tax Identification Number (TIN), vendor code or other change occurs in a contractor from what was presented under the contractor's response to a procurement. Certain changes are insignificant to the underlying contract(s) and should merely be recorded to keep the procurement file up-to-date. Other changes are more significant and may affect not only the underlying contract(s) but also the integrity of the original procurement.

Legal Name Change Only

If a contractor changes its legal name only and does not materially change its organizational structure, financial condition or procurement obligations, the department may continue the underlying contract(s) without amendment or new procurement. For example, a contractor wants a new image and decides to change its name, a contract partnership adds a new partner, or an individual gets married or divorced and changes his/her legal name.

Procedurally, the contractor must notify any department with which it has contracts of its legal name change, with documentation supporting the change. The contractor is required to sign a new Commonwealth of Massachusetts W-9 Form and applicable Commonwealth Terms and Conditions to reflect the legal name change. To update the Vendor Table (VEND) in MMARS, the department must forward these documents along with a Vendor Update Form (VU form) to the Office of the Comptroller, Payee Unit. Underlying contract documents and payments are not affected, however, it is good business practice to identify the new legal name on all contract and payment documents.

Material Change in Contractor Identity

A change in the contractor's Tax Identification Number (TIN) usually signals a material change in the contractor's identity such as merger, acquisition, consolidation or other organizational restructuring. When this occurs, the procuring department or PMT must determine the impact on its contracts. OSD makes the determination for statewide contracts. The department must require, review and place in the procurement file a clear and detailed statement of the material change sufficient to enable the department to decide, in its best interests, whether it will permit the assignment of the contract to the successor entity, award the remaining performance to the next best value bidder, conduct a new procurement or take any other action permitted under 801 CMR 21.00.

Decisions to continue contracts after a contractor has materially changed its identity are made by departments on a contract by contract basis. Since the analysis may be different for each contract, one department is not bound by another department's decision.

Departments and PMTs should refer to the appendix for Guidelines on Material Changes in a Contractor's Identity and the associated form covering the issues and responsibilities triggered by a material change in contractor identity.

CONTRACT DISPUTES

In most cases, contract disputes or conflicts arise due to miscommunication, misunderstandings, or lack of accurate or timely information. Enhanced communication and careful monitoring of contract performance can usually resolve most disputes. Departments are encouraged to develop internal methods for resolving disputes. If a department is unsuccessful at resolving a dispute, the department may consider other methods such as litigation or mediation.

Litigation or Mediation

Litigation has traditionally been the first line of attack when departments were faced with a contract dispute which had reached an impasse. However, litigation is expensive for both the Commonwealth and a contractor and may exceed the value of resolving the dispute. Departments may consider "mediation" as a less expensive, quicker and often less contentious way of resolving a contract dispute, and as a means of arriving at a creative solution not available in court.

Mediation uses a neutral third-party to work with the parties to develop a mutually agreeable solution to the dispute. Participation is voluntary; and the results are binding by mutual agreement of the parties. ANF, OSD and the Attorney General's Office support the use of mediation as an alternative form of dispute resolution. Mediation supports the procurement principles in this handbook and balances the Commonwealth's interest in litigating important legal rights that affect the Commonwealth while preserving Commonwealth funds and providing a more effective and efficient alternative to court.

Note: Mediation does NOT include "Arbitration." Arbitration may not be pursued or included in any contract as a method of dispute resolution.

The Massachusetts Office of Dispute Resolution (MODR) has been designated as the lead agency for overseeing the use of mediation by state departments. MODR has established a statewide contract for qualified mediators with expertise in a wide range of substantive areas. Departments must contact MODR if they are considering mediation and may not separately procure these services. MODR uses private sector mediators who have been selected and trained by MODR. Thus, the mediators are not employees of MODR or the department and they act independently as impartial mediators on behalf of both the department and the contractor to reach a solution.

A department and the contractor who agree to pursue mediation are expected to share the costs of a mediation. Department payments are simplified through the use of the Interdepartmental Chargeback Billing System on MMARS (IE/IV) instead of having to procure mediation services under a separate contract. For more information about mediation, training, and other services offered by MODR, contact:

Massachusetts Office of Dispute Resolution
Telephone: (617) 727-2224
Fax: (617) 727-6495

The Attorney General's Office

As the Commonwealth's litigator, (M.G.L. c.12) the Attorney General's Office (AGO) balances a variety of concerns that go beyond the scope of a particular dispute that may determine whether a dispute should be litigated or mediated. For example, some disputes may involve the development of legal precedents which have far reaching implications for other departments. The presence of such issues is not necessarily linked to the monetary size of the dispute. A small dollar dispute may involve issues with broad implications, while a large dollar dispute may not.

The AGO MUST be informed immediately whenever potential litigation may be involved or is threatened by a contractor or bidder, or whenever the department believes that a dispute has reached an impasse that may be resolved through mediation. The AGO must review these disputes to determine whether it should be litigated or mediated. Consequently, departments must obtain the approval of the AGO before agreeing to mediation.

Departments should contact the Attorney General's Trial Division, 200 Portland Street Boston, Massachusetts 02114, (617) 727-2200; FAX: (617) 727-3076 for further assistance with approvals for mediation or to refer potential contract dispute litigation.

CONTRACT SUSPENSION AND TERMINATION

When and How To Suspend or Terminate a Contract

When suspension or termination takes place prior to the expiration date specified in the contract, the party initiating the action must provide prior written notice to the other party. Given the seriousness of contract suspension or termination, the department or contractor taking the action should take steps to obtain documentation ensuring that the notice was delivered to the other party. Departments should include this evidence of delivery in the procurement file. The notice of suspension or

termination should state the effective date and period of the suspension or termination, reasons for the suspension or termination, any alleged breach or failure to perform, a reasonable period to correct any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the contractor during the notice period.

Departments are strongly encouraged to review any anticipated suspension or termination actions with legal staff and OSD prior to taking any action. Department legal staff may also contact the Attorney General's Office Trial Division if the planned termination or suspension involves potential litigation. This is especially important when a procuring department wants to suspend or terminate a contract used by other departments, since this action will have repercussions for more than just the procuring department. Also, legal staff and OSD may be able to suggest other solutions, such as mediation or contract negotiation, which may resolve the issues and forestall termination or suspension.

Departments should be aware that procurement file contents are generally subject to public disclosure under the public records law, and if litigation results from the action to terminate or suspend, the procurement file contents may also be subject to legal discovery. Therefore, notes, memos and documents concerning suspension or termination should accurately reflect the facts and circumstances of the department's actions.

There are three types of contract suspension or termination:

- Immediate suspension or termination
- Suspension or termination for cause
- Termination without cause

Departments should refer to the applicable Commonwealth Terms and Conditions to determine any specific standards for the timing and other procedural requirements regarding contract suspension or termination. It is important to note that there are specific differences between the two versions of the Commonwealth Terms and Conditions with regard to basis for termination, required notice period and obligations upon termination. Furthermore, the rights of the parties as expressed in the applicable Terms and Conditions are not exclusive, but are in addition to any other rights and privileges the parties may have under operation of law. Therefore, it is vital to contact department legal staff for assistance in this area.

Immediate Suspension or Termination

A contract may be suspended or terminated immediately upon receipt of written notice in certain limited circumstances, including unforeseen emergencies that require immediate department action or elimination or absence of funding.

A termination or suspension for an emergency is limited to a rare unforeseen public emergency which mandates immediate department action to address an acute public health or safety incident. This circumstance may arise due to a death, assault or injury to a Commonwealth client or employee in connection with a contractor's performance, or a public emergency (flood, fire, hurricane) having no connection with a contractor's performance. Departments should try to notify any contractor whose performance may be affected by an emergency. Depending upon the severity or duration of the emergency a department may either temporarily suspend performance or payments or may terminate the contract upon prior written notice to the contractor.

Although contract payments are "subject to appropriation" by the legislature and "allotment" by the Governor (M.G.L. c.29, s.27) a department may not escape contractual obligations through immediate contract termination (especially contracts for term leases, space leases, tax exempt lease purchase (TELP) or other long term commitments) unless the appropriation or allotment under the account funding the contract, or the specific language that authorizes the funding of that contract, is eliminated. However, if the available funding is eliminated for a contract, for any reason, the contractor must be notified in writing and the contract (or the underlying transaction under a statewide, OSD-designated statewide or multiple departmental

contract) shall be deemed suspended and the contractor shall not be entitled to compensation for any performance provided after the date of suspension. A department does not have the authority to negotiate this with a contractor nor may a department accept continued performance pending additional funding. On the other hand, a reduction in an operating account or a reversion of funds or other partial change is not viewed as sufficient grounds for immediate suspension or termination of a contract. When a department is faced with a reduction in available funding or a reversion of funds, the department's mandate is the primary priority, however, the department must honor the long term commitment if at all possible, or suffer the consequences of potentially severe termination penalties. If the available funding is not enough to cover all of the remaining contracts, the department has three options:

- Suspend a contract or portion of performance until available funding is received;
- Amend a contract to reduce the amount of allowable performance; or
- Terminate a contract with sufficient notice.

If a lack of available funding occurs, the department has no authority to request or authorize continued contract performance or to compensate the contractor for any performance provided during the period of the lapse in available funding. If available funding is pending, the department must suspend contract performance until the available funding is in place, at which time contract performance may continue. If available funding is not pending or imminent, and the department has no other legally available funding from another source, the department must either continue the suspension or terminate the contract. In the event the department receives available funding during the period of the original procurement, the department and the contractor may lift the suspension or execute a new contract for the remaining duration of the procurement.

Departments MUST immediately notify contractors and must work with appropriate budget staff whenever available funding for a contract may be in jeopardy.

☞ *For POS Only:* For contracts subject to the Commonwealth Terms and Conditions for Human and Social Services, the following specific bases for immediate termination exist:

- the absence of appropriation, allotment, or availability to the department to discharge its obligations under the contract in the fiscal year;
- a change in general or special law or regulation which prohibits or limits the department's authorization to spend available funds for the purpose of the contract;
- a party's default, breach or any intervening casualty which poses an immediate threat to the life, health or safety of a client.
- the indictment of the contractor or one of its principals or officers for an offense or offenses related to the provisions of services;
- fraudulent activities on the part of the contractor in its dealings with the Commonwealth; or the filing for bankruptcy by the contractor.

Suspension/Termination for Cause

If the contractor breaches any material term or condition of a contract, or fails to fulfill any material obligation required by a contract, a procuring department may terminate or suspend a contract for cause by providing the contractor with prior written notice.

Procuring departments should only use suspension or termination for breach when the department has clear documented proof of the breach or default and should contact OSD prior to exercising this option. Because many contracts may be utilized by more than one customer, all known customers must be notified of the intent to cease doing business with a contractor. Departments must be prepared to produce the level of documentation necessary to stand up in a court challenge, including affidavits from department personnel and documents that verify and support the allegations of breach or default supporting the suspension or termination. Suspension may be used to halt performance or to halt payments (reject or hold invoices with notice to the contractor) until the contractor corrects the breach or default.

The applicable Terms and Conditions and contract language will determine the parameters within which a department may terminate or suspend contract performance or payments for breach. As a result, a department should make every effort to clearly describe its expectations in its RFR and other contract documents. If the contract terms and conditions of performance are clear, complete and detailed, it will be equally clear when a breach or default has occurred. Performance measurements are also helpful in determining breach or default. If a department has clearly specified how performance will be judged and what the expected standard of performance will be, the contractor should be held to that standard. Oral agreements, amendments or conversations do not carry the weight of the written agreement and therefore should be formalized through the use of written amendments if performance is to be judged against them.

☞ *For POS Only:* A contract subject to the Commonwealth Terms and Conditions for Human and Social Services may also be terminated for cause, with a minimum of 45 calendar days notice, due to reduction of funds appropriated for contracts or when a statute or regulation which governs performance is changed, differently interpreted or adopted, thus significantly increasing the burden on either party in complying with the terms of the contract.

Termination Without Cause

Procuring departments may terminate a contract "without cause" whenever deemed appropriate by the department, upon prior notice to the contractor.

Termination without cause is also referred to as termination for convenience. Termination without cause enables a department to terminate a contract without penalty, without giving a reason. This method enables the department to terminate a contractor without having to prove a breach, a lack of available funding, an emergency, change of circumstances or any other reason.

Departments are cautioned to consider the basis for termination without cause. A department must be careful to avoid actions which could be found to constitute bad faith. Every contract has an implied covenant of good faith. Encouraging a contractor to incur costs in order to meet contract performance and then terminating without cause might give rise to a claim of bad faith.

Also, termination without cause will not relieve a department from compensating the contractor for performance provided and accepted by the department and costs incurred in accordance with the terms of the contract up to the effective date of the termination.

☞ *For POS Only:* Either party may terminate without cause with 60 days notice.

CHAPTER 6 ☞ *For POS Only:* AUDIT AND COMPLIANCE REQUIREMENTS

The Operational Services Division, as the responsible oversight entity, has established standard methods of complying with various federal and state requirements specifically for human and social services contracts and for private special education school programs provided pursuant to M.G.L. c.71B. This chapter highlights certain of these additional legal and contractual requirements. Please note, however, that the scope of this chapter is not intended to provide a complete description of all applicable legal or contractual rights and responsibilities. Additional information is available on the Internet at: www.state.ma.us/osd/pos/dps.htm. Departments and contractors should also refer to the following source material:

- Regulations: 801 CMR 21.00, Procurement of Commodities or Services, Including Human and Social Services 808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services; 815 CMR 3.00, Ready Payment System
- Contract Documents: Commonwealth Terms and Conditions for Human and Social Services, Standard Contract Form, RFR, contractor response, POS attachments
- Policy: This handbook and other interpretative materials
- Statutes: St. 1993 c.110, s.274, as amended by St. 1993, c.151, s.113, St. 1993, c.296, s.3 and St. 1993, c.495, s.99 and M.G.L. c.29, s.29B
- Massachusetts Constitution: Article 18, ss.2 and 3, commonly referred to as the "Anti-Aid Amendment" (these provisions limit payment to non-profit organizations for services purchased by the Commonwealth to reasonable and necessary costs of providing such services)
- Federal (if applicable): OMB Circulars, Catalog of Federal Domestic Assistance

GENERAL CONTRACTOR COMPLIANCE

The Commonwealth has an obligation to establish a strong system of accountability to ensure that public funds are well spent. In addition, the Commonwealth has a special responsibility to protect the interests of the consumers being served through its human and social service contracts and special education programs. Finally, the federal government, which funds a large portion of the state's human and social services contracts, has imposed particular spending restrictions and reporting requirements where federal funds are involved. This section briefly highlights important general provisions that are applicable to all human and social services contractors. Unless the language of a provision clearly indicates otherwise, when the term "contractor" is used, it also includes subcontractors and organizations providing special education services even if the organization does not have a service contract with a department under 801 CMR 21.00. Consistent with its contract management and monitoring responsibilities, departments should ensure that relevant staff are aware of the requirements described in this chapter and the source materials listed above.

OSD Regulation 808 CMR 1.00

Operational Services Division regulation 808 CMR 1.00, Compliance, Reporting and Auditing for Human and Social Services, is the primary regulation covering contract compliance, financial reporting and auditing requirements for contractors and subcontractors providing human and social services. These requirements are derived primarily from M.G.L. c.29 s.29B, applicable industry auditing and accounting standards set by the American Institute of Certified Public Accountants (AICPA), federal restrictions, the Internal Revenue Service (IRS) or other relevant sources. In addition, OSD issues policies, procedures, and forms to support and standardize how contractors and departments meet their responsibilities under this regulation. Departments and contractors should carefully review 808 CMR 1.00 in its entirety and any related policies, procedures and forms, as well as their contracts. Even if a department or OSD fails to initially identify violations of

808 CMR 1.00 through the contracting or auditing process, the contractor is not relieved of its responsibility to comply with its obligations under 808 CMR 1.00.

Please note, however, that there are limited instances when the standards imposed in 808 CMR 1.00 are not appropriate or reasonable for the specific circumstances. Therefore, on request of a department or a contractor, OSD has the authority to waive the applicability of one or more provisions of 808 CMR 1.00 (see 808 CMR 1.03(2)).

Commonwealth Terms and Conditions for Human and Social Services

The Commonwealth Terms and Conditions for Human and Social Services is the fundamental agreement underlying all human and social services contracts subject to OSD's authority. The Commonwealth Terms and Conditions for Human and Social Services sets forth general contractual terms that apply to all Commonwealth procurements for human and social services.

A contractor's Commonwealth Terms and Conditions for Human and Social Services must be recorded on the Vendor File, which the Office of the Comptroller (CTR) maintains as part of the Massachusetts Management Accounting and Reporting System (MMARS) in order for a contract or payment to be processed.

The Commonwealth Terms and Conditions for Human and Social Services takes effect upon execution by the contractor and applies to all human and social service contracts subsequently executed by the contractor and a department. The Commonwealth Terms and Conditions for Human and Social Services CANNOT be amended or altered.

In addition, unless already on file, the Commonwealth Terms and Conditions for Human and Social Services requires the attachment of a valid "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the contractor's correct Tax Identification Number (TIN), name and legal address information.

Note: A contractor who provides human and social services as well as other types of services (indirect or support services related to human and social services, and/or commercial, consulting, operational or certain entitlement services) must execute both versions of the Commonwealth Terms and Conditions. In either case, the execution of a Commonwealth Terms and Conditions document is a prerequisite to contracting but by itself is not an authorization from the Commonwealth to deliver any specific services.

Some provisions included in the Commonwealth Terms and Conditions for Human and Social Services to be aware of include:

- **Board of Director Standards.**

  The Commonwealth Terms and Conditions for Human and Social Services establishes requirements regarding board of directors of non-profit organizations contracting with the Commonwealth. The tone set by the board of directors in the form of the appropriateness of its actions, independence from management, interaction with its auditors, scrutiny of management activities, and stature and makeup of its members is the foundation for the internal controls needed to fulfill the board of director's responsibilities to its mission and the Commonwealth.

- **Client Care and Use of Funds.**

  The Commonwealth Terms and Conditions for Human and Social Services requires that contractors furnish their contracting department(s) with copies of all legally mandated reports of client abuse or neglect where the alleged abuse or neglect was a direct or indirect consequence of the services rendered under a human and social services contract.

  In addition, contractors must comply with all other requirements imposed by the contract itself with regard to checking Criminal Offender Record Information (CORI), use of client funds or resources, and any additional reporting requirements relative to client abuse and neglect.

Review and Audit of Contractors (the UFR)

The Commonwealth requires human and social services contractors and subcontractors to annually submit an independent audit (the Uniform Financial Statements and Independent Auditor's Report, the UFR). The purchase of service system utilizes a single audit approach through the UFR that is designed to meet the needs of all public, private and government report users (such as the United Way, lending institutions, state and federal agencies, the Attorney General's Division of Public Charities, private grant making organizations, bond rating organizations and government rate setting bodies) and to target areas of risk in the system. The UFR is described in more detail later in this chapter.

The data from contractor financial statements is collected in electronic form and provides the Commonwealth with basic industry financial statistics and indicators of contractor operating risk. The data can also be used by departments to review program specific financial results or by oversight bodies to identify "exceptions" which can then be targeted for post-audit or additional monitoring. This approach allows the Commonwealth to allocate an appropriate level of audit resources toward problem contractors while having reasonable assurances that the rest of the system is operating well.

Departments, contractors and subcontractors should be aware of the following audit related documents and procedures developed by OSD:

- Auditor's Compliance Supplement. This document is used in conjunction with the UFR to assist the contractor's auditor in determining areas of audit risk that need to be tested, the extent of the testing required and how to conduct the tests. This supplement is available on the Internet at: www.state.ma.us/osd/pos/dps.htm.

- Audit Resolution Policy. This policy establishes standards and procedures for the correction and elimination of deficiencies noted in UFR and various governmental audit reports. The policy delegates audit resolution responsibilities to the appropriate state departments who resolve identified deficiencies by executing administrative agreements with contractors. This policy is available on the Internet at: www.state.ma.us/osd/pos/dps.htm.

- Inter-Agency Agreement with State Auditor. This agreement has been established to provide for emergency audit services when needed.

Additional Federal Requirements

If any federal domestic assistance funds are furnished to a contractor by the Commonwealth, certain additional requirements concerning audits, cost principles, and contract administration requirements are applicable, as set forth in: **Office of Management and Budget (OMB) Circulars A-21, A-110, A-122, and A-133, or successor provisions thereto.** Further information about these circulars is available on the Internet at: www.whitehouse.gov/OMB. In addition to the general federal compliance requirements that are triggered, contractors may be responsible for grant specific requirements as outlined in the Catalog of Federal Domestic Assistance. Human and social services contracts that are wholly or partially federally funded are required to be identified with the relevant Catalog of Federal Domestic Assistance (CFDA) numbers. The Catalog of Federal Domestic Assistance is available by contacting the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-512-1800). Some of the key general federal compliance circulars are summarized below.

- Office of Management and Budget Circular A-110 - *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*

  This circular sets forth financial, program management and administrative requirements for federal funds. It also sets forth important standards for program performance and monitoring as part of the provisions concerning reports and records requirements, which are further discussed later in this chapter. OSD has also published an information sheet (A039-94) on this circular that is available on the Web site: www.state.ma.us/osd/ pos/dps.htm.

- Office of Management and Budget Circular A-122 - *Cost Principles for Non-Profit Organizations* (and *A-21 - Cost Principles for Educational Institutions)*

  This circular establishes principles for determining allowable and unallowable costs of grants, contracts, and other agreements with non-profit organizations that receive federal funds either directly from the federal government or as sub-recipients through the Commonwealth. It sets standards for allowability and reasonability of various cost items. Further, it requires that the allowability of costs be fully in keeping with Generally Accepted Accounting Principles. (Note: A-21 is the companion circular for colleges and universities.)

- Office of Management and Budget Circular A-133 - *Audits of States, Local Governments, and Non-Profit Organizations*

  This circular, revised June 30, 1997, requires states, local governments and non-profit organizations that are recipients or sub-recipients of federal funding and expend those funds above a certain threshold to produce a single audit. For contractors of human and social service programs, completion of the UFR is a starting point for meeting their single audit responsibilities under A-133. In addition, A-133 requires contractors to engage their auditor through competitive procurement in accordance with OMB Circular A-110, and to file and resolve audits as required by A-133 or by the Commonwealth. Additional guidance concerning single audit requirements is contained in the UFR instructions. Governmental entities, other than cities and towns of the Commonwealth, which contract with the Commonwealth to provide social service programs must file the appropriate single audit with OSD to meet the requirements of A-133. However, governmental entities are currently exempt from preparing some parts of the UFR. Cities and towns of the Commonwealth which contract with the state to provide social service programs will meet their filing requirements by submitting the appropriate single audit to the Department of Revenue (DOR).

Enforcement Tools: Penalties And Debarment

Departments have several regulatory tools to manage contractor compliance issues, including penalties and debarment. Contract penalties for failure to comply with important legal and contractual requirements and obligations are listed in 808 CMR 1.04(11). OSD is required to impose additional civil penalties for a contractor's failure to comply with the requirements on related party transactions, inventory of furnishings and equipment, and mortgage principal non-reimbursability.

Both the Commonwealth of Massachusetts and the federal government operate under legal provisions which allow for certain individuals or organizations to be excluded from doing business with government entities on the basis of poor contract performance, prior misdeeds, or criminal activity. The process which leads to this formal exclusion is called debarment under M.G.L. c.29, s.29F. Under federal oversight standards (48 Code of Federal Regulations c.1 subpart 9.4) and under Massachusetts law, departments are required to determine that the contractor has not been debarred under state or federal law prior to entering into a contractual relationship. See also Step 7 in Chapter 3.

REGULATORY AND CONTRACTUAL REIMBURSEMENT LIMITATIONS

When the Commonwealth enters into a contractual relationship with a contractor for the delivery of human and social services, that relationship is subject to a host of contractual and regulatory provisions. Many of these provisions have been established in response to the need of the Commonwealth and the federal government to ensure that public funds are spent in an accountable and efficient manner and that individuals in public programs are well served.

These standards strive to ensure that emphasis is placed upon the need to effectively attain desired client outcomes in the most efficient and economical way possible.

Pricing Limitations

The Commonwealth has established regulatory provisions, 808 CMR 1.03(4) and (5), to ensure that it receives quality services at the lowest available cost possible to the taxpayers of the Commonwealth. The Commonwealth only pays for services after it has been demonstrated that the client or other payers are unable to bear the expense of the needed services. The Commonwealth accomplishes this through three provisions:

- **Price Limit.** Payment is limited to the lowest fee charged to all other payers or to the general public.

- **Reimbursement as Full Payment.** Payment and obligations for services provided is limited to the contractually agreed upon authorized price between the contractor and one or more departments. Contractors may not "balance bill" a client for services.

- **Off-set of Duplicate or Supplemental Resources.** The regulatory language in 808 CMR 1.03(5) is intended to ensure that the Commonwealth only pays for its share of services and does not subsidize other purchasers. It prohibits duplicate payments or supplemental payments from other purchasers. "Off-set" is the term used to describe revenue sources which are applied to reduce the Commonwealth's costs. Off-sets may be required to defray program costs by the department, OSD regulation, the federal government or another revenue source. Off-sets may also be volunteered by the contractor.

808 CMR 1.03(5) also stipulates that any client resources or third party payments made on behalf of a client (covered by the contract), that are not expressly recognized or anticipated in the computation of the price, must go to reduce the amount of the department's obligation for services provided to that client. Therefore, contractors and departments should make every effort to anticipate and incorporate into the authorized price any alternative resources such as client fees and third party reimbursements.

If additional revenues for contracted services are received, such as client fees and third party reimbursements, even if they were not anticipated in the authorized price, contractors must proportionately adjust billings to the Commonwealth or amend the contract for these services. In many cases, the department will be able to increase the number of units purchased under the contract as a result of the increased availability of other sources of revenue.

Any additional or departmental specific expectations regarding compliance with the pricing limitations should be described in the RFR and documented in any executed contracts. If a Commonwealth contract or program (including special education programs) is supported with federal financial assistance, all other sources of support and revenue except charitable contributions and matching income are generally considered program income pursuant to OMB Circular A-110. These sources must be used as off-sets to reduce the cost to the federal government for its share of the program.

Also, if a contractor's proposed cost or price includes non-reimbursable expenses as defined in 808 CMR 1.05, voluntarily designated off-setting revenue that has not been committed to defray reimbursable costs must be used to cover those non-reimbursable costs. However, if a Commonwealth contract or program (including special education programs) is supported with federal financial assistance, only charitable contributions may be used to off-set non-reimbursable costs. In these cases, off-setting revenue should be itemized and reconciled with the amount of non-reimbursable expenses.

Limits on Earnings or Surpluses

OSD has established policies for limiting a contractor's earnings or surpluses from contracts.

- **For Profit Earnings/Commercial Fee.**
  For-profit contractors who provide human and social services to the Commonwealth may earn a commercial fee on their contracts. However, this fee must be negotiated and agreed upon by the department and the contractor at the time of procurement and contract execution, even if it is anticipated to be zero.

In determining a reasonable fee, departments may want to consider comparable industry standards for earnings allowances and the standards for surpluses that non-profit contractors can retain. As articulated in 808 CMR 1.03(6), a commercial fee is considered a discretionary earnings allowance which is in excess of the actual costs for the services being procured.

- **Non-Profit Surplus Revenue Retention.**
  Non-profit contractors may also be able to produce revenues in excess of the originally proposed cost or price for services rendered under a contract by implementing cost-saving initiatives that do not interfere with achieving the program and contract requirements. In those cases, contractors may retain some or all of the surplus generated, as specified in the 808 CMR 1.03(7) and the OSD policy on surplus revenue retention.

Non-Reimbursable Costs

State and federal law impose limitations on how program funds may be spent by human and social services contractors and subcontractors, which are enumerated in 808 CMR 1.02 (definition of "Reimbursable Operating Costs") and 808 CMR 1.05 ("Non-Reimbursable Costs"). In essence, the Commonwealth and federal government intend to pay no more than the necessary, reasonable cost for providing services. In addition, 808 CMR 1.05 specifically identifies certain costs which have been determined not reasonable because they are excessive or not ordinarily necessary for the operation of organizations providing human and social services or because they were not established in accordance with such factors as sound business practices, arm's length bargaining, generally accepted accounting principles, terms and conditions of the contract, or state and federal laws. Many costs could meet multiple criteria for being non-reimbursable. For instance, if certain depreciation costs were not computed over enough years (and therefore not according to GAAP and Internal Revenue Service requirements) they would be considered unreasonable. In addition, the excess portion of this inappropriately calculated depreciation would be considered a non-program expense because it is not directly related to the expenses associated with the current contract but instead is related to a program or service that may or may not be purchased by the Commonwealth in the future.

Other non-reimbursable provisions, such as salaries of officers and managers and mortgage principal have been imposed by the legislature or by other policy memoranda to respond to concerns about the use of Commonwealth funds. Review the provisions of 808 CMR 1.02 and 1.05 for further guidance on determining reasonable operating costs and understanding the non-reimbursable provisions.

Cost Standards for Transfers of Program Ownership

In cases where the ownership of Commonwealth funded programs or their assets are transferred by sale from one contractor to another, the Commonwealth needs assurance that any contract price adjustments resulting from the transfer are justified. In addition, the Commonwealth needs assurance that the transfer of program ownership or its assets is in fact a genuine transfer of ownership and not simply a method of financing or a vehicle for increasing the cost paid by the Commonwealth for use of the transferred assets by either party.

808 CMR 1.05(17) sets standards for determining when and which costs associated with a transfer of ownership are non-reimbursable. OSD has developed guidelines to apply this regulatory provision so it has assurance that an actual transfer of ownership took place and that no non-reimbursable costs are included in the contract price. Please note that this section only addresses costs associated with a transfer that the Commonwealth will consider reimbursable. Requirements for assigning or otherwise transferring Commonwealth contracts are contained in the Commonwealth Terms and Conditions for Human and Social Services and in the appendix (see Guidelines on Material Changes in a Contractor's Identity).

Recognizing a Transfer of Ownership:

A sale and transfer of ownership is recognized when:

- The sale of the program or its assets has not occurred between related parties.

- The sale of the program or its assets has been made for reasonable compensation as defined by reimbursable operating costs in 808 CMR 1.02.
- The sale of the program or its assets is a genuine transfer of ownership with free title to all powers and rights of ownership of the program or its assets.
- The sale of the program or its assets has been made for the purpose of selling the assets and transferring title of ownership of the program or its assets. It is not intended to finance or refinance a loan to increase the cost to be paid by the Commonwealth. Costs which are not reimbursable operating costs, such as goodwill, may not be included in the sale.
- The agreement has been designed to bring about a complete transfer of ownership of the program or its assets and there has been complete compliance with the terms of the finance or loan agreement (if this transfer is a finance or loan agreement between the seller and the buyer to facilitate the sale).

OSD and/or the department reserves the right to evaluate the relationship between the seller and buyer, and to monitor compliance with the agreement to assure that a complete transfer of program ownership has occurred.

What is Reimbursable? When the Commonwealth recognizes a sale and transfer of program ownership on or before the date the assets are fully depreciated in accordance with OSD service lives (see "Schedule of Asset Service Lives" which follows), the costs paid for the use of the assets by the Commonwealth **must** not exceed the following:

- Land: The lower of (1) the acquisition cost, or (2) the basis allowed the immediate prior owner (land is a non-depreciated asset; therefore, the Schedule of Asset Lives is not applicable);

- Furnishings, fixtures and equipment: The lower of (1) the acquisition cost, or (2) the reimbursable basis allowed the immediate prior owner minus the amount of accumulated depreciation that was taken (or principal payments in lieu of depreciation);

- Buildings: The lower of (1) the acquisition cost, (2) the most recent property valuation assessed by local taxing authorities at 100% valuation minus the amount of reimbursable accumulated depreciation (or principal payments in lieu of depreciation) allowed to the immediate prior owner, or (3) an independent appraisal made by a qualified appraiser.

  For purposes of this section, appraisals using the income approach to establish value will not be recognized.

In all transfers where the amount of actual depreciation (or principal payments in lieu of depreciation) reimbursed to the immediate prior owner is not known, the new owner shall have the burden of demonstrating the amount. Otherwise, the amount will be calculated by the procuring department or OSD using the best available information.

When a sale and transfer of program ownership meets the criteria above, interest expense to finance the transfer shall be allowed in accordance with the financing agreement. These expenses are also subject to the following limitations:

1) The principal upon which interest expense is calculated must not exceed the allowable basis of fixed assets or as defined in 808 CMR 1.05(17).
2) The rate used to calculate allowable interest expense must not exceed the prime rate plus one percent at the time of sale, as published in *The Wall Street Journal*.

Price Adjustments:

The department or OSD may adjust the authorized price to include those costs meeting the transfer of ownership requirements and exclude the prior owner's costs which are superseded by the new costs included in the authorized price. The effective date of the adjusted price shall be the date when the transfer of program ownership occurs, subject to the review and approval of the department.

Schedule of Asset Service Lives/Depreciation

There are capitalization and depreciation requirements for human and social services contractors. The financial statements and unaudited schedules of the UFR and the contractor's records must segregate, capitalize and depreciate those assets in Commonwealth-funded programs which are material, have a useful life of more than one year, and a cost exceeding the capitalization level established by the contractor for financial statement purposes.

An asset should be capitalized if it is expected that it will be useful for more than the current period (typically a one year period). For non-profit organizations, the Financial Accounting Standards Board (FASB) Concepts Statement No. 6 indicates that capital assets are assets used for the operating purposes of the organization over long periods of time in order to produce scarce goods or services that have the capacity to satisfy human wants and needs.

For a commercial organization, this statement defines capital assets as assets purchased by a for-profit company for production of services or goods rather than resale.

However, for some items subject to loss or excessive usage or having relatively low value in relation to other assets of the organization (e.g., portable tools), the decision to capitalize may be less obvious. In these instances, a contractor should set up rules to define capitalization criteria.

One expedient guideline for many companies is the amount of the expenditure. For instance, for some organizations assets costing less than $500 for each item (or in aggregate), while for others assets costing less than $800 may be considered immaterial and may be expensed. Those items with an acquisition cost greater than $500 (or $800) may be capitalized. Assets that are capitalized then need to be depreciated in accordance with generally accepted accounting principles.

The American Institute of Certified Public Accountants (AICPA) defines depreciation as a system of accounting which aims to distribute the cost or other basic value of tangible capital assets (less salvage, if any) over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation. Depreciation for the year is the portion of the total charge under such a system that is allocated to the year.

The OSD Schedule of Asset Service Lives utilizes either the useful life contained in the Modified Accelerated Cost Recovery System (MACRS) of the Internal Revenue Service or a shorter useful life. The MACRS depreciation periods have been designed for depreciating assets used in offices, manufacturing, nonresidential real property, residential rental property and low-income housing.

The MACRS depreciation periods are recognized by members of academia, federal income tax guides and tax services, publications by prominent members of the AICPA and higher education accounting text books as having lower depreciation recovery periods (i.e., shorter) than actual useful lives. In addition, MACRS depreciation tables are frequently used to estimate useful lives when computing depreciation disclosed in GAAP financial statements.

Pursuant to 808 CMR 1.00, OSD has issued the following Schedule of Asset Service Lives to specify the depreciable life that is used to determine the amount of allowable depreciation expense for the asset categories listed. This listing is not exhaustive. The service lives of assets not properly includable within any of the following categories shall be determined in accordance with OSD guidelines. Please contact the OSD Audit Bureau in these circumstances.

Note: Capital items purchased via a capital budget (either by the department or by the contractor) for use by a human and social services contractor are capitalized and depreciated by the contractor but are non-reimbursable. However, the contractor must record the free use of or benefit received from the asset in its UFR and must maintain the appropriate inventory records (see 808 CMR 1.04 (5)). Please see the Purchase of Service Capital Items Procurement Policy in the appendix.

Schedule of Asset Service Lives

ASSET CATEGORY	YEARS OF LIFE	YEARLY RATE
Buildings: Type 1 - Fireproof construction Type 2 - Non-combustible construction (as classified by the State Board of Building Regulations and Standards in accordance with 780 CMR 400.00) Type 3 - External masonry wall construction Type 4 - frame construction (as classified by the State Board of Building Regulations and Standards in accordance with 780 CMR 400.00)	40 27.5	2.5% 3.6%
Building/improvements	20	5%
Leasehold improvements	5 (or term of lease, whichever is greater)	20%
Equipment	10	10%
Computer equipment	3	33.33%
Other office and other program equipment: Items such as copiers, ovens, washers, dryers, office files and capitalized office and program supplies.	5	20%
Life safety improvements: Building or leasehold improvements or equipment acquisitions made solely to satisfy the requirements of any department regarding life safety or physical environment. Purpose must be documented.	5	20%
Motor vehicles	5	20%
Used motor vehicles	3	33.33%
Residential furnishings	3	33.33%
Office furnishings	7	14.2%

The contractor may request OSD to make an exception in the calculation of allowable depreciation in circumstances where the useful life employed by the contractor differs from the above schedule (due to greater or lesser consumption). The request must be substantiated by adequate documentation.

RECORD KEEPING REQUIREMENTS

The record keeping systems employed by contractors and subcontractors participating in the purchase of service system must adequately document contractor activities and meet financial and program reporting requirements. OSD has established record keeping requirements which are consistent with relevant industry standards as specified by Generally Accepted Accounting Principles (GAAP). Failure to maintain adequate documentation upon inspection or audit may result in certain penalties, as listed in 808 CMR 1.04(11).

Financial Records

808 CMR 1.00 (see particularly section 1.04(1)), the Commonwealth Terms and Conditions for Human and Social Services and federal OMB Circular A-122, if applicable, outline the minimum record keeping standards for contractors and subcontractors, including retention of records for seven years. These standards require the use of GAAP for the establishment and maintenance of certain financial and program records.

Financial activities should be recorded and summarized in a manner that clearly and fully reveals the sources and amounts of support, revenue, and the type and extent of expenditures. The accounting and program record keeping system should also identify the benefits accruing to clients or consumers of the services.

Personnel and Payroll Records

Personnel records must be sufficient to meet all state and federal employment, wage and labor standards, GAAP internal control needs and industry reporting requirements. The personnel and payroll records maintained by the contractor and subcontractor must also adequately and clearly document all staff time directly charged or allocated to state or federally funded contracts.

To meet the above standard, most contractors will need to maintain resumes, job applications, statements of job descriptions and responsibilities, statement of job qualifications, payroll records, and time and attendance records or effort reports in keeping with the documentary requirements of the Fair Labor Standards Act of 1938 as amended, M.G.L. Chapter 151 and OMB Circular A-122 or OMB Circular A-21.

Inventory Records

Any contractor in possession of furnishings and equipment to which the Commonwealth has title must maintain a written inventory of the property in such form as prescribed by 808 CMR 1.04(5). This inventory shall contain the sources of funding, description and location of each item, as well as any other information required by the department.

Client Records

Client records must be maintained as specified by the department and pursuant to the confidentiality, access and maintenance provisions of M.G.L. c.66A. In addition, inspection or review of client records must be made available to persons employed, engaged or authorized by the federal government with specific responsibilities for oversight as well as a number of Executive department and other oversight authorities including the secretariat, the department, OSD, the Office of the State Auditor, or the contractor (if services are subcontracted), including independent public accountants engaged by the contractor.

These entities may review records to: (a) determine federal reimbursement to departments for funds provided to the contractor, (b) assure that services are being furnished, (c) evaluate quality and effectiveness of services, (d) monitor maintenance of client files, (e) monitor record keeping, client eligibility and service delivery standards and/or (f) collect data to plan or assess systems of service delivery.

REPORTING REQUIREMENTS

Uniform Financial Statements and Independent Auditor's Report (UFR)

The POS system utilizes a uniform financial reporting system that has been codified by OSD as the Uniform Financial Statements and Independent Auditor's Report (UFR). The UFR replaced many of the multiple financial reports that contractors had previously been required to submit annually to state and other authorities or funding sources, including the Attorney General's Public Charities Division, certain Bureaus of the Division of Health Care Finance and Policy, certain chapters of the United Way of America, and most federal departments. The extensive use of the UFR by these organizations and other report users has made the UFR the primary set of financial statements for contractors and subcontractors, thereby eliminating the need for separate financial statements or reports.

This system has been designed to meet the Commonwealth's need for fiscal accountability and to provide report users with current, reliable information regarding contractors' financial status and the results of operations. The UFR is audited independently by the contractor's independent auditor. It contains a single uniform chart of accounts which insures that the contractor, the state, and other funding sources and oversight authorities have the basic necessary information about a contractor's operations.

The report also includes the auditor's opinions about the adequacy of internal controls and compliance with laws and regulations, in keeping with the requirements of Generally Accepted Government Auditing Standards (GAGAS).

The UFR is required to be prepared in accordance with Generally Accepted Accounting Principles (GAAP) as applied to non-profit voluntary health and welfare organizations and is audited in accordance with Generally Accepted Auditing Standards (GAAS). The UFR format conforms to the accounting principles and audit standards promulgated by the American Institute of Certified Public Accountants (AICPA) in its "Audit and Accounting Guide for Not-for-Profit Organizations." For-profit organizations must prepare their own basic financial statements in accordance with relevant industry standards.

The UFR or alternate format financial statements are subject to audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), which incorporates the auditing standards noted above. Additional benefits of GAGAS include requirements for disclosure of audit findings, resolution and follow-up on deficiencies, continuing education requirements for the auditor, and internal and external quality control requirements for the report and auditor. These additional elements of GAGAS have permitted the Commonwealth to utilize the UFR as a starting point for meeting its federal financial assistance sub-recipient single audit responsibilities under OMB Circular A-133.

In addition to the basic financial statements, four unaudited supplemental schedules detailing program revenues, expenses, and performance statistics accommodate pricing, data collection, and federal reporting needs.

The contractor must file its UFR annually with OSD's Bureau of Audit. Contractor organizations that are generally subject to the UFR filing requirements (pursuant to St. 1993, c.110, s.274, as amended, or any successor provision) include every legal entity which owns or operates one or more programs of human and social services.

There are notable exceptions and exemptions from this filing requirement, which are published by OSD as part of its annual information package. OSD regulation 808 CMR 1.04(11) also includes certain penalties for failure to file the UFR as required.

Related Party Disclosure

Generally speaking, all transactions and events reported in financial statements are presumed to be completed on an "arm's length" basis. When related party transactions exist, this presumption of an arm's length relationship no longer applies and the contractor needs to identify such transactions to avoid misleading report users. St. 1993, c.110, s.274, as amended and

808 CMR 1.04(4) require that related party transactions be reported in writing to OSD and the department(s) prior to execution. Notification of a related party transaction may occur:

a) in an RFR response submission

b) during contract negotiations

c) through risk management reporting procedures established pursuant to 808 CMR 1.04(3) and/or

d) in notes to the financial statements of the UFR.

OSD has adopted the definition for related party (808 CMR 1.02) as set forth in Statement of Financial Accounting Standards No. 57 (FASB 57) of the Financial Accounting Standards Board (FASB). Participants in the purchase of service system are encouraged to consult the full text of the original FASB 57 and section R36 of the current text of the accounting standards published by FASB to gain a full understanding of the various considerations that **must** be applied when determining if a related party condition exists. To assist in understanding and applying the FASB 57 definition for all reimbursement and disclosure requirements associated with 808 CMR 1.00, this section reiterates some FASB information and includes relevant examples developed by OSD *(in italics*).

FASB 57 Related Party Definitional Guidance and *OSD Comment/Examples*:

Related parties are affiliates of the enterprise, entities for which investments are accounted for by the equity method by the enterprise, trusts for the benefit of employees (e.g., pension and profit-sharing trusts that are managed by or under the trusteeship of management or principal owners of the enterprise) and members of the immediate families of principal owners of the enterprise. All of the above are related parties if they control or can significantly influence the management or operating policies of the organization to an extent that the organization could be prevented from fully pursuing its own interests.

An example of this influence is when a person or organization who is associated with the reporting contractor engages in a joint program or business venture directly or indirectly in which the contractor or other person or organization receives direct or indirect financial benefits.

a) Affiliate. A party that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control of an enterprise.

   A company is under common control with the contractor through common ownership or management, even though no transaction occurred, if the common control could have a material impact on the financial statements of the reporting contractor. "Common ownership" exists if there is direct or indirect ownership of ten percent or more in voting interest or ten percent of the financial interest in the capital assets or profits of any organization.

b) Control. The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

c) Immediate family. Family members whom a principal owner or a member of management might control or influence or by whom they might be controlled or influenced because of the family relationship.

   The following family members are generally considered able to exert control or influence or be controlled or influenced: a parent, child, brother, sister (whether by whole or half-blood), spouse, adopted child, adoptive parent, stepparent, stepchild, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, grandparent or grandchild.

d) Management. Persons who are responsible for achieving the objectives of the enterprise and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, the chief executive officer, the chief operating officer, vice presidents in charge of principal business functions (such as sales, administration, or finance), and

other persons who perform similar policy-making functions. Persons without formal titles also may be members of management.

Generally, management of a social service program will include program directors and program managers.

e) Principal owners. Owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise.

Or of more than 10% of the financial interest in the capital assets or profits of an organization.

The Operational Services Division incorporates all of the requirements and interpretations embodied in FASB 57 into its related party policy. Further, OSD has identified a number of examples in the human and social service purchasing context which would satisfy at least one related party definition of FASB 57.

Without limiting the scope of the definition, the following are considered by OSD to be related parties:

- *Another organization that does business with the contractor if:*

  a) The contractor has a manager with a family relationship to the management or board of the other organization.

  b) The contractor has a board member who is related to a manager of the other organization.

  c) The contractor has a board member who is also a board member of the other organization.

- *A real estate holding company that holds real estate primarily for the contractor or owns all or a significant portion of the contractor's program sites.*

- *Another organization which is in "competition" with the contractor organization where a contractor member of the board or an owner is a member of the board or an owner of the other organization.*

- *Another organization that does business solely with the reporting contractor or the contractor's related parties.*

FASB 57 Guidance Concerning Transactions:

Transactions between related parties commonly occur in the normal course of business. Some examples of common types of transactions are: sales, purchases and transfers of realty and personal property, services received or furnished (accounting, management, engineering, and legal services), use of property and equipment by lease or otherwise, borrowings and lending, guarantees, maintenance of bank balances as compensating balances for the benefit of another, inter-company billings based on allocations of common costs and filings of consolidated tax returns. Transactions between related parties are considered to be related party transactions even though they may not be given accounting recognition. For example, an enterprise may receive services from a related party without charge and not record receipt of the services.

OSD Related Party Disclosure Standards:

The following disclosures are required for all material related party transactions:

- Nature of related party relationship;

- The receivables or payables associated with related party transactions for each date that a balance sheet is presented, and, if not clearly determinable, the conditions and methods of settlement;

- For each period that an income statement is presented, the following is required:
  (1) A description of the transactions and other necessary information needed for an understanding of the impact of the transactions, and
  (2) Dollar amounts assigned to the transactions and their impact, if different from prior periods.

Note: If two or more companies are under common control via ownership or management, the disclosures above are required if this common control could have a material impact on the financial statements of the reporting contractor, even if there have been no financial transactions.

All related party disclosures must be made in accordance with the principles set forth in 808 CMR 1.00 and the AICPA Financial Accounting Standards Board FASB No. 57. There are also important restrictions placed upon the allowability of costs associated with related party transactions. These restrictions are set forth in OSD regulation 808 CMR 1.05(8).

Other Reporting Requirements

In addition to reporting requirements outlined above (annual audit and related party transaction disclosures), human and social service contractors are generally subject to reporting requirements established or coordinated through two other sources:

- The contract itself, which outlines programmatic and other contract specific reporting requirements, and

- Secretariat established procedures related to contractor qualification and risk management. This may include a requirement for the contractor to file the UFR annually with a designated department. Contractors that are subject to the UFR filing requirements at OSD may not submit alternate sets of financial statements for such purposes.

CHAPTER 7 QUALITY ASSURANCE

INTRODUCTION

The Quality Assurance Program is a key component of the procurement system under 801 CMR 21.00. The program has been designed and implemented by members of the Operational Services Division (OSD) and the Office of the Comptroller (CTR). This unique collaboration has created a solid partnership at the oversight level that extends to purchasing departments. The benefits include a coordinated effort and streamlined process for communicating with departments on purchasing and contracting issues. It also provides the base for comprehensive monitoring and a technical assistance network for departments, thus ensuring continued compliance with 801 CMR 21.00. The implementation of this comprehensive Quality Assurance Program enables the Commonwealth to efficiently oversee procuring and fiscal activities while acknowledging good practices.

Rather than duplicate the post audit role already conducted by the Single State Audit and the State Auditor's Office, the role of the Quality Assurance team is that of facilitator. The Quality Assurance team strives to assist departments in all aspects of the procurement process through the review and discussion of procurement files, as well as the provision of recommendations, including the need for training, where appropriate.

The Quality Assurance Program has been developed with the philosophy that procurement and fiscal activities work as a coordinated system, rather than separate exclusive components. This chapter describes the Quality Assurance Program, routine reviews, delegation and training, all of which support the concept of a coordinated system.

PURPOSE

The purpose of the Quality Assurance Program is to assist departments in achieving and maintaining compliance with 801 CMR 21.00 and the accompanying guidelines detailed in this handbook. While assisting departments in applying these purchasing guidelines to their individual organizational structures to fit their unique purchasing needs, the team is able to identify and resolve common areas of concern.

A clear understanding and appropriate application by all participants to the procurement principles and guidelines serves as a foundation and a measure of success of the entire system. The Quality Assurance review is a vital tool used in monitoring the procurement process and serves as the context in which to take decisive action to remedy problems.

ROUTINE REVIEWS

The Quality Assurance team conducts routine reviews with departments throughout the year. The reviews assess the departments' compliance with procurement and fiscal requirements. The reviews identify specific departmental needs as well as statewide issues needing clarification. The information is analyzed to determine if delegation increases are appropriate, improvements are necessary, or if statewide training is needed. Using the assessment as a starting point, the team assists departments in developing a realistic plan to improve procurement and contracting practices, if necessary. The reviews are conducted in several ways depending on their purpose. Some reviews are conducted on-site at the purchasing department while others can be accomplished without a visit.

On-site reviews are conducted when there is a need to meet with several department staff at the same time to present information or discuss issues that may need immediate action. An on-site visit may also be scheduled to review files located at the department to assess the department's compliance with their delegated authority. Debriefings are usually conducted at

the oversight department. These meetings are designed to facilitate a "give and take" discussion between the oversight departments and the purchasing departments. Internal reviews are those reviews which do not involve a visit to the department. They are performed using information available to the Quality Assurance team. These reviews provide a baseline about how departments conduct procurement and fiscal activities. Memorandums, e-mail and telephone conversations are appropriate in instances when scheduling, clarification, or reminders are needed and can be effectively communicated to one or two people.

The type and frequency of contact varies by department and is determined jointly by the Quality Assurance team and the department. The type of contact also depends on the issue(s). Departments requiring significant assistance may set up regular meetings in order to maximize the benefits of the assistance. Other departments may be contacted by the Quality Assurance team less frequently, i.e., once a year to acknowledge improvement in a specific area.

Departments may request a Quality Assurance review at any time. It is recommended that a review be requested when a department can demonstrate improved practices that resolve issues previously identified by the Quality Assurance team thus ensuring that the risk for the Commonwealth has been reduced. A new review may also result in increased delegation authority.

Areas that the Quality Assurance team consider and may address in a review include:

- RFR components
- Financial review
- Comm-PASS closure and compliance with policies
- Bill payment performance
- Incidental purchase practices
- Use of statewide contracts
- Participation in training and PMTs
- Number and type of audit findings
- Internal control practices review
- Prior year deficiencies
- CFO training

The above categories may be expanded to include other fiscal, contractual or procurement activities.

Documentation of the results reside in the OSD Quality Assurance file. The results are shared with department heads and Chief Fiscal Officers. Once a Quality Assurance review has been completed, the team recommends granting additional delegation or identifies areas that need to be addressed prior to the granting of delegation.

DELEGATION

Delegation provides departments with the ability to do their purchasing quickly and with greater flexibility. Departments exhibiting the skills and abilities of high performance, which indicates low risk to the Commonwealth, are granted increased delegation. This privilege is granted to departments that consistently meet or exceed performance standards defined by the Quality Assurance team. Conversely, departments that do not adhere to the regulations, policies and procedures risk having their delegation rescinded. Rescission may require extensive involvement with both oversight departments for an extended period of time, creating additional steps for those procuring departments prior to purchasing.

The Quality Assurance team continues to conduct reviews of departments' procurement and fiscal practices and procedures. Reassessment of the delegation levels is an on-going quality assurance process.

Delegation is reflected in increased authority in three distinct areas:

- *Incidental purchasing*
- *Credit card use*
- *Encumbering*

The following matrix displays the correlation between department performance, risk and the resulting delegation authority in the above three areas. In essence, the Quality Assurance team has determined that adherence to regulation, policies and procedures has a direct affect on the level of risk to the Commonwealth's use of purchasing funds. As such, adherence implies lower risk. Therefore, departments whose practices have been determined to cause a low risk may be granted increased delegation levels.

Quality Assurance Performance Review	***Incidental Purchase Limit***	***Credit Card***	***Encumbrance Delegation***
High Performance/Low Risk	Highest Available	Yes	Highest Available
Medium Performance/Medium Risk	Mid-point between high/low	Yes	Mid-point Between High/Low
Low Performance/ High Risk	Minimal Amount	No	No

Incidental Purchase Limit:
Increases to a department's incidental purchasing limit permits departments to purchase small dollar items quickly, without excessive administrative time or paperwork. This provides more responsibility and control to departments with good business practices. For additional information about incidental purchases, please see the transaction and threshold matrices in Chapter 1 as well as the incidental purchase procurement exception in Chapter 2. The appendices also contain the *Incidental Purchasing Quick Reference Guide*. This document, complete with several examples, can be used to help determine, in a systematic manner, whether a purchase qualifies as incidental. The appendix also contains an accompanying chart entitled *Object Code Limits for Incidental Purchases*, which lists the object codes governed by 801 CMR 21.00 and their incidental purchase limit. The object code limits may also be viewed on MMARS table OBJ2.

Credit Card:
Eligibility to participate in the Commonwealth's credit card program also provides departments with increased flexibility in their purchasing methods, not to mention a reduction in paperwork. Once a department is deemed eligible for credit card usage by the Quality Assurance team, representatives must attend an informative training, conducted by the Office of the Comptroller, which provides guidance on creating internal controls for credit card use.

Encumbrance Delegation:
Increases to a department's encumbrance delegation allow departments to process MMARS transactions directly to a done status, thus increasing a department's decision making authority by granting it control over the approval process. This saves time while providing additional flexibility. An increase to the encumbrance delegation can *significantly* assist departments in expediting procurement transaction processing.

CHIEF FISCAL OFFICER TRAINING

Prior to a department's acceptance and usage of increased delegation, the Chief Fiscal Officer (CFO) is required to attend appropriate training as specified by the Quality Assurance team.

The training provides the CFO with basic information regarding procurement and delegation responsibilities. Departments may chose to have other procurement staff attend this training, as well. CFOs who are required to attend a Delegation Information Session prior to being granted increased delegation will be notified of the registration process.

DELEGATION TRANSACTION CERTIFICATION FORM

Once the CFO has attended the appropriate training, the CFO and department head sign the *Delegation Transaction Certification Form* prior to receiving the delegation. By signing this form the department head and Chief Fiscal Officer are accepting the responsibility and accountability for performing all procurements in accordance with applicable laws, regulations, policies and procedures. They further agree to assume all recordkeeping and archiving responsibilities for transactions within their delegation authority. The executed *Delegation Transaction Certification Form* is submitted to the Office of the Comptroller for verification and processing. The department CFO will be notified when the MMARS system has been updated to reflect the new delegation status.

SUMMARY

The Quality Assurance team works closely with the OSD Procurement Team Leaders and the training units of both OSD and CTR to provide a comprehensive support and technical assistance network. These components, as well as the continuous monitoring of department practices, enable oversight departments and purchasing departments to achieve and maintain good procurement and contracting practices.

Additional information and resources may be viewed on the OSD Quality Assurance web page at: www.osd.state.ma.us/qa. Departments are encouraged to contact OSD or CTR to share knowledge and information, communicate concerns, receive advice and counsel on procurement and contract issues, request training or offer advice. The continuing success of the procurement system relies on communication and cooperative exchange.

CHAPTER 8 COMM-PASS (www.comm-pass.com)

This chapter provides an overview of Comm-PASS, the Commonwealth Procurement Access and Solicitation System. Comm-PASS is an Internet based tool that provides instant access to all active solicitations and contract information. In addition to allowing prospective bidders to view and download Request for Response (RFR) documents and information related to contracts, it is also a rich resource for Commonwealth employees to:

- Identify and use contractors on statewide contracts.
- Identify and use businesses under contract with other departments.
- Quickly develop resource listings of businesses that supply commodities and services.
- Access existing RFRs and customize them to meet their needs.
- Refer bidders to on-line information in response to requests for information.

All large procurements (over $50,000) must be posted on Comm-PASS. Any other procurements are encouraged to be posted on Comm-PASS as well. Solicitation and contract information is posted directly to Comm-PASS by purchasing entities or, in certain circumstances, sent to OSD for posting. Comm-PASS Internal View Certification training is designed to teach individuals to upload, amend, review and maintain their own procurement files on Comm-PASS.

WHAT COMM-PASS ADVERTISES

As part of the Commonwealth's ongoing effort to improve access to procurement information, purchasing entities use Comm-PASS to advertise procurement opportunities to a broad-based audience. Comm-PASS offers solicitation and contract information for commodities and services from hundreds of purchasing entities, representing billions of dollars in business opportunities. Anyone may view, download and/or print purchasing information in order to develop a response. Comm-PASS includes:

- Large procurements (over $50,000)
- Many solicitations with a value of $50,000 and under (at the purchasing entity's discretion)
- A Business Registry database (for businesses to market their commodities and services)
- Access to information on active statewide contracts
- Announcements of contract awards
- All information needed to become a contractor with the Commonwealth
- Access to Commonwealth procurement regulations
- Answers to Frequently Asked Questions (FAQs)
- "Hot links" to other governments' procurement web sites
- Special announcements

WHO COMM-PASS SERVES

1. The general public
2. Businesses: large, small, minority and women owned businesses
3. State and local government

4. Individuals and organizations that supply commodities and services within any of the following Comm-PASS categories:

- Architectural & Engineering Services
- Clothing & Toiletries
- Construction - Buildings
- Construction - Heavy & Highway (with subcategories)
- Energy, Utility and Fuels
- Environmental Services
- Facilities/Real Property (with subcategories)
- Food/Groceries Supplies & Services
- Human & Social Services (with subcategories)
- Information Technology Equipment, Supplies & Services
- Live Animals and Related Supplies & Services
- Medical, Dental and Laboratory Supplies & Services
- Office Equipment, Supplies & Services
- Professional Services
- Public Safety Equipment, Supplies & Services
- Raw Materials
- Recreation/Education Supplies & Services
- Surplus Supplies & Equipment Disposal
- Vehicles & Other Transportation

BENEFITS TO THE COMMONWEALTH

Comm-PASS benefits the Commonwealth by:

- Providing on-line access for departments, municipal entities, not-for-profits, quasi-public agencies and vendors to view RFR opportunities, current state contracts, historic solicitation information, and solicitation-driven interested bidder lists;
- Allowing purchasing entities and OSD to focus on developing and conducting best value procurements by eliminating unnecessary administrative tasks and providing enhanced bidder support;
- Increasing the bidding audience for competitive solicitations as a result of the Internet;
- Supporting and strengthening the Commonwealth's commitment to reduce the reliance on paper usage wherever possible;
- Offering a significant cost savings because administrative costs, such as paper usage and postal expenses, are reduced;
- Providing a "hotline" phone service that features trained, dedicated Comm-PASS Help Desk staff.

BENEFITS TO BIDDERS

Comm-PASS benefits bidders by:

- Providing convenient on-line access to solicitation documents and contract awards twenty-four hours a day, seven days a week;
- Allowing bidders to download a variety of documents to their desktops;
- Supplying search capability for bidders to use in identifying business opportunities;
- Assisting the business community in networking and selling products and services by allowing bidders to register their interest as either a prime or a subcontractor, and to search for other vendors who are in a particular type of business.

BENEFITS TO SOCIO-ECONOMIC PROGRAMS

Comm-PASS benefits socio-economic programs by:

- Fostering the best value procurement principles of encouraging competition and the participation of quality vendors;
- Providing access to a larger pool of potential bidders;
- Encouraging the participation of qualified minority and women business enterprises (M/WBE), small businesses, firms owned or controlled by socially or economically disadvantaged individuals, firms owned or controlled by individuals with disabilities and businesses which are environmentally friendly;
- Improving the ability of non-M/WBE businesses to easily identify and develop potential M/WBE partnerships;
- Providing a link to the State Office of Minority and Women Business Assistance (SOMWBA) directory.

HARDWARE AND SOFTWARE REQUIREMENTS FOR COMM-PASS

The detailed requirements for Comm-PASS access are set forth below. The use of Comm-PASS requires a personal computer or Apple Macintosh and other hardware, selected software, and an Internet connection service.

1. The hardware requirements are:

    - IBM compatible personal computer (486 minimum processor, 586 preferred) or Apple Macintosh (68020 minimum processor). The PC is used to communicate with other computers over a telephone line. The processing speed of the system determines its capability for formatting and displaying the information available on Comm-PASS. The system should have a minimum of 16 megabytes of Random Access Memory (RAM).

    - Modem - The modem is the device that allows a terminal to communicate with other computers over a telephone line. Modem speed is measured in bits per second (BPS) or kilo bits per second (KBPS). The recommended modem speed is at least 56 KBPS.

    - Printer - A printer is needed to print the documents available on Comm-PASS.

2. The software requirements are:

    - Internet browser - An Internet browser is software that reads data from the Internet and displays it in a readable format. Most Internet Service Providers (see below) provide free browser software. In general, *Netscape* or *MS Internet Explorer* are the preferred browsers.

    - Adobe Acrobat Reader - This free name brand software is available via the Internet and allows the user to view, navigate and print the Portable Document Files (pdf) that Comm-PASS uses.

      Adobe is similar to other windows-based software and may be read like document (doc) files. This software can be used with an IBM compatible PC or Apple Macintosh.

The only other requirement is an Internet connection, provided through an Internet Service Provider (ISP). An Internet Service Provider is a service that provides access to the Internet via a modem (above) and a telephone number. There are both fee-based and advertiser- supported ISPs.

POSTING INFORMATION ON COMM-PASS

RFR and contract information for procurements with a total contract value over $50,000 (large procurements) must be posted on Comm-PASS. Comm-PASS may also be used for RFRs having total contract values of $50,000 or less (small procurements).

The Training and Outreach Unit offers Comm-PASS Overview Training and Comm-PASS Internal View Certification Training. The following summary is intended to assist in either method of posting information on Comm-PASS (directly on-line or submitting files to OSD).

Prepare the Document for Submission

- Finalize and obtain approval of documents before posting. As soon as a document is posted to the Internet it becomes available for downloading and must therefore remain on Comm-PASS in order to avoid confusing anyone who may possess the invalid document.

- Produce the files using an approved software package (and standard formatting procedures). All Comm-PASS submission files must be prepared using Microsoft Word, Microsoft Excel or Coral.

- Include all mandatory bidder responsibility language. It is not possible to know who has downloaded a copy of an RFR from Comm-PASS. Therefore the RFR must inform bidders of their responsibility to check Comm-PASS for any modifications to an RFR and issue a warning that bidders may not alter documents (with certain exceptions). The RFR must also indicate mandatory form submissions as well as direct them to location of these forms on the Comm-PASS Forms and Information page. See Chapter 4 for more information.

If Applicable, Submit the Files and Forms to OSD

For those purchasing entities who are authorized to use OSD to post their solicitation and contract information, submissions must be sent via e-mail, postal mail or may be hand delivered to the following addresses:

- *E-mail*: Comm-PASS@state.ma.us - include all electronic files as e-mail attachments;
- *Mail or hand delivery*: Comm-PASS Submissions, Operational Services Division, One Ashburton Place, Room 1017, Boston, MA 02108. Include a submission form (available from OSD) and the RFR files on a 3.5" IBM formatted disk.

Note: Regardless of the posting method, it is the purchasing entity's responsibility to review all postings and supporting documentation on Comm-PASS.

Purchasing Entity Responsibilities After a Solicitation Is Closed

When a RFR closing date is reached, Comm-PASS automatically moves the solicitation from the "Open Solicitation" to the "Closed Solicitation" page on the system. The following message appears prominently at the top of the screen to indicate responses are under review, pending an award: *"This RFR is closed and under evaluation pending a contract award."*

In order to complete the procurement process, purchasing entities must notify bidders of the results of the procurement, per 801 CMR 21.06(12). Departments must post or submit the notice of contract execution documents to OSD as soon as the contract has been awarded (no later than 60 days after the solicitation close date). In the event the RFR responses are still being evaluated and a decision has not been made, a closed solicitation update must be posted. This update provides information to the bidders and other interested parties of the status of the solicitation evaluation process. In the event a solicitation has been canceled, the cancellation must be posted on Comm-PASS, thus notifying the public that the procurement is no longer active.

The type of information a purchasing entity chooses to post on Comm-PASS depends on the nature of the procurement. However, the notice of contract execution must include the department name, reference number, dates, and a summary of the procurement results, including the names of the winning bidders. Although only a minimum of information is required, departments are strongly encouraged to provide enough information to support the successful use of a contract and to minimize the number of public record requests.

COMM-PASS RESOURCES

In addition to on-line Comm-PASS information, a full listing of Comm-PASS resource numbers/addresses is listed below:

Comm-PASS RESOURCE	TELEPHONE NUMBER OR ADDRESS
Comm-PASS Internet address	www.comm-pass.com
Comm-PASS staff telephone	(617) 720-3197 1-888-MA STATE (627-8283)
Telecommunication Device for the Deaf (TDD)	(617) 727-2716
FAX	(617) 727-4527
E-mail	Comm-PASS@state.ma.us

APPENDICES

REGULATIONS

801 CMR 21.00
Procurement of Commodities or Services, Including Human and Social Services

808 CMR 1.00
Compliance, Reporting and Auditing for Human and Social Services

801 CMR 21.00: PROCUREMENT OF COMMODITIES OR SERVICES, INCLUDING HUMAN AND SOCIAL SERVICES

Section

21.01: Purpose, Application and Authority
21.02: Definitions
21.03: Requests for Information or Interest (RFI)
21.04: Statewide Contracts
21.05: Competitive Procurement Exceptions
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21.07: Contract Negotiation, Execution and Effective Start Date
21.08: Contract Funding and Compensation
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21.10: Integration
21.11: Severability

21.01: Purpose, Application and Authority

(1) Purpose. The purpose of 801 CMR 21.00 is to provide all Departments with uniform rules and standards governing the Procurement of Commodities or Services, or both, including Human and Social Services for Clients. Procurements will be considered in the best interests, or the Best Value, to a Department and the State when a Procurement supports and balances the following Procurement Principles: the achievement of required outcomes, generates the best quality economic value, is performed timely, minimizes the burden on administrative resources, expedites simple or routine purchases, allows flexibility in developing alternative Procurement and business relationships, encourages competition, encourages the continuing participation of quality Contractors and supports State and Department Procurement planning and implementation.

(2) Application. Unless otherwise provided by law, 801 CMR 21.00 shall apply to all Procurements of Commodities or Services, or both, by any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch. 801 CMR 21.00 will not apply to the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities, although the use of 801 CMR 21.00 by these entities is encouraged. 801 CMR 21.00 will not apply to interdepartmental services or transactions between two or more State Departments (815 CMR 6.00) or to grants and subsidies (815 CMR 2.00). The Executive Office for Administration and Finance (ANF) or the Operational Services Division (OSD) will interpret 801 CMR 21.00 and may take whatever actions necessary to carry out the purposes of 801 CMR 21.00. No Department shall incur any obligation for, or authorize payments for, any Commodities or Services except in accordance with 801 CMR 21.00. ANF, OSD and the Office of the Comptroller (CTR) may issue additional policies, procedures and Contract forms to be used by Departments to carry out the purposes of 801 CMR 21.00. OSD, through its Division of Purchased Services, may issue policies, procedures and Contract forms to be used by Departments for the procurement of Human and Social Services for Clients.

(3) Authority. 801 CMR 21.00 is promulgated under the authority of M.G.L. c. 7, §§ 4, 4A, 22 and 22G-22M; M.G.L. c. 29, §§ 27B, 29A and 29B; St. 1993, c. 110, § 274, as amended; and Executive Orders 279 and 350.

21.02: Definitions

Acquisition Method. The method of procuring a Commodity or Service, or both. Acquisition methods include outright purchase, license, lease-purchase, lease, rental, fee-for-service or other methods authorized by law and implemented in accordance with policies and procedures issued by ANF, OSD and CTR.

Authorized Signatory. An individual authorized in writing to execute Contracts or other agreements or commitments on behalf of a Department or Contractor.

21.02: continued

Available Funding. Operating appropriations, capital appropriations, trust funds or federal grant funds which have been appropriated or authorized for the purposes of a Contract.

Best Value. The result of common sense Procurement decision-making consistent with the States Procurement Principles, which are to balance and support the achievement of: required outcomes, best quality economic value, timely performance, minimizing the burdens on administrative resources, expediting simple or routine purchases, flexibility in developing alternative Procurement and business relationships, encouraging competition, encouraging the continuing participation of quality Contractors and supporting State and Department Procurement planning and implementation.

Bidder. An individual or organization proposing to enter into a Contract to provide a Commodity or Service, or both, to or for a Department or the State.

Client. An individual, group of individuals, the family or other person(s) who provides support to such individuals and who is eligible for or receiving Human and Social Services. Also referred to as "consumer".

Commodities. An article of trade, goods, products, supplies or information technology resources, including automated data processing and telecommunications hardware, software and systems.

Commonwealth Terms and Conditions. Documents, jointly issued by ANF, OSD and CTR, that must be executed by all Contractors that enter into Contracts with the State.

Consultant Contract. A Contract for consultant services pursuant to M.G.L. c. 29, § 29A.

Contract. A legally enforceable agreement between a Contractor and a Department. ANF, OSD and CTR shall jointly issue Commonwealth Terms and Conditions, a Standard Contract Form and other forms or documentation that Departments shall use to document the Procurement of Commodities or Services, or both.

Contract Employee. An individual Contractor whose Contract performance was classified, prior to the Contractor's selection, as work to be performed under the direct supervision and control of the Department, and not work as an independent Contractor, pursuant to the federal Internal Revenue Service (IRS) SS-8 process.

Contractor. An individual or organization which enters into a Contract with a Department or the State to provide Commodities or Services, or both.

Department. Any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch excluding the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities.

Designee. A State employee who has been delegated authority in writing to act on behalf of a Department Head or other Department officer in their official capacity.

Duration. The authorized total period of performance of a Contract under 801 CMR 21.00, which includes the initial duration of a Contract, either less than one fiscal year, a single fiscal year or multiple fiscal years, and any options to renew beyond the initial duration of the Contract.

Environmentally Preferable Products and Services. Commodities or Services that are less detrimental to the environment and human health than competing Commodities or Services serving the same purpose. Includes Commodities or Services that minimize waste, use recycled materials, conserve energy or water, or reduce the consumption or disposal of toxic materials.

21.02: continued

Execution. The distinct, verifiable signature or symbol of an authorized signatory of a Contractor or a Department which, when affixed to a document, is legally binding. If the signature is affixed through electronic means, the action of signing must be accomplished consistent with information processing standards established by CTR or by law.

Executive Office for Administration and Finance (ANF). The Executive Office established by M.G.L. c. 7.

Human and Social Services. Services provided by a Contractor to assist, maintain or improve the personal, mental or physical well-being of Clients. This may include, but is not limited to, social, habilitative, rehabilitative, mental health, mental retardation, special education, vocational, employment and training and elder services.

Independent Contractor. An individual or organization under Contract with a Department where the Contractor's work is not performed under the direct supervision and control of a Department.

Office of the Comptroller (CTR). The Department established pursuant to M.G.L. c. 7A.

Operational Services Division (OSD). The Department within the Executive Office for Administration and Finance established pursuant to M.G.L. c. 7, § 4A to regulate and oversee the Procurement of Commodities or Services in the State. OSD includes the Division of Purchased Services established by St. 1993, c. 110, § 274, as amended.

Procurement. The acquisition of Commodities or Services, or both, which may be made through an outright purchase, license, lease-purchase, lease, rental, fee-for-service or other method approved by OSD or authorized by law.

Procuring Department. A Department authorized to procure Commodities or Services, or both, for the Department or on behalf of multiple Departments. OSD shall be the primary Procuring Department for Statewide Contracts and may designate another Department to act as the Procuring Department for a Statewide Contract.

Recycled Products. Goods containing materials which have been diverted from the solid waste stream including post-consumer materials and materials or by-products generated in industrial processes or which have been wholly or partially remanufactured.

Request for Response (RFR). The mechanism used to communicate Procurement specifications and to request Responses or interest from potential Bidders. An RFR may also be referred to as a "solicitation".

Response. A Response from a Bidder to a Request for Response (RFR) under a competitive Procurement. A Response shall include submissions commonly referred to as "bids", "quotes" or "proposals".

Secretariat. Any Executive Office established by M.G.L. chs. 6A and 7, including any Department, Agency, Office, Division, Board, Commission or Institution within such Executive Offices.

Selected Bidder. A Bidder that has been selected to negotiate a Contract with a Procuring Department.

Services. The furnishing of time, labor, effort or specialized skills by a Contractor. Services shall include operational, professional, maintenance and repair, non-professional, consultant and Human and Social Services, as well as any other services identified in policies and procedures issued by ANF, OSD and CTR.

21.02: continued

Standard Contract Form. A Contract form, jointly issued by ANF, OSD and CTR, that Departments shall use for the Procurement of Commodities or Services, or both, which incorporates by reference a Commonwealth Terms and Conditions.

State. The Commonwealth of Massachusetts.

Statewide Contract. A Contract procured on behalf of all Departments for specified Commodities or Services, or both, which may be used by any Department or other entities authorized by OSD.

Suspension. The halt of Contract performance due to the lack of Available Funding, a breach of Contract, inadequate performance, an unanticipated emergency or other circumstances determined by a Department to warrant a pause in Contract performance. A suspension may continue until lifted by the Department, if the reason for the suspension has been alleviated, or Contract performance may be terminated.

21.03: Requests for Information or Interest (RFI)

A Procuring Department may gather information to assist in the development of a potential Procurement by inviting other Departments, potential Bidders or other interested parties to provide technical and business advice concerning industry standards, practice, general cost or price structures or other information which is relevant to the type of Commodities or Services, or both, that a Procuring Department seeks to procure.

21.04: Statewide Contracts

OSD shall be the primary Procuring Department for Statewide Contracts unless OSD designates another Department to act as the Procuring Department for a Statewide Contract. OSD shall establish Statewide Contracts for Commodities or Services, or both, which shall be available to Departments and other entities authorized by OSD. Departments shall acquire Commodities or Services, or both, from available Statewide Contracts in accordance with policies and procedures issued by ANF, OSD and CTR.

21.05: Competitive Procurement Exceptions

A Procuring Department shall be authorized to procure Commodities or Services, or both, without a competitive Procurement under the following exceptions, and in accordance with policies and procedures issued by ANF, OSD and CTR. Any questions as to the existence of an exception under 801 CMR 21.05 shall be determined by ANF or OSD. All other provisions of 801 CMR 21.00 shall apply.

(1) Incidental Purchases. A one-time purchase, or multiple purchases, with a total dollar value that does not exceed the minimum amount established by law, ANF or OSD.

(2) Exemption from Competitive Procurement. A general law, special law or other existing legal obligation that specifically exempts or prohibits a Procuring Department or a specific Contract from being competitively procured or specifically names a particular Contractor(s) to be awarded a Contract.

(3) Emergency Contract. An emergency Contract shall be appropriate whenever a Procuring Department Head determines that an unforeseen crisis or incident has arisen which requires or mandates the immediate acquisition of Commodities or Services, or both, to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of Clients or other persons or serious damage to property is threatened. The Contract shall be effective only for the period necessary to cure the emergency or in accordance with policies and procedures issued by ANF, OSD and CTR. Each Secretariat may establish a policy for administering emergency Contracts.

21.05: continued

(4) Collective Purchasing. The acquisition of Commodities or Services, or both, by one or more Departments from existing Contracts that have been established by or are proposed by federal agencies, other States or any other public entity. Prior to any acquisitions by Departments under 801 CMR 21.05(4), OSD shall confirm or identify which Contracts may be used by Departments and any other requirements for these Contracts.

(5) Interim Contracts. An Interim Contract may be used to prevent a lapse of Contract performance in the following circumstances:

(a) Termination or Suspension of Current Contractor. An Interim Contract may be executed whenever an existing Contract has been or will be terminated or suspended for any reason or whenever a Contractor is unable to complete full performance under a Contract. An Interim Contract may be offered to the Bidder that offered the next Best Value Response under the original Procurement and under the same terms and prices offered in that Bidder's original Response. The duration of an Interim Contract shall be limited to the remaining time available under the duration stated in the original RFR, including any options to renew. If the Department is unable to negotiate a Contract with any of the original Bidders who submitted Responses, in their original rank order according to Best Value, and under the same terms as offered in their original Response, the Department will be required to conduct a new competitive Procurement.

(b) Delayed Competitive Procurement. An Interim Contract may be executed with a current Contractor(s) when a new competitive Procurement has been commenced, but due to an unanticipated delay, has not been completed prior to the end of the duration available under the current Contract, as specified in that Contract's original RFR. An Interim Contract may be used to extend the current Contract(s), under the same terms and conditions, only for the period necessary to complete the competitive Procurement, including the execution of new Contracts.

(6) Contract Employees. A Department requiring the performance of an Individual Contractor, where the planned Contract performance has been classified, prior to the Contractor's selection, as work of a Contract Employee and not that of an Independent Contractor, may select an individual for that Contract using a recruitment process similar to the process the Department uses to select employees, rather than using the Request for Response process under 801 CMR 21.06.

21.06: Competitive Procurement Standards

All acquisitions of Commodities or Services, or both, must be competitively procured unless the acquisition qualifies as an exception under 801 CMR 21.05. A Procuring Department shall be responsible for conducting a Procurement for single or multiple Contracts for Commodities or Services, or both, in accordance with 801 CMR 21.00 and policies and procedures issued by ANF, OSD and CTR. The policies and procedures shall address, but shall not be limited to, the following Procurement standards:

(1) Procurement File. A Procuring Department shall maintain a paper or electronic Procurement file for each Procurement of Commodities or Services, or both. The file shall contain the original, copies or the file location of the RFR and data or other information relevant to the Procurement and selection of a Contractor, the executed Contract form(s), correspondence with the Contractor and any applicable approvals or justifications.

(2) Duration. The duration of any Contract procured or executed under 801 CMR 21.00 shall include the initial duration of a Contract, either less than one fiscal year, a single fiscal year or multiple fiscal years, and any options to renew beyond the initial duration of the Contract. The duration established for a Contract shall be the period determined by the Procuring Department to be reasonably necessary to obtain the required Commodities or Services, or both, at the Best Value for the Procuring Department and

21.06: continued

the State and shall be subject to Available Funding for the Contract, as follows:

(a) The duration of any Contract funded with an annual operating appropriation (account type 01) account(s) is subject to the appropriation by the Legislature, in each fiscal year of the Contract, of sufficient funds for the purposes of the Contract.

(b) The duration of any Contract funded with an annual retained revenue appropriation (account type 01) account(s) is subject to the appropriation by the Legislature, in each fiscal year of the Contract, and receipt of sufficient revenues for the purposes of the Contract.

c) The duration of any Contract funded with a trust account(s) (account type 03) is subject to the availability, or anticipated availability through authorized revenues, of sufficient funds for the purposes of the Contract. Payments are contingent upon the receipt of sufficient trust revenues to support payments under the Contract.

d) The duration of any Contract funded with a federal grant appropriation (account type 04) account(s) is subject to approval by the federal government and appropriation by the Legislature, in each fiscal year of the Contract, of sufficient funds for the purposes of the Contract.

e) The initial duration of any Contract funded with a capital appropriation (account type 02) account(s) is limited to the fiscal years in which sufficient funds are appropriated by the Legislature for the purposes of the Contract, provided that any options to renew which extend beyond the original authorization of funding of the capital account(s) funding the Contract is subject to the extension, by the Legislature, of the authorization of funding or a separate appropriation, in each additional fiscal year of the Contract, with sufficient funds for the purposes of the Contract.

f) If the appropriation, authorization or Available Funding ceases for a Contract, for any reason, a Contract shall be deemed under Suspension and Contract performance must halt. A Contractor shall not be entitled to compensation for any performance provided during the period of Contract Suspension. A Department may lift the Suspension if Available Funding is received. In the absence of foreseeable Available Funding, a Department may terminate the Contract.

(3) Scope of Contract Participants. A Procuring Department may draft a Request for Response (RFR) for specified Commodities or Services, or both, to include an option for additional Departments to purchase under the same terms of the RFR and may require Bidders to provide Responses specifying their ability to provide the specified Commodities or Services, or both, to other Departments in addition to the Procuring Department and the rates that will be used for the additional business given to the Contractor.

(4) Request for Responses (RFR).

(a) An RFR shall be used to solicit and select Responses from qualified Bidders under a competitive Procurement. The goal of all RFRs shall be to obtain the Best Value of Commodities or Services, or both, for the State. An RFR may include attributes of any of the methods of competitive Procurement formerly referred to as a request for proposals, request for qualifications or quotes, invitation for bids or good business practices.

(b) The Procuring Department shall draft an RFR which it deems appropriate, efficient and cost effective for the type of Procurement required, in accordance with policies and procedures issued by ANF, OSD and CTR. These policies and procedures may include total Contract value thresholds, minimum Procurement requirements and legal or regulatory restrictions, including limitations on the purchasing of certain types of restricted Commodities or Services or from certain restricted Bidders, and requirements and allowable preferences for purchasing of certain types of Commodities and Services.

21.06: continued

(c) An RFR shall include the Acquisition Method to be used; whether single or multiple Contractors are sought; whether additional Departments will have access to the Procurement as outlined in 801 CMR 21.06(3); the anticipated duration of the Contract including anticipated renewal options; the available funding or anticipated compensation for the Contract, if relevant; detailed specifications or the anticipated goals or outcomes to be accomplished by the Procurement; instructions for submission of Responses; and a deadline date for submission of Responses.

(d) RFRs may be used to establish criteria which prospective Bidders must satisfy in order to be placed on a list of qualified Contractors. These criteria may include, but are not limited to, technical expertise, experience, quality of performance, location, availability of Commodities and Services, rates, prices, catalogs of Commodities or Services, or both, or other criteria relevant to a particular Procurement.

(e) Recycled and Environmentally Preferable Products and Services. OSD, in cooperation with relevant environmental departments, shall periodically establish policies and procedures that promote, to the greatest extent feasible, the statewide procurement and use of recycled products and environmentally preferable products and services (EPPs), and the reporting thereof, by Procuring Departments and Contractors. These policies and procedures shall include, but not be limited to, designating EPPs and establishing minimum standards specifications for their procurement and use. RFRs may provide for additional points for any RFR Response in which a offers to provide EPPs as part of Contract performance, and for any RFR Response in which a Bidder offers to utilize EPPs or implement environmentally preferable practices as part of the performance of its business.

(f) Any Response to an RFR submitted by a Bidder shall be considered a firm offer and shall remain effective unconditionally for a minimum of 90 days unless a longer period is specified in an RFR, or unless extended by the Department upon prior notice to Bidders.

(5) Identification of Bidders or Public Notice. A Procuring Department shall be responsible for identifying Bidders capable and willing to provide the Procuring Department and the State with the Best Value of Commodities or Services, or both. A Procuring Department shall identify potential Bidders through public notice, newspaper or electronic advertisements or other methods identified by ANF or OSD as appropriate for a particular Procurement, or as required by law.

(6) Procurement Amendments. A Procuring Department may, at any time prior to the execution of a Contract, and without penalty, amend a Procurement or change the Procurement requirements, scope, budget or Procurement schedule upon notice to Bidders.

(7) Procurement Cancellation. A Procuring Department may for any reason, and at any time prior to the execution of a Contract, and without penalty, notify Bidders of a cancellation of a Procurement and the rejection of all Responses.

(8) Corrections or Clarifications to a Submitted Response. A Procuring Department shall determine whether to allow a correction of minor informalities in a Response. Minor informalities are matters of form rather than substance and include clerical errors or minimal or insignificant mistakes that can be corrected without prejudice to other Bidders. A Procuring Department may, upon written request of a Bidder, allow a correction of a minor informality in a Response which is clearly evident, such as a typographical error, transposition error or arithmetical error where the correct answer is obvious, or if the mistake is discovered by the Procuring Department, the Procuring Department may note the correction on the Response. If a Procuring Department requires a clarification of any particular section of a Response the Department must provide all Bidders that submitted Responses with the same notice and opportunity for clarification of the identified section in the Response. Clarifications are explanations of what is stated in a Response and may not be used as an opportunity to submit supplemental information or a change to a Response, unless the Department specifically

21.06: continued

requests these submissions or changes as part of the clarification of all Responses. No correction or clarification of Response prices, terms and conditions or the submission of supplemental information prejudicial to the interests of other Bidders or to fair competition shall be permitted.

(9) References. A Procuring Department shall have the right to request references at any time during the Procurement process and at any time during the period of Contract performance. A Procuring Department may verify any references included in a Bidder's Response and conduct any other reference or credit checks as the Procuring Department deems appropriate. The Procuring Department may consider any written references, including documentation of performance records of a Bidder on file at the Procuring Department or solicited from any other Department or entity, documentation of reference checks or other documentation solicited by or submitted to the Procuring Department during the Procurement process.

(10) Disqualification. A Procuring Department shall disqualify any Response that the Department determines to be unresponsive, including, but not limited to:

(a) Responses which are received after the deadline for submission specified in an RFR.

(b) Responses that fail to meet, address or comply with material requirements in an RFR, including instructions for submission, content or format.

(c) Responses which indicate collusion or unfair trade practices by one or more Bidders agreeing to act in a manner intended to avoid or frustrate any of the provisions of 801 CMR 21.00 or any other law or regulation.

(d) Responses submitted by a Bidder, or which identify a subcontractor, currently subject to any State or federal debarment order or determination. If the identified subcontractor is replaceable without a material effect on the Bidder's Response, the Bidder may be given the opportunity to select another subcontractor prior to execution of the Contract.

(11) Best and Final Offer, Evaluation of Responses and Selection of Bidder(s). The following options shall be available to a Department even if these options have not been included as part of an RFR:

(a) Best and Final Offer. At any time after submission of Responses and prior to the final selection of Bidders for Contract negotiation or execution, a Procuring Department shall have the option to provide Bidders with an opportunity to provide a Best and Final Offer and may limit the number of Bidders selected for this option.

(b) Evaluation of Responses and Selection of Bidder(s). A Department shall have the authority to evaluate Responses and select a Bidder(s) that it determines has offered the Best Value Response to the goals and performance requirements outlined in the RFR.

(12) Notification of Selected Bidders. A Procuring Department shall determine the timing and method of notifying Bidders of the Bidder(s) selected for Contract negotiation or the Contractor(s) that has executed a Contract. Notice may be limited to those Bidders who submitted Responses to an RFR.

(13) Press Conferences or News Release Restrictions. No Bidder shall make any press conference, news releases or announcements concerning its selection or non-selection for a Contract prior to the Procuring Department's public release of said information or prior to the written approval of the Procuring Department.

(14) Debriefing. An RFR may contain the opportunity for non-successful Bidders to request a debriefing to be conducted after Contract execution with Selected Bidder(s). Debriefings are designed to identify the weak areas of a Bidder's Response and suggest improvements for future Procurements. Comparisons with other Responses will not be made during a debriefing. If an RFR is silent as to an opportunity for a debriefing, the Procuring Department shall have the option to grant or deny a debriefing and may limit the number of debriefings granted.

21.06: continued

(15) Dispute Resolution Procedures for Human and Social Service Procurements. OSD may issue policies and procedures for conducting debriefings and appeals for Human and Social Service Procurements.

(16) Decisions made pursuant to the provisions of 801 CMR 21.00 are not subject to the provisions of M.G.L. c. 30A, §§ 10 and 11.

21.07: Contract Negotiation, Execution and Effective Start Date

(1) Contract and Contract Amendment Negotiation. The Department may negotiate with Selected Bidder(s) prior to execution of a Contract, and with Contractors after a Contract has been executed, as follows:

(a) The language of the RFR shall determine what elements of Contract performance or cost, within the scope of the original RFR and a Bidder's or Contractor's Response, may be negotiated. If the RFR is silent as to what can be negotiated, the Procuring Department and a Selected Bidder or Contractor may negotiate only the details of
performance identified within the scope of the original RFR and the Bidder's or Contractor's Response, and may not increase or change the scope of performance or costs.

(b) The Department and a Selected Bidder or Contractor may negotiate additional language which clarifies their understanding of, but does not change, the language of the Contract or Contract performance identified within the scope of the original RFR and the Bidder's or Contractor's Response

(c) Notwithstanding 801 CMR 21.07(1)(a), the Department and a Selected Bidder or Contractor may negotiate a change in any element of Contract performance or cost, identified in the original RFR or the Bidder's or Contractor's Response, which results in lower costs or in a more cost effective or better value than was presented in the Bidder's or Contractor's originally selected Best Value Response

(2) Contract Execution.

(a) The identification of a Selected Bidder(s) shall create no contractual obligation on the Procuring Department or the State. Performance may not begin, until a Contract is properly executed. The execution of a Contract is conditioned upon the Procuring Department's acceptance of a Selected Bidder's Response excluding any clauses or sections that are stricken by the Department as unacceptable and including any additional negotiated language as authorized under 801 CMR 21.07(1).

(b) Commonwealth Terms and Conditions. An authorized signatory of a Bidder must execute a Commonwealth Terms and Conditions, which is executed only once and must be filed as prescribed by CTR. A Commonwealth Terms and Conditions will be incorporated by reference into and shall apply to any Contract for Commodities or Services, or both, that is executed by the Bidder and any Department of the State.

(c) Standard Contract Form. An authorized signatory of the Contractor and the Department must execute a Standard Contract Form for Procurements under 801 CMR 21.00 in accordance with policies and procedures issued by ANF, OSD and CTR. The Contract shall incorporate by reference a Commonwealth Terms and Conditions and will include the RFR, the Bidder’s Response, excluding any clauses or sections that are stricken by the Department as unacceptable and including any additional negotiated language as authorized under 801 CMR 21.07(1). Contracts must be filed as prescribed by CTR.

(d) A Selected Bidder's Response shall be disqualified if the Procuring Department determines that the Bidder:

1. is intentionally or unreasonably delaying the timely execution of a Commonwealth Terms and Conditions or the Standard Contract Form or is unable to execute timely even for reasonable delays;

21.07: continued

2. conditions execution of a Commonwealth Terms and Conditions or the Standard Contract Form upon the Procuring Department's acceptance of additional material or amended Contract terms and conditions, or specifies that the Bidder's Response is "non-negotiable", "all-or-nothing" or that there can be "no substitutions";
3. negotiates in bad faith;
4. refuses to execute a Commonwealth Terms and Conditions or the Standard Contract Form;
5. demands that the Department execute the Bidder's Contract form instead of a Commonwealth Terms and Conditions or the Standard Contract Form; or
6. is unable to reach final agreement on contractual terms with the Department within a reasonable time as determined by the Department.

(e) If a Selected Bidder's Response is disqualified, for any reason, the Procuring Department may negotiate a Contract with the next Best Value qualified Bidder(s).

(3) Contract Effective Start Date. Notwithstanding verbal representations by the parties, or an earlier start date listed in the Standard Contract Form, the effective start date of a Contract shall be the latest of the following dates:

(a) the date the Standard Contract Form has been executed by an Authorized Signatory of the Contractor;
(b) the date the Standard Contract Form has been executed by an Authorized Signatory of the Procuring Department;
(c) the date of Secretariat or other approval(s) required by law or regulation; or
(d) a later date specified in the Standard Contract Form.

21.08: Contract Funding and Compensation

(1) The Contractor shall only be compensated for performance delivered to and accepted by the Department in accordance with the specific terms and conditions of a properly executed Contract. All Contract payments are subject to Available Funding, as described in 801 CMR 21.06(2), and shall be subject to automated intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. Contract payments for Human and Social Services are also subject to the provisions of 808 CMR 1.00. A Department shall be under no legal obligation to compensate a Contractor, or to obtain additional funding for any performance, costs or other commitments which are made outside of the scope of a Contract.

(2) Emergency and Exceptional Circumstances. Notwithstanding 801 CMR 21.07(2)(a) and (3) and 801 CMR 21.08(1), compensation for performance commenced prior to the contract effective start date shall be allowable in unanticipated, rare emergency or exceptional circumstances for the period from the date of the occurrence of such circumstance until a Contract is executed, which shall be documented by the Department as part of the Procurement File in accordance with policies and procedures issued by ANF, OSD and CTR.

(3) Payments cannot be issued until a properly executed Contract, with all requisite approvals, has been filed as prescribed by the CTR.

(4) Notwithstanding 801 CMR 21.07(2)(a) and (3) and 801 CMR 21.08(1), for Human and Social Service Contracts, compensation for performance commenced prior to the Contract effective start date may be made from the later of the following dates, the date of Secretariat or other required approvals, if applicable, or a later date specified in the Standard Contract Form, until a Contract has been executed. 801 CMR 21.08(4) shall be effective until September 30, 1998.

21.09: Quality Assurance

ANF, OSD, and CTR shall establish policies and procedures for conducting reviews of Department compliance with 801 CMR 21.00 and quality of Contractor performance.

21.10: Integration

801 CMR 21.00 shall be interpreted consistent with, and Procuring Departments shall comply with, state or federal general or special laws, regulations, executive orders and other authorities mandating additional requirements related to the procurement of Commodities and Services, including policies and procedures issued by ANF, OSD and CTR.

21.11: Severability

If any provision of 801 CMR 21.00 is declared or found to be illegal, unenforceable or void, then Departments, Bidders and Contractors shall be relieved of all obligations under that provision only, and all other provisions of 801 CMR 21.00 shall remain in full force and effect.

REGULATORY AUTHORITY

801 CMR 21.00: M.G.L. c. 7, §§ 4, 4A, 22 and 22G-22M; c. 29, §§ 27B, 29A and 29B;St. 1993, c. 110 § 274, as amended and Executive Orders 279 and 350.

808 CMR 1.00: COMPLIANCE, REPORTING AND AUDITING FOR HUMAN AND SOCIAL SERVICES

Section

1.01: Purpose, Application and Authority
1.02: Definitions
1.03: General Provisions
1.04: Recordkeeping and Reporting Requirements
1.05: Non-Reimbursable Costs
1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs
1.07: Severability

1.01: Purpose, Application and Authority

(1) Purpose. 808 CMR 1.00 governs contract compliance, financial reporting and auditing requirements applicable to all procurements of Human and Social Services and to M.G.L. c.71B Approved Private Schools subject to the authority of the Division of Purchased Services (DPS). 808 CMR 1.00 also describes the methods used by DPS in authorizing prices for M.G.L. c. 71B Approved Private School special education Programs.

(2) Application. 808 CMR 1.00 applies to Contractors and Subcontractors providing Human and Social Services to any Department and to all Contractors operating Programs approved by the Department of Education (DOE) under M.G.L. c. 71B and to their independent auditors, and to any Executive Office, Department, Agency, Board, Commission or Institution of the Executive Department, but excluding the Legislative and Judicial Branches, the Constitutional Offices, the Public Institutions of Higher Education and independent public authorities. Where a Contractor utilizes a Subcontractor to provide some or all of the Human and Social Services or in a Program approved by DOE under M.G.L. c. 71B, the subcontract between the Contractor and the Subcontractor shall require that all provisions of 808 CMR 1.00 shall apply to the Subcontractor as well. As 808 CMR 1.00 applies to services purchased pursuant to M.G.L. c. 71B, it also applies to Commonwealth Local Education Authorities (LEAs). DPS shall issue policies, procedures, and forms related to contract compliance, accounting principles, auditing standards, and pricing as may be determined necessary by DPS to implement the provisions of 808 CMR 1.00 and 801 CMR 21.00, which are in addition to the terms of 808 CMR 1.00.

(3) Authority. 808 CMR 1.00 is adopted pursuant to M.G.L. c. 29, § 29B and St. 1993, c. 110, § 274, as amended, and any successor provision thereto.

1.02: Definitions

Unless the context requires otherwise, terms used in 808 CMR 1.00 shall have the following meaning:

Administration and Support Costs. Administration and Support Costs (management and general) include expenditures for the overall direction of the organization, general record keeping, business management, budgeting, general board activities, general legal expenses and related purposes. "Overall direction" includes the salaries and expenses of the chief officer of the organization and the chief officer's staff. If such staff spends a portion of its time directly supervising fundraising or Program service activities, such salaries and expenses are considered indirect fundraising or Program costs and should be prorated (allocated) among those functions by position title or type of expense.

Authorized Price. A price which has been agreed upon in a contract or, in the case of M.G.L. c. 71B Programs, the price authorized by DPS. For health care services (including Title XIX), as defined in M.G.L. c. 118, § 2 (b), the Authorized Price shall be set by the Division of Health Care Finance and Policy or the Division of Medical Assistance.

Base Year. The Fiscal Year which may be designated by DPS for the purpose of its Program pricing activity under 808 CMR 1.06.

1.02: continued

Capital Item. A Capital Item is:

(a) an asset or group of assets of nonexpendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the capitalization level established and certified by the Contractor in accordance with generally accepted accounting principles for financial statement purposes; or

(b) a repair, betterment or improvement or a group of repairs, betterments or improvements of non-movable assets which costs more than $500 in aggregate and which adds to the permanent value of an asset or prolongs its useful life for more than one year.

Client. An individual, group of individuals, or the family or other person who provides support to such individuals, who is eligible for or receiving Human and Social Services. Also referred to as a consumer.

Client Resources. Revenue received in cash or in kind from Clients to defray all or a portion of the cost of services. These may include supplemental social security income received by the Contractor to defray the room and board expense of residential Clients, Clients' food stamps, or payments made by Clients according to ability to pay, such as a sliding fee scale.

Commercial Income. The difference between gross revenues and gross expenses resulting from the production of commercial products and services by Clients.

Contractor. An individual or organization which enters into a contract with a Department or the State to provide Human or Social Services or which operates Programs approved by the Department of Education under M.G.L. c. 71B.

Days. Calendar days, unless otherwise specified.

Department. Any Executive Office, Department, Agency, Office, Division, Board, Commission or Institution within the Executive Branch, excluding the Legislative Branch, Judicial Branch, Constitutional Offices, Elected Offices, Public Institutions of Higher Education, the Military Division and Independent Public Authorities. The term also includes Massachusetts Local Education Authorities (LEAs) when purchasing M.G.L. c. 71B Approved Private School Programs.

Department of Education (DOE). The Massachusetts Department of Education established by M.G.L. c. 15, § 1, including its departments and divisions.

Division of Purchased Services (DPS). The office within the Operational Services Division of the Executive Office for Administration and Finance.

Fiscal Year of the Commonwealth. The 12 month period beginning on July 1 and ending on June 30th.

Human and Social Services. Services provided by a Contractor to assist, maintain or improve the personal, mental or physical well-being of Clients. This may include, but is not limited to, social, habilitative, rehabilitative, health, mental health, mental retardation, special education, vocational, employment and training and elder services.

Local Education Authority (LEA). A local school district or public school defined pursuant to M.G.L. c. 71B.

M.G.L. c. 71B Approved Private School. A private day or residential school approved in accordance with DOE regulation 603 CMR 18.00 or successor thereto. Also referred to as Approved Private School.

Maximum Obligation. The maximum dollar amount of the Department's contract to pay for Human and Social Services.

1.02: continued

Off-Setting Revenue. The sum of the following revenues and support items. These revenues and support items must be received during the price year and must be dedicated for use in the same Program that also receives Commonwealth funds.

(a) any Contractor revenues and support (including but not limited to public and private grants, gifts, contributions, bequests, or any income therefrom, income from endowments, funds received from the Massachusetts Department of Education's Bureau of Nutrition, or similar funding) to the extent that revenues and support are restricted to use in the Program;
(b) the amount of unrestricted revenues and support voluntarily designated by the Contractor to defray the cost of Program services to a Department;
(c) the fair market value of any public employees assigned to work in the Contractor's Program (including salaries, fringe benefits and travel allowances) and/or the occupancy of public facilities to the extent that they are available to the Program without charge or at less than fair market value;
(d) any revenues and support (including but not limited to Supplemental Social Security Income, Food Stamps, Emergency Aid to the Elderly, Disabled and Children (EAEDC), reimbursements from third-party payers, Client sliding fee scale payments) received by or available to the Contractor on account of Clients;
(e) the amount of Commercial Income that the Contractor or Department may designate;
(f) the value of revenues and support used to defray non-reimbursable costs; and
(g) not-for-profit Contractor surplus revenue retention funds accrued in excess of the limitations of 808 CMR 1.03(7) which may be utilized at the discretion of the Department to reduce the Authorized Price or Maximum Obligation of the Commonwealth.

Office of Child Care Services (OCCS). An office of the Commonwealth established by M.G.L. c. 28A.

Program. The delivery of one or more discrete services in an organized and coordinated fashion in order to achieve contract objectives or a M.G.L. c. 71B private special education Program approved by DOE.

Reimbursable Operating Costs. Those costs reasonably incurred in providing the services described in the contract and/or, in the case of a Program approved under the provisions of M.G.L. c. 71B, in providing the services mandated by DOE or specifically included in an Authorized Price, with the exception of costs enumerated in 808 CMR 1.05 and costs excluded in the Authorized Price. Operating costs shall be considered “reasonably incurred” only if they are reasonable and allocable using the standards contained in Federal Office of Management and Budget Circular A-122 or A-21, or successors thereto.

Related Party. Any person or organization satisfying the criteria for a Related Party published by the Financial Accounting Standards Board in Statement of Financial Accounting Standards No. 57 (FASB 57).

Restricted Funds. Those temporarily and permanently Restricted Funds, as defined in the Uniform Financial Statements and Independent Auditor’s Report (UFR), which have been designated to a specific use by their donor. Funds which have been restricted as to application by the Contractor’s governing body are not considered restricted.

Subcontractor. An individual or organization which provides Human or Social Services or operates a Program on behalf of a Contractor, provided, however, that the term Subcontractor does not include an individual (including a client) or firm providing personnel services, unless specifically provided for in the service contract, or good or non-direct client services. This term also includes sub-Subcontractors.

Submit or Submission. Unless otherwise provided, to deliver a document by hand or by depositing it with the US Post Office or other delivery service, postage pre-paid.

1.02: continued

Uniform Financial Statements and Independent Auditor's Report (UFR). A uniform reporting system, established by DPS, consisting of basic financial statements prepared and audited in accordance with generally accepted accounting principles (GAAP) and generally accepted governmental auditing standards (GAGAS), supplemental schedules and other information as deemed necessary.

1.03: General Provisions

(1) Client Identification. No documents submitted to DPS shall include information that identifies a Client by name or by other means that includes personally identifiable information. Client identification numbers or another numbering scheme should be utilized.

(2) Waiver of Regulations. Upon request, DPS may consider waiving the applicability of one or more provisions of 808 CMR 1.00, provided that all such requests: are in writing and signed by an authorized signatory; specify the transactions to which such waiver would apply and the specific provisions of 808 CMR 1.00 which are to be waived; and are accompanied by documentation and justification deemed sufficient by DPS to support the need for relief. Waivers do not affect the responsibility of a Department or Contractor to comply with other applicable regulations or statutes.

(3) CMR 1.00 Prohibitions. The failure of a Department or DPS to identify violations of 808 CMR 1.00 in determining or authorizing a price shall not be deemed a waiver of violations of 808 CMR 1.00 which are identified later.

(4) Price Limitations.

(a) No Authorized Price may exceed the lowest fee that is charged to the general public or any third party payer, except when that fee is due to a sliding fee scale based on a Client's ability to pay.

(b) Except as provided in 808 CMR 1.03(4)(a), no Department may pay other than the Authorized Price.

(5) Reimbursement as Full Payment. Each Contractor shall, as a condition of accepting payment made by one or more Departments for services provided, accept the Authorized Price as full payment and discharge of all obligations for the services provided. There shall be no duplication or supplementation of payment from sources other than those expressly recognized or anticipated in the determination of the Authorized Price. Any Client Resources or third party payments made on behalf of a Client, not expressly recognized or anticipated in the computation of the Authorized Price, shall reduce the amount of the appropriate Department's obligation for service rendered to the Client.

(6) Commercial Fee. Departments may prospectively negotiate an earnings allowance with for-profit Contractors, which is in excess of the costs for the services being procured. In cost plus fixed fee contracts, this is also referred to as the fee portion of fee-for-service.

(7) Not-for-Profit Contractor Surplus Revenue Retention. If, through cost savings initiatives implemented consistent with programmatic and contractual obligations, a non-profit Contractor accrues an annual net surplus from the revenues and expenses associated with services provided to Departments which are subject to 808 CMR 1.00, the Contractor may retain, for future use, a portion of that surplus not to exceed 5% of said revenues. The cumulative amount of a Contractor's surplus may not exceed 20% of the prior year's revenues from Departments. Surpluses may be used by the Contractor for any of its established charitable purposes, provided that no portion of the surplus may be used for any non-reimbursable cost set forth in 808 CMR 1.05, the free care prohibition excepted. DPS shall be responsible for determining the amount of surplus that may be retained by each Contractor in any given year and may determine whether any excess surplus shall be used to reduce future prices or be recouped.

1.03: continued

(8) Procurement of Contractor Furnishings, Equipment and Other Goods. All procurements of furnishings, equipment and other goods by or on behalf of a Contractor shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Capital Items, as defined in 808 CMR 1.02, shall be acquired through solicitation of bids and proposals consistent with generally accepted accounting principles.

1.04: Recordkeeping and Reporting Requirements

(1) Recordkeeping. The Contractor and its Subcontractors shall keep on file all data necessary to satisfy applicable reporting requirements of the Commonwealth (including DPS, the Division of Health Care Finance and Policy and Departments), and financial books, supporting documents, statistical records, and all other records which reflect revenues associated with and costs incurred in or allocated to any Program of services rendered under the Contract. The Contractor and its Subcontractors shall maintain records of all types of expenses and income or other funds pertaining to the Program paid to the Contractor by every source, including from each Client. Books and records shall be maintained in accordance with generally accepted accounting principles as set forth by the American Institute of Certified Public Accountants (AICPA); which for not-for-profit Contractors shall be the Industry Audit Guide for Audits of Voluntary Health and Welfare Organizations, unless otherwise provided in the UFR. In addition, personnel records shall be maintained for each employee in accordance with generally accepted accounting principles recommended by the AICPA and sufficient to meet the requirements of M.G.L. c. 151, the Fair Labor Standards Act of 1938 and contract terms. If the Contractor or a Subcontractor receives any federal funds from the Commonwealth, directly or through subcontracts, the Contractor or Subcontractor shall also keep data necessary to satisfy Federal Office of Management and Budget (OMB) Circular A-133, or successor provision and shall also maintain books and records in accordance with OMB Circular A-110 and OMB Circular A-122, or successor provisions.

(2) Annual Audit. Each Contractor and Subcontractor shall, on or before the 15th day of the fifth month after the end of its fiscal year, Submit to DPS a UFR or a certification of exemption, in accordance with the standards and instructions contained in the UFR. The UFR and related materials submitted by a Contractor to DPS shall be certified under pains and penalties of perjury as true, correct and accurate by a Massachusetts independent public accountant engaged by the Contractor or by an authorized signatory for the Board of Directors or officers of the corporation, the Executive Director, or Chief Financial Officer of the Contractor.

(3) Other Reporting Requirements. In addition to reports required by contract, secretariats are authorized to develop and implement procedures and reporting requirements for Contractor qualification and risk management purposes.

(4) Related Party Transactions. Notice of all Related Party transactions (including the relationship of the Related Party and a description of the nature and amount of the transaction) shall be made in writing to DPS and the Department(s) prior to their execution. In the case of an M.G.L. c. 71B Approved Private School Program, notification shall be given to DPS and DOE. If disclosure was made through a response to a Request for Response pursuant to 801 CMR 21.00, within an executed contract, or through other formal means, such disclosure will satisfy the requirements of 808 CMR 1.04(4). Prior written disclosure shall not be required where the total value of transactions with a Related Party is less than $100 within the year, and shall not be required where the transaction is a gift to the Contractor from an official, administrator or manager of the Contractor.

1.04: continued

(5) Inventory of Equipment and Furnishings and Other Goods. Any Contractor in possession of Capital Items, as defined in 808 CMR 1.02 shall label, maintain and keep on file a written inventory of the property in accordance with generally accepted accounting principles. The Department may specify additional inventory requirements for Capital Items acquired with funds from the Commonwealth. Upon termination of the Contractor's contracts with the Department, Capital Items acquired with Commonwealth funds under a capital budget shall be subject to the following disposal standards:

(a) if the Department holds title, the item shall be returned to the Department or transferred to another Contractor, as directed by the Department;

(b) if the Contractor holds title and the item has been fully depreciated it shall be retained by the Contractor, or;

(c) if the Contractor holds title and the item has not been fully depreciated, the item and its title shall be returned to the Department, or transferred to another Contractor, or the item may be retained or sold by the Contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale, as determined by the Department.

(6) Requests for Additional Information. Each Contractor and Department shall Submit such additional information as DPS may from time to time require, no later than 21 Days after the date of the postmark of a written request.

(7) Extensions. At its discretion, DPS may in exceptional circumstances grant one extension of the filing deadline for Submission of the reporting requirements contained in 808 CMR 1.04(2) or (6). A written request for an extension must be received by DPS prior to the original due date. An extension is deemed to be denied if not granted in writing by DPS prior to the original due date.

(8) Access and Examination of Records. A Contractor shall make available for review, inspection and audit all records relating to its operations and those of its affiliates, subsidiaries and Related Parties and shall permit timely and reasonable access to its appropriate personnel for the purpose of interview and discussion related to those records and associated policies to any contracting Department, Executive Office, DPS, the Office of the State Auditor, the federal government or their representatives. Audit of records by DPS or Departments shall be conducted according to the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions", as published by the United States General Accounting Office.

(9) Field Audits and Quality Control Reviews. DPS may coordinate and conduct field audits of Contractors and quality control reviews of auditor's reports and work papers in the possession of the Contractor or its independent auditor. DPS may photocopy work papers and related documents, as deemed necessary.

(10) Audit Resolution Policy. DPS will maintain an audit resolution policy in accordance with generally accepted government auditing standards.

(11) Penalties.

(a) Application. DPS, Secretariats and Departments have authority to pursue remedial measures and assess penalties under the provisions of 808 CMR 1.04(11). In addition, DPS or Secretariats may require Departments or the Office of the Comptroller to take action necessary to carry out any penalty assessed by DPS or Secretariats. The availability of penalties under 808 CMR 1.04 shall not limit the Commonwealth's rights to pursue other remedies available by law, regulation, contract or the audit resolution policy.

(b) Failure to Comply with 808 CMR 1.04(1),(2),(3),(6),(8), (9) or (10). If a Contractor fails to comply with 808 CMR 1.04(1), including correction of deficiencies, 808 CMR 1.04(2), (3), (6), (7), (8), (9) or (10) in a timely manner, regardless of the stated reason, the Contractor may be subject to penalties up to and including: delay of

1.04: continued

payment, disallowance of payment of expenses relative to which documentation sufficient to meet the governmental agencies' inspection or auditing standards is not provided, restriction on bidding for new contracts, restriction from receiving additional funds or price increases, determination that the Contractor is ineligible for the ready payment system under 815 CMR 3.00, or debarment from doing business with the State. In addition, Contractors of special education services shall be deemed ineligible for an increase to prices authorized pursuant to the provisions of 808 CMR 1.06.

(c) Failure to Comply with 808 CMR 1.04(4), 1.04(5) or 1.05. If, after a hearing, DPS finds a violation of 808 CMR 1.04(4), 1.04(5) or 1.05, DPS may order that the contract(s) directly affected by such violation be terminated or may assess a civil penalty of not more than $2,000 or 10% of the Contractor's annual Maximum Obligation under such contract(s), whichever is greater. If DPS determines after a hearing that a Contractor has committed repeated willful violations of 808 CMR 1.04(4), 1.04(5) or 1.05, DPS may debar the Contractor for a period not to exceed five years.

1.05: Non-Reimbursable Costs

Funds received from Departments may only be used for Reimbursable Operating Costs as defined in 808 CMR 1.02. In addition, funds may not be used for costs specifically identified in 808 CMR 1.05 as non-reimbursable. Expenditures not in accordance with this paragraph are subject to recoupment, intercept, offset, and where appropriate, the Authorized Price is subject to adjustment, as determined by the Commonwealth.

(1) Unreasonable Costs. Any costs not determined to be Reimbursable Operating Costs as defined in 808 CMR 1.02 or any amount paid for goods or services which is greater than either the market price or the amount paid by comparable Departments or other governmental units within or outside of the Commonwealth.

(2) Certain Depreciation.

(a) Depreciation for assets to the extent that the assets have previously been depreciated by the Contractor.

(b) Depreciation which is computed by a method other than the following: an historical cost basis with a straight line method; using a schedule of asset service lives pursuant to DPS policy; and charging one half of the annual depreciation expense in each of the years of acquisition and disposal.

(c) Depreciation on idle, excess, or donated assets or on that portion of an asset's historical cost basis which was paid for from Restricted Funds.

(d) Depreciation on assets acquired under a capital budget approved by a Department and held in trust for the Commonwealth of Massachusetts or depreciation on assets acquired under a capital budget approved by a Department to which the Contractor holds title under the terms of a contract.

(3) Certain Interest.

(a) Any interest paid or accrued upon funds advanced or borrowed from any owner, partner, officer, stockholder, Related Party, or affiliated or parent organization which exceeds the prime rate plus 1% as published in The Wall Street Journal for similar obligations issued at the same time and for the same amount of time.

(b) Any interest paid or accrued to inter-fund borrowing.

(c) Any interest paid or accrued during the reporting year which is not supported by documentation and certification to demonstrate that payment of interest and repayment of principal are required under a definite schedule, or upon demand, pursuant to a written contract.

(d) Any interest or penalties incurred because of late payment of loans or other indebtedness, late filing or payment of federal and state tax returns, municipal taxes, unemployment taxes, social security, and the like.

(e) Any interest paid or accrued upon funds advanced or borrowed to the extent of income received or accrued from the investment of Restricted Funds which were available to defray all or a portion of the expenses to which borrowed or advanced funds were applied.

1.05: continued

(4) Current Expensing of Capital Items. All costs attributable to the current expensing of a Capital Item.

(5) Certain Salaries and Consultant Compensation. Those salaries, wages, and consultant compensation considered to be excessive by DPS, in light of salaries, wages and consultant compensation of other comparable Contractors.

(6) Bad Debts. Those amounts (whether estimated or actual) which represent the portion of an account or note receivable that proves to be entirely uncollectible despite collection efforts including legal action, and any related legal costs.

(7) Taxes. Federal corporate income taxes and the income related portion of the Massachusetts corporate excise tax.

(8) Related Party Transaction Costs. Costs which are associated with a Related Party transaction are reimbursable only to the extent that the costs do not exceed the lower of either the market price or the Related Party's actual costs. Notwithstanding the above provision, Related Party transaction costs are reimbursable up to market price when the following conditions are satisfied:

(a) the transaction is for a good or service which the Related Party sells to the general public;
(b) the Related Party's transactions with the Contractor in the reporting year comprise less than 10% of the Related Party's annual sales of that good or service to the general public (excluding sales to other parties also related to the Related Party under FASB 57); and
(c) the Contractor has approved the transaction by vote of independent directors, or a committee of independent directors, following full disclosure of the Related Party's interests.

Further, costs associated with a Related Party transaction which would not be Reimbursable Operating Costs to a Contractor under 808 CMR 1.02 and 808 CMR 1.05 are non-reimbursable. Transactions with a Related Party totaling less than $100 annually may be reimbursed at market prices.

(9) Certain Fringe Benefits.
(a) Fringe benefits determined to be excessive in light of salary levels and benefits of other comparable Contractors and fringe benefits to the extent that they are not available to all employees under an established policy of the Contractor. Disparities in benefits among employees attributable to length of service, collective bargaining agreements or regular hours of employment shall not result in the exclusion of such costs.
(b) Employer contributions to pension, annuity, and retirement plans which have been denied approval by the Internal Revenue Service.

(10) Fundraising Expense. The cost of activities which have as their primary purpose the raising of capital or obtaining contributions, including the costs associated with financial campaigns, endowment drives, and solicitation of gifts and bequests. However, if a Program which receives Commonwealth funds does not, or cannot be reasonably expected to, receive federal funds, the fundraising expenses specifically for raising capital or obtaining contributions for that Program may be off-set against the revenue generated by the fundraising activity except no loss will be reimbursable. In those circumstances, the Contractor must maintain and make available for review, subject to donor restrictions on confidentiality, accounting systems which adequately document and segregate those fundraising activity expenses and revenues associated with Programs which receive Commonwealth funds from other Contractor Programs in accordance with generally accepted accounting principles.

(11) Travel Allowances. Any amount advanced, paid, or accrued to reimburse the Contractor's employees for the use of a private motor vehicle on official agency business in excess of the amount allowed under the United States Internal Revenue Code §§ 61 and 62.

1.05: continued

(12) Non-Program Expenses. Expenses of the Contractor which are not directly related to the social service Program purposes of the Contractor.

(13) Security Deposits. Money deposited by the Contractor with a lessor of real property as security for full and faithful performance of the terms of a Contractor's lease.

(14) Free Care. Costs associated with free service and use.

(15) Research. The costs related to the conduct of grants, contracts, investigations, or Programs directed at the understanding, cause or alleviation of physical, mental or behavioral conditions. All costs of salaries, supplies, equipment, and overhead which are directly related to research are to be excluded. Data gathering and Program analysis are not considered to be research.

(16) Management Agency Fees. Fees charged to the Contractor by a management agency which exceed the costs the Contractor would have incurred had it not entered into a management agreement.

(17) Costs Resulting from a Change of Assets.

(a) Any costs related to a change of Program ownership that has not been recognized by the Commonwealth because of one or more of the following conditions:

1. The transfer of Program ownership occurred between Related Parties;
2. The transfer of Program ownership was not made for reasonable compensation;
3. The transfer of Program ownership was not a genuine transfer of all the powers and rights of ownership;
4. The transfer of Program ownership did not show an intent to sell the assets or the transfer increased the cost basis of either the transferor or transferee; or
5. In the case of a financing agreement between the transferor and the transferee, the agreement was not designed to bring about a complete transfer of Program ownership or there was not compliance with the terms of the agreement.

(b) When a change of Program ownership has been recognized by the Commonwealth, as follows:

1. For land, costs that exceed the lower of the acquisition cost or the basis allowed the immediate prior owner.
2. For furnishings and fixtures and equipment, costs that exceed the lower of the acquisition cost or the basis allowed the immediate prior owner, reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as a Reimbursable Operating Cost.
3. For buildings, costs that exceed the lower of the acquisition cost, 100% of the most recent 100% property valuation reduced by the amount of actual depreciation (or principal payments in lieu of depreciation) included as Reimbursable Operating Costs to the immediate prior owner, or an independent appraisal made by a qualified appraiser. Appraisals using the income approach to establish value will not be recognized.

(c) Where there has been an exchange of assets by a Related Party, costs in excess of the cost previously allowed to the Contractor with the Related Party relationship for the exchanged assets.

(d) Where there has been an exchange of assets between Contractors and such exchange results in a sale-lease back, costs in excess of the transferor’s allowable costs for the exchanged assets.

(18) Lobbying Costs. Funds used to compensate or reward lobbyists, consultants or staff to promote, oppose, or influence legislation, or influence the governor's approval or veto thereof or to influence the decision of any member of the Executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto, and any costs associated with lobbying activities. This prohibition shall apply where the lobbyists, consultants or staff, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation, approval or veto, or regulations, whether or not any compensation in

1.05: continued

addition to the salary for such employment is received for such services.

(19) Certain Reporting Year Expenditures. Reporting year expenditures in the operating fund for which Restricted Funds were available but not used.

(20) Itemized Deductions. All expenses not qualifying as itemized business deductions under the United States Internal Revenue Code.

(21) Litigation Costs. All costs incurred in connection with the prosecution or defense of claims against the State or any of it subdivisions, including, but not limited to, legal, accounting, and consulting costs. Reasonable expenses of a successful price appeal under 808 CMR 1.06(6) will not be considered non-reimbursable.

(22) Unallowable Costs under OMB Circular A-122 and A-21, or Successor Provisions. Costs which are not allowable under OMB Circular A-122 and A-21, or successor provisions, are non-reimbursable to Programs which receive federal financial assistance.

(23) Luxury Items. All costs associated with luxury items including, but not limited to luxury passenger automobiles as defined in §§ 4001 or 4002 of the Internal Revenue Code, airplanes, boats, vacation homes, alcoholic beverages, charitable contributions and donations, and all non-Program entertainment expenses.

(24) Salaries of Officers and Managers. Salaries of officers and managers to the extent they exceed the rate paid to state managers in job group M-XII, step seven.

(25) Mortgage Principal. Mortgage principal on an amortized or other basis: no Department shall reimburse a Contractor for the principal portion of any note secured by a mortgage on property owned directly or indirectly by the Contractor.

(26) Undocumented Expenses. Costs which are not adequately documented in the light of the American Institute of Certified Public Accountants statements on auditing standards for evidential matters.

(27) Administration and Support Costs. Costs which are otherwise non-reimbursable under the provisions of 808 CMR 1.05 may not be reimbursed through Administration and Support Costs.

1.06: Price Authorization for M.G.L. c. 71B Approved Private School Programs

808 CMR 1.06 sets forth the eligibility and procedural requirements applicable to M.G.L. c. 71B Approved Private School Programs seeking Massachusetts approved prices. 808 CMR 1.06 does not limit the prices a Contractor may charge to other purchasers of a Program, however, pursuant to 808 CMR 1.03(4) no price authorized under 808 CMR 1.06 may exceed the lowest price charged by a Contractor to other purchasers of the Program. In the calculation of an Authorized Price for an M.G.L. c. 71B Approved Private School Program, DPS shall not apply unrestricted funds or unrestricted revenue not specifically designated for such calculation by the Contractor. Any voluntary use of unrestricted funds or unrestricted revenues shall be governed by an annual written agreement between the Contractor and DPS. Any price authorization made as a result of such a written agreement shall not extend beyond June 30 of the Fiscal Year for which the price is authorized.

(1) Annual Price Authorization for Approved Private School Programs Located within the Commonwealth.

(a) Eligibility for a Price Increase. In order for an Approved Private School Program to be eligible for an increase to its currently Authorized Price, the Contractor must have

1.06: continued

filed a UFR or appropriate documentation of exemption for the designated Base Year in accordance with 808 CMR 1.04 or predecessor regulation and the instructions to the UFR.

(b) Price Determination for Eligible Programs. If a Program has been determined to be eligible for a price increase in accordance with 808 CMR 1.06(1)(a), DPS will establish a subsequent year price for the Program by adding a per student annual adjustment amount to the current Authorized Price as follows:

1. Where the Program's Authorized Price has been calculated pursuant to 808 CMR 1.06(3) or recalculated pursuant to 808 CMR 1.06(4) or predecessor regulation as a result of a revision by DOE of the Programs approved staffing and other components since the Base Year, the per student annual adjustment amount will be determined by multiplying the current Authorized Price by a percentage factor, as determined on an annual basis by DPS, which reflects adjustments to employee compensation.

2. Except as provided above in 808 CMR 1.06 (1)(b)(1), the per student annual adjustment amount will be determined by multiplying the current Authorized Price by a percentage factor, as determined on an annual basis by DPS.

3. Unless otherwise provided in 808 CMR 1.06, the price as determined in 808 CMR 1.06(1)(b)(1). or 808 CMR 1.06(1)(b)(2). will be the annual price authorized for the subsequent Fiscal Year.

(c) Price Determination for Other Programs. If a Program does not satisfy the criteria for a price adjustment under 808 CMR 1.06(1)(a), DPS will authorize a price for the Program equal to the current Program price, unless otherwise provided in 808 CMR 1.06.

(d) Additional Price Adjustments.

1. Adjustments to Account for Surplus Revenues and Audit Findings. Where a Contractor has accumulated a surplus in the Base Year in excess of the limitations contained in 808 CMR 1.03(7), or an audit of the Program by the Office of the State Auditor has determined that Program funds are subject to recoupment or DPS has determined that Department funds have been expended by the Program on non-reimbursable costs, DPS may adjust the Program price to recoup such excess surplus or inappropriate expenditures. Such adjustments may reduce the base upon which future years' prices are determined.

2. Adjustments for Failure to Comply with Audit Requirements. DPS will rescind any price increase authorized under 808 CMR 1.06 and will adjust the Authorized Price accordingly if, by June 1:

a. the Contractor has failed to correct UFR filing deficiencies identified by DPS; or

b. DPS has not received a corrective action plan incorporated into an administrative agreement which has been prepared and signed in accordance with the DPS Audit Resolution Policy relative to material and reportable internal control and compliance findings contained in its UFR for the Base Year.

(e) Adjustments to Reflect Price Increases Due to Extraordinary Circumstances. The Program price authorized under 808 CMR 1.06(1) may be prospectively adjusted for increases subsequently granted under 808 CMR 1.06(4), however any adjusted price shall not exceed the greater of the price authorized under 808 CMR 1.06(1), or that granted under 808 CMR 1.06(4).

(f) Annual Adjustment Limitation. No price authorized under 808 CMR 1.06(1) except a price authorized under 808 CMR 1.06(1)(e) may exceed the price in effect for the current Fiscal Year plus the annual adjustment percentage determined annually by DPS.

(g) Prices authorized pursuant to 808 CMR 1.06(1) will be authorized on or before the first Wednesday in February of each year and shall become effective on July 1 following authorization.

(2) Annual Price Authorization for M.G.L. c. 71B Approved Private Schools Located Outside the Commonwealth of Massachusetts. Any price authorized pursuant to 808 CMR 1.06(2) shall be effective on the date of authorization by DPS, or the effective date as determined by the state in which the Program is located, whichever is later.

1.06: continued

Prices authorized by DPS under 808 CMR 1.06(2) shall remain in effect until superseded by DPS.

(a) If an Approved Private School Program is located outside of the Commonwealth of Massachusetts in a state which has an established state rate or price setting mechanism, DPS will authorize as the price to be paid by Commonwealth Departments the price established, authorized or approved by the state in which the Program is located, provided that the price is the lowest charged by the Contractor for the Program. In order for DPS to authorize a price, the following must be submitted to DPS by the Contractor:

1. A UFR or certificate of exemption for the most recent reporting year, in accordance with the UFR instructions;
2. A certification from the Contractor that the price requested to be authorized is the lowest charged by the Contractor for the Program; and
3. A copy of the price authorization or approval by the state in which the Program is located, including the effective dates of the price.
4. If the requested price is not the lowest charged by the Contractor for the Program, the Contractor must identify the amount of the lowest price charged, which will then be authorized by DPS.

(b) If an Approved Private School is located outside the Commonwealth of Massachusetts in a state where there is no established state rate or price setting mechanism, DPS will determine and authorize a Program price pursuant to the provisions of 808 CMR 1.06(1) or (3), as applicable.

(3) Price Authorization For New or Reconstructed M.G.L. c. 71B Approved Private School Programs

(a) Upon the request and recommendation of DOE, DPS will review a proposed Program price for a new or reconstructed M.G.L. c. 71B Approved Private School Program. A new Program is one approved by DOE for the first time as such. A reconstructed Program is one currently approved by DOE but the service configuration of which has been altered and those alterations have been approved by DOE. DPS may require that information sufficient for its review, including format of the information, be submitted with the DOE request and recommendation. After review, DPS may authorize the proposed price, authorize an adjusted price, or suspend action pending the receipt of additional information.

(b) A price authorized under the provisions of 808 CMR 1.06(3) for a new M.G.L. c. 71B Approved Private School Program is subject to review and adjustment after six (6) months based upon a review and analysis of the Contractor's actual expenditures. Within 60 days of the last day following the sixth month of the effective date of the price, or the date that the Program becomes operational, whichever is later, the Contractor must submit, in UFR format, actual expenditure and revenue reports according to the instructions in the UFR, including an accountant's review report (AICPA Professional Standards Statement on Auditing Standards No. 71 (SAS No. 71)) Within 60 days of the receipt of the required materials, DPS shall notify the Contractor of any adjustments to be made to the Authorized Price.

(4) Price Adjustment for M.G.L. c. 71B Approved Private School Programs - Extraordinary Relief.

(a) Conditions for Consideration of Extraordinary Relief. Where an Approved Private School experiences additional expenses for its Program during the price year which are necessary for the provision of the mandated program of services and which it cannot absorb within its Authorized Price, the Contractor may apply to DPS for a price adjustment for the Program during the price year if the expenses are necessary to:

1. meet federal or state statutory, or local regulatory requirements, including DOE or OCCS regulations and licensing requirements not currently included in the Authorized Price, or
2. account for unanticipated emergencies beyond the reasonable control of the Contractor.

1.06: continued

(b) To be eligible for consideration for extraordinary relief the conditions described in 808 CMR 1.06(4)(a) must have resulted from unforeseen events occurring after July 1 of the current Fiscal Year.

(c) Required Documentation. To be eligible for consideration for extraordinary relief, the Contractor's request must include the following:

1. a detailed description of the situation which has caused the Contractor to seek extraordinary relief;
2. price year income and expenses to date for the Approved Private School Program(s) for which extraordinary relief is being sought;
3. a copy of the Contractor's most recently completed fiscal year UFR;
4. a copy of the Approved Private School Program budget(s) for the current fiscal year using the components contained in the UFR and instructions thereto;
5. a listing of the Approved Private School Program purchasers for the current Fiscal Year, including the number of students for each purchaser;
6. the average enrollment, by month, of the Approved Private School Program(s) for the most recently completed 12 month period;
7. substantial evidence that the Contractor's resources are insufficient to cover the expenses for which extraordinary relief is sought, including substantial evidence that the Contractor has exhausted all programmatic and financial resources. For the purposes of 808 CMR 1.06(4)(c)(7), "programmatic and financial resources" shall not include unrestricted funds or revenues as defined in the instructions to the UFR which have not been specifically designated for use by the Approved Private School Program by the Contractor, but shall include, and not be limited to, surplus revenues as determined by DPS under 808 CMR 1.03(7).
8. evidence, for each cost for which extraordinary relief is sought, that the Contractor acted prudently, reasonably and in compliance with the law;
9. citations or notices of violations of federal, state or local statute or regulation supporting the request, or a statement from the appropriate authority that it requires the expense or item for which extraordinary relief is being sought;
10. documentation that the current operating expenses are in compliance with the reimbursable cost standards contained in 808 CMR 1.02 and 1.05;
11. the Contractor's requested price;
12. documentation that the Contractor has notified all entities which currently purchase the Approved Private School Program that it has requested extraordinary relief, and the amount of the requested price; and
13. where a Contractor's request includes expenses for additional Approved Private School Program staff, a staff listing, prepared using position titles contained in the instructions to the UFR and containing the number of proposed full time equivalents for each position title. Such a staff listing shall include a statement, signed by an authorized representative of DOE and/or OCCS indicating that the agency's regulation requires the listed staffing level and the number of students the staffing is intended to serve.

(d) Submission. The Contractor shall Submit its request, together with all the required documentation under 808 CMR 1.06(4)(c)(1) through (13) to DPS, with a copy to DOE. A request will be deemed incomplete until all of the required documentation is submitted, and no action will be taken by DPS on an incomplete application. DPS may request additional or clarifying information from the Contractor. Should these requests not be satisfied within 21 Days of the postmark of such request, extraordinary relief shall not be granted.

(e) Adjusted Price. DPS will take action on a complete request within 60 Days of the receipt of materials required under 808 CMR 1.06(4)(d). Should DPS determine that the Contractor's request meets the requirements of 808 CMR 1.06(4)(a), (b) and (c) and that extraordinary relief should be granted, DPS will develop and authorize a price subject to the following conditions:

1. any requested expenses which do not qualify under 808 CMR 1.06(4)(a)(1) or (2) will not be included;
2. any requested expenses which are deemed to be non-reimbursable by DPS using

1.06: continued

the criteria contained in 808 CMR 1.05 will not be included;

3. any requested adjustments to administrative expenses will not be included;

4. the additional amount included in any adjusted price for any given item will not exceed the amount of the difference between the Contractor's expense for the item in the most recently completed Fiscal Year, and the current year's anticipated expense, on a per student basis; and

5. no adjusted price will be effective prior to the date of authorization, and no price shall include expenses incurred prior to the date of authorization.

(5) Administrative Review.

(a) DPS may conduct a review of Approved Private School Programs and/or Authorized Prices for good cause, including but not limited to the following reasons: failure to incur costs for items included in the initial price authorization process or later adjustments, failure to provide the approved or required Program services, failure to implement approved or required programmatic or non-programmatic changes included in the price year Reimbursable Operating Costs, or use of Department funds on non-reimbursable costs as defined in 808 CMR 1.05, as determined by DPS.

(b) DPS shall initiate administrative review by notifying the Contractor that it intends to conduct an administrative review and the reason(s) for the review. DPS may require the Contractor and/or Department(s) to Submit books, records and other information it deems necessary for its review. Such requests shall be in writing, and requested materials shall be submitted to DPS within 21 Days of the request.

(c) DPS shall notify the Contractor and the Department(s) of the results of the administrative review. The review may result in an amendment to an Authorized Price.

(6) Contractor Right to Appeal.

(a) Any Contractor aggrieved by the action of DPS relative to action taken under 808 CMR 1.06(1), (2), (3), (4) or (5)(c), who desires a review thereof, may file an appeal with the Division of Administrative Law Appeals within 30 Days of notice of DPS's action. The question on appeal shall be whether DPS, in taking the challenged action, has properly applied its regulations.

(b) The pendency of an appeal under 808 CMR 1.06(6) does not limit DPS's right to undertake an administrative review of any Authorized Price or to take any other corrective action.

(7) Price Authorization in Special Cases.

(a) Individual Prices. DPS will develop, issue, and amend, as necessary, instructions for the authorization of individual prices for services to students enrolled in Approved Private School Programs when that student has a need for additional or unique services which are not provided by the Approved Private School Program.

(b) Specialized Placement Price Authorization. DPS will develop, issue and amend, as necessary, instructions for the development and authorization of prices for individual students who are placed, after approval by DOE pursuant to 603 CMR 28.500 or successor provisions thereto, by a Department in a private school which has not been approved under M.G.L. c. 71B. These placements are also referred to as "sole source" placements.

(c) Special Circumstances. With the consent of DOE and the Contractor, DPS may authorize a price determined in any manner consistent with St. 1993, c. 110, § 274, as amended, should DPS determine that price determination methods under 808 CMR 1.06 are inapplicable to the private school or produce a result which is inconsistent with St. 1993, c. 110, § 274, as amended.

(d) Critical Direct Care Positions for M.G.L. c. 71B Approved Private School Programs. Upon application to DPS by an Approved Private School Program, DPS may adjust the current Authorized Price to accommodate compensation adjustments for the following direct care positions, as defined in the Fiscal Year 1999 UFR Audit and Preparation Manual:

1.06: continued

Direct Care/Program Staff I;
Direct Care/Program Staff II;
Direct Care/Program Staff Supervisor;
Teacher, and
Special Education Teacher.

All Authorized Price adjustments will be governed by the DPS Critical Direct Care Staff Compensation Policy for M.G.L. c. 71B Approved Private School Programs. All requests for Authorized Price adjustments under this paragraph will include a statement, signed by an authorized representative of DOE, indicating that the number of staff in each position for which an adjustment in compensation is sought is consistent with DOE approval.

Any funds received pursuant to an adjustment in the Authorized Price made under this paragraph will be used for the purpose requested. Any such funds not so used, as determined by DPS through the Administrative Review process set forth in 808 CMR 1.06(5), will be subject to recoupment.

1.07: Severability

The provisions of 808 CMR 1.00 are severable. If any provision of 808 CMR 1.00 or its application is held to be illegal, unenforceable or void, Departments and Contractors shall be relieved of the obligations under that provision and all other provisions shall remain in full force and effect. Such invalidity shall not be construed to affect the application of the provision under circumstances other than those held invalid.

REGULATORY AUTHORITY

808 CMR 1.00: M.G.L. c. 29, § 29B; St. 1993 c. 110, § 274, as amended by St. 1993, c. 151, § 113, St. 1993, c. 296, § 3 and St. 1993, c. 495, § 99.

FORMS - CONTRACT

Request for Verification of Taxation Reporting Information

Commonwealth Terms and Conditions

Commonwealth Terms and Conditions for Human and Social Services

Standard Contract Form

Standard Contract Amendment Form

Purchase of Service Attachments

Change in Contractor Identity Form

Equipment/Services Confirmation Form

Contract Review Form

Commonwealth of Massachusetts

REQUEST FOR VERIFICATION OF TAXATION REPORTING INFORMATION

(Massachusetts Substitute W-9 Format)

Pursuant to IRS regulations, vendors & customers must furnish their Taxpayer Identification Number *(TIN)* to the Commonwealth. Vendors must complete, sign, and return this form before payments may be made.

LEGAL NAME (List legal name, if joint names, list first & circle the name of the person whose TIN you enter in Part I below.
(See Specific Instructions on the back page.)

BUSINESS NAME- If different from the above**. (**See **Specific Instructions** on the back page)

LEGAL ADDRESS – Number, Street, and apt. or suite no., City, State and ZIP code.

REMITTANCE (PAYMENT) ADDRESS (If different from the above**)** Number, Street, and apt. or suite no., City, State and ZIP code.

PHONE # **FAX #**

PART I - Taxpayer Identification Number (TIN) Verification

Enter your Taxpayer Identification Number (TIN) in the appropriate box.

Enter either *SSN* **OR** *EIN*. **DO NOT ENTER BOTH.** (See PART II.)

Social Security Number (SSN)

☐☐☐☐☐☐☐☐☐

Employer Identification Number (EIN)

☐☐☐☐☐☐☐☐☐

PART III Update to existing W-9 Form

☐ A Request for Verification of Taxation Reporting Information has been previously filed with the Commonwealth under this TIN. This form will replace that form.

Please attach supporting documentations specified in instructions on the back page under Updates.

PART II – What Name and Number to give to the requester (one type of account box MUST be checked)

TYPE OF ACCOUNT Please check one	NAME	TIN	ORGANIZATION TYPE
❑ Individual	The Individual Name	SSN	I
❑ Sole Proprietorship	The Individual Name- The Owner	SSN or EIN	I
❑ Corporate	The corporation (including Canada & Mexico)	EIN	C
❑ Partnership	The Partnership	EIN	I
❑ A valid trust, estate, or pension trust	Legal entity. List first and circle the name of the legal trust, estate or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)	EIN	I
❑ Association, club, religious, charitable, educational, or other tax-exempt organization.	The Organization	EIN	O
❑ A broker or registered nominee	The broker or nominee	EIN	Any of the above except Individual

I have read and understand the Commonwealth of Massachusetts Request for Verification of Taxation Reporting Information
Please check this box ☐

Under penalties of perjury, I declare that I have examined this request and to the best of my knowledge and belief, all information I have supplied is true, correct, and complete.

_____ _____/_____/_____
Signature ***Date***

_____ _____/_____/_____
Please print or type your name & title ***Date***

Revision date 05/01/2000 ***MA W-9 Form***

REQUEST FOR VERIFICATION OF TAXATION REPORTING INFORMATION

GENERAL INSTRUCTIONS
(Section references are to the Internal Revenue Code.)

Purpose of Form - A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report payments made to you for the sales of goods & services & real estate transactions Use the Request for Verification of Taxation Reporting Information *(Massachusetts Substitute W-9 Format*) to furnish your correct TIN to the Commonwealth and, when applicable, (1) to certify that the TIN you are furnishing is correct *(or that you are waiting for a number to be issued).*

How To Obtain a TIN - If you do not have a TIN, apply for one immediately. To apply, get **Form SS-5**, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or **Form SS-4**, Application for Employer Identification Number (for businesses and all other entities), from your local Internal Revenue Service office.

To complete the Request for Verification of Taxation Reporting Information if you do not have a TIN, write "Applied For" in the space for the TIN in Part 1, sign and date the form, and give it to the requester. Generally, you will then have 60 days to obtain a TIN and furnish it to the requester. Note: Writing "Applied For" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Request for Verification of Taxation Reporting Information, include your TIN, sign and date the form, and give it to the requester.

Penalties

Failure to Furnish TIN - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of $50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil Penalty for False Information With Respect to Withholding - If you make a false statement with no reasonable basis that results in no imposition of backup withholding, you are subject to a penalty of $500.

Criminal Penalty for Falsifying Information - Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

SPECIFIC INSTRUCTIONS
Name - If you are an individual, you must generally provide the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, please enter your first name, the last name shown on your social security card and your new last name.

Sole proprietor- You must enter your *individual* Name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the business name line.

Other entities- Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or legal document creating the entity. You may enter your business, trade, or "doing business as" name on the business line.

Foreign Vendors - If you are a nonresident alien or foreign entity not subject to backup withholding, give the requester a completed **Form W-8BEN** (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding).

TIN "Applied For" - Follow the instructions under How to Obtain a TIN, sign and date this form.

Signature - The form must be signed to be considered valid.

Privacy Act Notice - Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS to report interest, dividends, and certain other income paid, the acquisition of property. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return.

Organizations Recognized by the Commonwealth as Tax Exempt - Organizations seeking recognition of tax exempt status with the Commonwealth must provide documentation of the organization federal tax exempt status in the form of a ruling or determination letter issued by the Internal Revenue Service (IRS). The Commonwealth recognizes the following IRS tax exempt status organization rulings:
. Section 501(c) (1 through 23)
. Section 501 (d)
. Section 501(e)
. Section 501 (f)
. Section 501(k)
. Section 521 (a)
For more information on Tax-Exempt status, please see IRS Publication 557 (rev. Jan. 99).

Updates to the Request for Verification of Vendor/Customer Taxation Reporting Information - If any of the information requested on this form changes *(i.e., name or address changes)*, the payee must submit a new Request for Verification of Taxation Reporting Information with the updated information. Changes to name or TIN must be accompanied by IRS certification of Name & TIN.

If the payee receives notification from the IRS that an information return *(i.e., 1099-MISC)* was filed on their behalf by the Commonwealth with incorrect spelling of their name and/or incorrect or missing TIN (commonly referred to as a "B-Notice" or IRS Form 8355), the payee must immediately complete a new Request for Verification of Taxation Reporting Information with the corrected information and attach a copy of the IRS Form 8355 to the form.

If the Office of the State Comptroller or a department of the Commonwealth contacts you because the IRS has informed the Commonwealth that a return filed in your behalf has an incorrect spelling of your vendor name and /or incorrect or missing TIN. You must submit a new Request for Verification of Taxation Reporting Information and attach an IRS verification of your TIN and correct *(legal*) name.

If you have Questions on Completing this Form - Please contact the Office of the State Comptroller

***By Phone*:** (617) 973-2311 or 973-2655

Completion of Form:
Upon completion of this form, please return it to the Commonwealth department you wish to register with for the purpose of doing business.

Revision date 05/01/2000
MA W-9 Form

COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. ***Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.*** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract**.** The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

1. *Contract Effective Start Date.* Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

2. *Payments And Compensation.* The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

3. *Contractor Payment Mechanism*. All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

4. *Contract Termination Or Suspension*. A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

5. *Written Notice*. Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

6. *Confidentiality*. The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

7. *Record-keeping And Retention, Inspection Of Records.* The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

8. *Assignment*. The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. *Subcontracting By Contractor.* Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. *Affirmative Action, Non-Discrimination In Hiring And Employment.* The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11. *Indemnification.* Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

12. *Waivers*. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. *Risk Of Loss.* The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

COMMONWEALTH TERMS AND CONDITIONS

14. ***Forum, Choice of Law And Mediation.*** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. ***Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.*** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: _____
(signature)

Print Name: _____

Title: _____

Date: _____

(Check One): _____ Organization _____ Individual

Full Legal Organization or Individual Name: _____

Doing Business As: Name (If Different): _____

Tax Identification Number: ____ ____ ____ ____ ____ ____ ____ ____ ____

Address: _____

Telephone: _____ FAX: _____

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the***: Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108*** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES

This Commonwealth Terms and Conditions for Human and Social Services form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division/Division of Purchased Services (OSD), for use by Commonwealth of Massachusetts ("State") Departments and Contractor organizations that contract to provide Human and Social Services to Commonwealth clients. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions for Human and Social Services by the Contractor and filing as prescribed by CTR, these Commonwealth Terms and Conditions for Human and Social Services will be incorporated by reference into any Contract for Human and Social Services executed by the Contractor and any Department, in the absence of a superseding law or regulation requiring a different Contract form. Its provisions are in addition to the requirements contained in 808 CMR 1.00 and any Human and Social Services Contract(s), as well as any applicable requirements contained in 808 CMR 2.00 or 801 CMR 21.00. This Commonwealth Terms and Conditions for Human and Social Services is effective upon signature by the Contractor or July 1, 1997, whichever is later, and supersedes the Master Agreement and General Conditions approved by ANF on May 1, 1995.

1. Contract Effective Start Date. Notwithstanding verbal or other representations by the parties, unless otherwise permitted in 801 CMR 21.00, the effective start date of a Contract shall be the later of: the date the Contract was executed by an authorized signatory of the Contractor; the date the Contract was executed by an authorized signatory of the Department; the date specified in the Contract; or, the date of Secretariat authorization pursuant to M.G.L. c. 29, §29B.

2. Payments And Compensation. The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with 801 CMR 21.00, 808 CMR 1.00 and the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. c. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. c. 7A, §3 and 815 CMR 9.00. In no event shall payments under any Contract exceed the rate or maximum obligation of the Contract or be directed to off-set costs which are not reimbursable under Commonwealth contracts under any provision of law, including M.G.L. c. 7, §56 and 808 CMR 1.00. Upon determination by the Department that the Contractor has not provided services to the extent billed, has billed for services to any client who the Contractor knew or should have known was ineligible for services according to the terms of the Contract, has received duplicate or otherwise excess payments, has used Contract payments for non-reimbursable expenses or otherwise failed to perform in accordance with the terms of the Contract or 808 CMR 1.04, the Department may, upon reasonable notice and opportunity for correction, delay, disallow, set-off or recoup payments.

3. Contractor Payment Mechanism. The Contractor will be paid using the Payment Voucher System unless a different payment mechanism is agreed upon in the Contract. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

4. Contract Termination Or Suspension.

a. Procedures. A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon any of the events or conditions set forth below. During the notice period for termination, the parties may agree to adjust the termination conditions, including the effective date contained within the notice of termination. Grounds and procedures for termination are: i) Immediate Termination: Absence of Funding or Emergency. A Contract shall terminate immediately upon receipt of written notice of termination under the following conditions: the absence of appropriation, allotment, availability or authorization to the Department to discharge its obligations under the Contract in the fiscal year; a party's default, breach or any intervening casualty which poses an immediate threat to the life, health or safety of a client; the indictment of the Contractor or one of its principals or officers for an offense or offenses related to the provision of services; fraudulent activities on the part of the Contractor in its dealings with the Commonwealth; or the filing for bankruptcy by a Contractor. ii) Early Termination: Breach or Default, Reduction of Funding or Change in Law. A Contract may be terminated by providing notice of termination effective not less than forty-five (45) calendar days after date of notice under the following conditions: either party may terminate if the other party fails to fulfill its obligations under a Contract, including partial or complete non-performance of any provision; there is a reduction of funds appropriated for Contracts; or if any statute or regulation which governs performance is changed, differently interpreted by a court or other competent authority, newly enacted, adopted or promulgated so as to increase the burdens on either party in complying with the terms of the Contract significantly beyond those existing at the time of execution. For termination for breach or default, the party must specify the alleged default or breach in writing, allowing a reasonable time, but not less than thirty (30) calendar days, for correction. For termination due to reduction in funding, the Department may alternatively provide a conditional notice of termination with a proposed amendment to a Contract. iii) Termination without Cause. Either party may terminate the Contract without cause upon provision of written notice to the other at least sixty (60) calendar days before its effective date. Whether or not cause to terminate exists under any other provision, a party may elect to terminate without cause.

b. Obligations Upon Termination. Upon termination, the Contractor shall have the following obligations: i) Transfer of Clients. The Contractor shall use its best efforts to provide for the health and safety of clients being served under the Contract for a reasonable period of time, while the Department arranges for their transfer, and shall cooperate fully with the Department's efforts to transfer clients. ii) Client Records. Client records maintained pursuant to the Contract shall remain the property of the Contractor, subject to the provisions of Sections 6, 7 and 11d. However, where the Department has continuing responsibility to provide for the clients funded by the Contract, the Contractor must, upon request, provide to the Department or the new Contractor a copy of the client records of services as authorized by the Department. The reasonable cost of such transfer will be borne by the Department. iii) Reports and Other Documents. All documents, data, studies, and reports related to performance of the Contract shall be submitted to the Department by the Contractor, unless the Department directs otherwise. iv) Furnishings and Equipment. The termination of the Contract does not affect the Contractor's responsibilities with respect to equipment and other property under 808 CMR 1.00. v) Payment. The Contractor shall be paid for all authorized services performed up to the date of termination, subject to the provisions of Section 2. In addition, if the Department is required to remove clients from a facility operated by the Contractor and fails to remove said clients, unless otherwise agreed by the parties and subject to the conditions set forth in Section 2, the Contractor will be paid at the rate contained in its terminated Contract for continuing to provide services after the date of termination and until such clients are removed. vi) Subsequent Audit. If a Contract is terminated without inspection, review or audit, the Commonwealth retains the right to conduct an inspection, review, or audit and to disallow reimbursement or recover funds if any finding warrants such action.

5. Written Notice. Any notice shall be deemed delivered and received when submitted in writing, in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor.

6. Confidentiality. The Contractor shall comply with M.G.L. c. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

7. Record-keeping And Retention, Inspection Of Records. The Contractor shall maintain records, books, files and other data as required by 808 CMR 1.00 and as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Contractor shall maintain adequate written policies and procedures for accounting, management and personnel activities, including but not limited to conflict of interest and nepotism policies. The Department shall have access, as well as any parties identified under Executive Order 195,

during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of records at a reasonable expense.

8. Assignment. No liability, responsibility, obligation, duty or interest under a Contract may be assigned, delegated, assumed or transferred, in whole or in part, without the prior written approval of the Department. However, the Contractor or a court appointed receiver shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. c.106, §9-318. The Contractor or court appointed receiver must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. Subcontracting By Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions for Human and Social Services and a Contract. When the Department furnishes federal funds to the Contractor, which are being passed down to a subcontractor, the subcontract must contain a provision that the subcontractor will comply with applicable federal single audit, cost principles and administrative requirement standards. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. Affirmative Action, Non-Discrimination In Hiring, Employment and Service Delivery. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. The Contractor shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities and agrees to comply with any affirmative action programs required by Executive Order 227, or any successor provisions.

11. Human and Social Services Contracting Provisions

a. Board of Directors Standards. If a non-profit organization, the Contractor shall comply with the principles in the Massachusetts Attorney General's "Guide for Board Members of Charitable Organizations" and with the standards for boards contained in the American Institute of Certified Public Accountants (AICPA)'s statements on auditing standards, as may be amended from time to time. Further, the Contractor specifically agrees that: i) members of the Contractor's management and immediate family (as defined in the AICPA's Financial Accounting Standards Board Statement number 57) will not comprise more than 30% of the voting members of the Contractor's board or any of the board's committees or subcommittees; and, ii) the Contractor's Board of Directors will approve the selection of the Contractor's audit firm, will annually review its executive director's or other more senior manager's performance and set that person's compensation by formal vote, and will meet as frequently as necessary to fulfill the Contractor's obligations under this section. Where the board meets less than two times during its fiscal year, the Contractor shall submit a description of its board structure and the dates of each board and subcommittee meeting with its Uniform Financial Statements and Independent Auditor's Report (UFR).

b. Client Care and Use of Funds. The Contractor shall comply with all applicable provisions of law relative to the care of clients and the investigation and reporting of suspected client abuse or neglect. The Contractor shall provide the Department with copies of all legally mandated reports of client abuse or neglect where the alleged abuse or neglect was a direct or indirect consequence of the services rendered under a Contract and shall comply with all additional reporting requirements relative to client abuse and neglect contained in a Contract. The Contractor shall be subject to any standards cited in a Contract for the disqualification of candidates for positions where the candidates have criminal records, for establishing proof of criminal record information of candidates prior to hire and for addressing criminal activities subsequent to hire. The Contractor shall also comply with all laws and regulations and contractual provisions relative to the use of client funds, property or other resources.

c. Annual Financial Reporting Requirements. The Contractor and any subcontractor must comply with all applicable annual financial reporting requirements set forth in 808 CMR 1.00 and the instructions to the UFR. Any nonprofit Contractor receiving in excess of the threshold of federal funds through the Commonwealth, as set forth in Office of Management and Budget (OMB) Circular A-133 or successor provision, must comply with the Circular as well.

d. Publications. The Contractor shall not disseminate, reproduce, display or publish any report, map, information, data or other materials or documents expressly required or produced in whole or in part pursuant to a Contract, nor shall any such materials or documents be the subject of an application for patent or copyright by or an behalf of the Contractor, without the prior written consent of the Department. If the Contractor prepares, publishes or distributes any publication describing any services or programs the cost of which are funded at least in part by a Contract, then any such publication shall, unless the Department directs otherwise, contain a prominently displayed statement to that effect.

e. Additional Provisions Applicable to Contractors Receiving Federal Funds. If the Contractor receives federal funds from the Commonwealth through a Contract, then, in accordance with OMB Circular A-110 or successor provision, it further agrees to the following: i) Equal Employment Opportunity: All contracts entered into by the Contractor shall contain a provision requiring compliance with federal Executive Order 11246, as amended by Executive Order 11375, and as supplemented by regulations at 41 CFR part 60; ii) Contract Work Hours and Safety Act: If the Contractor employs mechanics or laborers to fulfill its contractual obligations, it will comply with sections 102 and 107 of 40 USC 327-333, as supplemented by 29 CFR part 5.; iii) Clean Air Act and the Federal Water Pollution Control Act: If the Contractor receives more than $100,000 in federal funds the Contractor agrees to comply with any applicable standards, order, or regulations issued pursuant to 42 USC 7401 et seq. and 33 USC 1251 et seq.; and iv) Byrd Anti-Lobbying Amendment: If a Contractor receives $100,000 or more of federal funds through a Contract, by signing that Contract it certifies it has not and will not use federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. A Contractor shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

12. Waivers. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. Risk Of Loss. The Contractor shall bear the risk of loss for any Contractor supplies, equipment or other materials used for a Contract and for all deliverables, records, documents, files, data, studies and reports which are in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession and, where applicable, ownership and full legal title, to the deliverables, records, documents, files, data, studies and reports are transferred to and accepted by the Department.

14. Forum and Choice of Law. Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof.

15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration. Any amendment or attachment to any Contract which contains conflicting language or has the effect of deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions for Human and Social Services, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All formal amendments must be executed by the parties and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these

COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES

Commonwealth Terms and Conditions for Human and Social Services, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions for Human and Social Services, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, The Contractor certifies under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for Human and Social Services for any applicable Contract executed with the Commonwealth as certified by its authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: _____
(signature)

Print Name: _____

Title: _____

Date: _____

Full Legal Organization Name: _____

Doing Business As: Name (If Different): _____

Tax Identification Number: ____ ____ ____ ____ ____ ____ ____ ____ ____

Address: _____
_____

Telephone: _____ FAX: _____ .

INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES (and the W-9 form if applicable) to the**: Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

COMMONWEALTH OF MASSACHUSETTS

STANDARD CONTRACT FORM

This form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. **Any changes to the official printed language of this form as published by ANF, CTR and OSD shall be void. This shall not prohibit the addition of non-conflicting Contract terms.** The quality of all performance by the Contractor under this Contract must be timely and meet or exceed industry standards. The Contractor shall comply with all applicable Massachusetts ("State") and federal laws and regulations and perform this Contract in accordance with the applicable Commonwealth Terms and Conditions and as follows:

(*The Contractor Must Complete Only Those Sections preceded by an "*>>*")*

>>Vendor Code:	Document ID:
>>**CONTRACTOR NAME**:	**DEPARTMENT NAME:**
>>Contract Manager:	Contract Manager:
>>Phone: >>Fax:	Phone: Fax:
>>Business and Mailing Address:	Business and Mailing Address:
Terms and Conditions that apply to this Contract (*Completed by Department. Check one option only*): ___ COMMONWEALTH TERMS AND CONDITIONS (Standard) OR ___ COMMONWEALTH TERMS AND CONDITIONS FOR HUMAN AND SOCIAL SERVICES **Execution and Filing Status of applicable Terms and Conditions**: *(Check one option only):* ___ Previously executed by Contractor and is on file as prescribed by CTR OR ___ Executed by Contractor and is attached to this Contract	**Compensation** (*Completed by Department*) ____ Maximum Obligation of this Contract: $_____. OR ____ No Maximum Obligation established: ___ Rate Contract with a Rate of: $_____ ___ Per:_____ (Multiple Rates Must Be Attached) ___ Statewide Contract or Qualified List Contract **Payment Type**: FOR INFORMATION PURPOSES ONLY (*Completed by Department- Check one option only*) ____Payment Voucher ____Ready Payment (Schedule:_____Initial Base Amt:$_____) ____Contractor Payroll ____Recurring Payment
Start Date of This Contract:_____ (*Completed by Department.* Subject To Section 1. of the applicable Terms and Conditions.)	(**Termination Date of This Contract** :_____. (*Completed by Department.* Subject To Section 4. of the applicable Terms and Conditions.)
Brief Description of Performance: (*Completed by Department*) Attach a copy of the Request for Response (RFR) and the Contractor's Response and any additional negotiated terms, if applicable; or if an RFR was not required attach appropriate justification documentation including exemption from RFR requirement and details of scope of performance and compensation.	

IN WITNESS WHEREOF, **the Contractor certifies, under the pains and penalties of perjury that it is in compliance with all of the following provisions and shall remain in compliance with these provisions for the life of this Contract:** That the Contractor is qualified to perform this Contract and possesses, or shall obtain, all requisite licenses and permits to complete performance under this Contract; that it is in compliance with all federal and state tax laws, including M.G.L. c. 62C, §49A; that pursuant to M.G.L. c. 151A, §19A and M.G.L. c. 152, it will comply with all laws and regulations relating to payments to the Employment Security System and required workers' compensation insurance policies; that it shall carry professional and personal injury liability insurance sufficient to cover its performance under this Contract; that it will comply with all relevant prevailing wage rate and employment laws; that it is in compliance with the provisions of the Acts of 1990, c. 521, §7 as amended by the Acts of 1991, c. 329 and 102 CMR 12.00 and that the Contractor is either a "qualified employer" (it has fifty (50) or more full time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements) or the Contractor is an "exempt employer"; that pursuant to M.G.L. c. 156B, §109 (business corporations), c. 180, §26A (non-profit corporations), c. 181, §4 (foreign corporations) and c. 12, §8F (public charities) it has filed all required certificates and reports with the Secretary of State and the Attorney General's Office; that it is in compliance with Federal Anti-Lobbying requirements of 31 USC 1352; that it and any of its subcontractors are not currently debarred or suspended by the federal government or the State under any law or regulation, including Federal Executive Orders 12549 and 12689, Executive Order 147, M.G.L. c. 29, §29F and M.G.L. c. 152, §25C; and that it shall comply with Executive Orders 130, 346 and 359, M.G.L. c. 268A, c. 7, §22C and any additional provisions specified in this Contract, and **IN WITNESS WHEREOF**, **the Contractor certifies under the pains and penalties of perjury that it has submitted a Response to a Request for Response (RFR) issued by the Department and that this Response is the Contractor's offer as evidenced by the execution below of the Contractor's authorized signatory, and that this Response may be subject to negotiation by the Department, and that the terms of the RFR, the Contractor's Response and any negotiated terms of the Response shall be deemed accepted by the Department and included as part of this Contract, which incorporates by reference the applicable Terms and Conditions, upon execution of this Contract by the Department's authorized signatory as of the date indicated below, OR if this Contract is not the result of a Request for Response solicitation that this Contract complies with all applicable laws and regulations as indicated by the execution of the authorized signatories of the Department and the Contractor as of the last date indicated below:**

FOR THE CONTRACTOR:

>>X:_____
(Signature)

>>NAME: _____

>>TITLE: _____

>>DATE: _____

FOR THE DEPARTMENT:

X:_____
(Signature)

NAME: _____

TITLE: _____

DATE: _____

DOC ID NUMBER: ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ (For Attached Transaction)

COMMONWEALTH OF MASSACHUSETTS

STANDARD CONTRACT AMENDMENT FORM

This Amendment Form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. **Any changes or electronic alterations, by either the Department or the Contractor, to the official printed language of this form as published by ANF, CTR and OSD shall be void.** Contract Amendments must be authorized as part of the original Contract procurement and must be executed contemporaneously with the need for the Contract Amendment and prior to the scheduled termination date of the Contract.

CONTRACTOR NAME: **Vendor Code: ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___**	**DEPARTMENT NAME:**
ADDRESS:	**ADDRESS:**

CURRENT CONTRACT INFORMATION:

Current Doc. ID Number Of Contract Being Amended: ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___

Current Total Contract Dates *(Includes Original Contract Start Date and Amendments*): START: ___ ____ ____ TERMINATION: ____ ____ ____

Current Total Maximum Obligation Of Contract *(Inclusive Of Previous Amendments To Date)*:$ _____ *(indicate "N/A" if Contract is a Rate Contract, Statewide Contract or Qualified List Contract that does not contain a Maximum Obligation*.)

CHOOSE ONE AMENDMENT COLUMN BELOW, either "STANDARD AMENDMENT" *OR* "AMENDMENT TO EXERCISE OPTION TO RENEW" and check off any applicable amendments under that column.

_____ **STANDARD AMENDMENT** *(Check all that apply)*:	_____ **AMENDMENT TO EXERCISE OPTION TO RENEW** *(Check all that apply):*
_____ **Amendment To Contract Performance**	_____ **Amendment To Contract Performance**
_____ **Amendment To Contract Maximum Obligation**	_____ **Amendment To Contract Maximum Obligation**
_____ **Amendment To Contract Budget Or Rates**	_____ **Amendment To Contract Budget Or Rates**
_____ **Amendment To Contract Dates Of Performance**	_____ **Amendment To Contract Dates Of Performance**
_____ **Other: (*Explain*)**	_____ **Other: (*Explain*)**

DESCRIPTION OF REASON FOR AMENDMENT: *(Attach all relevant documentation detailing amendment(s)):*

NEW CONTRACT INFORMATION *(indicate "N/A" if not applicable or "N/C" for no change):*

New Total Contract Dates *(Includes Original Contract Start Date and Amendments):* START: ____ ____ ____ TERMINATION: ____ ____ ____

Amount Of Amendment Change *(if applicable):* $ _____

New Total Maximum Obligation Of Contract*: $ _____ (Includes Total of "Current Total Maximum Obligation" indicated above and the "Amount of Amendment Change". Indicate "N/A" if Contract is a Rate Contract, Statewide Contract or Qualified List Contract that does not contain a Maximum Obligation.)*

IN WITNESS WHEREOF: the Department and the Contractor certify under the pains and penalties of perjury that this Amendment Form and any information contained herein, or attached hereto, is complete and accurate and complies with all applicable laws and regulations, and is subject to its associated Contract, as evidenced by the execution by their authorized signatories as of the last date below:

FOR THE CONTRACTOR:	**FOR THE DEPARTMENT:**
X:_____ **(Signature)**	**X:_____** **(Signature)**
NAME: _____	**NAME: _____**
TITLE: _____	**TITLE: _____**
DATE: _____	**DATE: _____**

The Department must file the original record copy of any Contract Amendment with the original record copy of the Contract being amended. Record copies will be located at either OSC, OSD or the Department (if the Department has been approved for Contract delegation authority).

PURCHASE OF SERVICE ATTACHMENTS

FY_____ Amendment #, If Applicable: If Federal Funds, CFDA #:

PURCHASE OF SERVICE - ATTACHMENT 1: PROGRAM COVER PAGE

PROGRAM INFORMATION

Contractor Name:	Department Name:
Program Type:	Document ID #:
Program Name:	UFR Program #: 0
Program Address:	MMARS Program Code:
City/State/Zip:	Other Reference Information (Information Purposes Only):
Contact Person: Telephone:	Contact Person: Telephone:

RFR INFORMATION: Attached RFR Reference # _____
legislative exemption emergency collective purchase interim amendment

SCOPE OF SERVICES: Bidders Response Attached Description of Services Attached

TOTAL ANTICIPATED CONTRACT DURATION: _____ to _____

INITIAL DURATION: _____ to _____

OPTIONS TO RENEW: _____options to renew for _____ years each option

FISCAL TERMS

	FUNDING SUMMARY					
	Prior Years		Current Year		Future Years	
	FY	Amount	FY	Amount	FY	Amount
PRICE IS ESTABLISHED THROUGH: (CHECK 1,2, OR 3) **OPTION 1: PRICE AGREEMENT** (list price) $_____ rate regulation (if any)_____ **OPTION 2: SUMMARY BUDGET** (✳ lines only) unit rate cost reimbursement other _____ **OPTION 3: COMPLETE BUDGET** cost reimbursement unit rate other _____						
	Total: $		Total: $		Total: $	
	Multi-Year Total: $					

CURRENT
MAX OBLIGATION: $_____ UNIT RATE: $_____per _____ # BILLABLE UNITS: _____

ADDITIONAL PAYMENT OR PRICE SPECIFICATIONS:

FY_____ Contractor Name: Amendment #, If Applicable: If Federal Funds, CFDA #:

PURCHASE OF SERVICE - ATTACHMENT 2: PERFORMANCE MEASURES

Program Name:	**Document ID#:**	**MMARS Code:**	**Program Type**	**UFR Program Number:**

PROGRAM OUTCOMES	MEASURE	GOAL*				
		year 1	year 2	year 3	year 4	year 5
1.						
2.						
3.						
4.						
5.						
PROGRAM OUTPUTS	MEASURE	GOAL*				
		year 1	year 2	year 3	year 4	year 5
1.						
2.						
3.						
4.						
5.						
PROGRAM EFFICIENCY	MEASURE	GOAL*				
		year 1	year 2	year 3	year 4	year 5
1.						
2.						
3.						
4.						
5.						
PROGRAM EFFECTIVENESS	MEASURE	GOAL*				
		year 1	year 2	year 3	year 4	year 5
1.						
2.						
3.						
4.						
5.						

Attach additional years, if appropriate

FY_____ Contractor Name: Amendment #, If Applicable If Federal Funds, CFDA #:

PURCHASE OF SERVICE - ATTACHMENT 3: FISCAL YEAR PROGRAM BUDGET

Program Name:	Document ID#:	MMARS Code:	Program Type	UFR Prog. #

		Current		Amend. Change		New				
		FTE	Amount	FTE	Amount	FTE	Amount	COST REIMBURSEMENT ONLY		
	Program Component							**Offset	Source	Reimbursable Cost
UFR Title #	Direct Care/Program Support Staff (UFR Titles)									
	SUBTOTAL STAFF									
150	Payroll Taxes									
151	Fringe Benefits									
✳	**Total Direct Care/Program Staff**									
UFR Title #	Other Direct Care/Program Support (Use UFR Titles)									
201	Program Consultants									
202	Direct Care Specialists									
203	Prov. Reimb/Stipends									
204	Staff Training									
205	Staff Mileage/Travel									
206	Subcontract Dir.Care									
207	Meals									
*** 208	Client Transportation									
209	Incid. Health/Med Care									
210	Medicine/Pharmacy									
211	Client Per. Allowances									
212	Prov. of Material Good									
213	Data Processing									
214	Commercial Resources									
*** 215	Program Supplies/Mat									
216	Program Support									
✳	**Total Other Direct Care/Program**									
UFR Title #	Occupancy									
301	Program Facilities									
*** 390	Fac. Oper/Main/Furn									
✳	**Total Occupancy**									
✳	**SUBTOTAL PROGRAM COSTS**									
*** 410 ✳	**Agency Admin. Support Allocation**	% $								
✳	**Commercial Earn. Factor, if applicable**	% $								
✳	**PROGRAM TOTAL**									

**** A. $ _____ Subtotal of offsets which are for non-reimbursable costs.**

**** Non-reimbursable costs must be shown in detail on Attachment 5 when the program is subject to the provisions of Federal OMB Circular A-122 and/or 808 CMR 1.00.**

***** Contractor's Board approved capitalization level relative to any negotiated expense costs in lines 208, 215, 390 or 410 is $_____**

FY_____ Contractor Name: Amendment #, If Applicable: If Federal Funds, CFDA #:

PURCHASE OF SERVICE
ATTACHMENT 4: RATE CALCULATION/MAXIMUM OBLIGATION CALCULATION PAGE

Program Name:	Document ID#:	MMARS Code:	Program Type	UFR Prog. #

AMENDMENT #, IF APPLICABLE:

UNIT RATE CALCULATION

1. Program Total Costs $_____

2a. Program Offsets: Source Amount

_____ _____

_____ _____

_____ _____

_____ _____

2b. Offsets for Non-Reimbursable Costs:_____ _____

Note: Total non-reimbursable costs listed in line 2b must be detailed on Attachment 5.

2. Subtotal Offsets (Line 2a + Line 2b) ($_____)

3. Net Adjusted Program Costs (LINE 1 minus LINE 2) $_____

4. Total Program Capacity _____ (# of units) _____ (Type of unit)

5. Share of Total Capacity Purchased by Contract_____ (# of units) _____ % (% of line 4)

6. Negotiated Utilization Factor, if any _____%

7. Adjusted Capacity Used to Establish Price (LINE 4 x LINE 6) _____ (# of units)

8. Unit Rate (LINE 3 DIVIDED BY LINE 7) _____

9. Maximum # of Billable Units (LINE 5 x LINE 6) _____

_____

_____

OTHER PRICE CALCULATION METHOD

10. Enter relevant information:_____

_____

MAXIMUM OBLIGATION CALCULATION

11. For Unit Rate: Line 8 X Line 9
For Other Price Calculation Method, Enter Obligation From Line 10
For Cost Reimbursement: Enter Reimbursable Cost Total From Program Budget $_____

12. Invoice Offset SOURCE AMOUNT

_____ _____

_____ _____

_____ _____

12. Subtotal: ($_____)

13. Maximum Obligation for the Program(LINE 11 minus LINE 12) $_____

14. Capital Budget (from Capital Budget Form), if applicable $_____

15. **Total Maximum Obligation for Program** (LINE 13 LINE 14) **$_____**

FOR INFORMATION ONLY: Other Revenue Sources (Only if % in LINE 5 is less than 100%)

SOURCE AMOUNT

_____ _____

_____ _____

FY_____ Contractor Name: AMENDMENT #, IF APPLICABLE:

If Federal Funds, CFDA #:

PURCHASE OF SERVICE

ATTACHMENT 5: NON-REIMBURSABLE COST PROGRAM OFFSET SCHEDULE

Program Name:	Document ID#:	MMARS Program Code:	Program Type	UFR Prog. #

Program Component	State and/or Federal Reg.	Non-Reimbursable Cost	Source of Fund for Offset	Related Party (yes/no)	Name of Related Party
1. Direct Care/Program Support Staff					
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
2. Other Direct Care					
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
3. Occupancy					
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
4. Administrative Support					
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
_____	_____	$_____	_____	_____	_____
SUBTOTAL		$_____			

Note: Subtotal must reconcile to line 2b on the Rate Calculation Page for Unit Rate & Accommodations Purchase budgets; or, to LINE A on the bottom of the budget page for Cost Reimbursement budgets.

FY _____ Contractor Name:_____ * If Federal Funds, CFDA #:_____

PURCHASE OF SERVICE ATTACHMENT 6: CAPITAL BUDGET:
For Purchase Of Capital Assets With Commonwealth Funds

Program Name:	Document ID#:	MMARS Program Code:	Program Type	UFR Prog. #

Item to Be Purchased	Need For Item	Quantity	Estimated Unit Cost	Estimated Total Cost

DEPARTMENT USE ONLY: Check the appropriate box: **Total Cost: $_____**

Capital items purchased by the Contractor: ☐

Capital items purchased by the Commonwealth (object code M11): ☐

Only capital items, as defined in 808 CMR 1.02, may be procured through a capital budget with Commonwealth funds. The following are not eligible to be procured through this capital budget: capital items defined under 808 CMR 1.02 which includes capital items that are not moveable, an asset or group of assets that are below the Contractor's capitalization level, or items not approved by the Department. Title to all capital items purchased by the Contractor through this capital budget shall vest with the Contractor (with certain restrictions). Title to all capital items purchased by the Commonwealth through this capital budget and the M11 object code shall vest with the Commonwealth.

***** Pursuant to the provisions of OMB Circular A-122 a capital budget that utilizes federal grant funds to acquire capital items for use in programs receiving any federal grant funds may not be used unless the Department receives prior written approval from the Federal awarding agency(ies). Capital items of furnishings and equipment purchased with Commonwealth funds that are to be owned by the Contractor and used in programs receiving federal grant funds may only be acquired using a capital budget if the revenue and expense associated with the capital items are budgeted and disclosed in the UFR as a separate revenue and cost category of the program.

Use of assets acquired with Commonwealth funds should be clearly disclosed in the financial statements. The asset(s) should be disclosed on the UFR Balance Sheet in the plant fund if the Contractor holds title or in the Custodian fund if the Commonwealth holds title. The revenue derived from the capital budget when the asset is purchased should be disclosed in program services on the UFR Statement of Activities and in the appropriate program(s) on the Supplemental Revenue Schedule A. Capital assets, whether owned by the Contractor or the Commonwealth, should be depreciated and disclosed in Supplemental Expense Schedule B and Schedule B-1 as a non-reimbursable cost when incurred, using the schedule of service lives issued by the Operational Services Division. See also 808 CMR 1.05(2)(d).

The assets furnished through a capital budget must be labeled and kept on file in the Contractor's written inventory, which notes the number and description of assets, source of funding, acquisition cost and location of the assets, pursuant to 808 CMR 1.04(5). In addition, the Contractor must follow disposition standards in 808 CMR 1.04(5).

I,_____, an authorized signatory for _____ (the Contractor), hereby certify that the Contractor's capitalization level established for financial statement purposes by the board of directors is: an asset or group of assets of non-expendable personal property having a useful life of more than one year and an acquisition cost of $_____

_____(Signature)
_____(Title)
_____(Date)

PURCHASE OF SERVICE - UFR TITLES

UFR Title #	UFR Titles (for a more complete title description, please refer to the UFR Audit & Preparation Manual)
101	Program Manager - An individual who has overall responsibility for the management, oversight and coordination of a programmatic functional area within or across programs as in the case of "Medical Director", "Residence Director", "Clinical Director", "Education Director", etc.
102	Program Director - An individual who has overall responsibility for the daily operation of one or more individual programs.
103	Assistant Program Director - An individual who reports directly to the Program Director, acts for the Program Director in his/her absence and functions as an adviser/assistant to the Program Director.
104	Supervising Professional - A credentialed professional (physician, psychiatrist, social worker, nurse, etc) whose primary responsibility is the supervision of fellow credentialed professionals in the daily performance of their programmatic functions.
105	Physician - A Board of Registration in Medicine-licensed or Board eligible physician (including all medical specialties, e.g. dentist, podiatrist except psychiatrist # 121) with either an MD or DO degree whose primary responsibility is delivery or supervision of health/medical care to program participants.
106	Physician's Assistant - An individual registered with the Department of Public Health and functioning in that capacity.
107	Registered Nurse-Master's, Nurse Psychiatric Mental Health Specialist, Nurse Practitioner- An individual who possesses a Master's degree in nursing and/or is registered with the Board of Registration in Nursing and is functioning in any of the above capacities.
108	Registered Nurse - An individual who is licensed as a registered nurse by the Board of Registration Nursing (both BSNs and others) and is engaged in nursing duties.
109	Licensed Practical Nurse - An individual licensed as a practical nurse by the Board of Registration in Nursing and is engaged in nursing duties.
110	Pharmacist - An individual licensed by the Board of Registration in Pharmacy and functioning as a pharmacist.
111	Occupational Therapist - An individual registered as an occupational therapist by the Board of Registration in Allied Health Professionals and who provides occupational therapy.
112	Physical Therapist - An individual registered as a physical therapist by the Board of Registration in Allied Health Professionals and who provides physical therapy.
113	Speech/Language Pathologist, Audiologist - An individual registered as a Speech/Language Pathologist or as an Audiologist by the Board of Registration in Speech/Language Pathology and Audiology and provides speech and hearing therapy.
114	Dietitian/Nutritionist - An individual registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association or an individual with a Bachelor's or Master's degree in nutrition, who provides nutritional counseling, education, supervision of meal/menu preparation.
115	Special Education Teacher - An individual certified in special education by the Massachusetts Department of Education and working in that capacity.
116	Teacher - an individual certified by the Massachusetts Department of Education, other than special education and working in that capacity.
117	Day Care Director - An individual certified by the Office for Children as a Day Care Director and functioning in that capacity.
118	Day Care Lead Teacher - An individual certified by the Office of Children as a Day Care Lead Teacher and functioning in that capacity.
119	Day Care Teacher - An individual certified by the Office of children as a Day Care Teacher and functioning in that capacity.
120	Day Care Assistant Teacher/Aide - An individual certified by the Office of Children as a Day Care Assistant Teacher/Aide and functioning in that capacity.
121	Psychiatrist - An individual licensed to practice medicine, certified or eligible for certification by the American Board of Psychiatry and primarily involved in rendering or direction psychiatric care.
122	Psychologist - Doctorate- An individual holding a doctoral degree in psychology (including behavioral psychologist and neuropsychologist) or a closely related field, registered by the Board of Registration of Psychologist and primarily engaged in providing diagnostic evaluations, psychological counseling/therapy or development and implementation of behavioral treatment plans.
123	Psychologist - Master's- An individual holding a Master's degree in psychology (including behavioral psychologist) or a closely related field and primarily engaged in providing diagnostic evaluations, psychological counseling/therapy or developmental and implementation of behavioral treatment plans.
124	Social Worker -LICSW - An individual registered as a Licensed Independent Clinical Social Worker by the Board of Registration of Social Workers and primarily engaged in providing diagnostic evaluations, psychological counseling/therapy or development and implementation of behavioral treatment plans.
125	Social Worker-LCSW- An individual registered as a Licensed Certified Social Worker by the Board of Registration of Social Workers and providing social work services.
126	Social Worker - LSW- An individual registered as a Licensed Social Worker by the Board of Registration of Social Workers and providing social work services (including casework/counseling).
127	Licensed Counselor - An individual with at least a Master's degree in counseling or a related field who is licensed by the appropriate Board of Registration and provides counseling services.
128	Certified Vocational Rehabilitation Counselor - An individual certified by the Committee on Accreditation of Rehabilitation Facilities and provides vocational rehabilitation counseling.
129	Certified Alcoholism Counselor, Certified Drug Abuse Counselor, Certified Alcoholism/Drug Abuse Counselor- An individual registered as either an Alcoholism Counselor, Drug Abuse Counselor or both by the Massachusetts Board of Substance Abuse Counselor Certification and who provides counseling services for substance abusers.
130	Counselor - An individual who provides therapeutic or instructive counseling to program clients/service recipients.

131	Case Worker/Manager - Master's - An individual possessing at least a Master's degree in counseling, or a closely related discipline, providing casework/case management services including service eligibility determination, service plan development, service coordination, resource development advocacy, etc.
132	Case Worker/Manager - An individual , providing casework/case management services including service eligibility determination, service plan development service coordination, resource development advocacy, etc.
133	Direct Care/Program Staff Supervisor - A staff member whose primary responsibility is the supervision of nonprofessional or paraprofessional direct care/program staff in the performance of their programmatic functions or whose duties involve significant responsibility for program operations or logistics. A supervisor in this component may also perform direct client care.
134	Direct Care/Program Staff III - Staff, other than those described above, requiring a doctoral or Master's degree, specific credentials or licensure, significant experience, or specialized skills, who are responsible for the general daily care of program clients/service recipients or for primary program service delivery.
135	Direct Care/Program Staff II - Staff, other than those described above, requiring a Bachelor's degree, experience or specific skills who are responsible for the general daily care of program clients/service recipients or for primary program service delivery.
136	Direct Care/Program Staff I - Staff, other than those defined above, who are responsible for the general daily care of program clients/service recipients or for primary program service. This includes relief employees on payroll.
137	Program Secretarial, Clerical Staff - Individuals required to carry on direct program clerical activities such as program or client record keeping.
138	Program Support, Housekeeping, Maintenance, Janitorial, Groundskeeper, Drive, Cook - Individuals who carry our direct program activities for client health and safety.
150	Payroll Taxes - Employer's share of FICA, MUCIA, Worker's Compensation Insurance, FUTA (in the case of for-profit providers) and other payroll taxes paid by the employer on the direct care/program staff listed in category 1 on the budget.
151	Fringe Benefits - Life, health and medical insurance, pension and annuity plan contributions, day care, tuition benefits and all other non-salary/wage benefits received by direct care/program staff listed in category 1 on the budget.

COMMONWEALTH OF MASSACHUSETTS

CHANGE IN CONTRACTOR IDENTITY FORM

This Change in Contractor Identity Form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. **Any changes or electronic alterations, by either the Department or the Contractor, to the official printed language of this form as published by ANF, CTR and OSD shall be void.** Any transfer of Contract performance to a successor entity must be made consistent with the original procurement, executed contemporaneously with the Contractor change in identity and prior to the current scheduled termination date of the Contract.

Unless otherwise specified, the Department shall complete all information on this Form.

CURRENT CONTRACTOR NAME: **Vendor Code:**	**DEPARTMENT NAME:**
ADDRESS:	**ADDRESS:**

INDICATE REASON FOR CONTRACTOR IDENTITY CHANGE

The Current Contractor is undergoing a structural change that will result in a change in its Tax Identification Number (TIN). Indicate structural change and resulting change in Contractor identity (e.g., merger, buyout, consolidation, etc.):

A justification statement explaining (a) the Contractor's Change in Identity; (b) that the transfer of contract performance to the successor entity is consistent with original procurement; (c) and is in the best interest of the Department MUST be included in the Procurement File.

CURRENT CONTRACTOR INFORMATION:

_____(*Check here if multiple contracts* *are affected; leave this section blank and attach a completed "Contractor Change Schedule of Multiple Contracts" instead*.)

Current Doc. ID Number Of Contract Being Amended: _____

Current Total Contract Dates (*Includes Original Contract Start Date and Amendments)*: START _____TERMINATION _____

Current Total Maximum Obligation Of Contract: $ _____ *(Inclusive Of ALL Previous Amendments)*

CURRENT CONTRACTOR AMENDED INFORMATION

_____(*Check here if multiple contracts* *are affected; leave this section blank and attach a completed "Contractor Change Schedule of Multiple Contracts" instead*.)

Amended Termination Date of Contract Performance for Current Contractor: TERMINATION DATE: _____
Amended Estimated Maximum Obligation for Current Contractor: $_____ (*Reflects total of any obligations to date and final payments to be made. Final payments are based upon actual performance and the Department may adjust this remaining Maximum Obligation with written notice to the Current Contractor without further formal amendment.)*

NEW CONTRACTOR (SUCCESSOR ENTITY) NAME: **TIN # or Vendor Code:**	**ADDRESS:**

NEW CONTRACTOR INFORMATION:

_____ (*Check here if multiple contracts* *are affected; leave this section blank and complete the attached "Contractor Change Schedule of Multiple Contracts"*.)

Doc. ID for New Contractor: _____ *(For remaining contract period with New Contractor*)

Contract Performance Dates for New Contractor: START: _____ TERMINATION: _____
(Start Date must comply with 801 CMR 21.00 or other applicable law.)

Estimated Maximum Obligation for New Contractor $ _____ (*This amount does not include remaining amounts to be paid by the Department to the Current Contractor indicated above. The total maximum obligation, transactions and payments will be based upon actual performance and any final payments made to the Current Contractor and the Department may adjust the Maximum Obligation and transactions accordingly with written notice to the New Contractor without further amendment.)*

REQUIRED ADDITIONAL ATTACHMENTS FOR NEW CONTRACTOR

All applicable items below must be completed and executed by the New Contractor if not currently on file.

_____ Commonwealth of Massachusetts Substitute W-9 Form, if not currently on file (mandatory)
_____ Applicable Commonwealth Terms and Conditions (Standard) or (for Human and Social Services) is attached or has been filed with the Office of the Comptroller. (mandatory)
_____ Contractor Signature Verification Authorization Form (if required under original RFR)
_____ Affirmative Action Form or Plan Attached (Employers Only) (Large Procurements Only) (if required under original RFR)
_____ SOMWBA MBE/WBE Certification/Participation Form (if required under original RFR)
_____ Consultant Contract Mandatory Submission Form Attached (only if Consultant Contract - HH or N01-N14 Object codes)
_____ Written Disclosure Of Current and Anticipated Related Parties Pursuant to 808 CMR 1.04 (if required under RFR)
_____ Northern Ireland Notice & Certification Form pursuant to M.G.L. C. 7 section 22C. (mandatory)

Additional Requirements or Information:

IN WITNESS WHEREOF: The Department certifies that this Contractor Change is necessary for the completion of essential Contract performance and is in the best interests of the Department and is consistent with the original Contract Procurement for this Contract. The Department, the Current Contractor and the New Contractor hereby agree to the terms of this Change in Contractor Identity Form and certify under the pains and penalties of perjury that this Change in Contractor Identity Form and any information contained herein, or attached hereto, is complete and accurate and complies with all applicable laws and regulations, as evidenced by the execution by their authorized signatories which shall be effective as of the last date executed by all the parties below. The New Contractor agrees to perform all of the remaining requirements of this Contract in accordance with the terms, requirements and certifications in the applicable Contract under the original procurement, and any amendments thereto, as filed under the "Current Doc. ID Number of Contract" above, and in accordance with any additional terms or requirements included as part of this Change in Contractor Identity Form.

CURRENT CONTRACTOR:_____

X:_____
(Signature)

NAME: _____

TITLE: _____

DATE: _____

DEPARTMENT: _____

X:_____
(Signature)

NAME: _____

TITLE: _____

DATE:_____

NEW CONTRACTOR:_____

X:_____
(Signature)

NAME: _____

TITLE: _____

DATE: _____

The Department must file the original record copy of any Change in Contractor Identity Form with the original record copy of the Contract being amended. Record copies will be located at either OSC, OSD or the Department if the Department has been approved for Contract delegation authority.

CHANGE IN CONTRACTOR IDENTITY FORM INSTRUCTIONS

This form should be used when a Contractor has a material change in identity due to a structural business change such as a merger, buyout, consolidation or other business arrangement, and the Department has chosen to transfer the remaining performance of the Contractor to the successor entity resulting from the identity change (referred to as the "New Contractor"). Please refer to the "Guidelines for Material Changes in Contractor Identity" in the *Procurement Policies and Procedures Handbook* for assistance in determining whether a transfer of Contract performance is appropriate.

This single form replaces the need for a Contract Amendment Form to terminate the current Contract and a Standard Contract Form executed by the New Contractor for the transfer of remaining Contract performance. This form also serves to document transaction and historical contract identification information to track both current and new Contracts as part of the Contract Procurement File. Both the Current and New Contractor (Successor Entity) execute this Form which is then approved by the Department's execution of the Form.

If the Change in Identity affects "Multiple" Contracts, please complete information for EACH Contract using the "Contractor Change Schedule of Multiple Contracts."

Current Contractor Information - As The Contract Appears Before The Contractor Identity Change

Current Contractor Name and Address: Enter the name and address of the Current Contractor as it appears on the Contract(s) with the Department before the Contractor Identity Change.

Indicate Reason For Contractor Identity Change: Identify the type of structural business change (such as a merger, buyout, consolidation, etc.) that will result in a change in the Current Contractor's identity requiring a new Tax Identification Number. (If just the Legal Name of the Contractor is changing, without an underlying business change, this form **is not** needed. See "Handbook.")

Current Doc. ID of Contract Being Amended: Enter the number which identifies the Current Contract as it appears before the Contractor Identity Change.

Current Total Contract Dates: Enter the effective start and termination dates as these appear on the Current Contract, including any amendments that have previously been made to these dates, **before** the Contractor Identity Change.

Current Total Maximum Obligation of Contract: Enter the current Maximum Obligation of the Contract (including any amendments that have been made to date) as it appears before the Contractor Identity Change. Enter "N/A" for a contract with no Maximum Obligation (i.e., rate contract, statewide contract or qualified list contract without a Maximum Obligation.)

Current Contractor Amended Information - Termination Date And Remaining Payments Under Current Contract

Amended Termination Date: Enter the date that the Current Contractor will terminate performance.

Amended Estimated Maximum Obligation for Current Contractor: Enter any amounts that are due or are anticipated to be due to the Current Contractor for completed performance up until the amended Termination Date. Payments are based upon actual performance and may be adjusted by the Department with written notice to the Current Contractor without a formal amendment. Enter "N/A" for a contract with no Maximum Obligation (i.e., rate contract, statewide contract or qualified list contract without a Maximum Obligation.)

New Contractor Information - Transfer Of Remaining Contract Performance To Successor Entity

New Contractor (Successor Entity) Name and Address: Enter the name of the successor entity or resulting entity after the structural business change to the Current Contractor. Enter the Tax Identification Number of the New Contractor, or the new Vendor Code Number if known.

Doc. ID for New Contractor: Enter a number which identifies the Contract for the transfer of remaining Contract performance to the New Contractor. There may be instances where the New Contractor is technically not "new" but rather is an existing Contractor with a contract for the same type of services that the department decides to amend to incorporate the transfer of remaining contract performance.

Contract Performance Dates for New Contractor: Enter effective start and termination dates for the transfer of remaining Contract performance to the New Contractor, which must comply with 801 CMR 21.00, other applicable law and the original procurement. Please note that for contracts subject to M.G.L. c.29 s.29A or s.29B, the original Secretariat authorization for services remains valid and no new Service Request (SR) is required.

Estimated Maximum Obligation for New Contractor: Enter the Maximum Obligation for the transfer of remaining Contract performance to the New Contractor. Enter "N/A" for a contract with no Maximum Obligation (i.e., rate contract, statewide contract or qualified list contract without a Maximum Obligation.) Payments are based upon actual performance and may be adjusted by the Department with written notice to the New Contractor without a formal amendment.

Attachments: New Contractor must complete all required attachments if not currently on file.

CHANGE IN CONTRACTOR IDENTITY FORM - CONTRACTOR CHANGE SCHEDULE OF MULTIPLE CONTRACTS

(Complete Information Under Each Section for Each Separate Contract. Attach as Many Additional Copies of this Form as Necessary.)

***DEPARTMENT*_____**

Current Doc. ID of Contract	Current Contract Effective Start Date	Current Contract Termination Date	Current Maximum Obligation of Contract (if applicable)	Amended Termination Date of Current Contractor Performance	Amended Estimated Maximum Obligation For Current Contractor
			$		$
Doc. ID for New Contractor	**New Contractor Effective Start Date of Performance**	**New Contractor Termination Date of Performance**	**Maximum Obligation for New Contractor (if applicable)**	**Additional Requirements or Information:**	
			$		

Current Doc. ID of Contract	Current Contract Effective Start Date	Current Contract Termination Date	Current Maximum Obligation of Contract (if applicable)	Amended Termination Date of Current Contractor Performance	Amended Estimated Maximum Obligation For Current Contractor
			$		$
Doc. ID for New Contractor	**New Contractor Effective Start Date of Performance**	**New Contractor Termination Date of Performance**	**Maximum Obligation for New Contractor (if applicable)**	**Additional Requirements or Information:**	
			$		

Current Doc. ID of Contract	Current Contract Effective Start Date	Current Contract Termination Date	Current Maximum Obligation of Contract (if applicable)	Amended Termination Date of Current Contractor Performance	Amended Estimated Maximum Obligation For Current Contractor
			$		$
Doc. ID for New Contractor	**New Contractor Effective Start Date of Performance**	**New Contractor Termination Date of Performance**	**Maximum Obligation for New Contractor (if applicable)**	**Additional Requirements or Information:**	
			$		

The total Maximum Obligation, transactions and payments will be based upon actual performance by the Current and New Contractor and the Department may adjust the Maximum Obligation and transactions accordingly with written notice to the Current and New Contractor (as applicable) without further amendment.

COMMONWEALTH OF MASSACHUSETTS
EQUIPMENT/SERVICES CONFIRMATION FORM

This form is issued jointly by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all departments and contractors. Any changes or electronic alterations by either the department or the contractor to the official printed version of this form, as jointly published by ANF, CTR and OSD, shall void the form. This form may be used to confirm the selection of equipment and services which are covered under a current contract. Conflicting or additional terms, conditions or agreements, included in or attached to this form which conflict with the terms of the contract shall be considered to be superseded and void.

DOC ID NUMBER: _____ **FISCAL YEAR:_____**

DEPARTMENT:	**CONTRACTOR:**
Contact Person:	**Contact Person:**
Phone: **Fax:**	**Phone:** **Fax:**
Billing Address: **Contact: Phone:**	**Contractor Address:**
Delivery Address: **_____(Check here if same address as above)** **Contact:_____ Phone:_____**	**(Check the applicable box below)** **_____Service** **_____Rental (not to exceed 6 months)** **_____Maintenance** **_____TELP lease/purchase (intent to own)** **_____Term lease** **_____ Commodity** **_____Outright purchase**
Price Agreement or MSA number (whichever is applicable):	**Equipment category/class:**
Start date of this agreement:	**Termination date of this agreement:** **(may not exceed termination date of contract)**

Confirmation of equipment or services selected from the contract: (Include description here and any related costs, prices, or options.) Attach additional pages as necessary.

Description	Quantity	Rate

In witness whereof, the contractor certifies that the equipment or services identified in this confirmation form shall be provided in accordance with the contract on file at OSD, CTR or at the procuring department.

FOR THE DEPARTMENT:

X: _____
(Signature)

NAME: _____

TITLE: _____

DATE: _____

FOR THE CONTRACTOR:

X: _____
(Signature)

NAME:_____

TITLE:_____

DATE: _____

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE COMPTROLLER, PROCUREMENT UNIT

CONTRACT REVIEW FORM

The purpose of this form is to indicate issues with the attached submitted documentation. Please return this form with the corrected documentation.

TO:
DEPT:
FROM: **Phone Number _____ Fax Number_____**
DATE:

Each transaction(s) listed below is returned for the reasons indicated:

TRANSACTION	OBJ	AMOUNT	TRANSACTION	OBJ	AMOUNT

REQUIRED DOCUMENTS ARE MISSING, INCOMPLETE OR INCORRECT AS INDICATED

Commonwealth Terms and Conditions: (CC, LO, MSA Table Update Form, SC, SM)

	1	Original Commonwealth Terms and Conditions or Commonwealth Terms and Conditions for Human and Social Services is not attached or is not registered on the MMARS VEND Table
	12	Required fields incomplete (TIN#, Vendor Name, Original Signature)
	13	Document has been physically or electronically altered

Comm-PASS

	17	Comm-PASS Contract Page Missing

Standard Contract Form\Amendment Form: (CC, LO, MSA Table Update Form, SC, SM)

	14	Standard Contract Form /Standard Amendment Form requires original signature by Department and Contractor
	16	Standard Contract Form/Standard Amendment Form has been physically or electronically altered
	4	Department signature missing/not dated. Signatures and dates must be original.
	3	Contractor signature missing/not dated. Signatures and dates must be original.
	15	Signature not authorized by Department Head/Secretariat (random review). See MMARS Memo #278.
	5	Standard Contract Form /Standard Amendment Form not completed properly (see details in COMMENT SECTION)
	2	Standard Contract Form/Standard Amendment Form missing
	18	Original or Copy of Request for Response (RFR) required or justification for exception missing
	19	RFR and/or Response not clearly identified
	10	Original of Winning Bidder' Response missing
	20	Unsuccessful bidders information must be kept in the Department's procurement file. Please remove from this document and resubmit.

	21	Consultant Contract Mandatory Submission Form (HH and NN Contracts Only) required for all departments per M.G.L. C.29, 29A and C. 7A, Sec.6. Non-executive branch Departments only need to complete middle section (financial disclosure)
	22	Contract Employee Description of Services required
	23	Contract Employee Resume or Statement of Qualifications required and is not attached
	24	Budget and/or Rate Schedule missing.
	11	Contractor Signatory Authorization Verification Form or Attached Verification Documentation (Required for All Contracts > $50,000) not attached or is incomplete
	25	Contractor TIN# and Name does not match transaction document or MMARS entry
	6	Dates of Performance on Contract do not match MMARS entry.
	26	Dates of Performance listed on the Standard Contract Form or the encumbrance are not in accordance with the initial duration indicated in the RFR
	27	"Openorder" Vendor Code Request Form Missing OR is incomplete (Appendix G in the FY98 Closing/FY99 Opening Book)
		THE ITEMS BELOW PERTAIN TO HUMAN AND SOCIAL SERVICE CONTRACTS ONLY (OBJECT CODES: M03, MM3,)
	28	Attachment 1: Program Cover Page
	29	Attachment 2: Performance Measures
	30	Attachment 3: Fiscal Year Program Budget
	31	Attachment 4: Rate Calculation/Maximum Obligation Calculation Page
	32	Attachment 5: Non-Reimbursable Cost Program Offset Schedule
	33	Attachment 6: Capital Budget
		THE ITEMS BELOW PERTAIN TO REAL PROPERTY ONLY (OBJECT CODE: G01)
	34	Approved DCPO Form 3 (Transaction Approval Form) not attached
	35	Approved DCPO Form 4 (Agreement Termination) not attached
	36	Exhibit E (for change of ownership)
	37	Exhibit F (for change of ownership)
	38	Exhibit G-1 or Exhibit G-2 whichever is applicable (for change of ownership)
		THE ITEMS BELOW PERTAIN TO CONSTRUCTION CONTRACTS ONLY
	39	Missing Payment Bond
	40	Missing Performance Bond
		THE ITEM BELOW PERTAINS TO GRANTS ONLY (PP SUBSIDIARY)
	41	Use of this object code in this Fund Type and Vend organizational structure prohibited
		DEPARTMENT REQUEST
	63	Document returned to Department per Department request

TRANSACTION DEFICIENCIES AS INDICATED

MMARS Transactions (CC, LO, MSA Table Update Form, SC, SM, SR)

	42	Transaction not entered in MMARS
	43	Transaction not properly completed or rejected in MMARS (see error on attached screenprint or details in COMMENT section)
	44	MSA Table Update Form Missing
	7	Incorrect Object Code for Contract Description (see Expenditure Classification Handbook)
	45	Separate Object Code Required for Travel Reimbursement (see 98 object codes series)
	46	Transaction Document Maximum Obligation Does Not Match MMARS Entry
	8	Transaction Current Fiscal Year Obligation and Out-Years Do Not Match Contract Maximum Obligation
	47	Out-Year Completed Incorrectly. Current Fiscal Year must be on unique line. All Out-Years Must Be On Separate Accounting Lines.

	48	Signature not authorized by Department Head/Secretariat (random review). See MMARS Memo #278 series
	9	Transaction Document Does Not Contain Authorized Signatory Certification Statement (See MMARS Memo 220 & 220A)
	49	SC Input Form or screen-print needs to be an original signature by a Department authorized signatory.
	50	SC Transaction Does Not Reference SR (RPT 670A)
	51	SR (RPT 670A) Document Missing Secretariat Approval
	52	SR (RPT 670A) Document Missing Attorney General's Office (AGO) Signoff (H09 and N03 object codes)
	53	SR Department and Secretariat signatures and dates must be original. Date stamped or typed is not acceptable
	54	SR signature dates earlier then 670A Report date.
	55	SM (RPT 671A) Missing Secretariat Approval (Only applicable in instances where original contract classification required an SR. See Expenditure Classification Handbook for further guidance)
	56	SM Department and Secretariat signatures and dates must be original. Date stamped or typed is not acceptable
	57	Program Code Field (PROG) on SC/SM not completed (for object codes M03, MM3 only)
	58	Construction Contract transaction requires use of CC transaction type because it is Appropriation Account Type "02" Bond Fund Accounts. Please refer to MMARS Memo #136.

CTR PEND 5 NOT REQUIRED. FOR THE REASON'S INDICATED BELOW. RETAIN THESE DOCUMENT(S) AS PART OF THE DEPARTMENT'S PROCUREMENT FILE FOR THIS CONTRACT(S)

	59	Secondary approval delegation covers this transaction
	60	Transaction under $1,000.
	61	Transaction references a Statewide Contract or Departmental MSA

CTR NOT OFFICIAL KEEPER OF RECORD COPY

	62	See MMARS Memo # 261. (CTR not official keeper of record.) Please retain documents as part of the Department's Procurement File.

OTHER

	64	Other

COMMENTS:

FORMS - RFR ATTACHMENTS/OTHER

(Alphabetical Order)

Additional Environmentally Preferable Product Information

Affirmative Action Plan Form

Authorization for Electronic Funds Payments

Business Reference Form

Consultant Contractor Mandatory Submission Form

Contractor Authorized Signature Verification Form

Northern Ireland Notice and Certification

RFR - Optional Specifications

RFR - Required Specifications

Sample Reference Review Form

Sample Response Evaluation Scorecard

Tax Compliance Certification Instructions

ADDITIONAL ENVIRONMENTALLY PREFERABLE PRODUCT INFORMATION

In line with the Commonwealth's efforts to promote products and practices which reduce our impact on the environment, bidders are encouraged to incorporate environmentally preferable criteria in as wide range of products and business practices as possible. Bidders who demonstrate significant environmental efforts in any of the categories listed below may be eligible to receive extra points in the evaluation of this RFR. In order to receive such consideration, bidders must complete this form and attach any additional documentation necessary to describe the products or process.

1. Packaging

Do bidders use packaging which incorporates any of the following environmental criteria?

- Contains post-consumer recycled content
- Promotes waste prevention/source reduction
- Is fully recyclable in Massachusetts
- Reduces or eliminates materials which have been bleached with chlorine or chlorine derivatives

☐ Yes ☐ No

If yes, bidders must attach a description of the packaging used and the specific environmental criteria such packaging meets.

2. Business Practices / Operations / Manufacturing

Does the bidder engage in practices that serve to reduce or minimize an impact to the environment, including, but not necessarily limited to, the following:

- Recycling of materials in the warehouse or other operations
- Use of alternative fuel vehicles
- Use of reusable or returnable packaging
- Use of energy efficient office equipment or building design products
- Use of recycled paper in their marketing and/or resource materials

☐ Yes ☐ No

If yes, bidders must attach a description of the practices being followed and the specific environmental criteria such practices meet.

3. Training and Education

Does the bidder conduct/offer a program to train or inform customers of the environmental benefits of the products to be offered under this contract, and/or does the bidder conduct environmental training of its own staff?

☐ Yes ☐ No

If yes, bidders must attach a description of the training offered and the specific environmental criteria such training targets.

4. Certifications

Has the bidder or any of its subcontractors obtained any of the following product / industry certifications:

- ISO 14000 or adopted some other equivalent environmental management system
- Other industry environmental standards, such as the CERES principles, Responsible Care Codes of Practice or other similar standards
- Third Party product certifications such as Green Seal, Scientific Certification Systems, Smartwood.

☐ Yes ☐ No

If yes, bidders must attach a description of any certifications obtained.

AFFIRMATIVE ACTION PLAN FORM

(Required for procurements of $50,000 or more - employers only)

Bidder:_____

RFR Name/Title: _____

RFR Number: # _____

Pursuant to Executive Orders 227 and 246, any contract with a potential financial benefit of $50,000 dollars or more requires a bidder to submit an Affirmative Action Plan. The format for Affirmative Action Plans shall be determined in accordance with the Executive Orders and the procuring department's secretariat, if the secretariat specifies a format. **If a format has not been specified by the department's secretariat, bidders will be required to complete either A or B below:**

A. BIDDER MUST ATTACH A COPY OF AFFIRMATIVE ACTION PLAN TO RFR RESPONSE.

OR

B. BIDDER MUST COMPLETE THE FOLLOWING CERTIFICATION OF AFFIRMATIVE ACTION PLAN.

IN WITNESS WHEREOF, the bidder certifies under the pains and penalties of perjury, that as an employer, it is committed to non-discrimination in employment and if selected to execute contracts with the Commonwealth of Massachusetts shall also be committed to procure commodities, services and supplies from certified minority and women-owned business enterprises, businesses owned by individuals with disabilities and businesses owned and controlled by socially or economically disadvantaged individuals, both in the performance of contracts with the Commonwealth of Massachusetts and in the performance of its business generally, as certified by the execution of this certification by an authorized signatory of the bidder as of the last date indicated below.

X_____
(Signature of Authorized Signatory of Bidder)

PRINT NAME: _____
(Print Name of Authorized Signatory of Bidder)

TITLE: _____
(Print Title of Authorized Signatory of Bidder)

DATE: _____

AUTHORIZATION FOR ELECTRONIC FUNDS PAYMENT

WHAT SHOULD A DEPARTMENT DO TO PROCESS A PAYEE'S REQUEST TO RECEIVE PAYMENT VIA ELECTRONIC FUNDS TRANSFER (EFT)?

Electronic funds transfer (EFT) allows for payments to be made to Contractors electronically. It is the preferred method of payment for all payees doing business with the Commonwealth. A new Contractor should always be encouraged by the Department to receive payment electronically. It saves the Commonwealth money and can be more efficient for the payee. When a Department initiates a new business relationship with a payee this question should always be asked.

Registering a Contractor for EFT payment is the responsibility of the Department doing business with that payee. The Contractor should complete and return **to the Department** the "Authorization For Electronic Funds Transfer Payment" form, which follows. This form contains the banking information that the Department must enter on the Vendor Update (VU) Transaction screen.

Departments should follow the steps listed below:

I. Departments will enter the required EFT information on the Vendor Update (VU) screen.

II. After the Vendor Update has been approved by CTR, MMARS alerts Treasury to the fact that an EFT Contractor request has been entered.

III. The Treasury initiates a pre-note process, similar to a test run, of the EFT process, to ensure that the electronic transfer will work correctly. This takes about 15 days to complete.

IV. If there is no problem, the EFT payment process is enabled.

V. If there is a problem, there are two options:

   A. In some cases, TRE will be able to correct misinformation and process the EFT request. The Contractor Banking Status Table (VBST) will be updated with a 'Y' in the “Notice of Change” field. If the banking information has been corrected the Department may have to update their own internal system when applicable.

   B. In other cases, TRE will not be able to fix the information. Departments must monitor the VBST table, for any rejected EFT and changed requests. The VBST screen contains the "Electronic Commerce Status Flag". If the value for your Department Contractor is "R" for Reject, either the Pre-note on the "EFT" has rejected for the Contractors shown on that table. The Department should contact the Contractor to resolve the problem.

Availability of Electronic Funds Transfer (EFT) for Payees

In order to facilitate the Contractor’s use of this technology, on the next page is the Authorization for Electronic Funds Payments form, which can be given by Departments to Contractors. Contractors should then return the form to the Department so the following data can be entered on the Vendor Update (VU) transaction.

- Bank Transit Routing Number
- Bank Account Number
- Type of Account (Checking or Savings)

Having the Contractor attach a voided check to the form may be helpful to the Department in ensuring the accuracy and completeness of the information. To complete the EFT initiation process, Contractors need to contact their bank and inform it that they will be receiving their payments by EFT. The bank receives EFT payments through their Automated Clearing House (ACH) service. It is then up to the bank to provide that detailed payment description information for the payee.

COMMONWEALTH OF MASSACHUSETTS
AUTHORIZATION FOR ELECTRONIC PAYMENTS

The Commonwealth's goal is to make the printing and mailing of paper checks an obsolete business practice in the Commonwealth of Massachusetts. Electronic fund transfer (EFT) is the preferred method of payment for all payees doing business with the Commonwealth. EFT saves the Commonwealth money and is more efficient for the payee.

EFT allows for payments to be credited to payee's designated account electronically similar to an employee's direct deposit of payroll. The Commonwealth has been offering EFT to Vendors for almost 15 years. Annually, the Commonwealth pays more than $5 billion dollars via EFT. Payments are more predictable, with no delays to the payee. Remittance information is transmitted to the vendor bank and is provided to vendors on their bank statements. This remittance information can now also be accessed via the Internet at the Comptroller's VendorWeb site http://massfinance.state.ma.us.

Payees can sign up through the Office of the Comptroller. To expedite this process, the payee should complete the lower portion of this page and return to the address listed below.

A voided check attached to the form may help to ensure the accuracy and completeness of the information. To complete the EFT initiation process, payees should contact their bank once the form has been filed with the Commonwealth and inform them that they will be receiving payment by EFT using the CTX format. The bank receives EFT payments through their Automated Clearing House (ACH) service.

EFT is safer and faster. Thank you for your smart decision in going the EFT way.

COMMONWEALTH OF MASSACHUSETTS
AUTHORIZATION FOR ELECTRONIC FUNDS TRANSFER PAYMENTS

"I, _____, hereby authorize the Commonwealth of Massachusetts, through the State Treasurer, to deposit funds due into the account at the bank named below.
The State Treasurer is also authorized to debit my account only to adjust any over deposit which it has caused to be made to my account."

VENDOR BANK INFORMATION:

Vendor Bank Name: _____

Vendor Bank Transit Routing Number: ____ ____ ____ ____ ____ ____ ____ ____ ____

Vendor Bank Account Number: _____

(Please Check Account Type): _____ Checking Account (attach voided check) _____ Non-Checking Account

VENDOR INFORMATION:

Vendor Tax Identification Number (EIN): ____ ____ ____ ____ ____ ____ ____ ____ ____

Vendor/Business Name: _____

Vendor Contact Name: _____ Telephone: ( )_____

Address: _____

City: _____ State: _____ Zip: _____

This authorization will remain in effect until either canceled in writing or an updated form changing information is sent to:

Office of the Comptroller
One Ashburton Place, Room 901
Boston, Ma 02108

AUTHORIZED SIGNATURE: _____

Print Name and Title: _____DATE: _____

BUSINESS REFERENCE FORM

Bidder: _____

RFR Name/Title: _____

RFR Number: _____

The bidder must provide (indicate a number) _____ business references.

Reference name:_____ _____ Contact: _____

Address: _____ Phone: ( )_____

Fax/Internet address: _____

Description and date(s) of commodities and services provided: _____

_____

_____

_____

Reference name: _____ Contact: _____

Address: _____ Phone: ( )_____

Fax/Internet address: _____

Description and date(s) of commodities and services provided: _____

_____

_____

_____

Reference name: _____ Contact: _____

Address: _____ Phone: ( )_____

Fax/Internet address: _____

Description and date(s) of commodities and services provided: _____

_____

_____

_____

References will be contacted to confirm the bidder's abilities and qualifications as stated in the bidder's response. The department may deem the bidder's response unresponsive if a reference is not obtainable from a listed reference after reasonable attempts.

CONSULTANT CONTRACTOR MANDATORY SUBMISSION FORM

COMPLETE THE FOLLOWING ONLY FOR CONSULTANT CONTRACTS
(Within HH and NN subsidiaries)

Bidder:_____

RFR Name/Title: _____
RFR Number: # _____

Additional Income Disclosure. Pursuant to the provisions of M.G.L. c. 29, s 29A, the following amounts represent any contracts, grants or other income due from the Commonwealth of Massachusetts, including any political subdivision or public authority, during the period of a contract. Enter N/A if none. You may attach additional sheets as necessary.

Disclosure of Persons with Financial Interest. Pursuant to the provisions of M.G.L. c. 29, s 29A and c. 7A, s. 6., the following individuals have a financial interest in a contract and/or with more than one percent (1%) interest in the capital stock of the contractor. Enter N/A if none. You may attach additional sheets as necessary.

Key Personnel. Attach a resume or statement of qualifications for all key personnel specifically named in bidder's response to be assigned to the performance of a contract. Enter N/A if none.

The information submitted herein is certified by the Bidder to be accurate under the pains and penalties of perjury.

Signature of Authorized Signatory for Bidder: _____

Title of Authorized Signatory for Bidder: _____

Date: _____

CONTRACTOR AUTHORIZED SIGNATURE VERIFICATION FORM

Individuals: Individuals have **two options** to verify signature authorization:

1. **Official Sample of Signature.** Signature verification may be accomplished by submitting a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature, **OR**
2. **Notarization.** In the alternative, the Bidder can have their signature notarized in the space below.

Corporations. Corporations have **two options** to verify signature authorization.

1. **Authorization and Clerk Certification:** The Corporate Clerk may certify in the space below that they have witnessed the authorized signatory's signature (made in the Clerk's presence) **AND** that the signatory is authorized to execute contracts and other documents and legally bind the corporation. (**NOTE:** Clerks may not self-certify if they act as Clerk and as an authorized signatory. Alternative documentation should be submitted); **OR**
2. **Authorization and Official Sample of Signature or Notarization** (Complete both "a." and "b." below)

a. **Authorization.** The Bidder may attach a copy of a board of directors vote stating that each signatory is authorized to execute contracts and other documents and legally bind the corporation, **AND**:

b. **Official Sample of Signature or Notarization. (Select one option)**

- **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing an example of the authorized signatory's signature, **OR**
- **Notarization.** Have each of the signatory's signature notarized (made in a notary's presence) below.

Partnership or Other Entities

1. **Authorization.** Attach documentation for each signatory of authorization to execute contracts and other documents and legally bind the partnership or other entity, **AND**
2. **Official Sample of Signature or Notarization:** (Select one option)

a. **Official Sample of Signature.** Attach a copy of a driver's license, passport, social security card, business ID or other official form or identification containing the authorized signatory's signature; **OR**

b. **Notarization.** Have their signature notarized in the space below.

THIS SECTION IS FOR NOTARIZATION OR CORPORATE CLERK CERTIFICATION

PRINT SIGNATORY'S FULL LEGAL NAME: _____

SIGNATURE: (as it will appear on documents) _____

(NOTARY) I, _____ as a notary public certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory on behalf of the Bidder , and the individual's identity was verified, on this date: _____, 20 _____. My commission expires on:

OR

(CORPORATE CLERK) I, _____ as corporate clerk of the Bidder/Contractor certify under the pains and penalties of perjury that I witnessed the signature of the aforementioned signatory and the signatory is authorized to execute contracts and other instruments and legally bind the Bidder/Contractor. This date: _____, 20 _____.

AFFIX CORPORATE SEAL OR NOTARY SEAL HERE:

NORTHERN IRELAND NOTICE AND CERTIFICATION

State agencies, state authorities, the House of Representatives or the state Senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland who fails to complete the certification below as required by M.G.L. c.7 section 22C:

_____The bidder does not employ ten or more employees in an office or other facility in Northern Ireland.

_____The bidder employs ten or more employees in an office or other facility located in Northern Ireland and certifies that:

1) the bidder does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and

2) the bidder promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and

3) the bidder is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Signed under the pains and penalties of perjury on this _____ day of _____, ____.

_____
Bidder Name

X_____
Signature of Authorized Representative Signing on Behalf of Bidder

_____
Print Name of Authorized Representative of Bidder

_____
Print Title of Authorized Representative of Bidder

RFR - OPTIONAL SPECIFICATIONS

The following RFR provisions may appear in Commonwealth competitive procurements conducted under 801 CMR 21.00:

Multiple Department Procurement/Limited User Contracts. Departments reserve the right to include an option for other named departments to purchase services or commodities under the same terms of the contract. Should departments exercise this option, bidders will be required to specify their ability to extend services to other departments and the rates to be used. This department will execute contracts on behalf of all of the participating departments with the selected bidder(s).

Single Department Procurement/Multiple Department User Contracts. This department reserves the right to include an option for other departments to purchase services or commodities under the same terms of the contract. Should departments exercise this option, bidders will be required to specify their ability to extend services to other departments and the rates to be used. Other departments may execute separate contracts with awarded bidders.

Electronic Funds Transfer (EFT). The Commonwealth encourages contractors to use EFT for payments. This is a benefit to the contractors as well as the Commonwealth. EFT ensures quick payment directly to contractors and saves both parties the cost of processing checks. Bidders may enroll in EFT by completing the *Authorization for Electronics Funds Payment Form* included in this RFR.

Prompt Payment Discounts. Bidders are encouraged to offer discounts in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice only when in exchange for discounted prices. Payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty.

Environmentally Preferable Products and Services. The department and contractor (s) may negotiate during the contract term to permit the substitution or addition of Environmentally Preferable Products (EPPs) when such products are readily available at a competitive cost and satisfy the department's performance needs.

Estimated Provisions. The Commonwealth makes no guarantee that any commodities or services will be purchased from any contract resulting from this RFR. Any estimates or past procurement volumes referenced in this RFR are included only for the convenience of bidders, and are not to be relied upon as any indication of future purchase levels.

Brand Name or Equal. Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any commodity or service, and the department may consider clearly identified offers of substantially equivalent commodities and services submitted in response to such reference.

Alternatives. A response which fails to meet any material term or condition of the RFR, including the submission of required attachments, may lose points or be deemed unresponsive and disqualified. Unless otherwise specified, bidders may submit responses proposing alternatives which provide equivalent, better or more cost effective performance than achievable under the stated RFR specifications. These alternatives may include related commodities or services that may be available to enhance performance during the period of the contract. The response should describe how any alternative achieves substantially equivalent or better performance to that of the RFR specifications.

The department will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this RFR is to provide the best value of commodities and services to achieve the procurement goals of the department. Bidders that propose discounts, uncharged commodities and services or other benefits in addition to the RFR specifications may receive a preference or additional points under this RFR as specified.

Contractors may also propose alternatives for equivalent, better or more cost effective performance than specified under the Contractor's original response to enable the department to take advantage of enhanced technologies, commodities or services which become available during the term of the contract.

Debriefing *Optional specification for non-POS RFRs.* Non-successful bidders may request a debriefing from the department. Department debriefing procedures may be found in the RFR. Non-successful bidders aggrieved by the decision of a department must participate in a debriefing as a prerequisite to an administrative appeal.

Year 2000 Compliance for Commodities and Services RFRs. Bidders must represent and warrant that the information technology for this contract is year 2000 compliant. Year 2000 compliant means information technology that accurately processes date/time data (including but not limited to calculating, comparing and sequencing) from, to and between the twentieth and twenty-first centuries and the years 1999 and 2000, including leap year calculations. Furthermore, year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other informational technology properly exchanges date/time data with it. This warranty shall survive the expiration or termination of this contract.

Year 2000 Compliance for Systems RFRs. Bidders must represent and warrant that this system and all interfaces to this system that the contract is providing, including but not limited to interfaces with other systems and data entry interface for this system, are year 2000 compliant. Year 2000 compliant means information technology that accurately processes date/time data (including but not limited to calculating, comparing and sequencing) from, to and between the twentieth and twenty-first centuries and the years 1999 and 2000, including leap year calculations. Furthermore, year 2000 compliant information technology, when used in combination with other information technology, shall accurately process date/time data if the other informational technology properly exchanges date/time data with it. This warranty shall survive the expiration or termination of this contract.

RFR - REQUIRED SPECIFICATIONS

In general, most of the required contractual stipulations are referenced in the Standard Contract Form and the Commonwealth Terms and Conditions (either version). However, the following RFR provisions must appear in all Commonwealth competitive procurements conducted under 801 CMR 21.00:

The terms of 801 CMR 21.00: Procurement of Commodities and Services (and 808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services, if applicable) are incorporated by reference into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00 (and 808 CMR 1.00, if applicable). Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost proposals or figures in U.S. currency. All responses must be submitted in accordance with the specific terms of this RFR. No electronic responses may be submitted in response to this RFR.

Bidder Communication. Bidders are prohibited from communicating directly with any employee of the procuring department except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may contact the contact person for this RFR in the event this RFR is incomplete or the bidder is having trouble obtaining any required attachments electronically through Comm-PASS.

Reasonable Accommodation. Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case by case basis. A bidder requesting accommodation must submit a written statement which describes the bidder's disability and the requested accommodation to the contact person for the RFR. The PMT reserves the right to reject unreasonable requests.

Public Records. All responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L., Chapter 66, Section 10, and to Chapter 4, Section 7, Subsection 26. Any statements in submitted responses that are inconsistent with these statutes shall be disregarded.

Best Value Selection and Negotiation. The PMT may select the response(s) which demonstrates the best value overall, including proposed alternatives, that will achieve the procurement goals of the department. The PMT and a selected bidder, or a contractor, may negotiate a change in any element of contract performance or cost identified in the original RFR or the selected bidder's or contractor's response which results in lower costs or a more cost effective or better value than was presented in the selected bidder's or contractor's original response.

Costs. Costs which are not specifically identified in the bidder's response, and accepted by a department as part of a contract, will not be compensated under any contract awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by bidders responding to this RFR.

Comm-PASS. If this RFR has been distributed electronically using the Comm-PASS system, RFR attachments that are referenced are available either as separate .pdf files with this RFR or in the Comm-PASS Forms and Information section: www.comm-pass.com. Bidders are solely responsible for obtaining and completing the required attachments that are identified in this RFR and for checking Comm-PASS for any addenda or modifications that are subsequently made to this RFR or attachments. The Commonwealth and its subdivisions accept no liability and will provide no accommodation to bidders who fail to check for amended RFRs and submit inadequate or incorrect responses. Bidders are advised to check the "last change" field on the summary page of RFRs for which they intend to submit a response to ensure that they have the most recent RFR files. Bidders may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of the RFR, specifications, terms and conditions, or which change the intent of this RFR are prohibited and may disqualify a response.

Northern Ireland Notice and Certification. All bidders must complete the Northern Ireland Notice and Certification form to satisfy M.G.L. c.7 section 22C, which states that no state agency may procure commodities or services from any bidder employing ten (10) or more employees in an office or other facility located in Northern Ireland unless the bidder certifies through the notice and certification form that if it employs ten or more employees in Northern Ireland, a) the bidder does not discriminate in employment, compensation or the terms, conditions and privileges of employment on account of religious or political belief, b) the bidder promotes religious tolerance within the workplace and the eradication of any manifestations of religious and other illegal discrimination and, c) the bidder is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Subcontracting Policies. Prior approval of the department is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.

Affirmative Market Program. Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs). As a result, M/WBEs are strongly encouraged to submit responses to this RFR, either as prime vendors, as joint venture partners, or as subcontractors.

Non-M/WBE bidders are strongly encouraged to develop creative initiatives to help foster *new business relationships* with M/WBEs within the primary industries affected by this RFR. The highest number of points may be awarded for responses that clearly illustrate how the proposed business relationship(s) will result in the development and growth of M/WBEs within these primary industries. A lesser number of points may be awarded for traditional subcontracting relationships. The least number of points may be awarded for ancillary uses of M/WBEs.

In order to satisfy this section, the bidder must submit: the names, addresses, phone numbers and contact persons of each M/WBE firm; a description of each business relationship to be established; and the actual dollar amounts, or percentages, to be awarded to each M/WBE firm. MBE and WBE firms must submit a copy of their SOMWBA certification letter for the current period. A directory of SOMWBA certified firms is available via the Internet at www.state.ma.us/somwba.

A Minority Business Enterprise (MBE) or a Woman Business Enterprises (WBE) is defined as a business that has been certified as such by the State Office of Minority and Women Business Assistance (SOMWBA). Minority and women-owned firms that are not currently SOMWBA-certified but would like to be considered as an M/WBE for this RFR should apply for certification. A fast track application is available, and will be considered for the purposes of this RFR. For further information on SOMWBA certification contact the State Office of Minority and Women Business Assistance at (617) 727-8692 or via the Internet at www.magnet.state.ma.us/somwba.

Contract Expansion. If additional funds become available during the contract duration period, the department reserves the right to increase the maximum obligation to some or all contracts executed as a result of this RFR or to execute contracts with contractors not funded in the initial selection process, subject to available funding, satisfactory contract performance and service or commodity need.

Multi-State EMall™. *Required for statewide and OSD-designated statewide contracts only*. The Commonwealth of Massachusetts has implemented the Multi-State EMall according to the Open Buying on the Internet (OBI) model. The Commonwealth has adopted this method of Electronic Commerce and is in the process of selecting contracts for implementation. This new method of Electronic Commerce or others may become a requirement of this contract at a later date. At least 120 days notice will be given before an implementation requirement will be enforced. More information about OBI is available at: www.openbuy.org.

Information Technology - Clarification of Language in Section 11, Indemnification of the Commonwealth Terms and Conditions. *Required for the following object codes within the "Expenditure Classification Handbook" as issued by the Office of the Comptroller:*

E08 - Telecommunication Services, Voice
EE8 - Telecommunication Services, Data
E09 - Software purchases
H03 - IT consulting & Maintenance
J08 - IT Cabling/installation & maintenance
K01 - IT equipment purchases
L01 - IT TELP
L21 - IT Rental or Lease
L41 - IT Technical Support

Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the Contractor be liable for damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of $100,000, or two times the value of the product or service (as defined in the contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions.

Filing Requirements ☞ *Required for POS Only.* Successful bidders must have filed their Uniform Financial Statements and Independent Auditor's Report (UFR), as required for current contractors, with the Operational Services Division for the most recently completed fiscal year before a contract can be executed and services may begin. Other contractor qualification/risk management reporting requirements and non-filing consequences promulgated by secretariats or departments pursuant to 808 CMR 1.04(3) may also apply. In the event immediate services are required by a department, a contract may be executed and services may begin with the approval of OSD and the appropriate secretariat. However, unless authorized by OSD and the appropriate secretariat, the contractor will not be paid for any such services rendered until the UFR has been filed.

Debriefing ☞ *Required for POS Only. Optional specification for non-POS RFRs.* Non-successful bidders may request a debriefing from the department. Department debriefing procedures may be found in the RFR. Non-successful bidders aggrieved by the decision of a department must participate in a debriefing as a prerequisite to an administrative appeal.

Administrative Appeals to Departments ☞ *Required for POS Only.* Non-successful bidders who participate in the debriefing process and remain aggrieved with the decision of the department may appeal that decision to the department head. Department appeal procedures may be found in the RFR.

Administrative Appeals to OSD ☞ *Required for POS Only.* Non-successful bidders who participate in the department appeal process and remain aggrieved by the selection decision of the department may appeal the department decision to the Operational Services Division. The basis for an appeal to OSD is limited to the following grounds:

1. The competitive procurement conducted by the department failed to comply with applicable regulations and guidelines. These would be limited to the requirements of 801 CMR 21.00 or any successor regulations, the *Procurement Policies and Procedures Handbook*, subsequent policies and procedures issued by OSD and the specifications of the RFR; or

2. There was a fundamental unfairness in the procurement process. The allegation of unfairness or bias is one that is easier to allege than prove, consequently, the burden of proof rests with the bidder to provide sufficient and specific evidence in support of their claim. OSD will presume that departments conducted a fair procurement absent documentation to the contrary.

Requests for an appeal must be sent to the attention of the Deputy Purchasing Agent at Room 1017, One Ashburton Place, Boston, MA 02108 and be received within fourteen (14) calendar days of the postmark of the notice of the department head's decision on appeal. Appeal requests must specify in sufficient detail the basis for the appeal. Sufficient detail requires a description of the published policy or procedure which was applied and forms the basis for the appeal and presentation of all information that supports the claim under paragraphs 1 or 2 above. OSD reserves the right to reject appeal requests based on grounds other than those stated above or those submitted without sufficient detail on the basis for the appeal.

The decision of the Deputy Purchasing Agent shall be rendered, in writing, setting forth the grounds for the decision within sixty (60) calendar days of receipt of the appeal request. Pending appeals to the Deputy Purchasing Agent shall not prohibit the department from proceeding with executing contracts.

SAMPLE REFERENCE REVIEW FORM

Use additional pages if necessary

RFR Name/Title: _____

RFR Number : _____

Bidder: _____

Reference:_____ Phone:_____

Date & Time: _____

Interviewer: _____

1. Bidder's ability to provide required commodities or services.
   Excellent Good Fair Poor

2. Bidder's reputation, ethical approach and integrity in performance.
   Excellent Good Fair Poor

3. Bidder's organizational approach (reporting, internal controls, use of staff).
   Excellent Good Fair Poor

4. Bidder's interpersonal skills (communication, leadership, thoroughness, diligence).
   Excellent Good Fair Poor

5. Are you aware of any substantiated complaints against the bidder?
   Yes (explain below) No Other

   _____

   _____

6. Were there any significant achievements by the bidder?

   _____

   _____

7. Would you rehire or recommend the hiring of this bidder?

   _____

Additional questions:

_____

_____

_____

Additional comments:

_____

_____

_____

SAMPLE RESPONSE EVALUATION SCORECARD

Before giving to reviewers the Procurement Team Leader should enter each evaluation criteria to be scored in first column and indicate the priority level under the "multiplier" column. The evaluation criteria with the highest priority will have the highest multiplier, e.g., "x 10" and the lowest priority criteria will have the lowest multiplier, e.g., "x 1". Multiply the multiplier by "5" to obtain the highest number of points for each criteria (since "5" is the highest score).

Reviewers must check one score (0-5) for each criteria. Multiplying the marked score by the multiplier will result in the total points awarded for that criteria.

NAME OF BIDDER: RFR TITLE: NAME OF REVIEWER:	***Score Unsatisfactory 0 pts***	***Score Satisfactory 1 pt***	***Score Good 2 pts***	***Score Very Good 3 pts***	***Score Excellent 4 pts***	***Score Outstanding 5 pts***	Multiplier	Points Awarded (mark score from (0-5 and multiply by multiplier)	Maximum Points Available (5 x multiplier)
EVALUATION CRITERIA LISTING									
EXAMPLE - 1						XX	(x 5)	25	25
EXAMPLE - 2				XX			(x 2))	6	10
EXAMPLE - 3			XX				(x 1)	2	5
1.							(x __)		
2.							(x __)		
3.							(x __)		
4.							(x __)		
5.							(x __)		
6.							(x __)		
7.							(x __)		
8.							(x __)		
9.							(x __)		
10.							(x __)		

Comments on individual score selections or general comments during review of response:

TAX COMPLIANCE CERTIFICATION INSTRUCTIONS

The bidder must demonstrate compliance with Commonwealth tax laws, including M.G.L. C. 62C, s.49A. The bidder must submit an original or photocopy of a *Certificate of Good Standing* which has been issued by the Massachusetts Department of Revenue within the past year. To obtain a *Certificate of Good Standing*, the bidder must submit the request to:

Department of Revenue (DOR)
Taxpayer Services Division
Certificate Unit
P.O. Box 7066
Boston, MA 02204
(617) 887-6550
FAX back on demand (617) 887-6262 (for application and instructions)

Include the following information:

1. Name, address and telephone number of the corporation.
2. Reason for the request.
3. Types of taxes to which the corporation is subject and the corresponding Massachusetts identification number (if any).
4. Power of Attorney Form M-2848, if applicable.
5. Signature of a major officer of the corporation.

The issuance of a *Certificate of Good Standing* normally takes several weeks, so bidders should indicate in their request to the Department of Revenue that the certificate is sought in connection with a Commonwealth solicitation (with a deadline). If the bidder does not supply the requested tax certificate with the response, the bidder must submit documentation verifying that the appropriate application has been filed. The certificate must be provided prior to final execution of the Standard Contract Form.

OTHER PROCUREMENT INFORMATION

(Alphabetical Order)

Acquisition of Durable Commodities

Analyzing a Financial Statement

Environmentally Preferable Products (EPP) Program

Guidelines on Material Changes in a Contractor's Identity

Incidental Purchasing Quick Reference Guide

Performance Contracting

Procurement Groups

Procurement Group to Object Code Crosswalk

Purchase of Service Budget Attachments - Fiscal Specifications

Purchase of Service (POS) Capital Items Procurement Policy

Request for Response (RFR) Checklist

Request for Response/Contract Duration

Use of a Procurement by a Single or Multiple Departments

ACQUISITION OF DURABLE COMMODITIES

When deciding to acquire durable commodities, procuring departments and PMTs should assess their requirements and weigh and compare their available options. Options for the acquisition of durable commodities are:

1. **Outright Purchase** - Immediate ownership (When the value of the commodity is $15,000 or greater, this is considered a Commonwealth fixed asset.)
2. **Rental** - Temporary short term use without ownership (limit 6 months).
3. **Term Lease** - Temporary use without ownership for over 6 months. (These leases must be reviewed for categorization as capital or operating.)
4. **Tax Exempt Lease-Purchase (TELP)** - Purchase of commodity with financing and ultimate ownership. (This should be reported as a capital lease. When the value of the commodity is $15,000 or greater, it is considered a Commonwealth fixed asset for which an FA transaction must be entered at the time of acquisition.)
5. **License** - Temporary use without ownership of intellectual property or software.

Note: Other Acquisition Methods: Departments must use one of the acquisition methods identified above unless another method is legislatively authorized and approved by OSD or CTR.

I. Fixed Asset Determination: When To Record Commodities as Fixed Assets

Regardless of the acquisition method, departments are responsible for recording fixed assets with a value of $15,000 or greater on the Fixed Asset Subsystem. The Fixed Asset Subsystem is a component of MMARS whose purpose is to provide a uniform and fully automated vehicle to account for and report on GAAP (Governmental Generally Accepted Accounting Principles) fixed assets owned by the Commonwealth's departments. Departments must record GAAP fixed assets on the Fixed Asset Subsystem. This recording of these assets allows CTR to incorporate this information into the Commonwealth's annual comprehensive financial report.

Departments must also determine if a lease is a GAAP fixed asset, whether it is a capital lease or a term lease, and are responsible for any required reporting and proper coding of transactions in MMARS. The key steps in making this determination are as shown in the chart below and also are outlined in MMARS Memo #277 (available at: www.state.ma.us/osc/overview.htm).

Procurement Method	*Dollars/Life*	*GAAP Reporting Category*	*Lease Type Codes*	*FA (Fixed Asset Transaction) Yes or No*	*Object Code*
TELP	*≥ $15,000*	*Capital*	*C*	*YES*	*L01-L13*
TELP	*< $15,000*	*Capital*	*C*	*NO*	*L01-L13*
TERM LEASE	*≥ $15,000* *> 75% of Life OR 90% of Cost*	*Capital*	*C*	*YES*	*L21-L33*
TERM LEASE	*< $15,000* *> 75% of Life OR 90% of Cost*	*Capital*	*C*	*NO*	*L21-L33*
TERM LEASE	*≥ $15,000* *< 75% of Life OR 90% of Cost*	*Operating*	*O*	*NO*	*L21-L33*
TERM LEASE	*< $15,000 of life* *< 75% of Life OR 90% of Cost*	*Operating*	*O*	*NO*	*L21-L33*

The purchase of durable commodities valued at equal to or greater than $15,000 (or as this amount is amended) are considered capital items and must be recorded as a Commonwealth asset as soon as the commodity is accepted. Departments should refer to the CTR's *Fixed Asset Subsystem User Guide* and MMARS Memo #277, Commonwealth Equipment Leasing for guidance on reporting the following:

> All commodities acquired through outright purchase or TELP that are valued at equal to or greater than $15,000 or the current approved amount;
>
> Any **term lease** when the lease term is greater than 75% of the estimated economic life of commodity; and
>
> Any **term lease** when total payments (less maintenance cost) exceed 90% of the asset's fair market value.

II. Acquisition Methods

1. When Departments Should Consider Purchasing a Commodity (Either Outright Purchase or TELP)

- The department has a **definite long term or permanent need** for the commodity. Departments SHOULD NOT consider the purchase of a commodity if the need is temporary or if the department cannot determine the needed duration;
- The department wants to **own** the commodity and classify it as a Commonwealth asset;
- The commodity is not likely to be quickly outdated by advances in technology and will continue to be usable at the department for a longer period than 36 months;
- The durability of the commodity will provide a long-term useful life, normally longer than 36 months; for some IT commodities, longer than 18 months;
- The commodity can be recycled, passed down or circulated to other areas of a department when new commodities are needed rather than considering it as a surplus item;
- The commodity can be easily modified or upgraded with parts, rather than having to be replaced with a new commodity;
- The benefits of ownership of the commodity outweigh the burdens of ownership, such as ongoing maintenance, repairs and final disposition;
- The department has sufficient funds to purchase the commodity **(outright purchase)**;
- The department does not have sufficient funds for an outright purchase, but is anticipates having funding in the future to purchase the commodity over time (**Tax Exempt Lease Purchase - TELP**). See #4 of this section, Tax Exempt Lease Purchase.

Note: Commodities purchased through outright purchase or TELP will be considered Commonwealth fixed assets and should be recorded as part of the department's Fixed Asset Management Plan.

Outright Purchase With Immediate Ownership

A department uses an outright purchase when:

- the department has determined that it is most advantageous to buy the commodity rather than just purchase the temporary use of the commodity and

- the department has sufficient funds available to purchase the commodity.

- Departments wishing to purchase a commodity, but lacking sufficient funds for an outright purchase, should consider a Tax Exempt Lease Purchase discussed in #4 of this section.

Many commodities are available on statewide contracts and can be obtained quickly and efficiently. Commodities that are not on statewide contract and cannot be purchased through an incidental purchase (because the total value of the procurement is higher than the department's incidental purchase limit or the object code incidental purchase limit) should be procured using an RFR. The RFR should be drafted to identify the commodity(ies) required and obtain the best value for the department's available funds. The RFR should identify the department's goals for using the commodity and ask bidders to identify all available options, so that bidders can effectively match the department with the commodity and accessories that most closely meet these needs.

Depending on the type of commodity to be procured, the RFR should include a maintenance component, either in a warranty for repair or replacement, or for needed on-call maintenance and repairs. This section of the RFR may solicit separate responses (just for maintenance and repairs) from bidders other than the contractor selected for the purchase of the equipment. Coupling the purchase and maintenance under one RFR will eliminate the need for a separate maintenance RFR.

2. When Departments Should Consider Temporary Use of a Commodity (Rental or Term Lease)

- The department has a **short term** or **temporary need** for a commodity;
- The department will need the commodity for a temporarily funded program or project, a pilot project, or the department does not know how long commodity will be needed;
- The department does not want or need to own the commodity or to classify it as a Commonwealth asset;
- The department needs to have the ability to upgrade or replace the commodity with newer or different models, new or different technology in order to react to rapidly changing technology or internal departmental needs;
- The durability of the commodity will not provide a long-term useful life, normally longer than 36 months. For some IT commodities, longer than 18 months;
- The commodity cannot be recycled, passed down or circulated to other areas of a department when new commodities are needed, and would have to be declared surplus;
- The disposal of a commodity will be costly or lead to a potential environmental hazard;
- The commodity cannot be easily modified or upgraded with parts, but would have to be completely replaced with a new commodity;
- The benefits of temporary use of the commodity outweigh the benefits of ownership;
- The department has sufficient funds (and anticipates future funds) to pay for the temporary use of the commodity; If the anticipated **PERIOD** of the term lease is ***greater than 75% of estimated economic or "useful" life*** of the commodity, the department should consider an outright purchase or a TELP as opposed to a term lease. If a term lease is done, this commodity must also be recorded as a fixed asset. This is because the department is paying for the majority of the value of the commodity which qualifies this as a purchase;
- If the anticipated **VALUE** of total term lease payments (less maintenance costs) is ***greater than 90% of the commodity's fair market value***, the department should consider a outright purchase or a TELP as opposed to a term lease. If a term lease is done, this commodity must also be recorded as a fixed asset. This is because the department is paying for the majority of the value of the commodity which qualifies it as a purchase.

Rentals - Temporary Short-Term Use Without Ownership (Limit 6 Months)

A rental is an ideal arrangement for departments which have a one-time need or a short-term requirement for a commodity. For example, a department may need to rent 200 chairs for a conference or special ceremony, or a video camera for a special taping. These commodities are needed temporarily or for the specific or unusual event, and it is not practical or reasonable to purchase or lease the commodity.

Note: The total rental cost for several single days or for several days may qualify as an incidental purchase (depending on a department's incidental purchase limit and the incidental purchase limit for the object code); as such, an RFR may not be required.

Term rentals are longer than a one-time rental, or extend over a short period of time (not to exceed 6 months) and require periodic payments to the rental company contractor. Title to a rented commodity is held by the rental company.

In contrast with most lease contracts, maintenance and repair responsibility for a rented commodity remains with the rental company contractor. A department should expect a rented commodity to be functional and in good working condition and should immediately notify the rental company if the commodity is not performing as expected.

Departments are encouraged to negotiate the rental payments with the rental company contractor, and should not enter into a rental that contains penalty clauses (which exceed the actual rental fee) for exceeding the rental term. Departments should execute, on a timely basis, a rental amendment (provided it does not exceed a total aggregate of 6 months) if the department anticipates needing the use of the commodity for longer than the rental term.

Generally, a department may not rent a commodity for longer than 6 months or negotiate options to renew. Although rental companies will negotiate longer term rentals, these rentals are generally not cost-effective. Therefore, if the department is unsure whether the rental will exceed 6 months, or the department is nearing the 6 month period, the department should negotiate a short-term lease for the anticipated period, rather than a rental. Leases are generally significantly less expensive than rentals for periods exceeding 6 months. Thus, for a department to realize the best value and execute the most practical contract, a department should know their exact requirements for the commodity and negotiate the best pricing structure.

Many commodities may be rented. Although the latest model or newest technology may be available for rental, it is likely that the equipment will not be brand new (the rental company may have rented the same equipment to other users).

In the rare event that a department wishes to purchase the rented commodity, it may be possible to negotiate this purchase at fair market value. However, this option should be treated as a separate outright purchase procurement (if the value does not qualify as an incidental purchase and the item is not on a statewide contract).

3. Term Lease - Temporary Use Without Ownership (Longer than 6 Months). (See also #4 Tax Exempt Lease Purchase – Purchase of Commodity With Financing and Ultimate Ownership.)

The term lease (also known as lease or operational lease) may be a feasible option for procuring departments which have a longer term need (longer than 6 months), **but do not need or intend to purchase the commodity**. For example, a term lease may be practical when the commodity or equipment changes rapidly with advances in technology. Generally, the following are some characteristics of term leases:

- A lease gives the department the use of the commodity for a specified period;
- Lease payments are usually less than a rental for the same period of time;
- Procuring departments are usually required to maintain and service the commodity, either as part of the lease payment or under a separate maintenance contract;
- Leases may offer automatic upgrades or replacement with new models during or at the end of the term of the lease;
- Title and ownership remain with the contractor and will not be transferred to the department as part of the lease.

Term Leasing Guidelines and Considerations

There are specific guidelines and pre-requisites that must be carefully considered on an individual basis before choosing leasing as an option.

A. <u>Specific instances in which term leasing is a desirable option.</u>

Term leasing can be a beneficial alternative when there is:

- A project of undetermined duration;
- A limited duration project funded by capital funds (in which TELP is not an option);
- A need for rapid technological change;
- A significant financial or environmental cost associated with the disposal of the commodity;
- Downsizing, relocating or re-organizing within a department;
- A need to be flexible and to respond quickly to changing department needs;
- The use of term leasing requires that:
- Departments have a clear and internally approved commodity use business plan (see the next guideline);
- Departments understand the **"useful life"** of their equipment according to their business strategy (furniture has a different useful life than desktop computers). This is important because many leasing companies may offer leases for a period equal to or longer than the useful life of the equipment. (This happens often with information technology equipment, which has a much shorter life than furniture.) A department that enters into a lease for a period equal to or greater than the useful life would in essence be paying the full value of a purchase of the commodity, without gaining any equity or purchase rights, which would not be a prudent use of resources. Also, the department would be required to record this commodity as a fixed asset. **Leases should always be negotiated for LESS than the 75% of the useful life of the equipment;**
- Departments understand the "**fair market value**" of the commodity to be leased. This is important because many leasing companies may offer leases for a total lease amount that equals or is greater than the total value of the commodity. A department that enters into a lease for an amount equal to or greater than the value of the commodity would in essence be paying the full value of a purchase of the commodity, without gaining any equity or purchase rights. Also, the department would be required to record this commodity as a fixed asset. **Leases should always be negotiated for LESS than the 90% of the value of the commodity of the equipment;**

  Funding is secured at the beginning of the lease, and throughout the lease term, to assure payment throughout the lease term;

- The contract plan addresses the disposal of commodities, in accordance with appropriate regulations, at the end of a lease so that the commodities may be replaced, upgraded or returned to the leasing contractor without any disruption of service.

B. <u>Departments need to have a business plan for internal commodity needs.</u>

The type of questions and issues that need to be researched for the development of a plan are:

- What are the department needs, technically or otherwise? Consideration must be given to the strategic direction of the Commonwealth and the needs of the department.
- How does the department plan to get to there?
- In the information technology area, which operating systems and applications software products does the department plan to use (are these items year 2000 compliant)?
- How is the plan going to be supported (externally and internally)?
- Should commodities be purchased outright, financed (TELP) or term leased? Should the acquisition methods be combined?
- How does the department protect against technical obsolescence; how often does the department need to upgrade or replace the commodity?
- How does the department plan to replace the commodity when the lease ends?
- Have disposal costs and requirements been considered?
- Are the plans and goals realistic?

C. <u>Departments must have a formal asset management program.</u>

Similar to tracking fixed assets of Commonwealth owned commodities or those financed through TELP (especially on a large scale) an asset management program must be in place to track and control the leased inventory. Since ownership remains with the leasing contractor, the department must carefully track the location of all leased commodities. While leasing is a flexible tool, tight control and planning are mandatory.

Using information technology as an example, benefits include:

- Automation of system updates which reduces the cost of hardware and software deployment;
- Effective planning of system updates which reduces the cost of hardware and software deployment;
- Ability to track the commodity inventory, especially in time of reorganization and downsizing;
- Downtime of equipment is minimized resulting in higher productivity and lower costs;
- Helping departments to strike a balance between hardware deployment, the retirement of equipment, and the use and integration of newer technologies. Departments must know where all leased commodities are located because the department may be subject to severe penalties if leased commodities are lost.

D. <u>Traditional funding mechanisms and sources need to be re-examined.</u>

- A multi-year commitment is critical both to a department and a contractor before entering into a lease;
- Appropriation of funds must be secured both for the current year and out-year budget commitments;
- The type of funds should be considered;
- Restrictions related to various funding sources must be considered.

E. <u>The time frame for a term lease should depend on the anticipated useful life of the commodity.</u>

In the information technology arena, for example, term leases beyond three years are not recommended. Instead, TELP financing or outright purchase should be considered.

Flexibility is considered one benefit of leasing a commodity. The preferred structure of a lease should be considered by a department. Once the lease is completed and all payments are made the commodity is returned to the contractor.

Note:

- If the anticipated TERM of the term lease is ***<u>greater than 75% of estimated economic or useful life</u>*** of the commodity, the department should consider an outright purchase or a TELP as opposed to a term lease. Even if a term lease is chosen, this commodity must be recorded as a fixed asset because the department is paying for most of the value of the commodity (qualifying it as a purchase).

- If the anticipated VALUE of total term lease payments (less maintenance cost) is ***<u>greater than 90% of the commodity's fair market value</u>*** the department should consider an outright purchase or a TELP instead of a term lease. Even if a term lease is selected, this commodity must be recorded as a fixed asset because the department is paying for most of the value of the commodity (qualifying it as a purchase).

F. <u>Negotiating options as part of a lease.</u>

A department may <u>not</u> negotiate an option to purchase under a term lease. Options to purchase (also referred to as buy-out options) significantly inflate lease costs (and are therefore inappropriate). **A department must evaluate, before acquiring a commodity, whether it is best value to lease the commodity.**

Also, departments should not negotiate other options as part of a term lease, e.g., options to upgrade, refresh or replace equipment. These types of options generally build in additional monthly costs and require the department to purchase something in advance that it may never receive (in violation of state finance law). Instead, departments have the ability to negotiate upgrades, refresh or replace a commodity at any time during the lease term. Even if this language is not specified in a RFR, the department will always have the opportunity to negotiate with a contractor.

G. <u>Can a department reconsider its choice and choose to buy a commodity during or at the completion of the term lease?</u> Yes, with certain restrictions.

- If the department determines **<u>during the lease period</u>** that it should have purchased the commodity, <u>and</u> the department has sufficient funds for an outright purchase, it may negotiate the fair market value purchase of the commodity with the contractor.
- If the department determines **<u>during the lease period</u>** that it should have purchased the commodity, <u>and</u> the department does not have sufficient funds for an outright purchase, it should re-negotiate the term lease as a TELP. TELP payments (unlike lease payments) contribute to the purchase of the commodity, thereby reducing the overall cost to the department.
- If the department determines **<u>at the end of the lease period</u>** that it should have purchased the commodity, <u>and</u> the department has sufficient funds for an outright purchase, it may negotiate the fair market value purchase of the commodity with the contractor. However, the purchase should be treated as a completely separate transaction and may not be built in as an option under the original lease.

Terminating a term lease.

Departments must be very careful when considering terminating a term lease. Term leases are unlike rental or other contracts that are terminable at will and without cause. Similar to a TELP, the cancellation of a term lease may result in severe penalties if the department decides to terminate prior to the end of the lease. Therefore, departments may not terminate a lease easily and should be very careful to ensure that the commodity to be leased is essential to department operations for the period of the lease.

A leasing contractor factors in the value of the commodity and the associated financing cost for the period leased. As such, the full negotiated amount of the lease is not just the monthly or quarterly value of the lease while it is at the department, but the full amount of the investment that the leasing company seeks to recoup, irrespective of the length of the lease. The full amount of the lease is then broken down into multiple payments for the convenience of the department to be paid over a specified period of time.

The leasing company expects to recoup the full amount of the lease even if the department wants to terminate the lease early. Therefore, a department seeking to terminate a lease early without cause will often be faced with three options, (1) an acceleration of payments (the leasing company wants to recoup all remaining leasing payments); (2) negotiating a buyout of the commodity at the fair market value of the commodity; (3) negotiating a settlement of some amount less than the remaining lease payments. Departments should seek guidance from their fiscal and legal staffs when deciding to terminate a lease.

4. Tax Exempt Lease Purchase - Purchase of Commodity With Financing and Ultimate Ownership. (See also #3 Term Lease – Temporary Use Without Ownership - Longer than 6 Months.)

Factors to Consider for Tax Exempt Lease Purchase

Under 801 CMR 21.00, the term lease purchase is synonymous with purchase (if the commodity's value is equal to or greater than $15,000 or other approved value, the commodity is considered a fixed asset of the Commonwealth and must be recorded). Lease purchase is also synonymous with Tax Exempt Lease Purchase (TELP), i.e., whenever a department considers buying a commodity with financing, it enters into a Tax Exempt Lease Purchase (TELP). There are no leasing options under a lease-purchase.

All lease purchases entered into by a department must be TELPs absent a statutory or other legal prohibition. A TELP provides financing for the commodity purchase over time. The TELP financier pays an equipment contractor immediately for the full cost of the commodity. The department then pays the TELP financier over a specified period of time. Upon completion of payments, the title to the commodity is transferred to the department. Tax exempt refers to the benefits a TELP financier receives from the tax exempt status of the Commonwealth. A TELP financier can sell tax exempt bonds to finance the purchase of the commodity which are much less expensive and more easily sold than taxable bonds. This provides Commonwealth departments with a much lower interest rate for the TELP payments.

A department may consider using a **Tax Exempt Lease Purchase (TELP)** when:

- the department has determined that it is most advantageous to buy a commodity rather than purchase the temporary use of the commodity, i.e., no anticipated trade-in is planned;
- the commodity is essential to the operations of the department;

- the department does not have sufficient funds currently available to purchase the commodity outright, and
- the department anticipates having sufficient continuing partial funding available over the term of the TELP to pay the cost of the commodity and the financing costs. **(Note: Capital funds may not be used for TELP financing.)**

Note: A TELP financing company is not a merchant dealing in the commodity being purchased, and **will not provide upgrade and swapping options that a lease may provide**. Other than for maintenance and warranty issues, the department's relationship with the equipment contractor terminates when the TELP financier makes full payment to the contractor for the equipment at the beginning of the TELP term.

Departments should remain aware that a TELP is a mechanism for financing the **purchase** of a commodity. Title for the commodity remains with the TELP financing company until all payments are made by the department.

TELP contracts may include the provision of service and maintenance or may require that separate contracts provide for this upkeep, depending upon the procurement and the contractor. Service and maintenance costs are additional and may be available through the TELP contractor as part of the TELP contract as a convenience, **however these costs may not be financed as part of the TELP payments, but must be paid separately.**

TELP cancellations usually result in severe penalties and the loss of all equity built up in the commodity. The termination or cancellation of a TELP should be carefully considered and used only in very extreme circumstances. Usually the only way that a TELP can be terminated, without penalty, is when the legislature fails to appropriate funds for that contract (the elimination of a line item) and there are no other available sources of funds that are authorized for that purpose.

If the TELP contract is encumbered in an account in which funding is reduced, other discretionary contracts (contracts terminable without cause which do not have automatic severe penalty clauses associated with termination) **must be terminated or reduced in order to ensure sufficient funds to cover the TELP payments.** This priority of obligations is required since the TELP contractor pays the equipment contractor immediately for the full cost of the commodity and is allowing the department to repay this amount over the term of the TELP. Therefore, the department is obligated to repay this amount and financing costs.

An Outline of the Commodity Purchase TELP Acquisition Process

A TELP acquisition method allows a department to purchase the commodity and finance the cost of the commodity over time. The TELP process is outlined briefly as follows:

- All anticipated TELP purchases must be reviewed in advance by the Executive Office for Administration and Finance, Fiscal Affairs Division (FAD). Departments must submit a request to FAD outlining the type, quantity and anticipated value of the commodity(ies) including the sources of funding identified for all future TELP payments;
- Commodities and equipment must be procured in accordance with 801 CMR 21.00. The department may select the commodity either from a current statewide contract, or the department conducts an RFR solicitation for the commodity (in which the RFR states the department intends to finance the commodity), provided the statewide TELP does not meet a department's need;
- Once the commodities are selected, the department can then select from one of the three options available for TELP financing. The options, which are discussed more fully below, are:

  A. The Commonwealth TELP (administered by the Information Technology Division)
  B. The statewide TELP contract (requires quotes from all statewide contractors)
  C. A contractor TELP (from the contractor supplying the commodity under an RFR)

- The TELP arrangement is finalized upon the department's acceptance of the commodity and completion of the required paperwork of the TELP (Commonwealth of Massachusetts – Fiscal Affairs Division Tax Exempt Lease Purchase (TELP) Authorization Form, Statewide Tax Exempt Lease Purchase Quotation Form, Acceptance Certificate, Acceptance Certificate Payment Schedule, Tax Exempt Lease Purchase (TELP) Agreement Essential Use Letter and Certificate of Appropriation);
- The TELP contractor (financier) gets the benefit of the Commonwealth's tax exempt status and therefore can offer better financing rates to departments;
- A department makes TELP payments (principal and interest costs only) periodically (monthly, quarterly, annually or semi-annually) spreading the acquisition cost over a longer period of time (24, 36, 48, 60 or more months, depending upon the type of commodity, its useful life and the total cost);

Note: Maintenance, personnel or other costs which may not be financed should be invoiced and paid separately from TELP payments.

- TELP payments are unconditional and a department may not terminate a TELP arrangement except for non-appropriation of funds, which is not overspending of a budget, but usually occurs only when a department is dissolved or has its funding cut severely;
- TELP payments must be made through the MMARS Recurring Payment System on time in order to avoid adverse consequences to the Commonwealth's financial status;
- Departments gain possession and use of the commodity or equipment immediately and the title remains with the TELP contractor until all of the TELP payments have been made; and
- Title to the commodity transfers to the department at the end of the TELP term.

A. The Commonwealth TELP (Administered by the Information Technology Division)

The Information Technology Division (ITD) manages the Commonwealth TELP statewide contract on behalf of departments. Financing a purchase utilizing the Commonwealth TELP may provide the following advantages to departments:

- ITD assists departments through the entire TELP process;
- The Commonwealth TELP is a good option for smaller TELP purchases provided the total acquisition costs of the equipment is at least $15,000;
- The Commonwealth TELP contractor cannot refuse to provide financing to a department, unlike the statewide TELP or contractor TELP financiers who may refuse to provide financing for certain types of equipment or smaller dollar purchases;
- The Commonwealth TELP interest rate is set as part of the contract according to the Commonwealth's credit rating, and is updated quarterly to reflect market changes;
- Departments save administrative costs because they do not need to competitively solicit TELP interest rates or negotiate a financing contract with a third-party financier;
- Departments know the interest rate and total financing cost, and may budget the procurement accordingly (or the selection of the commodity from a statewide contract); and
- TELP payments under the Commonwealth TELP are set up on the quarterly Recurring Payment System on MMARS and paid quarterly in arrears.

Departments seeking to utilize the Commonwealth TELP for a commodity purchase can contact ITD:

Information Technology Division
One Ashburton Place, 8th Floor
Boston, MA 02108 Tel. (617) 973-0715 or (617) 973-0702

B. Statewide TELP Contract

The statewide TELP contract is a good option for purchase of a commodity meeting the following requirements:

- The commodity or equipment to be purchased has a total acquisition cost of greater than $50,000.
- The commodities are information technology equipment, telecommunications, motor vehicles, energy/water conservation equipment, office automation equipment, photocopy/duplication equipment or other equipment or commodities authorized by OSD as appropriate for TELP.
- The department obtains competitive TELP quotes from ALL of the approved statewide TELP contractors to obtain the best TELP financing rates.
- The department establishes the TELP payment schedule in accordance with one of the approved MMARS "REST" tables in the Recurring Payment System (monthly, quarterly, semiannual or annual).

The Financial Services Procurement Management Team has developed a comprehensive statewide *TELP Handbook* to assist departments step-by-step through the process of obtaining TELP financing which is available on Comm-PASS at: www.comm-pass.com.

C. Contractor TELPs

The third TELP financing option is a contractor TELP. Similar to the third-party financing available using the Commonwealth TELP contractor through ITD or the statewide TELP contract, some contractors may also offer TELP financing as part of commodity purchases. A contractor financed tax exempt lease purchase (or contractor TELP) may be considered advantageous for the following reasons:

- Department convenience; since a contractor TELP provides a "one-stop shop" for both the purchase of the commodity and the financing of TELP payments;
- Departments may be able to negotiate better commodity pricing through a full service equipment contractor since the contractor will realize the benefit of the equipment purchase as well as the interest payments for the financing of payment.

However, certain restrictions apply when considering using a contractor TELP:

1. Commodity contractors on statewide contract can only provide TELP financing for their listed commodities if a TELP option has been approved under the statewide contract (for example, the statewide contract for photocopiers has a TELP option). If the TELP financing option has not been approved under the statewide contract, the department must obtain TELP financing through either the Commonwealth TELP (ITD) or the statewide TELP contract.

2. RFRs for commodity purchases with a TELP option may only be drafted and awarded to contractors that provide BOTH the commodity AND the financing as a single "one-stop shop" entity. **RFRs may not be done to seek third party financing** (in which the commodity is obtained from the contractor but the TELP financing is provided by a separate entity from the contractor). This is prohibited since the statewide TELP contract has already approved qualified third party financiers for TELP. Contractors that seek to offer contractor TELP financing under an RFR <u>must</u> agree to the same terms and conditions outlined in the statewide TELP contract concerning providing TELP financing, which should be included in the RFR for the commodity purchase. Please see the RFR for the statewide contract for TELP services on Comm-PASS (www.comm-pass.com) for TELP terms and conditions. There may be additional terms and conditions applicable to individual RFRs.

3. Contractor TELP payments MUST be scheduled in accordance with one of the approved MMARS "REST" tables in the Recurring Payment System (monthly, quarterly, semi-annual or annual).
4. Contractor TELPs do not always offer the best interest rates, and departments are encouraged to compare the quotes offered under a contractor TELP with the statewide TELP contract or the Commonwealth TELP to determine if the contractor TELP is the best value for the commodity purchase. A higher interest rate (and higher TELP payments) may not justify the convenience offered under a contractor TELP.

5. Licenses - Temporary Use Without Ownership

A license is essentially the same as a lease. Most licenses are acquired by paying a fee for the use of software or the use of other intellectual property that does not fall under the normal categories of durable commodities. Most departments pay a fee or royalty for the right (exclusive or non-exclusive) to use the software, intellectual property or equipment.

A license continues for the period of the contract or until the license is revoked by the contractor. Title and ownership of the software or equipment remain with the contractor and title will never pass to the department. Licenses may contain restrictions on the department's use, distribution or modifications to the software or equipment and may have limited warranties.

Note: Prior to contract execution, license language should be reviewed by the PMT's information technology staff to ensure that the language is not unduly restrictive. It should also be reviewed by legal staff to ensure that it does not conflict with the Commonwealth Terms and Conditions and Standard Contract Form. Departments should work with the relevant OSD PMT group for assistance when acquiring a license.

ANALYZING A FINANCIAL STATEMENT

While most members of PMTs will not have a special expertise in analyzing financial statements, the application of the following formulae can be used at least to alert the Procurement Management Team that perhaps a questionable statement should be referred to someone with more expertise.

- Always read the "notes" in the back of the financial statements and take a closer look at all asterisk denoted figures. Since such items have already elicited a special comment from the firm's accountants, they merit attention.

- The purpose of this type of review is to determine if even a cursory review suggests that the bidder may not have enough ready cash and recent accounts receivable (money owed by customers which is due to be paid within a month or so) to more than cover the money the bidder is due to pay in the short term. In accounting jargon, what is the bidder's liquidity?

- Make a determine whether accounts receivable equal more than two (2) months of average sales.

- Notes receivable may not be a good indicator of the business financial health.

- Ratios of Liquidity

1. Acid or Quick Ratio, i.e., the ratio of short term assets which can quickly be converted to cash to current liabilities. These "quick" assets are cash, cash equivalents (short-term marketable securities such as government bonds) and good accounts receivable (i.e., after doubtful accounts have "netted out").

$$\frac{\text{(Cash \& Accounts Receivable)}}{\text{(Current Liabilities)}} = \text{no less than } 1.5$$

2. Current Ratio. Simple ratio of current assets to current liabilities. Often not really very liquid as current assets typically include inventory (which may be hard or slow to sell or prepaid expenses which may not ever be refunded).

$$\frac{\text{(Current Assets)}}{\text{(Current Liabilities)}} = \text{not less than } 2.5$$

3. Accounts Receivable/Total Accounts Payable Ratio. How well do good accounts receivable cover payables they have to pay in the near term?

$$\frac{\text{(Accounts Receivable)}}{\text{(Accounts Payable)}} = \text{not less than } 2.5$$

4. Accounts Receivable Turnover (average number of days it takes for customers to pay invoices). This figure can indicate that the Quick Ratio may not be very quick because this firm's customers may take a long time to pay. If they don't pay the bidder, how will the bidder pay its supplier or personnel?

$$\frac{\text{(Accounts Receivable)}}{\text{(Net Sales)}} \times (360) = \text{45-60 days at the very most}$$

5. Accounts Payable (A/P) Turnover. How many days does this bidder take to pay its supplier? If it does not pay in a timely manner, supplier may have to reduce their shipments to bidder. Also, if bidder's A/P turnover is longer than its A/R turnover, what is bidder doing with their customers' money? Does bidder have large debt payment notes payable or bank debt which is causing bidder to stretch out supplier payments?

Accounts Payable + Accrued Liabilities X (360)
divided by Cost of Sales* $\geq$ 50 days

*from income statement

6. Inventory Turnover. How many days does it take bidder to sell, process, and get inventory out the door? Turnover can indicate that much of the bidder's current assets are tied up in slow moving inventory. Perhaps a sizable amount is virtually obsolete. In such cases, the current ratio is not very current as this inventory is not very salable and may have to be drastically discounted.

Total Inventory X (360)
divided by Cost of Sales* $\leq$ 50 days of inventory on hand

*from bidder's income statement

These ratios may not fit all industries and only suggest the bidder's relative risk of near term insolvency, especially when compared with their competitors. In any case, they are only meant to be an early warning system indicating that further analysis is warranted.

ENVIRONMENTALLY PREFERABLE PRODUCTS PROGRAM

(EPP Program)
Requirements & Additional Information

General EPP Program Information

OSD has established an EPP program and works jointly with the Executive Office of Environmental Affairs and Department of Environmental Protection to promote the procurement and use of EPP commodities and services throughout Commonwealth departments. The purpose of the EPP program is to strengthen markets for recyclable materials and minimize the environmental and health impacts associated with products during their use and disposal.

OSD designates products and services with minimum specifications for recycled content, energy or water conservation. OSD also designates products and services with minimum specifications for toxic waste reduction or other waste reduction.

In this appendix, OSD specifies EPPs and services which have mandatory department purchasing and RFR specifications. Other EPPs and services have recommended department purchasing and RFR specifications. This appendix also references other requirements and information that departments should review before writing RFRs and making commodity purchases.

These designated EPPs are updated periodically by OSD, in cooperation with EOEA and DEP, therefore PMTs should check with OSD for the latest information or refer to the environmental procurements web page (www.state.ma.us/osd/enviro/enviro.htm).

The EPP Program assists departments in their efforts to:

- minimize the environmental impact due to manufacturing, utilizing, or disposing of products purchased by the Commonwealth or its contractors,
- encourage private sector development of more environmentally benign products and services by increasing demand for these products and services, and
- provide a model for other public, private, and non-profit organizations to make environmental criteria a component of their purchasing decisions by testing, using, and promoting the use of environmentally preferable products.

Procuring Department Responsibilities for EPP Purchasing

Procuring departments are required to:

- follow the mandatory EPP purchasing and specification requirements described below whenever any of the listed commodities are being purchased;
- adhere, whenever possible, to the EPP purchasing and specification recommendations below;
- whenever feasible, promote the procurement and use of EPPs which have not been designated by OSD;
- as much as possible, educate and inform all staff about EPPs and state requirements;
- when appropriate, identify in RFRs whether additional points will be awarded to bidders of EPPs and establish evaluation criteria for selecting EPPs whenever feasible;
- maintain records of all procurements and purchases of EPPs in departments procurement files.

Mandatory Department Purchasing and RFR Specifications for Designated EPP Commodities and Services

OSD has determined hat the commodities listed below are available at a value and quality comparable to non-environmentally preferable counterparts. In an effort to assist departments, OSD has established statewide contracts for each of the commodities listed in this section.

Non-Executive departments and other public entities are encouraged to use these statewide contracts whenever feasible. Executive departments are required to use these statewide contracts absent any unusual and documented circumstances. If any unusual circumstances necessitate the PMT's separate procurement of these designated commodities, the RFR MUST include the following mandatory minimum specifications:

Paper Products and Office Supplies

- **printing and writing papers, computer paper and forms, envelopes** - minimum 30% post-consumer for all products in this group, except for coated papers which may be 20% post-consumer content
- **printed materials** - minimum 30% post-consumer content, except for coated papers which may be 20% post-consumer content
- **file folders** - minimum 10% post-consumer content
- **writing tablets, message pads and all other office paper** - minimum 20% post-consumer content
- **corrugated cardboard boxes** - minimum 35% post-consumer content

Janitorial Products

- **paper towels** - minimum 100% total recycled content, 40 % post-consumer content
- **toilet tissue** - minimum 100% total recycled content, 20% post-consumer content
- **facial tissue** - minimum 100% total recycled content, 10% post-consumer content
- **napkins** - minimum 100% total recycled content, 30% post-consumer content
- **paper wipes, disposable** - 50% post-consumer content
- **wiping rags, cotton** - 100% reused cotton
- **plastic trash bags** - minimum of 20% post-consumer content
- **janitorial paper products as part of cleaning service contract** - specifications as listed above

Automotive Products

- **anti-freeze** - minimum 100% recycled ethylene glycol or 100% propylene glycol
- **re-refined motor oil** – minimum 50% re-refined base stock; must be certified by the American Petroleum Institute (API)
- **traffic cones** - 50% total recovered PVC or Low Density Polyethylene (LDPE) or crumb rubber material, 8% post-consumer content
- **glass beads** - 100% total recycled glass

Flooring and Facilities/Recreational Products

- **rubber matting and flooring** - 80% post-consumer content
- **plastic lumber benches, tables, dimensional lumber, site amenities –** minimum 25-100% post-consumer recycled plastic (see contract for specifics)
- **compost bins, plastic** - minimum 50% post-consumer content
- **recycling carts, plastic** – minimum 20% post-consumer content
- **recycling set out containers, plastic** - minimum 75% recycled plastic (50% post-consumer content)

Office Equipment

- **computers, monitors, fax machines, copiers** - must meet federal Energy Star power consumption guidelines and be shipped with the energy star function enabled

A response submitted that does not meet the mandatory minimum specifications should be considered unresponsive and be disqualified.

Recommended Department Purchasing and RFR Specifications for Designated EPP Products and Services

OSD has determined that the commodities listed below are frequently available at a value and quality comparable to non-environmentally preferable counterparts. In an effort to assist PMTs, OSD has established EPP statewide contracts for the commodities listed below.

Non-Executive departments and other public entities are encouraged to use these EPP statewide contracts whenever feasible. Executive departments must use these statewide contracts unless the contracts do not meet their needs. Some of the contracts offer both EPP and non-EPP alternatives. Departments are encouraged to select the EPP alternative whenever possible or include the following specifications in RFRs:

- **binders, office** - minimum 25% post-consumer material for plastic binders
- **carpeting** – minimum 75% recycled P.E.T. (plastic)
- **carpeting** – minimum 25% recycled nylon (post/pre-consumer mix) or 100% recycled backing
- **compost and mulch** – compost which meets state specifications
- **hospital equipment** – remanufactured beds, wheelchairs, lifts, transfer devices and other equipment
- **insulation** - 5-75% recycled content, depending on type of insulation (e.g. fiberglass, cellulose)
- **janitorial cleaners** – minimum specifications include no carcinogens, no toxic ingredients on the Mass. TURA list, no ozone depleters; other criteria varies depending on product line
- **lamps and ballasts** – energy efficient lighting, ballasts and exit signs
- **non-mercury alternatives** - digital thermometers, sphygmomanometers (blood pressure equipment), etc.
- **office desktop accessories** - minimum 25% post-consumer plastic
- **office panels** - re-manufactured; meets all Original Equipment Manufacturer (OEM) specifications
- **office waste and recycling containers** - 20% post-consumer plastic or 25% post-consumer steel
- **paint** - minimum of 50% post-consumer content
- **paper plates, bowls, trays** - 100% recycled paper
- **pool disinfecting equipment** – pool ionization systems which reduce chlorine use by 80%
- **promotional items** – wide range of paper, plastic, fabric and other items made with recycled content
- **retread tires** - licensed retreader for all non-passenger vehicles
- **toner cartridges** - re-manufactured; meets all Original Equipment Manufacturer (OEM) specifications
- **vehicle parts, motorized** – remanufactured parts, accessories and supplies

Recycled Content Purchasing Requirements for State Departments Utilizing Federal Funds

Any state agency which receives federal funding for a given program or project and intends to use such funding to purchase at least $10,000 worth of recycled products designated by the U.S. Environmental Protection Agency, must, under the provisions of Section 6002 of the Federal Resource Conservation and Recovery Act (RCRA) and Presidential Executive Order 13101, follow federal guidelines for the procurement of such products (the guidelines primarily govern minimum levels of recycled content which must be specified for these products). PMTs seeking current information on which products are subject to the federal guidelines may call the RCRA hotline at (800) 424-9346, or contact OSD.

EPP Technical Assistance

Departments may wish to clarify these guidelines or obtain additional information about products listed here or other products. Departments are encouraged to engage in discussions with existing contractors about possible environmental criteria for products being purchased, or attend various workshops as well as the annual buy recycled fair and conference sponsored by OSD, the Department of Environmental Protection and the Executive Office of Environmental Affairs.

All other inquiries should be directed to the environmental procurement staff listed below or to the appropriate Procurement Team Leader at OSD:

Environmental Purchasing Coordinator or Trainer
Operational Services Division
One Ashburton Place, Room 1017
Boston, MA 02108
(617) 720-3351 or 617-720-3356
(617) 727-4527 fax
www.state.ma.us/osd/enviro/enviro.htm

GUIDELINES ON MATERIAL CHANGES IN A CONTRACTOR'S IDENTITY

A change in contractor identity occurs whenever the legal name, organizational structure, Tax Identification Number (TIN), Vendor Code or other change occurs in a contractor from what was presented in the contractor's response to a procurement. However, certain changes, such as a legal name change, are insignificant to the underlying contract(s) and should merely be recorded to keep the procurement file up-to-date. Other changes are considered material and may affect not only the underlying contract(s) but also the integrity of the original procurement. This document outlines some of the most common material changes to a contractor's identity and provides basic guidance to departments. Departments are strongly encouraged to seek the advice of their legal counsel whenever these circumstances arise. In addition, a Change in Contractor Identity Form is available for documenting information in such circumstances. This form is also located in the appendix.

MATERIAL CHANGE IN CONTRACTOR IDENTITY: MERGER, BUYOUT OR CONSOLIDATION

A merger, buyout or consolidation is a ***structural change*** to a contractor in which the assets and liabilities of one or more organizations (one being the contractor) are combined into a single successor entity. Both mergers and consolidations are governed by state statutes, which require a formal filing with the Secretary of the Commonwealth and that certain conditions are met. One important provision to note, under M.G.L. c.156B, s.80 and c.180, s.10A, is that the new entity assumes all of the obligations and responsibilities of the prior entity. Other forms of a material change in the contractor (whether or not a new Taxpayer Identification Number, TIN, results) are described at the end of this document.

- **Merger or Buyout.** One or more organizations merge into another, or one organization buys another, and one becomes the surviving organization. For example, Organization A merges into, or is bought out by, Organization B and the surviving entity is Organization B, with A no longer existing as a separate legal entity.

  In that case, if the department's current contractor is Organization B, the merger or buyout will not change the underlying contract documentation. The department should verify, however, that the merger or buyout by the contractor will not result in any changes to the performance responsibilities of the contractor under the current contract(s).

  If, however, the department's current contractor is Organization A, which is merged into, or is bought out by, Organization B, this presents a ***substantial structural change*** in the contractor which does affect the underlying contract(s) and procurement, and may trigger the "assignment" or "termination" clauses of the applicable Commonwealth Terms and Conditions.

- **Consolidation.** Two or more organizations combine ("consolidate") into a new or resulting corporation (A + B = C, with both A and B no longer existing as separate legal entities). If the department's current contractor is either Organization A or B which are consolidated into a new Organization C, this presents a ***substantial structural change*** in the contractor which does affect the underlying contract(s) and procurement, and may trigger the "assignment" or "termination" clauses of the applicable Commonwealth Terms and Conditions.

Contract Options

The applicable Commonwealth Terms and Conditions contain provisions on termination and contract assignment which assert the Commonwealth's control over whom it does business with. While a contractor may freely make whatever organizational or structural changes it wishes, if it involves a material change to its identity (as noted by a change in Taxpayer Identification Number) then its existing contracts may terminate. Further, a contractor may not unilaterally assign, or delegate its responsibilities or duties under a contract to another entity. The procuring department has the sole authority to determine what to do with the remaining contract performance in all such instances.

When faced with a material change in contractor identity, a department must determine what is in the best interests of the department, what actions are appropriate to prevent a lapse in any necessary services or a project, the most cost-effective actions given available resources and funding, and what actions will maintain the integrity of the original procurement A

department should invoke the procurement principles stated in 801 CMR 21.01(1) to evaluate the proposed or actual business change of the contractor. The procuring department or PMT will develop, review and place in the procurement file a clear and detailed statement of the material change sufficient to enable the department to decide, in its best interests, whether it will continue the underlying contract(s) or undertake any other action.

Departments have the following options:

1. Continue the contract through assignment to the successor entity, upon review and justification as outlined further in this document;
2. Award a short-term interim contract to the intended successor entity on a competitive procurement exception basis (in order to permit adequate time for a review and/or re-procurement and potential transition to a new contractor);
3. Award the remaining contract performance as an interim contract to another contractor (the next best value bidder from the original procurement) on a procurement exception basis, if justified;
4. Consolidate the contract into another existing contract (if permitted under the original procurement);
5. Allow the contract to lapse or terminate the contract;
6. Suspend or terminate the current contract and re-procure the contract; or
7. Take any other permitted contracting or procurement action.

Contract Assignment

A contract assignment refers to an assignment of the remaining contract performance to a successor contractor or to another department. A department should approve the assignment of the remaining contract obligations, duties or responsibilities under a procurement to another entity only in certain circumstances. These are usually limited to circumstances in which a contractor's identity changes (through a merger, buyout, consolidation or other underlying business relationship) resulting in the formation of a new successor entity and the department has determined that the assignment of the remaining performance is essential. In addition, departments may freely assign a contract to another Commonwealth department.

When a contractor is planning a merger or other significant organizational transformation, it is important that the relevant state departments be informed as early as possible; <u>at least 60 days advance notice of the potential change is desirable</u>. If the contractor holds contracts with multiple procuring departments, each procuring department will then undertake a review and may grant approval of a contract assignment, including the establishment of conditions, if appropriate, or may take any other contract management action it deems advisable under the specific circumstances. A decision that one procuring department makes does not apply to any other procuring department who may hold contracts with the same contractor.

Evaluating the Impact of a Material Change in Contractor Identity

The primary responsibility of department staff is to protect the interests of the Commonwealth and of the interests of consumers being served under any contract. As with most 801 CMR 21.00 procurement decisions, department staff are free to use their judgment in determining the scope of review, the relative importance of various factors and how to gather necessary or desirable information, prior to making any contracting decisions. The department is responsible for maintaining documentation of its review process and all other relevant information in the procurement file.

In considering whether or not to permit a contract assignment when there is a material change in contractor identity, a department should conduct and document a thorough review of the potential impact. Factors to consider include:

- **<u>Critical Services or Continuity of Program or Project</u>**
  This is probably the paramount consideration when faced with a material change in contractor identity. In certain circumstances, such as a critical need to prevent a lapse in services for certain types of long-term service projects, mandated client services, clients in residence, etc., it may be prudent to permit these contracts to be assigned to a successor organization, rather than terminating and re-awarding these contracts to another contractor.

  For most commodity contracts, and many service contracts, where clients or a program are not involved, a requested contract assignment to a successor entity should be carefully scrutinized. Since the successor entity was not one of the original bidders, this entity has no automatic right to the remaining contract performance, absent extreme or special circumstances that warrant a contract assignment. Instead, departments should consider an interim contract with bidders under the original procurement.

- **Original Procurement Requirements**
  The successor entity must meet the same requirements as the contractor under the original procurement. Some of these requirements include basic qualifications under an RFR, years of experience, M/WBE status or subcontracts, consumer-controlled or non-profit organization status (which might affect its competitive ranking or eligibility for a contract award) and internal contract management capacity. Absent special circumstances, a resulting successor entity that does not meet or exceed the same material requirements as the contractor under the original procurement should not be awarded a contract performance assignment.

- **Qualifications of Successor Entity**
  The assignment of the remaining contract performance under a procurement should not be made to a successor entity unless the level of quality of performance will be maintained or increased. Departments should consider the new entity's service delivery philosophy, financial stability, capacity to service the contract, new and existing staff resources and qualifications, program plan and other factors to ensure the successor entity offers the equivalent or a better value than the current contractor.

- An assignment is only appropriate if the new contractor's key personnel, financial stability, staff resources and qualifications are equal to or better than the current contractor. If the financial stability, capability to perform and the core individuals responsible for performance are the same, it is easier to argue that an assignment is appropriate. If not, the department must be able to defend that the assignment is more appropriate than the award of an interim contract to the next ranked best value bidder or a new procurement.

- **Price or Cost Implications**
  In order to maintain the integrity of the original procurement, assignment of the remaining contract performance under a procurement should not be made unless the cost or price implications of the assignment do not materially increase or change. The successor entity should be assuming the contractual responsibilities outlined in the current contractor's RFR response at the same costs and prices as negotiated under the original contract. However, the department and the successor entity (new contractor) may negotiate any costs or prices as authorized under the original RFR and contract. Other factors to consider are economies of scale factors, blending rates, special costs, etc.

- **Non-Profit Status**
  Additional considerations arise when the original contractor was a non-profit. If an organization's non-profit status is affected by a material change in contractor identity, there are legal, policy and administrative factors that departments should consider. Many federal funding sources used are limited to non-profit or governmental recipients; thus, departments should review any funding source restrictions (e.g., in the Catalog of Federal Domestic Assistance) in such circumstances. Often times there are public and community implications that departments should be aware of as well.

- **Assumption of Liabilities**
  Will the successor entity assume all the obligations and liabilities of the prior contractor under prior year contracts within the current contract cycle of the contract to be assigned? While this is required in mergers and consolidations (see M.G.L. c.156B, s.80 and c.180, s.10A for relevant legal requirements in Massachusetts), in other situations, such as a contractual affiliation, the department should assure itself that all outstanding or potential obligations and liabilities will be covered.

  ☞ *For POS Only:* The successor entity should be aware of Commonwealth audit and audit resolution policies and understand that it may be liable in future years for findings of audits to be conducted of prior year activities.

ADMINISTRATIVE PROCESS FOR A MATERIAL CHANGE IN CONTRACTOR IDENTITY

In cases involving a material change in contractor identity that may affect more than one department, the affected departments may identify a principal procuring department or another agreed upon state agency to assume responsibility for coordinating and facilitating communication among other affected departments. It is important to note, however, that the decision on whether or not to assign or terminate a contract may vary within and among departments, depending on the program specific elements of the contract review as well as other administrative factors.

Departments must also identify and plan the appropriate administrative steps necessary if the review indicates a contract assignment is desirable. Probably the most critical issue facing departments affected by material changes in contractor

identity is the need to prevent any disruption of client services or service projects or programs that are in progress. To insure the timely authorization to assign performance, departments must coordinate the end date of performance and funding for the current contractor with the start date and remaining performance and funding for the successor or new contractor. Departments will need to allow sufficient time to gather and process information in order to determine the legal form of contractor change in identity and the corresponding administrative requirements, including tax status and board governance requirements.

Detailed discussions should be held with the current contractor as soon as possible to determine accurate and complete obligation levels for the contract(s) up to the date when contract performance will be assumed by the successor entity. These discussions must identify all services or service units which have been delivered and any outstanding or supplemental units expected to occur within the time frame determined. It is especially important to identify and review all payment invoices not yet submitted, or submitted and not yet paid and to identify and resolve any service delivery or reimbursement problems.

As a special note, for all cost reimbursement contracts, the current contractor needs to assure that all incurred costs up to the planned transfer date have been identified and included in the final obligation amount. Once contract dates and funding levels for the current and successor contractors have been agreed upon, the department should prepare a Change in Contractor Identity Form, which serves to document the details associated with the change in contractor for the underlying contract.

Oversight departments do not usually play an active role in the review process, however, both the Operational Services Division (OSD), and the secretariats are available for consultation as needed. OSD can provide guidance on how a planned contractor change in identity might affect the underlying original procurement. In addition, OSD can issue regulatory interpretations. The secretariat may make policy determinations for cross-agency program/funding implications and determine principal procuring department or lead coordinator, if necessary.

☞ *For POS Only:* Examples of OSD regulatory interpretations include the UFR filing determination and whether related parties result from the change, etc.

Required Documentation

A material change in contractor identity, such as with most mergers, buyouts and consolidations resulting in a new successor entity, also involve a legal structural change and a new Tax Identification Number. Therefore, along with identifying contract specific information to assign contract performance to the successor entity, several documents are required. There may be instances where the successor contractor is technically not "new" but rather is an existing contractor with a contract for the same type of service, into which the department may decide to incorporate the performance assignment.

The successor contractor must complete and execute, as appropriate:

- request for verification of taxation reporting information (Massachusetts Substitute W-9 Format);
- the Commonwealth Terms and Conditions or Commonwealth Terms and Conditions for Human and Social Services for the successor entity (new contractor);
- a Contractor Change in Identity Form (in appendix) to document any remaining performance and payments to the current contractor and the balance of performance and anticipated amounts to be expended by the new contractor. The Contractor Change in Identity Form documents the new contractor's commitment to assume all outstanding obligations and responsibilities under the current contract;
- any required attachments that were required under the original RFR (such as Contractor Authorized Signature Verification Form, Affirmative Action Plan Form, Mandatory Consultant Contractor Submission Form, Northern Ireland Notice and Certification and any other attachments required by the department as part of the RFR) and,
  ☞ *For POS Only:* Written Disclosure of Current and Anticipated Related Parties pursuant to 808 CMR 1.04.

The department completes a Vendor Update Form (VU form) and submits this plus the new W-9 and applicable Commonwealth Terms and Conditions to the Comptroller's Payee Unit to update the VEND table. The remaining contract documentation and MMARS transactions would be processed in accordance with standard contract processing and filing procedures.

OTHER TYPES OF CONTRACTOR CHANGE

For information purposes only, this summary describes common contractor business arrangements, from the least to the most integrated form of organizational combination/restructuring (except for merger and consolidation, which was described earlier). It is also important to note that people often use these terms informally to mean something different than the legal concepts underlying the terms as presented here, therefore departments should work closely with their legal departments when these situations present themselves.

These examples do not necessarily formally trigger the "assignment" clause, but may have an impact upon services which could justify a departmental review of the contract(s) anyway and follow up monitoring or other action as needed. If serious concerns arise, the contract may be terminated with an appropriate notice period in accordance with the applicable Commonwealth Terms and Conditions.

- **Management Agreement** - One party provides management services to another, as spelled out in a contractual agreement. The nature and scope of these agreements can vary greatly. This may or may not involve a delegation of some contract related responsibility which would be impacted by the assignment clause.

  For POS Only: Also, reimbursement restrictions (see 808 CMR 1.00) and potential related party disclosure may apply.

- **Joint Venture** - A limited purpose undertaking by two or more parties. The venture may be set up through a contractual agreement (functioning as a partnership), or more formally by establishing a separate corporation, either for-profit or not-for-profit, to undertake the activity or to provide support. In a contractual joint venture, one contractor must act as the lead agency in terms of being a party to a Commonwealth contract (because the Commonwealth generally does not enter into multi-party contracts) and then subcontract with its venture partners. If a separate corporation is established and is intended to be the contractor, then it is treated like any other new vendor.

- **Contractual Affiliation** - Similar to a joint venture, but the undertaking is broader in scope in terms of services involved. The participating parties may jointly develop programs, combine resources or lend assistance. One example of a contractual affiliation is the formation of a network, through the establishment of a new organization in which each affiliating contractor is a member. In this case the new "network" corporation enters into service contracts on behalf of the network, and subcontracts with its member contractors.

  ☞ *For POS Only:* Related party disclosure requirements will likely be triggered. From an accounting perspective the affiliated parties may be determined to be consolidated entities, which must then file audited financial statements accordingly. Should the department wish to permit a contract assignment to the network corporation, OSD recommends that the department condition its approval, and resulting contract, on all entities assuming responsibility for prior year obligations. In this way, should prior year audit or other issues arise, there will be access to resources to satisfy prior year obligations whether or not the prior entity continues to directly hold Commonwealth contracts.

- **Corporate Affiliation or Acquisition -** An action whereby one entity takes control of another (i.e., a parent/subsidiary relationship is established). In a not-for-profit this occurs through by-law changes so that the controlling organization appoints the directors of the subsidiary organization, which remains intact as a separate corporation.

  ☞ *For POS Only:* In the above affiliation or acquisition, certain administrative requirements are triggered such as notification of changes to the Board of the acquired organization, and related party disclosures. The department may wish to review the circumstances to determine whether the best interests of the Commonwealth and the consumers will still be served by the new arrangement.

- **Asset Purchase/Acquisition** - A purchase of assets is a contractual arrangement where one organization purchases some or all of the assets, and possibly some or all of the liabilities, of another. The seller organization either ceases to exist or "dissolves" (a not-for-profit must petition the court for dissolution) or it is transformed into another kind of entity. In the latter case, the seller is no longer a service contractor - since it has nothing left to provide services with. In Massachusetts, if the seller is a public charity it must provide 30 days prior written notice to the Attorney General's Public Charities Division before disposing of all or substantially all of its assets, if a material change in the nature of the activities conducted by the charity will result. The 801 CMR 21.00 contracts performed by the contractor (seller) are not "assets" that can be purchased by another organization. The department must determine how and by whom the services should now be delivered. Should a department determine that it is in the Commonwealth's best interests to assign a contract in these circumstances, it should condition approval on the new entity assuming prior year obligations.

INCIDENTAL PURCHASING QUICK REFERENCE GUIDE

An incidental purchase is defined as a one-time purchase, or a series of purchases for a one-time non-recurring need. The total dollar value can not exceed the department or object code (OBJ2) incidental purchase limit

1. **Is purchase available from statewide contract?**

   If **yes**, stop here, this is not an incidental purchase. If no, go to step 2. To determine if commodity or service is available on statewide contract check listing at www.state.ma.us/osd/statewid/statewid.htm. If the commodity or service is available on statewide contract, an Executive department must use the statewide contract unless the statewide contract does not meet its unique needs. If the statewide contract does not meet the department's needs, an incidental purchase may be done. However, the department should document why the statewide contract could not be used as part of the procurement file for future reference and the OSD Procurement Team Leader notified as a courtesy.

2. **Is the total cost of the purchase below your department's incidental purchase limit?**

   If yes, continue to step 3. If **no**, stop here, this is not an incidental purchase.

3. **Is the total cost of the purchase below the object code incidental purchase limit?**

   This can be determined by checking the Object Code Limits for Incidental Purchases Chart in this appendix or the OBJ2 table on MMARS. If yes, continue to step 4. If **no**, stop here, this is not an incidental purchase.

4. **Is the purchase for a one time, non-recurring need?**

   If **no**, stop here, this is not an incidental purchase. If yes, determine best value using good business practices and place your order.

Is my small purchase considered incidental?

Yes if:

it is one-time only, unanticipated, non-recurring need
it is one-time rental (less than 6 months) for a single event or single occurrence of events; non recurring

No if:

it is an equipment or property lease (by definition leases are longer than 6 months)

Maybe if:

it is a periodic, anticipated need, but not known when need will arise or exact cost It will depend on the potential for future need. If the potential is clearly uncertain this may be an incidental purchase. If the potential for repeated use is probable or likely, then this would not qualify as an incidental purchase because the need would be considered recurring, and the total anticipated cost of purchases may exceed the incidental purchase limit.

Conclusion: Incidental Purchase = one time, non-recurring need **and** less than the department incidental purchase limit and object code limit (OBJ2), but **not** on statewide contract. NOTE: A best value determination for incidental purchases should weigh the value added (cost and administrative savings) from not conducting a procurement and executing a contract with a vendor with the benefits and protections for the department and Commonwealth gained from having a procurement and contract in place.

INCIDENTAL/NON-INCIDENTAL PURCHASE EXAMPLES

Duration of Need	Anticipated Cost	Department Incidental Purchase Limit	Object Code Limit (MMARS OBJ2 Table)	Is this an Incidental Purchase?
One-time need only, unanticipated not recurring (single or multiple purchases). **Not** available on statewide contract.	$4,500	$5,000	$5,000	**Yes**
One time need only, unanticipated, not recurring (single or multiple purchases). **Not** available on statewide contract.	$4,000	$2,500	$5,000	**No**. Exceeds department's limit.
One time need only, unanticipated, not recurring (single or multiple purchases). **Available** on statewide contract.	$2,000	$5,000	$5,000	**No**. Executive departments must use statewide contract unless it does not meet the need.
One time need only for a consultant. **Not** available on statewide contract.	$1,500	$5,000	$5,000	**Yes.** The SR/SC encumbrance and Standard Contract Form and T & C is required, however a competitive procurement is not.
Periodic, anticipated need, but not known when need may arise or exact cost (ex. occasional or situation-specific supplies or equipment). **Not** available on statewide contract.	Average of $100.00 - $500.00 per incident. Highest annual average cost $2,000 per fiscal year.	$5,000	$5,000	**Maybe**. Depends on circumstances and need. Department must make best value determination of whether cost and administrative savings are higher than benefits and protection of RFR and contract.

INCIDENTAL/NON-INCIDENTAL PURCHASE EXAMPLES (CONT.)

Duration of Need	Anticipated Cost	Department Incidental Purchase Limit	Object Code Limit	Is this an Incidental Purchase?
Recurring, anticipated need (annual, monthly, bi-annual - periodic maintenance, repair, pest removal, licenses). **Not** available on statewide contract.	$2,000 per fiscal year	$5,000	$5,000	**No**. Anticipated purchase, not one time need.
6 month rental of equipment or one time 2 year software license. Not recurring (ex. audio-visual equipment, chairs, speaker system for series of 3 conferences; purchase of software with unlimited free upgrades). **Not** available on statewide contract.	$2,000	$5,000	$5,000	**Yes.** One time need. Does not exceed departmental or object code limits.
Equipment or commodity lease (by definition leases are greater than 6 months). **Not** available on statewide contract.	$2,000 for 36 months quarterly payments	$5,000	$5,000	**No.** Anticipated, recurring purchase. Leases may not be considered one time need even though the total cost will not exceed departmental or object code limits.
Service contract for operational service, potential for repeated use if needed, subject to funding. **Not** available on statewide contract.	$1,500 for current services, additional amounts to be determined	$5,000	$5,000	**Maybe**. Depends on potential for the future need. If the potential is clearly uncertain this may be an incidental purchase. If the potential for repeat use is probable or likely, then this would not be an incidental purchase because the need would be considered recurring and the total cost would exceed the departmental or object code limits.

OBJECT CODE LIMITS FOR INCIDENTAL PURCHASES

SUBSIDIARY/OBJECT CODE(S)	INCIDENTAL PURCHASE OBJECT CODE LIMIT As set on the OBJ2 table unless otherwise noted.	INCIDENTAL PURCHASE LIMIT A department may make incidental purchases up to the LESSER amount of either the incidental purchase object code limit (OBJ2) for the anticipated purchase OR the department's incidental purchase limit. A department can use the following calculation to determine the incidental purchase limit for a particular object code.
Special Employees/Contracted Services: CC (C98) **Administrative Expenses:** EE (E01, E02, E09, E14, E15, E22) **Facility Operational Supplies and Expenses:** FF (F01, F03-F11, F13, F16, F18-F21, F25-F28) **Energy Costs and Space Rental Expenses:** GG (G05-G07, G10) **Consultant Services:** HH (H17) **Operational Services:** JJ (J01, J04-J05 J07-J10, J12, J14, J16, J18, J20, J21, J23, J25, J27, J29, J32, J33, J38-40, J42-44, J46, J47, J50–J52, J54, J56, J58-J61, J98) E**quipment Outright Purchase:** KK (K01-K07, K09-K13) **Equipment Rental, Lease, Maintenance and Repair:** LL (L21-L27 L29-L33, L41-L47, L49-L53) **Human and Social Services:** MM (MM1, MM3, M01, M03, M04, M10, M11, M98) **Construction, Improvements, and Maintenance:** NN (N18,N23, N98)	$5,000 (OBJ2)	$5,000 or department's incidental purchase limit amount, whichever is less.
Consultant Services (M.G.L. c. 29,s.29A) HH (H01-H06, H08, H16, H19-H23, H25, H28, H30, H32, H98) **Construction, Improvements, and Maintenance** (M.G.L. c. 29,s.29A) NN (N01-N06, N08, N12-N14)	$5,000 $1,000 (OBJ2) All purchases exceeding $1,000 require SR/SC encumbrance and Commonwealth Terms and Conditions/Standard Contract Form regardless of the department's incidental purchase limit.	$5,000 or department's incidental purchase limit amount, whichever is less for procurements. All purchases exceeding $1,000 require SR/SC encumbrance and Commonwealth Terms and Conditions/Standard Contract Form regardless of the department 's incidental purchase limit.
Entitlement Programs RR (R07, R10, R18, R21, R25)	$1,000 (OBJ2)	$1,000 or department's incidental purchase limit amount, whichever is less.
Special Employees/Contracted Services: CC (C05, C08) **Equipment Tax Exempt Lease Purchase (TELP)** LL (L01 -L13) **Loans and Special Payments** TT (T09, T10)	$0.00 (OBJ2)	No incidental purchases are authorized under these object codes.

What are the Characteristics of a "Good" Performance Measure?

A good performance measure is:

- easily understood by prospective bidders, departments and the general public;
- focused on the results or desired changes and defined with a specific goal or level of performance expected from the contract;
- well-defined and considers both the quantitative (how much?) and the qualitative (how well?) aspects of a service;
- developed by engaging as many stakeholders as possible as early in the process as possible;
- developed with a written definition and well-defined calculation on how data will be reported;
- realistic in terms of available resources, funding and timelines and recognizes externalities beyond the control of the system;
- ☞ *Required for POS Only:* standardized and consistent within a specific service type and coordinated with other departments whenever possible.

Defining Performance: A Critical Issue

In order for performance measures to be useful, it must be clear to everyone precisely what is being measured and how the measures are calculated. Achieving this degree of clarity between both the procuring department and the contractor is one of the most difficult and challenging aspects of performance contracting. Any ambiguities about what and how performance is being measured should be eliminated before the contract is executed. This will ensure that a contractor understands its responsibility and the data collected will be reliable.

As an example, a performance measure may involve the attainment of employment. However, there are many opinions as to what constitutes a "job". It is the responsibility of the procuring department to define that term in a way that addresses some of those unique characteristics of a job, such as any requirements concerning the number of hours worked each week, qualifying wage, benefit requirements and job retention requirements that, without being defined, might lead to disagreement between contractors and department staff. If a performance measure requires delivery within a specific timeframe, it would be important to define "working" days or "calendar" days to avoid any confusion. It is also important to define how performance will be calculated if the measure includes percentages. For example, there must be common agreement on how the numerator and denominator will be calculated. If measuring an actual number, it is important to address an issue such as duplicated or unduplicated count.

Data Collection

When developing performance measures, consideration should be given in advance as to how the data is to be submitted and analyzed. Departments should consider:

- **How much information can reasonably be requested, submitted and analyzed?** Departments should identify a reasonable number of performance measures that are consistent with contractor and department resources. Two or three solid, meaningful outcome measures that address substantive changes as the result of

services or product delivery requirements may provide more information than a large number of outputs that simply provide information on the quantity of services delivered.

- **How often must the data be reported?** (monthly, quarterly, semi-annually?)
- **How will the information be submitted?** Wherever possible, departments should streamline the submission process, using electronic submission of data whenever possible or consolidate the reporting process with an already existing reporting requirement.
- **Who will receive the information?** How will information be shared within the department and with other departments?
- **How will feedback be provided to the contractor?** Each department must establish an on-going, systematic process to provide feedback on contractor performance during the contract year. Departments may develop mechanisms for feedback that are appropriate for the scope of service such as written correspondence, telephone communication or face-to-face meetings.

The RFR may identify a variety of approaches that may be used to evaluate contractor performance including but not limited to the following:

- random sampling
- review of reports and files
- complaints from department staff
- other complaints filed with the department
- site visits
- survey instruments to measure consumer satisfaction
- performance goals identified in the RFR

What Resources Are Available to Assist in the Performance Contracting Initiative?

There has been a tremendous amount of interest in developing performance measures on the municipal, state and federal level. Information on activities in other states can be located on the Internet. Departments may find it helpful to visit several of the more innovative web sites to learn about performance contracting efforts outside of the Commonwealth.

Some interesting web sites to visit:

The Alliance for Redesigning Government @ www.alliance.napawash.org/alliance/index.html. This web site provides information on government re-engineering initiatives on the local, state and national level. There is a clear emphasis on case studies focusing on performance and results.

National Partnership for Reinventing Government @ www.npr.gov/. This web site provides information on the federal government's initiative to "create a system that works better and costs less." Find out how each federal agency is progressing toward improving customer service through the development of performance measures.

Kennedy School of Government: Innovations in American Government @ www.innovations.harvard.edu. This web site spotlights innovative projects in government and provides case studies with an emphasis on performance and results.

In addition, OSD is available to assist in the development of performance measures, data collection systems, data analysis and performance reimbursement services.

PROCUREMENT GROUPS

- **Animals and Animal Supplies** - Livestock & related products and services such as feed, bedding, veterinary services and general supplies.

- **Clothing and Toiletries** - Clothing and apparel, uniforms and personal hygiene products.

- **Energy-Utilities and Fuels** - Electricity, natural gas, distillate oil, residual oil, gasoline, diesel oil, propane and utility bill audits.

- **Facilities - Materials, Repairs, Operations -** Commodities and services related to the maintenance and operation of physical plants & property (e.g., building materials, trade work, lawn & grounds equipment, etc.).

- **Financial Management: Professional Services -** Services or personnel related to the management of money or other assets. Service areas include Tax Exempt Lease Purchases (TELP), credit cards, debt collection, bank services, billing services, and audit services. Agencies or individual persons may provide contracted work for accountants, statisticians, actuaries, auditors and economists.

- **Food** - Groceries and related products, equipment and services (e.g., meat, vegetables, dry goods, food preparation products & equipment, food services).

- **Hospital, Laboratory & Dental: Supplies and Equipment -** Medical and surgical supplies; medical, dental, laboratory, treatment and monitoring equipment, beds and furnishings.

- **Human and Social Services** - Social, rehabilitative, health, special education, transportation, child care, employment and training and other services provided to help, maintain, or improve the well-being of clients.

- **Human Resources: Professional Services -** Services or personnel related to the provision of human resource professionals. Agencies or individual persons may provide contracted services in the following areas: advertising, media consultants, artists & graphic designers, exam developers, lecturers, researchers, management consultants, recruiters, program coordinators, writers, performers/actors, interpreters/translators, temporary help, trainers, archivists, librarians, records managers, and meteorologists.

- **Information Technology: Software & Services** - Software, IT services. (contract personnel, solution providers).

- **Information Technology: Hardware** – Computers, peripherals, related hardware, network integration and support services.

- **Information Technology: Telecommunications** – Telecommunications voice/data equipment and services.

- **Legal Support Services: Professional Services** - Services or personnel related to law. Service areas include legal services, client legal services and legal research tools. Agencies or individual persons may provide contracted work for court reporters, court transcription services, investigators, inspectors, reviewers, paralegals, polygraph examiners, title examiners, arbitrators, and mediators.

- **Manufacturing** – Equipment and supplies used in the production of material goods.

- **Medicine (Healthcare) and Laboratory: Supplies and Services** - Pharmaceuticals, services related to medical care, client specific medical items and prosthetics.

- **Office Equipment, Supplies and Services** - Office supplies, business equipment (excluding computers), office furniture, mailing and printing services, etc.

- **Public Safety/Law Enforcement Equipment: Supplies and Services -** Firearms, ammunition, targets, fire fighting equipment, first aid supplies, and other goods and services used by public safety organizations.

- **Recreational and Educational Supplies** - Scholastic supplies, equipment for athletic and other recreational activities.

- **Vehicles** - Transportation equipment for land, sea or air and related maintenance products and services.

Note: The above procurement groups use Environmentally Preferable Products (EPPs), e.g., recycled content, energy efficient, less toxic, etc., wherever feasible.

PROCUREMENT GROUP TO OBJECT CODE CROSSWALK

Procurement Grouping	Object Code	Object Code Title
ANIMALS & ANIMAL SUPPLIES	F13	FARM AND/OR GARDEN EXPENSES & SUPPLIES
	J52	VETERINARY SERVICES
CLOTHING & TOILETRIES	E14	EXHIBITS/DISPLAYS
	F05	LABORATORY SUPPLIES
	F08	TOILETRIES & PERSONAL SUPPLIES
	F09	CLOTHING & FOOTWEAR
ENERGY-UTILITIES & FUELS	G03	ELECTRICITY
	G05	FUEL FOR VEHICLES
	G06	FUEL FOR BUILDINGS
	G10	ENERGY SAVINGS
	G11	NATURAL GAS
	T10	DEBT COLLECTION - CONTINGENT FEES: UTILITY AUDIT
FACILITIES - MATERIALS, REPAIRS, OPERATIONS	E22	TEMPORARY USE OF SPACE, CONFERENCES & CONFERENCE INCIDENTALS
	F10	FACILITY FURNISHINGS
	F13	FARM &/OR GARDEN EXPENSES & SUPPLIES
	F19	MANUFACTURING SUPPLIES & MATERIALS
	F25	MAINTENANCE & REPAIR TOOLS & SUPPLIES
	F26	FLOOR COVERINGS
	G07	HEATING & AIR CONDITIONING, WATER TREATMENT, CHEMICALS & SUPPLIES
	G10	ENERGY SAVINGS
	H06	ARCHITECTS/LANDSCAPE DESIGNERS/SPACE PLANNERS
	H12	ENGINEERS
	H14	HEALTH & SAFETY EXPERTS
	H22	PLANNERS
	H32	LAND APPRAISERS
	J01	ACCREDITATION REVIEW COSTS
	J05	ATHLETIC SERVICES
	J07	AUCTIONEERS
	J09	CLEANERS/JANITORS
	J18	EXTERMINATORS
	J20	GUIDES
	J21	HAZARDOUS WASTE REMOVAL SERVICES
	J27	LAUNDRY SERVICE
	J39	NON-HAZARDOUS WASTE REMOVAL SERVICES
	J40	SECURITY SERVICES
	J43	SNOW REMOVAL & GROUNDSKEEPING SERVICES
	J44	SURVEYORS
	J59	MOVERS
	J60	LICENSED OR PROFESSIONAL TRADESPEOPLE
	J61	PROPERTY MANAGEMENT
	K03	FACILITY EQUIPMENT
	K07	OFFICE FURNISHINGS
	K13	LAWN & GROUNDS EQUIPMENT
	L03	FACILITY EQUIPMENT LEASE-PURCHASE
	L13	LAWN & GROUNDS EQUIPMENT LEASE PURCHASE
	L23	FACILITY EQUIPMENT RENTAL OR LEASE
	L33	LAWN & GROUNDS EQUIPMENT RENTAL OR LEASE
	L43	FACILITY EQUIPMENT MAINTENANCE &REPAIR
	L44	MOTORIZED VEHICLE EQUIPMENT MAINTENANCE & REPAIR
	L53	LAWN & GROUNDS EQUIPMENT MAINTENANCE & REPAIR
	M11	HUMAN AND SOCIAL SERVICES PROGRAM EQUIPMENT
	N01	ARCHITECTS/DESIGNERS
	N04	APPRAISERS
	N05	CONSTRUCTION MANAGEMENT
	N06	COST ESTIMATORS
	N08	ENGINEERS, RESIDENT ENGINEERS, PROJECT MANAGERS
	N12	TESTING FIRMS
	N13	HIGHWAY/LATERAL STRUCTURE PLANNING & ENGINEERING
	N14	HAZARDOUS WASTE REMOVAL SERVICES
	N23	HIGHWAY/LATERAL MAINTENANCE MATERIALS

Procurement Grouping	Object Code	Object Code Title
FINANCIAL MANAGEMENT: PROFESSIONAL SERVICES	E30	CREDIT CARD PURCHASES
	E31	CREDIT CARD PURCHASES FINANCE CHARGES
	H01	ACCOUNTANTS
	H02	ACTUARIES/STATISTICIANS
	H10	AUDITORS/AUDIT SERVICES
	H11	ECONOMISTS
	J10	FINANCIAL SERVICES
	T10	DEBT COLLECTION - CONTINGENT FEES
FOOD	E15	BOTTLED WATER
	F01	FOOD, BEVERAGES & PRESERVATION
	F03	KITCHEN & DINING SUPPLIES
	F11	LAUNDRY & CLEANING SUPPLIES
	J56	FOOD SERVICES
HOSPITAL, LABORATORY & DENTAL: SUPPLIES AND EQUIPMENT	E01	OFFICE & ADMINISTRATIVE SUPPLIES
	F05	LABORATORY SUPPLIES & EQUIPMENT
	F06	MEDICAL & SURGICAL SUPPLIES & EQUIPMENT
	F06	DENTAL & SURGICAL SUPPLIES & EQUIPMENT
	K09	MEDICAL EQUIPMENT
	L09	MEDICAL EQUIPMENT LEASE-PURCHASE
	L29	MEDICAL EQUIPMENT RENTAL OR LEASE
	M11	HUMAN AND SOCIAL SERVICES PROGRAM EQUIPMENT
HUMAN AND SOCIAL SERVICES: TRANSPORTATION, CHILD CARE, HEALTHCARE/POS, EMPLOYMENT & TRAINING	M01	INDIVIDUALS - PROVIDING NON-MEDICAL OR NON-HEALTH CARE RELATED CLIENT SERVICES
	MM1	INDIVIDUALS - PROVIDING MEDICAL OR HEALTH CARE RELATED CLIENT SERVICES
	M03	PURCHASED HUMAN AND SOCIAL SERVICES FOR CLIENTS - NON-MEDICAL
	MM3	PURCHASED HUMAN AND SOCIAL SERVICES FOR CLIENTS - MEDICAL OR HEALTH CARE RELATED
	M04	SERVICES PURCHASED IN SUPPORT OF HUMAN AND SOCIAL SERVICES FOR CLIENTS
	M98	REIMBURSEMENT FOR TRAVEL AND OTHER EXPENSES FOR INDIVIDUALS PAID FROM M01 OR MM1
HUMAN RESOURCES: PROFESSIONAL SERVICES	H04	ADVERTISING AGENCY/MEDIA CONSULTANTS
	H08	ARTISTS/GRAPHIC DESIGNERS
	H13	EXAM DEVELOPERS
	H15	HONORARIA - VISITING SPEAKERS/LECTURERS
	H16	RESEARCHERS
	H17	LABOR NEGOTIATORS
	H19	MANAGEMENT CONSULTANTS
	H21	RECRUITERS
	H23	PROGRAM COORDINATORS
	H28	WRITERS
	H30	PERFORMERS/ACTORS
	J04	ART MODELS/ARTWORK/PERFORMERS/ACTORS
	J16	EXAMINERS/MONITORS/GRADERS
	J38	RELIGIOUS SERVICES
	J42	INTERPRETERS FOR THE DEAF
	J46	TEMPORARY HELP SERVICES
	J50	INSTRUCTORS/LECTURERS/TRAINERS
	J51	TRANSLATORS/INTERPRETERS: FOREIGN LANGUAGE
	J54	WEATHER REPORTING SERVICES
	J58	ARCHIVISTS/LIBRARIANS/RECORD MANAGERS
	N02	ARTISTS
	N06	COST ESTIMATORS
	R18	EMPLOYMENT ASSISTANCE
INFORMATION TECHNOLOGY: SOFTWARE & SERVICES, HARDWARE, TELECOMMUNICATIONS	E08	TELEPHONE SERVICE

Procurement Grouping	Object Code	Object Code Title
INFORMATION TECHNOLOGY: SOFTWARE & SERVICES, HARDWARE, TELECOMMUNICATIONS (CONT.)	E09	SOFTWARE & INFORMATION TECHNOLOGY LICENSES
	H03	INFORMATION TECHNOLOGY PROFESSIONALS
	J08	INFORMATION TECHNOLOGY CABLING
	J46	TEMPORARY HELP SERVICES
	K01	INFORMATION TECHNOLOGY (DP) EQUIPMENT
	L01	INFORMATION TECHNOLOGY (DP) EQUIPMENT LEASE-PURCHASE
	L21	INFORMATION TECHNOLOGY (DP) EQUIPMENT RENTAL OR LEASE
	L41	INFORMATION TECHNOLOGY (DP) EQUIPMENT MAINTENANCE & REPAIR
	M11	HUMAN AND SOCIAL SERVICES PROGRAM EQUIPMENT
LEGAL SUPPORT SERVICES: PROFESSIONAL SERVICES	E12	SUBSCRIPTIONS/MEMB.: LEGAL RESEARCH TOOLS ONLY
	H09	ATTORNEYS/LEGAL SERVICES
	J14	COURT REPORTERS/STENOGRAPHIC & TRANSCRIPTION SERVICES
	J23	INVESTIGATORS/INSPECTORS/REVIEWERS
	J32	PARALEGALS
	J47	TITLE EXAMINERS
	NO3	ATTORNEYS/LEGAL SERVICES
	R25	CLIENT LEGAL SERVICES
	H05	ARBITRATORS/MEDIATORS/DISPUTE RESOLUTION
MANUFACTURING	F10	FACILITIES FURNISHINGS
	F20	RAW MATERIALS FOR MANUFACTURE
	F28	WHOLESALE SUPPLIES
MEDICAL (HEALTHCARE) AND LABORATORY: SUPPLIES & SERVICES	F04	DRUGS
	F05	LABORATORY SUPPLIES
	F07	PERSONAL MEDICAL ITEMS & PROSTHETICS
	H20	MEDICAL CONSULTANTS
	H25	SCIENTISTS
	J12	CORONERS/PATHOLOGISTS
	J25	LAB AND PHARMACEUTICAL SERVICES
	K09	MEDICAL EQUIPMENT
	L09	MEDICAL EQUIPMENT LEASE-PURCHASE
	L29	MEDICAL EQUIPMENT RENTAL OR LEASE
	L49	MEDICAL EQUIPMENT MAINTENANCE & REPAIR
OFFICE EQUIPMENT, SUPPLIES AND SERVICES	E01	OFFICE & ADMINISTRATIVE SUPPLIES
	E02	PRINTING EXPENSES & SUPPLIES
	E14	EXHIBITS/DISPLAYS
	J29	MESSENGER /MAIL SERVICES
	J33	PHOTOGRAPHIC & MICROGRAPHIC SERVICES
	K05	OFFICE EQUIPMENT
	K06	PRINTING, PHOTOCOPYING, & MICROGRAPHICS EQUIP.
	K07	OFFICE FURNISHINGS
	L05	OFFICE EQUIPMENT LEASE-PURCHASE
	L07	PRINTING, PHOTOCOPYING, & MICROGRAPHICS EQUIPMENT TELP LEASE/PURCHASE
	L07	OFFICE FURNISHINGS LEASE-PURCHASE
	L25	OFFICE EQUIPMENT RENTAL OR LEASE
	L26	PRINTING,PHOTOCOPYING & MICROGRPAHICS RENTAL OR LEASE
	L27	OFFICE FURNISHING RENTAL OR LEASE
	L45	OFFICE EQUIPMENT MAINTENANCE &REPAIR
	L46	PRINTING,PHOTOCOPYING & MICROGRAPHICS MAINTENANCE &REPAIR
	L47	OFFICE FURNISHINGS MAINTENANCE &REPAIR
	M11	HUMAN AND SOCIAL SERVICES PROGRAM EQUIPMENT
	N18	INITIAL FURNISHINGS AND EQUIPMENT PURCHASES
PUBLIC SAFETY/LAW ENFORCEMENT: EQUIPMENT, SUPPLIES & SERVICES	F27	LAW ENFORCEMENT & SECURITY SUPPLIES
	K10	LAW ENFORCEMENT & SECURITY EQUIPMENT
	L10	LAW ENFORCEMENT & SECURITY EQUIPMENT LEASE-PURCHASE
	L30	LAW ENFORCE. & SECURITY EQUIPMENT RENTAL OR LEASE

Procurement Grouping	Object Code	Object Code Title
PUBLIC SAFETY/LAW ENFORCEMENT: EQUIPMENT, SUPPLIES & SERVICES (CONT.)	L50	LAW ENFORCE. & SECURITY EQUIPMENT MAINTENANCE & REPAIR
RECREATION AND EDUCATIONAL SUPPLIES	F16	LIBRARY SUPPLIES & MATERIALS
	F18	RECREATION, RELIGIOUS & SOCIAL SUPPLIES & MATERIALS
	K02	EDUCATIONAL EQUIPMENT
	K12	TELEVISION BROADCASTING EQUIPMENT
	L02	EDUCATIONAL EQUIPMENT LEASE-PURCHASE
	L12	TELEVISION BROADCASTING EQUIP. LEASE PURCHASE
	L22	EDUCATIONAL EQUIPMENT RENTAL OR LEASE
	L32	TELEVISION BROADCASTING EQUIPMENT RENTAL OR LEASE
	L42	EDUCATIONAL EQUIPMENT MAINTENANCE &REPAIR
	M11	HUMAN AND SOCIAL SERVICES PROGRAM EQUIPMENT
	L52	TELEVISION BROADCASTING EQUIPMENT MAINTENANCE & REPAIR
VEHICLES	F21	NAVIGATIONAL & NAUTICAL SUPPLIES
	K04	MOTORIZED VEHICLE EQUIPMENT
	K11	HEAVY EQUIPMENT
	L04	MOTORIZED VEHICLE EQUIPMENT TELP LEASE-PURCHASE
	L11	HEAVY EQUIPMENT LEASE-PURCHASE
	L24	MOTORIZED VEHICLE EQUIPMENT RENTAL OR LEASE
	L31	HEAVY EQUIPMENT RENTAL OR LEASE
	L44	MOTORIZED VEHICLE EQUIPMENT MAINTENANCE & REPAIR
	L51	HEAVY EQUIPMENT MAINTENANCE & REPAIR
	M11	HUMAN AND SOCIAL SERVICES PROGRAM EQUIPMENT

☞ *For POS Only:*

PURCHASE OF SERVICE BUDGET ATTACHMENTS - FISCAL SPECIFICATIONS

Departments have the flexibility to develop and negotiate a pricing and payment structure most appropriate to the services being procured. Specific expectations regarding compliance with the pricing limitations, including, but not limited to, restrictions on commercial fees for for-profit contractors, should be described in the RFR and documented in the contract. The standardized budget forms are applicable to the three budget options indicated below that are available to departments to accommodate a variety of pricing approaches. These attachments are required for all new human and social services contracts where payment is based on the submission of a summary or complete program budget. Use of the attachments is optional in the RFR; however, if a department chooses to require the attachments as part of the RFR response, it should indicate which pricing option is required and identify any back-up documentation requirements.

Option #1: Price Agreement. This option is available to departments when a detailed or summary budget is unnecessary to establish a price or if the price is already established by another authority. Departments should consider using this method under the following circumstances:

- rates have already been established pursuant to another independent rate setting authority, such as the Division of Health Care Finance and Policy or OSD (for special education tuition prices) or prices have been established by the procuring department;
- a budget is not required (Note: The federal government requires a summary or complete budget, consequently, this option is not available for programs receiving federal funds. Departments requiring additional information on federal funding restrictions may contact OSD);
- reasonableness of the proposed price can be evaluated by the department based on market rates and a review of historical expenses;
- federal dollars are not available to support the purchase of services.

Under this option, departments would request that a prospective bidder simply submit price information when they respond to the RFR.

Option #2: Summary Budgets. OSD encourages departments to use this approach that summarizes major categories of expenses (Direct Care Staff Wages; Fringe Benefits & Payroll Taxes; Other Direct Care/Program Support; Occupancy; Administrative Support; Commercial Fees; Program Offsets) under the following circumstances:

- a budget is required due to federal dollars available to support the program;
- categorical information is sufficient to evaluate the comprehensiveness of the services and adequacy of resources to achieve performance measures.

Departments can request additional information (required staffing pattern, staff qualifications, housing requirements, etc.) as needed. Using this method, departments would request that a prospective bidder submit a summary budget when they respond to the RFR.

Option #3: Complete Budget. Departments should require complete budgets only when deemed necessary. Some situations which might benefit from a complete budget submission include:

- the program is a new or reconfigured service and detailed cost information is necessary to determine future price;
- departments have a documented need to closely monitor expenditures;
- a complete budget is required to meet federal standards;
- categorical information is insufficient to evaluate the comprehensiveness of the services and adequacy of resources to achieve performance measures; and
- special circumstances exist that make option 1 or option 2 impossible.

Using this method, departments would request that a prospective bidder submit a complete budget.

PURCHASE OF SERVICE (POS) CAPITAL ITEMS PROCUREMENT POLICY

This policy was developed to provide flexibility in assuring POS contractors can acquire needed capital items of furnishings and equipment, particularly for start-up programs. The policy recognizes that the Commonwealth typically should not own capital items and then lend them to human and social service contractors, but rather, when necessary, these contractors should receive funding from the Commonwealth to procure necessary capital items of furnishings and equipment to serve the Commonwealth's clients.

The policy has been adopted in conjunction with regulation 808 CMR 1.00: *Compliance, Reporting and Auditing for Human and Social Services* and consists of three options. A Commonwealth department may choose to use any one or all of the options, as it deems appropriate.

Option 1 - Reimbursement: The department may reimburse the contractor for incurred depreciation and interest expense related to capital items owned by the contractor and used in the delivery of services to Commonwealth clients. Departments should ascertain the contractor's capitalization level when the contract is negotiated (see Attachment 3: Fiscal Year Program Budget). The contractor holds title to the capital items procured under Option 1.

Option 2 - Commonwealth Purchase: The department may purchase, in accordance with 801 CMR 21.00, and retain title of furnishings and equipment using the M-11 object code. The furnishings and equipment are then made available to the contractor as free-use items in the delivery of services to Commonwealth clients. Option 2 must be carried out consistent with the provisions of the Office of the State Comptroller MMARS Memo #281 (available on the Internet at: www.state.ma.us/osc/ memos/281.htm.). The following requirements apply:

- Contractors must maintain and inventory Commonwealth-owned, free-use equipment and furnishings in accordance with 808 CMR 1.04(5). Said inventory shall contain the number and description of assets, source of funding, acquisition cost and location of each item.
- Depreciation expense associated with capital items of furnishings and equipment provided under Option 2 is to be carried on the Uniform Financial Statements and Independent Auditor's Report (UFR) statements and schedules and in contract budgets as a non-reimbursable expense. Departments should also exclude such expenses when establishing a non-negotiated rate.
- Upon termination of the contractor's contracts with the department, any capital items of furnishings and equipment owned by the Commonwealth must be returned to the Commonwealth or transferred to another contractor, as directed by the department.
- Federal grant funds may be used by departments for Commonwealth purchases of capital items of furnishings and equipment only if the benefit received by the contractor from the use of the capital items (monetary value) is disclosed in the budget and the UFR as free-use items.

Option 3 - Contractor Purchase: The department may provide the contractor with funds for the procurement of capital items of furnishings and equipment that have been identified in a capital budget page of a multiyear or renewable contract with a term of three or more years remaining. Under Option 3, furnishings and equipment are procured by the contractor in accordance with 808 CMR 1.03(8) and are owned by the contractor (with certain restrictions). In addition, Option 3 must be carried out consistent with the provisions of the Office of the State Comptroller MMARS Memo #281. The following conditions apply to Option 3:

- Capital items of furnishings and equipment that are contained and certified as capital items in the contractor's capital budget page must meet the new definition of a capital item in 808 CMR 1.02. In addition, the contractor must inventory capital items in accordance with 808 CMR 1.04(5) and said inventory shall contain the number and description of assets, source of funding, acquisition cost and location of each item.
- Upon termination of the contractor's contracts with the department, any capital item procured under Option 3 that is not fully depreciated is subject to the following disposition options, as directed by the department: the item and its title may be returned to the department, or transferred to another contractor, or the item may be

retained or sold by the contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale. The Department should provide written authorization to the contractor of which option is to be used, based on financial and programmatic considerations that give best value to the Commonwealth.

- Depreciation expense associated with capital items of furnishings and equipment provided under Option 3 is to be carried on the UFR statements and schedules and in contract budgets as a non-reimbursable expense. Departments should also exclude such expenses when establishing a non-negotiated rate.
- Capital Purchase with Federal Funds: Pursuant to the provisions of OMB Circular A-122, a capital budget and federal grant funds may <u>not</u> be used to furnish federally defined capital items to be owned by the contractor for use in programs unless the department receives prior written approval from the federal awarding agency(ies). Federally defined capital items to be owned by the contractor not receiving prior written approval from the federal awarding agency(ies) may only be furnished and reimbursed through depreciation or a federally approved use allowance. The federal government defines capital items of equipment as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization (contractor) for the financial statement purposes, or (b) $5000.
- Capital items of furnishings and equipment purchased with Commonwealth funds rather than federal funds, that are to be owned by the contractor and used in programs receiving federal grant funds may only be acquired using a capital budget if the revenue and expense associated with the capital items are budgeted and disclosed in the UFR as a separate revenue and cost category of the program. In addition, capital expenditures must be separately billed for by the contractor and the department must utilize a separate MMARS accounting line.
- In certain circumstances, a department may wish to permit procurement of capital items by the contractor for contracts or procurements with less than three years remaining. This may occur only with the prior written approval of the department head or chief financial officer.

REQUEST FOR RESPONSE (RFR) CHECKLIST

Please refer to the handbook for detailed instructions and additional guidance for this checklist.

MINIMUM REQUIREMENTS FOR EVERY RFR

1. Description or purpose of the procurement
2. Acquisition method (fee-for-service, outright purchase, rental, term lease, Tax Exempt Lease-Purchase or license)
3. Request for single or multiple contractors
4. Use of a procurement by a single or multiple departments
5. Anticipated duration of contract including renewal options
6. Anticipated expenditures and compensation structures
7. Contract and performance specifications
8. Instructions for submission of responses
9. Deadline for responses or procurement calendar
10. RFR attachments/specifications

CONSIDERATIONS FOR THE RFR

- What are performance measurements? How will performance be judged?
- Identify relevant performance dates and deadlines.
- Identification of M/WBE status or use of M/WBE subcontractors?
- Identify contract deliverables.
- Year 2000 compliance required?
- Financial statements - Audited or unaudited?
- Should bidders identify market basket or catalog of available commodities and services?
- Should bidders identify more cost-effective or best value alternative?
- Will contractor owned materials be used during performance?
- Is brand name or equivalent involved?
- What information do you want to know about a bidder (firm profile, organization chart, years in business, experience)?
- Contract or project managers
- Identification of subcontractors?
- Business references
- Prevailing wages requirements?
- Requirements for consultant services
- Risk of loss - insurance and performance or surety bonds?
- Record keeping requirements? Security issues?
- Invoice and payment specifications
- Proof of Worker's Compensation payments and unemployment insurance?
- Evidence of tax compliance
- Programmatic or fiscal reporting requirements?
- Other certifications, statutory requirements, (World Trade Organization, federal funding restrictions of requirements, etc.)
- Identification of similar contracts or projects?
- Should bidders identify additional related commodities and services?
- Should bidders identify EPP opportunities or EPP requirements, if applicable?

RFR ATTACHMENTS (refer to Chapter 4 for additional information and guidance on RFR attachments)

- RFR – Required Specifications
- Commonwealth Terms and Conditions AND/OR Commonwealth Terms and Conditions for Human and Social Services
- W-9 (Massachusetts Substitute W-9 Format)
- Standard Contract Form
- Contractor Authorized Signature Verification Form
- Affirmative Action Plan or Form (employers only)
- Northern Ireland Notice and Certification
- Authorization For Electronic Funds Payment (EFT)
- ☞ *For POS Only:* Purchase of Services Attachments 1-6

Required for RFRs for consultant services (paid in HH subsidiary or N01-N14 object codes)

- Consultant Contractor Mandatory Submission Form (additional income disclosure, disclosure of persons with financial interest, key personnel)

Optional

- Additional Environmentally Preferable Product Information
- Business Reference Form
- RFR – Optional Specifications
- Tax Compliance Certification Instructions
- Other department attachments

RFR PROCUREMENT PROCESS QUICK-REFERENCE

PROCUREMENT PROCESS	SMALL PROCUREMENTS ≤$50,000.	LARGE PROCUREMENTS > $50,000
RFR Drafting	RFR - Build to suit - See RFR checklist and handbook for additional information.	RFR - Build to suit - See RFR checklist and handbook for additional information.
RFR Response Format	Responses may be made through fax, mail or personal delivery as specified in RFR. Electronic responses are not acceptable.	Mail or personal delivery. Sealed hard copies are required. Faxed or electronic responses are not acceptable.
Bidder's Conference	Optional. If yes, dept. adds date, time and place in RFR.	Optional. If yes, dept. adds date, time and place in RFR.
Written Inquiries	Optional. If yes, dept. adds deadline date, time, place and method of submission of questions (mail, fax, electronic) in RFR.	Optional. If yes, dept. adds deadline date, time, place and method of submission of questions (mail, fax, electronic) in RFR.

PROCUREMENT PROCESS	SMALL PROCUREMENTS ≤$50,000.	LARGE PROCUREMENTS > $50,000
Answers to Written Questions	If option used, and the RFR was posted on Comm-PASS, dept. posts answers on Comm-PASS and sends to those bidders who received paper copies of the RFR (via mail or fax).	If option used, dept. posts answers on Comm-PASS and sends to those bidders who received paper copies of the RFR (via mail or fax).
Evaluation Criteria	Required - Must be completed prior to RFR deadline. Evaluation criteria amendments must be completed prior to review of any responses.	Required - Must be completed prior to RFR deadline. Evaluation criteria amendments must be completed prior to review of any responses.
RFR Advertisement or Distribution	Dept. distributes written RFR to a min. of 3 qualified bidders, posts on Comm-PASS, in newspapers or as required by statute. Telephone distribution is not acceptable.	Dept. posts RFR on Comm-PASS (mandatory), through newspapers or as required by statute.
RFR Amendments	If the RFR was posted on Comm-PASS, dept. posts on Comm-PASS and sends to those bidders who received paper copies of the RFR (via mail or fax).	Dept. posts on Comm-PASS and sends to those bidders who received paper copies of the RFR (via mail or fax).
RFR Cancellation	If the RFR was posted on Comm-PASS, dept. posts on Comm-PASS and sends to those bidders who received paper copies of the RFR (via mail or fax).	Dept. posts on Comm-PASS and sends to those bidders who received paper copies of the RFR (via mail or fax).
Receipt of Responses	Dept. date stamps or records date and time of receipt.	Dept. date stamps or records date and time of receipt.
Reference Checks	Optional - Business reference attachment may be added to RFR or dept. may conduct separate checks.	Optional - Business reference attachment may be added to RFR or dept. may conduct separate checks.
Oral Presentations	Optional. If option used, date, time and place should be identified in RFR or selected bidders should be notified directly.	Optional. If option used, date, time and place should be identified in RFR or selected bidders should be notified directly.
Response Corrections	At dept.'s option.	At dept.'s option.
Response Clarifications	At dept.'s option. If the RFR was posted on Comm-PASS, dept. sends to all bidders that submitted responses (via mail or fax) and posts notice of option for clarification of specified section on Comm-PASS.	At dept.'s option. Dept. sends to all bidders that submitted responses (via mail or fax) and posts notice of option for clarification of specified section on Comm-PASS.
Best and Final Offer	Optional, same terms to all chosen bidders.	Optional, same terms to all chosen bidders.
Notice of Contract Execution	If the RFR was posted on Comm-PASS, dept. posts notice of contract execution on Comm-PASS and sends to all bidders that received paper copies of the RFR (via mail or fax).	Dept. posts notice of contract execution Comm-PASS and sends to all bidders that received paper copies of the RFR (via mail or fax).
Debriefing	At dept. option (required for human and social service programs in which the bidder intends to appeal the dept.'s decision).	At dept. option (required for human and social service programs in which the bidder intends to appeal the dept.'s decision).

REQUEST FOR RESPONSE/CONTRACT DURATION

This guidance on total contract duration is intended to assist those who draft Requests for Responses when determining the anticipated duration of the contract, including options to renew. The guidance emphasizes that the dates of the total anticipated duration specified in the RFR take precedence over any other dates that may be published on Comm-PASS or appear elsewhere. It also provides examples of flexible and restrictive language which may be selected for the RFR (including the considerations for each type of language). Attached to the guidance is a reference chart which summarizes and provides examples of options for RFR language.

An RFR should specify a definite **"Total Anticipated Duration"** which CAN NOT be open-ended or ambiguous. For example, the following statements would be considered ambiguous or open-ended and could NOT be used as part of an RFR duration: "for as long as the listed commodities or services are needed," or "any additional options to renew as negotiated by the parties". Instead, the RFR duration must be specific and clear so that anyone looking at the RFR will be able to easily determine its duration. Examples of specific language include: "up to 6 years", "5 years", "4 fiscal years", "36 months" or a specific set of dates such as "7/1/2000-6/30/2002".

Is the RFR Duration Listed in an RFR Negotiable?

Even though 801 CMR 21.07(1)(a) states that the RFR determines what elements of contract performance may be negotiated, and 801 CMR 21.07(1)(c) allows for the negotiation of any element in contract performance that results in a better value than was presented in a bidder's response, the RFR duration is ***NOT*** considered an element of contract performance that is negotiable. Therefore, the contract duration listed in the RFR is ***NOT*** negotiable and may not be changed.

The **Total Anticipated Duration** can ***NOT*** be negotiated for a longer period than is listed in the RFR. The RFR **"Total Anticipated Duration"** is defined as the RFR **Initial Contract Duration** *plus* all listed "options to renew" (if options are available). If the **Total Anticipated Duration** is listed as "5 years", then the contract may not be negotiated, executed or amended to extend beyond 5 years from the **Contract Effective Start Date*** (as defined by 801 CMR 21.07(3)). The clock on the **Total Anticipated Duration** starts to tick as of the **Contract Effective Start Date*** and continues to run irrespective of any lapses in the contract duration. For example, if the **Contract Effective Start Date*** were 10/1/2000, the **Total Anticipated Duration** clock of 5 years would begin to run on that date and the contract must terminate no later than 9/30/2005.

The **Initial Contract Duration** is the initial period the contract will be executed, or the minimum period of the contract before the department will exercise an option(s) to renew. The *Standard Contract Form* **must** be executed for a period not less than the **Initial Contract Duration** listed in the RFR (less any time that is lost due to a delay in execution and restrictive RFR **Initial Contract Duration** language, as described later in this document). For example, if the RFR **Initial Contract Duration** is listed as *"1 year plus 3 one-year options to renew"*, the *Standard Contract Form* must be executed for a minimum of 1 year from the **Contract Effective Start Date*.** The department may **NOT** negotiate a shorter **Initial Contract Duration** period than the 1 year listed in the RFR.

A department can build in some flexibility to identify the Initial Duration of the *Standard Contract Form*. If the RFR **Initial Contract Duration** is listed as ***"up to 1 year*** *plus 3 options to renew of up to one year each"*, the *Standard Contract Form* could be executed for *any period of up to 1 year* from the **Contract Effective Start Date***. This type of flexibility might be appropriate for a contract for a new service or commodity for which the department wanted the ability to set a shorter **Initial Contract Duration** based upon need or the quality of the contractor.

*NOTE: If an **Initial Contract Duration** is not listed in the RFR, then the Standard Contract Form must be executed for the entire period listed in the RFR under **Total Anticipated Duration** and the department and contractor may **NOT** negotiate a shorter period.*

DRAFTING THE RFR DURATION – MOST FLEXIBLE TO MOST RESTRICTIVE LANGUAGE

Using **"up to ____ years"** language (as listed in the previous paragraph) offers the **most flexible** RFR duration language. If the RFR **Total Anticipated Duration** was listed as *"up to four years"* and the **Initial Contract Duration** was listed as ***"up to one year*** *plus 3 options to renew up to one year each"*, the *Standard Contract Form* could initially be executed for any period **"**up to**"** one year from the **Contract Effective Start Date***. The contract could then be renewed for any period(s) up to three years after the **Initial Contract Duration**.

However, this greater flexibility with the **Initial Contract Duration** and **Total Anticipated Duration** should be carefully balanced against the higher costs bidders may submit for a shorter **Initial Contract Duration** or a period that may be subject to negotiation. Greater flexibility to negotiate a shorter **Initial Contract Duration** is usually preferable only for new programs or unknown contractors, since there are possibly greater cost savings if bidders are submitting responses for a two year contract versus a contract that could be less than one year.

Using **"years"** to identify the **Total Anticipated Duration** is **flexible** language for RFR duration. For example, if the RFR **Total Anticipated Duration** is listed as "5 years" and the **Initial Contract Duration** is listed as "*2 years plus 3 one-year options to renew*", the **Total Anticipated Duration** of 5 years would begin to run on the **Contract Effective Start Date***. If the **Contract Effective Start Date*** is 10/1/2000, the *Standard Contract Form* **must** be executed for at least the **Initial Contract Duration** of 2 years (10/1/2000–9/30/2002) and then could be amended to exercise the remaining options to renew to terminate no later than 9/30/2005.

Using **"fiscal years"** to identify the **Total Anticipated Duration** and the **Initial Contract Duration** is **restrictive** language for RFR duration. The **Total Anticipated Duration** clock starts to run on the beginning of the fiscal year in which the contract is executed. If the **Contract Effective Start Date*** is after 7/1 of the fiscal year, the period from 7/1 until the **Contract Effective Start Date*** will be lost and may not be added on to the end of the contract. For example, if the **Total Anticipated Duration** is *"four fiscal years"* and the *Standard Contract Form* is executed with a **Contract Effective Start Date*** of 9/1/2000, the period between 7/1/2000 and 9/1/2000 is lost and may not be added on to the end of the contract. The contract would terminate on 6/30/2004.

Using a **"specific set of dates"** for the **Total Anticipated** and the **Initial Contract Duration** is the **most restrictive** language for RFR duration. The duration clock starts to run on the listed date in the RFR and periods between this listed date and the **Contract Effective Start Date*** will be lost and may not be added on to the end of the contract. For example, if the RFR lists the **Total Anticipated Duration** as "7/1/2000 – 6/30/2003", and the *Standard Contract Form* is executed with a **Contract Effective Start Date*** of 10/1/2000, the period from 7/1/2000 to 10/1/2000 is lost and may not be added on to the end of the contract. The contract would terminate on 6/30/2003 as listed in the RFR.

CONFLICTING DATES – THE TOTAL ANTICIPATED DURATION IN RFR CONTROLS

Sometimes multiple duration dates in an RFR or other documents in a procurement may conflict. In order to resolve conflicting dates, **the Total Anticipated Duration listed in the RFR supercedes any other conflicting dates in the RFR or in any other document in a procurement, including Comm-PASS start and end dates.** [NOTE: Comm-PASS requires actual dates in order to post an RFR. These dates are for processing purposes only.]

The RFR **Total Anticipated Duration** also supercedes any dates or periods listed under **Initial Contract Duration** or other sections of the RFR that do not match the **Total Anticipated Duration** in the RFR. For example, if the RFR **Total Anticipated Duration** states *"4 years"* and the RFR lists the **Initial Contract Duration** as: "*2 years plus 3 one year options to renew"*, the **Total Anticipated Duration** of *"4 years"* would supercede and control over the conflicting **Initial Contract Duration** which adds up to five years.

In order to avoid the confusion of conflicting dates, departments are encouraged to place all relevant duration dates in one location in the RFR entitled "Total Anticipated Duration and Initial Contract Duration". Any key dates in the RFR should be identified in this section, even if the date may appear in another place in the RFR or RFR attachments.

EXERCISING OPTIONS TO RENEW

Options to renew may be exercised by a department at any time during the period of the contract. For example, if the RFR lists the **Initial Contract Duration** as **"***1 year, plus 2 one-year options to renew***"**, the department ***must*** execute the *Standard Contract Form* for **at least** the 1 year **Initial Contract Duration.** However, the department may also exercise one or both options to renew at any time and does not have to wait until the end of the first year to exercise the first one year option to renew. Options to renew must be mutually agreed to by both department and contractor. An option to renew is exercised by a department and contractor executing a *Standard Contract Amendment Form* ***prior*** to the termination date of the contract.

If a department fails to exercise an option to renew prior to the termination date of a contract, ***all contract performance must stop as of the termination date of the contract***. However, any remaining options to renew are not lost. An option to renew is not lost even if the RFR stated a specific period within which the option to renew would be exercised by the department. However, the department and contractor will have to execute a new contract (referencing the original contract that terminated), and will lose any time between the contract termination date and the **Contract Effective Start Date*** of the new contract.

For example, if the RFR **Total Anticipated Duration** was "*1 year plus 2 one year options to renew*" the *Standard Contract Form* must be executed for **at least** the 1 year **Initial Contract Duration**. If the **Contract Effective Start Date*** was July 1, 2000 with a termination date of June 30, 2001, the department would normally exercise the first one-year option to renew by executing a *Standard Contract Amendment Form* (along with the contractor) ***prior to*** June 30, 2001. If the department failed to exercise the option to renew for any reason (such as a lack of funding) the contract would **automatically** terminate on June 30, 2001 and **ALL PERFORMANCE WOULD HAVE TO STOP**.

However, if the circumstances changed (such as getting additional funding) the department could execute a new contract exercising **the "remaining portions" of the first and second options to renew**, provided the contract terminated no later than June 30, 2003. For example, the department could execute a new contract on July 1, 2002. The period of time between June 30, 2001 and June 30, 2002 would be lost and could not be added to the end of the contract which would have to terminate no later than June 30, 2003.

Exercising an option to renew after the termination date of a contract may ***NOT*** be used as a way of avoiding timely execution of amendments to exercise an option to renew or to amend or extend a terminated contract. All performance must stop as of the termination date of a contract and a contractor may not be compensated for any performance between the termination date of a contract and the execution of a new contract.

Note: the Request for Response, contractor's Response and other attachments to the original contract do not have to be attached to the new contract ***provided*** the department references the original contract "document id" as part of the new contract and identifies that the department is exercising a remaining option to renew. However, any information that has been updated or changed, such as authorized signatories for the contractor, would be required to be attached to the new contract and also maintained in the department procurement file.

Departments should refer to the Chapter 1 on "Procurement Principles - Best Value", Chapter 4 on "How to Draft and RFR" (in general) and Chapter 5 on "Contract Execution, Contract Effective Date and Contract Processing" for additional considerations for drafting an RFR duration to ensure that the duration provides the flexibility and appropriate time to achieve a "best value" procurement.

* **Contract Effective Start Date** is calculated in accordance with 801 CMR 21.07(3). Notwithstanding verbal representations by the parties, or an earlier start date listed in the Standard Contract Form, the effective start date of a contract shall be the latest of the following dates: the date the Standard Contract Form has been executed by an Authorized Signatory of the Contractor, the procuring department; the date of Secretariat or other approval(s) required by law or regulation; or a later date specified in the Standard Contract Form.

EXAMPLES OF RFR TOTAL ANTICIPATED AND INITIAL DURATIONS

Amount of Flexibility for *Standard Contract Form* Duration	**If the RFR lists the Total Anticipated Duration as:**	**If the RFR Lists the Contract Initial Duration and any Renewal Options as:**	**If Contract Effective Start Date* Is:**	***Standard Contract Form* Initial Duration Must Be:**	**COMMENTS [Based upon RFR Total Anticipated Duration and Initial Duration]**
Most Flexible	**"**Up to 6 years**"**	**"**Up to 2 years, plus two options to renew up to 2 years each"	8/1/2000	Any period between 8/1/2000 up to 7/31/2002	Using the language **"up to"** and **"years"** is the most flexible language for RFR duration. In this example, a department **may** execute the *Standard Contract Form* to be any period of "up to" two years from the **Contract Effective Start Date***. The six year **Total Anticipated Duration** clock starts ticking as of 8/1/2000 and the contract **must** terminate no later than 7/31/2006.
Flexible	**"**5 years**"**	**"**2 years plus 3 one year options to renew**"**	9/1/2000	9/1/2000 to 8/31/2002	Using **"years"** is flexible language for RFR duration. In this example, a department **must** execute the *Standard Contract Form* for **at least** 2 years (24 months) from **Contract Effective Start Date***. The five year **Total Anticipated Duration** clock starts ticking as of 9/1/2000 and the contract **must** terminate no later than 8/31/2005.
Restrictive	**"**4 fiscal years**"**	**"**2 fiscal years plus 2 one year options to renew**"**	10/1/2000	10/1/2000 to 6/30/2002	Using **"fiscal years"** is restrictive language in RFR duration. In this example, a department **must** execute the *Standard Contract Form* for the remaining period of 2 fiscal years (24 months) from the **Contract Effective Start Date***. Any period from the beginning of the fiscal year (7/1) until the **Contract Effective Start Date*** is lost and may **not** be added to the end of the contract period. The four fiscal year **Total Anticipated Duration** clock starts ticking as of 7/1/2000 and the contract **must** terminate no later than 6/30/2004.
Most Restrictive	**"**9/1/2000-8/31/2004**"**	**"**1 year plus 3 one-year options to renew**"**	12/1/2000	12/1/2000 to 8/31/2001	Using **"specific dates"** is the most restrictive language for RFR duration. In this example, a department **must** execute the *Standard Contract Form* for **at least** one year (12 months) from the **Contract Effective Start Date***. Any period between 9/1/2000 and the **Contract Effective Start Date*** is lost and may not be added to the end of the contract period. Since specific dates are identified, the contract **must** terminate no later than 8/31/2004.

***Contract Effective Start Date** is calculated in accordance with 801 CMR 21.07(3). Notwithstanding verbal representations by the parties, or an earlier start date listed in the Standard Contract Form, the effective start date of a contract shall be the latest of the following dates: the date the Standard Contract Form has been executed by an Authorized Signatory of the Contractor, the procuring department; the date of Secretariat or other approval(s) required by law or regulation; or a later date specified in the Standard Contract Form.

USE OF A PROCUREMENT BY A SINGLE OR MULTIPLE DEPARTMENTS

Pursuant to 801 CMR 21.06, an RFR must identify whether the procurement is being issued primarily for the procuring department's needs or for use by additional departments as well. A department may not only procure commodities and services based upon its own needs but may also issue an RFR on behalf of additional departments (known or unknown) that may want to take advantage of the procurement.

A "statewide contract" is the most common form of contract that makes commodities and services available for purchase by multiple departments. RFRs issued for multiple department users are encouraged because any subsequent participating department gets all the benefits associated with purchasing the commodities or services from approved contractors without having to conduct a competitive procurement.

RFRs should be drafted using one of the following options to identify whether the RFR will be available for use only by the procuring department or by multiple departments:

1. **Statewide Contract Procurement Conducted by OSD (this procurement option is only available for OSD use).** Procurements conducted and managed by an OSD/PMT on behalf of the Commonwealth resulting in statewide contracts that are available to all departments and other OSD approved eligible entities. Departments can purchase from a statewide contract without having to execute additional contract documentation.

2. **Statewide Contract Procurement Conducted by OSD-Designated Department (this procurement option is available to any department with PRIOR written approval by OSD).** Procurements conducted and managed by a department (formally designated by OSD) on behalf of the Commonwealth resulting in statewide contracts that are available to all departments and other OSD approved eligible entities. Departments can purchase from a statewide contract without having to execute additional contract documentation.

3. **Multiple Department Procurement/Limited Department User Contracts (this procurement option is available to all departments).** Procurements conducted and managed by a self-selected group of departments which chooses one of the departments to act as the procuring department to post the RFR and execute contracts and contract amendments on behalf of the group. Similar to a statewide contract, any department identified in the RFR, or later approved by the PMT (if this option was specified in the RFR), can purchase from the contract without having to execute additional contract documentation.

4. **Single Department Procurement/Multiple Department User Contracts (this procurement option is available to all departments).** Procurements conducted and managed by a procuring department for its own needs (if those needs cannot be met by an existing statewide contract) that can also be used by other departments and OSD approved eligible entities. Subsequent departments may use the RFR and winning bidder response(s) as the procurement basis for the execution of a contract(s).

5. **Single Department Procurement/Single Department User Contract (this procurement option is available to all departments).** Procurements conducted and managed by the procuring department solely for its own needs (if those needs cannot be met by an existing statewide contract). If the RFR is silent as to use by additional departments or OSD approved eligible entities, then the RFR is limited to use only by the procuring department.

In certain circumstances, special needs of departments may warrant modifications to these options. Any modifications should be processed with other involved parties, including the Office of the Comptroller and OSD and should be clearly specified in the RFR.

(1) Statewide Contracts - Conducted by OSD

Statewide contracts are procured on behalf of the Commonwealth for use by all departments and other eligible entities. **NOTE:** Executive departments must use a statewide contract unless the contract does not meet the department's specialized procurement needs.

OSD acts as the procuring department for most statewide contracts and leads a Procurement Management Team (PMT) for the commodities and services to be procured. PMTs for statewide contracts are comprised of members from "customer" departments that have expressed a need for, or have historically procured a specified commodity or service.

OSD and statewide PMTs are continuously developing more comprehensive and cost-effective statewide contracts for use by all departments. In many cases, statewide contracts can offer better prices and a larger quality selection of commodities and services because the volume of potential business by the Commonwealth as a whole attracts certain bidders that would not normally respond to a single department procurement. Statewide contracts provide immediate access to needed commodities and services, without the necessity of executing additional contract documentation, so that departments can spend more time fulfilling mandates rather than conducting separate competitive procurements.

(2) Statewide Contracts Conducted by OSD-Designated Department

While OSD is continually identifying opportunities for establishing new or improved statewide contracts, OSD has limited resources or expertise to pursue all of these options. Therefore, OSD must select, from many potential projects, which statewide contracts are most urgently needed by departments. Pursuant to 801 CMR 21.04, OSD may designate another department to take the lead in establishing a statewide contract in the areas of its particular expertise or interest. One example is the statewide contract for Internet access services, where the Information Technology Division (ITD) was designated by OSD as the procuring department.

OSD-designated department statewide contracts benefit all departments by expanding the scope of commodities and services available under statewide contracts. The OSD-designated department also benefits by being able to provide its particular experience and expertise to the development of the RFR to meet statewide needs while also receiving technical assistance and ongoing support and resources from OSD.

Departments can request statewide contract designation authority directly from OSD. The OSD-designated department and OSD execute a formal designation agreement specifying each department's respective responsibilities. Guidance for the designated agreement between OSD and a department to conduct a procurement resulting in a statewide contract(s) follows this description of all five options. OSD offers technical assistance that generally includes a PMT member.

The OSD-designated department assembles a statewide PMT and performs all the same procurement and contract responsibilities and duties as outlined for OSD with the following exceptions:

- The OSD-designated department will be the Commonwealth's signatory for all contract documentation and contract amendments and will maintain the statewide contract procurement file.
- The OSD-designated department will maintain the record copy of the statewide contract as part of its procurement file and acts as the record keeper for that statewide contract in accordance with M.G.L. Chapter 66 and MMARS MEMO #287, or as amended.

RFR Drafting and Comm-PASS Posting Considerations for Statewide Contracts (Options 1 and 2)

A statewide contract PMT designs the RFR to meet the existing and potential future needs of the PMT participating departments as well as building in flexibility to meet the anticipated needs of other potential department users.

Many RFRs for statewide contracts are drafted to select "qualified contractor lists" of multiple statewide contractors from which a department may choose, rather than choosing only one statewide contractor. In other cases, the PMT may determine that it is more cost effective or appropriate to select only one contractor, or one contractor by region.

The PMT develops evaluation criteria for bidder selection as well as performance measurements that will be used by the PMT to monitor contractor performance on a regular basis under the statewide contract. The procuring department (OSD or the OSD-designated department - whichever is conducting the procurement) must post the RFR on Comm-PASS listing "statewide contract" in the summary section of both the open solicitation and contract screens. A Comm-PASS posting is required ***regardless*** of the total anticipated value of the resulting contracts.

Statewide Contracts - Bidder Selection, Contract Filing, Procurement File and Contract Management (Options 1 and 2)

The statewide contract PMT reviews all bidder responses and selects a statewide contractor or multiple statewide contractors based upon the evaluation criteria and the terms of the RFR. Selection as a statewide contractor does not guarantee that a contractor will be used by departments or guarantee any minimum usage by the Commonwealth.

The procuring department (OSD or the OSD-designated department - whichever is conducting the procurement) acts as the authorized signatory for all contract documents, contract amendments or other negotiations. Once the PMT has concluded negotiation of prices, rates and performance details, the procuring department executes a Standard Contract Form with each selected bidder on behalf of the Commonwealth.

The Standard Contract Form must indicate "statewide contract". The procuring department must also file a Vendor Update Form (VU) along with a contractor-executed Commonwealth Terms and Conditions (Standard or Human and Social Services) and W-9 Form with the Office of the Comptroller, unless the contractor information and T&C are already posted on the MMARS Vendor File.

For all statewide contracts, OSD will establish the necessary MMARS tables based on the recommendations of the PMT (a "Price Agreement Table" for commodities; or the "MSER" and "MSVR" Tables to set up a Master Service Agreement Number (MSA) for services).

OSD issues an "OSD Update", drafted by the PMT, containing comprehensive information about use of the statewide contract, a list of approved statewide contractors, specialized terms, rates and any restrictions. The OSD Update will also identify whether rates and specifications are set or may be negotiated by the department and an approved statewide contractor. Detailed information including specifications and contract requirements are available either through Comm-PASS (www.comm-pass.com) or by reviewing OSD Updates which are located on the OSD Web site at: www.state.ma.us/osd/memo/memotoc.htm.

The statewide contract procurement file compiled by the PMT will be housed at the procuring department (OSD or the OSD-designated department - whichever conducted the procurement). The PMT will meet regularly to monitor the use of the statewide contract and rate the statewide contractor(s) performance based upon the established performance measurements. The statewide contract Procurement Team Leader listed in the OSD Update acts as the contact person for the statewide contract and the customer service representative for departments using the statewide contract.

The procuring department will be considered the "record keeper" responsible for maintaining the record copy of the contract (which includes the executed Standard Contract Form, a copy of the RFR or a copy of the Comm-PASS closed solicitations summary page, and the original contractor response) for each statewide contractor. The record keeper is responsible for maintaining the record copy of the contract as a public record, responding to public records requests involving the contract in accordance with M.G.L. Chapter 66, and for archiving the record copy in accordance with MMARS MEMO #287, or as amended.

How a Departments Finds and Uses Statewide Contracts (Options 1 and 2)

OSD maintains a listing of statewide contracts for commodities and services at the following site: www.state.ma.us/osd/statewid/statewid.htm. Any department wishing to purchase commodities or services from a statewide contract simply needs to review the relevant OSD Update to determine if the statewide contract meets its particular procurement needs. To view a listing of available OSD Updates or to print a specific OSD Update please see: www.state.ma.us/osd/memo/memotoc.htm.

If the department needs more detail about a statewide contract, the department can view the RFR on Comm-PASS, or contact the Procurement Team Leader (PTL) listed in the OSD Update for that statewide contract. Once the department has determined that the statewide contract meets its needs, the department can contact the statewide contractor(s) directly to request the needed commodities and services. No additional contract documentation is required. However, the department may use the Equipment/Service Confirmation Form and attach additional scope of services information, if needed, to document the details of performance.

The department user then enters a MMARS encumbrance transaction (a "PG" for commodities or an "SC", "SR/SC" or "LO" for services) referencing the correct statewide contract "Price Agreement" or "MSA" number. The Office of the Comptroller *Expenditure Classification Handbook* identifies the appropriate transactions for the object code(s) covered under a statewide contract.

(3) Multiple Department Procurement/Limited Department User Contracts

Unlike statewide contracts designed to be used by any and all departments, certain types of procurements may deliver a better value by servicing a smaller or limited number of department users, rather than being procured on a statewide basis. For example, some contractors may not be able to handle the volume of performance required for a statewide contract, but may provide the best value for a specific smaller group of departments. Also, smaller scale procurements may attract small businesses or SOMWBA certified M/WBE bidders that can provide excellent deals, but have limited performance capacity.

A **Multiple Department Procurement/Limited Department User** contract is procured by two or more departments for the exclusive use of these departments. Bundling performance needs can sometimes provide better prices and performance for these departments while at the same time distributing the contract procurement and management workload between departments.

The participating departments in the group would form a PMT and agree to designate a “lead” department to act as the procuring department and a Procurement Team Leader (PTL) for the procurement. PMTs for these contracts are comprised of members from departments that have expressed a need for, or have historically procured, a specified commodity or service. The PMT should attempt to identify other departments that might benefit from the contract. OSD can assist departments who are interested in sharing a procurement by identifying other potential department participants that may have similar needs. Departments should consult the appropriate OSD PTL for guidance on **Multiple Department Procurement/Limited Department User Contracts** and in the recruitment of other departments.

RFR Drafting and Comm-PASS Posting Considerations for a Multiple Department Procurement/Limited Department User Contracts

For the benefit of potential bidders, the RFR should clearly identify the procuring department and authorized department users intending to purchase from the contract.

Even though **Multiple Department Procurement/Limited Department User** C**ontracts** are procured for the benefit of a limited number of initial authorized department users, the RFR may include the option for the PMT to approve the use of the resulting procurement by additional participating departments without formal amendment of

the procurement file. In that case, the PMT then has the flexibility to add additional departments based upon specific circumstances. Newly added departments should also accept the responsibility of joining the PMT. Absent this language in the RFR, the procurement will be closed to any other department or eligible entity other than those named in the original RFR.

When a PMT chooses to draft the RFR to allow additional departments to be added to the procurement file upon approval of the PMT, bidders should be asked to respond to their capability or capacity to service departments in addition to those specifically listed in the RFR. Some bidders may, in their response, request the opportunity to agree to the addition of new departments especially in those cases where the bidder has limited capacity to provide the commodities and services required by any additional departments. In this case, the PMT simply documents any agreement to add a new department by filing a letter or memorandum from the contractor in the procurement file.

The RFR should also be specific about each PMT participant's responsibilities relating to the resulting contract(s). For example, the RFR should describe the procuring department's role as authorized signatory of the contract, as keeper of the procurement file and as primary contact for procurement file administration issues. If authorized department users plan to use only a particular portion of the procurement, that should also be made clear to bidders. The RFR should also identify each authorized department user's role in the procurement process including evaluation, selection, contract negotiation, performance monitoring and ongoing procurement file management.

The PMT should design the RFR to meet the various needs of the authorized department users. The RFR can be drafted to select "qualified contractor lists" of multiple contractors from which the authorized department users may choose, rather than choosing only one contractor. In other cases, the PMT may determine that it is more cost effective or appropriate to select only one contractor, or one contractor by region.

The PMT then develops evaluation criteria for bidder selection as well as performance measurements that will be used by the PMT to determine and rate contractor performance.

NOTE: The procuring department **MUST** label the RFR a "**Multiple Department Procurement/Limited Department User Contract**" on Comm-PASS in the summary section of both the open solicitation and contract screens and list the participating departments involved in the procurement. A Comm-PASS posting is required ***regardless*** of the total anticipated value of the resulting contracts.

Multiple Department Procurement/Limited Department User Contracts: Bidder Selection, Contract Filing, Procurement File and Contract Management

The PMT reviews all responses and selects a contractor or multiple contractors based upon the evaluation criteria and the terms of the RFR. Selection of a contractor for a **Multiple Department Procurement/Limited Department User Contract** does not guarantee that a contractor will be used by any or all the authorized department users or guarantee any minimum usage by the Commonwealth.

The procuring department is responsible for completing all the required paperwork, including MMARS transactions, necessary to allow access to the contract(s) by all participating departments. The procuring department will act as the authorized signatory for all procurement file documents, contract amendments and MMARS transaction documents. Once the PMT has concluded negotiation of prices, rates and performance details, the procuring department executes a Standard Contract Form with each selected bidder on behalf of the authorized department users. Generally, the Standard Contract Form will indicate "rate contract", however, it is permissible to identify an estimated encumbrance level for each participating department as an attachment to the contract. The procuring department must file a Vendor Update Form (VU) along with a contractor-executed Commonwealth Terms and Conditions (Standard or Human and Social Services) and W-9 Form with the Office of the Comptroller, unless the contractor information and T&C are already posted on the MMARS Vendor File.

The procuring department also is responsible for submitting the appropriate transaction requests **on behalf of each participating department** to OSD for commodities and CTR for services to establish the **Multiple Department Procurement/Limited Department User Contract** on MMARS along with the record copy of the procurement file for each contractor. The appropriate transaction requests are as follows:

Commodities (OSD)

- A letter to OSD from the procuring department requesting the establishment of a Price Agreement Table with all relevant information including commodity code #, specific instructions for establishing multiple lines and any additional specifications.
- Commonwealth of Massachusetts Standard Contract Form originally signed by the procuring departments authorized signatory.
- Selected bidder's response (including any negotiated items and additional conditions).
- Request for response (including all applicable attachments) or copy of the Comm-PASS closed solicitation summary which verifies the location of the RFR, including RFR Reference Number on Comm-PASS (see Chapter 5 for more details on this RFR filing option).

Services (CTR)

- A Master Service Agreement Table Update Form for each participating department originally signed by the procuring departments authorized signatory.
- Commonwealth of Massachusetts Standard Contract Form originally signed by the procuring departments authorized signatory.
- Selected bidder's response (including any negotiated items and additional conditions).
- Request for response (including all applicable attachments) or copy of the Comm-PASS closed solicitation summary which verifies the location of the RFR, including RFR Reference Number on Comm-PASS (see Chapter 5 for more details on this RFR filing option).

The department processing the transaction is considered the record keeper responsible for maintaining the copy of the procurement file (which includes the executed Standard Contract Form, a copy of the RFR or a copy of the Comm-PASS closed solicitations summary page, and the original contractor response) for each contractor. The record keeper is responsible for maintaining the record copy of the procurement file as a public record, responding to public records requests involving the procurement file in accordance with M.G.L. Chapter 66, and for archiving the record copy in accordance with MMARS MEMO #287, or as amended.

The procurement file compiled by the PMT will be housed with the procuring department. The PMT should meet regularly to monitor the use of the **Multiple Department Procurement/Limited Department User Contract** and evaluate contractor performance based upon the established performance measurements. The procuring department PTL listed in the Comm-PASS closed solicitations summary page acts as the contact person for the procurement file and the customer service representative for departments using the contract. Unless specified in the RFR, any problems, adjustments, amendments or other required negotiations between a PMT department and a contractor will be handled through the procuring department or the PMT as a whole, and not by any of the individual authorized department users.

Departments Use of Multiple Department Procurement/Limited Department User Contract

Authorized department users may contact contractors directly to purchase commodities and services under a **Multiple Department Procurement/Limited Department User Contract**. The authorized department users are required to encumber sufficient funds for any requested commodities and services, and must comply with the terms of the procurement (the RFR terms, the contractor's RFR response and any additional negotiated terms). Similar to a statewide procurement file, no additional procurement file documentation is required to be executed by an authorized department user other than an encumbrance document. Authorized department users are expected to use the contracts created under this option unless the contract no longer meets their specialized needs.

Although the main procurement file is maintained by the procuring department, all authorized department users using a **Multiple Department Procurement/Limited Department User Contract** are encouraged to have ready access to a copy of the RFR and RFR response(s) from contractors as well as any other negotiated terms. Authorized department users must maintain a file with encumbrance documents for all purchases from the procurement. If copies of the RFR response(s) are not maintained in the department user's procurement file, the department must have a document on file that references the location of the main procurement file at the office of the procuring department.

(4) Single Department Procurement/Multiple Department User Contracts

Sometimes a department may need to procure a specific commodity or service that might also be suitable for purchase by other departments but, the procuring department may not want to act as the lead department or Procurement Team Leader (PTL) for other purchasing departments.

Under a **Single Department Procurement/Multiple Department User Contract**, the procuring department conducts a procurement based upon its own needs, but drafts the RFR with the option for other departments to also purchase the same commodities or services. The potential of additional purchasers might attract greater interest and competition from prospective bidders who might otherwise not respond to the solicitation at the funding level for a single department but would respond if there were opportunities for expanded markets to sell commodities or services to other departments.

This type of procurement might also attract bidders that would not respond to a statewide contract procurement (because the bidder could not guarantee to meet the needs of all departments that requested performance) but could respond to a smaller number of departments. The possibility of additional purchasers under this type of procurement can also result in enhanced prices and performance for the procuring department.

Unlike statewide contracts, Executive departments are not required to use existing **Single Department Procurement/Multiple Department User Contracts**.

Departments using a **Single Department Procurement/Multiple Department User Contract** are “piggy-backing” onto an already existing procurement and are completely relieved of the responsibility of conducting a competitive procurement. This results in significant cost savings, time savings (usually a minimum of 1-3 months) and in expedited contracting for the commodities or services needed.

RFR Drafting and Comm-PASS Posting Considerations for a Single Department Procurement/Multiple Department User Contracts

The procuring department assembles a department PMT to conduct the procurement, which may include members from other departments with similar needs or interests. The PMT should design the RFR to meet the specific needs of the procuring department, but also include some flexibility to be able to meet the various needs of other potential purchasing departments. The RFR can be drafted to select "qualified contractor lists" of multiple contractors from which the procuring department and other departments may choose, rather than choosing only one contractor. In other cases, the PMT may determine that it is more cost effective or appropriate to select only one contractor, or one contractor by region.

For the benefit of potential bidders, the RFR should clearly identify the procuring department and that other departments may contract using the RFR and winning response(s). The RFR should state that the procuring department may be conducting the procurement on behalf of other departments, however, each department is separately responsible for contracting under the RFR as if each department had conducted its own procurement. The PMT also develops the evaluation criteria for bidder selection as well as performance measurements that will be used by the PMT to determine and rate contractor performance.

The procuring department is required to post an RFR for a "**Single Department Procurement/Multiple Department User Contract**" on Comm-PASS, AND clearly label the RFR as **a** "**Single Department Procurement/Multiple Department User Contract**" on Comm-PASS in the summary section of both the open solicitation and contract screens. This listing is necessary so that other departments interested in using this procurement can easily identify the procurement through the search capabilities in Comm-PASS. A Comm-PASS posting is required ***regardless*** of the total anticipated value of the resulting contracts.

Single Department Procurement/Multiple Department User Contracts - Bidder Selection, Contract Filing, Procurement File and Contract Management

The PMT reviews all responses and selects a contractor or multiple contractors based upon the evaluation criteria and the terms of the RFR. Selection of a contractor(s) does not guarantee that a contractor will be used by more than the procuring department or guarantee any minimum usage by the Commonwealth.

The procuring department will act as the authorized signatory for all procurement file documents, procurement file amendments and any other documents for its use only. Once the PMT has concluded negotiation of prices, rates and performance details the procuring department executes a Standard Contract Form with each selected bidder for its use only. The Standard Contract Form can be executed as a maximum obligation contract or a rate contract. Any estimated maximum obligation in the RFR is technically binding only on the procuring department and not subsequent department users. Any rates are binding on other department users of the procurement file, or unless the RFR indicates a lower rate is available if additional departments purchase from the procurement. Department users may always attempt to negotiate better rates within the terms of the RFR.

The procuring department must also file a Vendor Update Form (VU) along with a contractor-executed Commonwealth Terms and Conditions (Standard or Human and Social Services) and W-9 Form with the Office of the Comptroller, unless the contractor information and T&C are already posted on the MMARS Vendor File.

The procuring department is responsible for executing the appropriate encumbrance, PD (commodities) or SC, SC/SR or LO (services) exclusively **for its own use**. Depending upon the procuring department's encumbrance delegation limit, the record copy of the procurement file (which includes the executed Standard Contract Form, a copy of the RFR or a copy of the Comm-PASS closed solicitations summary page, and the original contractor response) for each contractor, will be filed at one of the following locations:

- at the procuring department, as record keeper, if the procurement file transaction does not exceed the department's encumbrance delegation limit;
- OSD, as record keeper, if the procurement file transaction is for commodities and exceeds the department's encumbrance delegation limit; or
- CTR, as record keeper, if the procurement file transaction is for services and exceeds the department's encumbrance delegation limit.

The record keeper will be responsible for maintaining the record copy of the procurement file as a public record, responding to public records requests involving the procurement file in accordance with M.G.L. Chapter 66, and for archiving the record copy in accordance with MMARS MEMO #287, or as amended.

The procurement file compiled by the PMT will be housed with the procuring department. The PMT will meet regularly to monitor the use of the **Single Department Procurement/Multiple Department User Contract** and evaluate contractor performance based upon the established performance measurements for its use only. Other department users should also evaluate and maintain records of contractor performance for their own use.

NOTE: The procuring department will NOT be held responsible for any other user department's legal or fiscal obligations incurred using the procurement.

Department Use of Single Department Procurement/Multiple Department User Contracts

A department may take advantage of a procurement that has already been conducted by another department if:

- the RFR was posted on Comm-PASS as a **Single Department Procurement/Multiple Department User Contract** indicating an option to allow other departments to contract under that particular RFR, and
- the department purchases within the scope of the RFR and selected response(s) for its own use.

Although the **Single Department Procurement/Multiple Department User Contract** option eliminates a department's responsibility to conduct a competitive procurement, the department is still required to execute and file all the required contract and amendment documents and comply with all other requirements as if the department had conducted its own procurement.

Departments that want to use the **Single Department Procurement/Multiple Department User Contract** should**:**

- obtain a copy of the RFR from Comm-PASS;

- contact the procuring department to obtain a copy of the response(s) for the winning contractor(s), any required RFR attachments and any additional negotiated terms;
- communicate directly with the winning contractor(s) from the original procurement to negotiate and execute a Standard Contract Form as if the department user had conducted the procurement itself.

The department is responsible for encumbering the appropriate encumbrance, PD (commodities) or SC, SC/SR or LO (services) exclusively **for its own use**. Depending upon the department user's encumbrance delegation limit, the record copy of the procurement file (which includes the executed Standard Contract Form, a copy of the RFR or a copy of the Comm-PASS closed solicitations summary page, and a copy of the contractor response) for each contractor, will be filed at one of the following locations:

- at the department, as record keeper, if the procurement file transaction does not exceed the department's encumbrance delegation limit;
- OSD, as record keeper, if the procurement file transaction is for commodities and exceeds the department's encumbrance delegation limit; or
- CTR, as record keeper, if the procurement file transaction is for services and exceeds the department's encumbrance delegation limit.

The record keeper will be responsible for maintaining the record copy of the procurement file as a public record, responding to public records requests involving the procurement file in accordance with M.G.L. Chapter 66, and for archiving the record copy in accordance with MMARS MEMO #287, or as amended.

All required documents and any subsequent documentation compiled during the procurement must be retained in the department user's procurement file. Copies of procurement file documentation compiled by the original procuring department are not required. Unless specified in the RFR, any problems, adjustments, amendments or other required negotiations between a department user and a contractor will be handled by the department user under the terms of the RFR, and not by the original procuring department.

All the same Handbook policies and procedures apply to a department user's use of a **Single Department Procurement/Multiple Department User Contract**. The procurement file(s) will be treated as if the department user had conducted the procurement itself. Amendments, duration, options to renew, scope of negotiation etc. will all be governed by the terms of the RFR. Interim contracts will also be available as specified in the Handbook.

(5) Single Department Procurement/ Single Department User Contracts

A department with specialized needs always has the option to procure contracts for commodities and services that an not be provided by an existing statewide contract. The RFR should clearly state the procurement is intended for the exclusive use of the procuring department. If the RFR is silent as to use by additional departments or OSD approved eligible entities, then the RFR is limited to use only by the procuring department.
The procuring department follows all the requirements outlined in the previous section on **Single Department Procurement/Multiple Department User Contract**, with the exception that the RFR is drafted exclusively for and may be used ONLY by the procuring department.

Important Reminders for all RFR Procurements

- RFRs should be drafted to encourage responses from State Office of Minority and Women's Owned Business (SOMWBA) certified bidders to assist departments in meeting affirmative market benchmarks for department expenditures with certified M/WBE contractors pursuant to Executive Order 390. Please see Chapter 3 for additional information about these requirements.
- RFRs should also be drafted, when appropriate, to promote the use of environmentally preferred products (EPP) for requested commodities and services. Please see Chapter 3, "RFR Section 7" for additional information about these requirements.
- Departments should carefully review Chapter 3 “How to do a Competitive Procurement”, Chapter 4 “How to Draft a Request for Response”; Chapter 5 “Contract Execution and Management”; Chapter 6 “For POS ONLY: Audit and Compliance Requirements” if applicable and the appendices to ensure that the RFR meets minimum mandatory requirements.

	Statewide Contract Procurement Conducted By OSD	Statewide Contract Procurement Conducted By OSD-Designated Procuring Department	Multiple Department Procurement/Limited Department User Contract	Single Department Procurement/Multiple Department User Contract	Single Department Procurement/Single Department User Contract
Which departments may use this type of contract?	All departments and eligible entities.	All departments and eligible entities.	Limited to departments named in RFR, unless otherwise specified in RFR .	Any departments unless otherwise limited or specified in the RFR.	Procuring department only.
Which department is the "procuring department" for this type of contract?	OSD (on behalf of all departments).	An OSD-designated department (on behalf of all departments).	A single department is selected from participating departments.	The procuring department listed in the RFR.	The procuring department listed in the RFR.
How can other departments use this type of contract?	Department users review appropriate OSD Updates (and RFR on Comm-PASS if necessary) to effectively use the contract. Department users contact authorized statewide contractors directly to establish purchases.	Department users review appropriate OSD Updates (and RFR on Comm-PASS if necessary) to effectively use the contract. Department users contact authorized statewide contractors directly to establish purchases.	Participating department users should have ready access to necessary contract information (RFR and response and any negotiated terms) to effectively use the contract. Participating department users contact contractors directly to establish purchases.	Department users may obtain copy of RFR from Comm-PASS, and copy of winning response(s) and attachments from procuring department. Department users contact contractor(s) directly to establish their own contract(s) and complete the contract filing process as if the department had conducted its own procurement.	N/A No other department users.
How is the availability of a contract communicated to other departments?	OSD issues OSD Updates OSD maintains listing of all statewide contracts at: *www.state.ma.us/osd/statewid/statewid.htm.* Listed as "*Statewide Contract*" on Comm-PASS to facilitate searches.	OSD issues OSD Update drafted by OSD-Designated department. OSD maintains listing of all *statewide contracts at www.state.ma.us/osd/statewid/statewid.htm.* Listed as "*Statewide Contract*" on Comm-PASS to facilitate searches.	Listed as "*Multiple Department Procurement/Limited Department User Contract*" on Comm-PASS to facilitate searches.	Listed as "*Single Department Procurement/Multiple Department User Contract*" on Comm-PASS to facilitate searches.	N/A No other department users.
Which department assembles a Procurement Management Team (PMT) and conducts the procurement ?	OSD assembles a PMT of key departments.	The OSD-designated procuring department assembles a PMT of key departments.	The group of interested departments form a PMT.	The procuring department.	The procuring department.
What are RFR posting or distribution requirements for this type of contract?	OSD posts statewide contract RFR on Comm-PASS listing "*Statewide Contract*" in the summary section of the Comm-PASS RFR screen.	OSD-designated procuring department posts statewide contract RFR on Comm-PASS listing "*Statewide Contract*" in the summary section of the Comm-PASS RFR screen.	Procuring department posts RFR on Comm-PASS (regardless of anticipated value of RFR) listing both "*Multiple Department Procurement/Limited Department User Contract*" and department users in the summary section of the Comm-PASS RFR screen.	Procuring department posts RFR on Comm-PASS (regardless of anticipated value of RFR) listing "*Single Department Procurement/Multiple Department User Contract*" in the summary section of the Comm-PASS RFR screen.	Posting or distribution requirements are based on anticipated total value of RFR. If RFR total value is $50,000 or less, the RFR must be distributed to a minimum of 3 qualified bidders. If RFR total value is over $50,000, the RFR must be posted on Comm-PASS.

	Statewide Contract Procurement Conducted By OSD	Statewide Contract Procurement Conducted By OSD-Designated Procuring Department	Multiple Department Procurement/Limited Department User Contract	Single Department Procurement/Multiple Department User Contract	Single Department Procurement/Single Department User Contract
Which department has the authority to execute the Standard Contract Form & other contract documentation (including amendments)?	OSD on behalf of all departments.	The OSD-designated procuring department on behalf of all departments.	The procuring department on behalf of the participating departments listed in the RFR.	The procuring department for its own use. All other department users execute a separate Standard Contract Form and related documents for their own use.	The procuring department for its own use.
What are the procuring department's contract requirements for this type of contract?	The department identified above compiles a contract for each contractor which includes: 1. Contractor-executed Commonwealth Terms and Conditions. 2. Executed Standard Contract Form. 3. Copy of RFR or Comm-PASS RFR Summary screen print. 4. Contractor's original response including any negotiated changes.				
What are the department user contract requirements for this type of contract?	None. Equipment/Service Confirmation Form may be used to document details of performance as appropriate.	None. Equipment/Service Confirmation Form may be used to document details of performance as appropriate.	None. Equipment/Service Confirmation Form may be used to document details of performance as appropriate.	Department user compiles contract for each contractor which includes: 1. Executed Standard Contract Form. 2. Copy of RFR or Comm-PASS RFR Summary screen print. 3. Copy of contractor's response. Department user then completes contract filing process for each contractor.	N/A No Additional department users.
Which department files the Commonwealth Terms and Conditions, W-9 and sets up the MMARS vendor file, if not already on file at the CTR?	OSD as needed.	OSD-Designated procuring department as needed.	Procuring department as needed.	Procuring department as needed.	Procuring department as needed.
Which department is considered the "record-keeper" and responsible for maintaining the record copy of the contract, archiving the record copy in accordance with MMARS MEMO #287, and responding to public records requests under M.G.L. c. 66?	OSD.	OSD-Designated procuring department.	Procuring department files record copy of a contract for each contractor with either OSD (Commodities) or CTR (Services) who will act as record keeper.	Depending upon procuring department's or department user's transaction delegation limit, the record copy will be maintained either at the department as record keeper (if transaction is less than department's transaction delegation limit) or the record copy will be filed with either OSD (Commodities) or CTR (Services) who will act as record keeper (if transaction exceeds department's transaction delegation limit).	Depending upon Department's transaction delegation limit, the record copy will be maintained either at the department as record keeper (if transaction is less than department's transaction delegation limit) or the record copy will be filed with either OSD (Commodities) or CTR (Services) who will act as record keeper (if transaction exceeds department's transaction delegation limit).

	Statewide Contract Procurement Conducted By OSD	Statewide Contract Procurement Conducted By OSD-Designated Procuring Department	Multiple Department Procurement/Limited Department User Contract	Single Department Procurement/Multiple Department User Contract	Single Department Procurement/Single Department User Contract
Which department is responsible for establishing contract encumbrances and payments in accordance with Commonwealth Bill Paying Policy (MMARS MEMO #289)?	OSD establishes Price Agreement Tables (commodities) or MSA Tables (services). Department users are responsible for encumbering PG (commodities); or SC, SC/SR, LO (services) and processing timely payments (PV).	OSD establishes Price Agreement Tables (commodities) or MSA Tables (services). Department users are responsible for encumbering PG (commodities); or SC, SC/SR, LO (services) and processing timely payments (PV).	Procuring department submits Price Agreement Table (commodities) to OSD or MSA Tables (services) to CTR, for each department listed in RFR. Department users are responsible for encumbering PG (commodities); or SC, SC/SR, LO (services) and processing timely payments (PV).	Procuring department responsible for encumbering PD (commodities); or SC, SC/SR, LO or MSA table (services) for its own use. Other department users are responsible for encumbering PD (commodities); or SC, SC/SR, LO (services) for their own use. If applicable, both the procuring department and any other users submit MSA tables to CTR for their own use. All departments are responsible for processing timely payments (PV).	Procuring department responsible for encumbering PD, SC, SC/SR, LO or MSA table (services) for its own use and processing timely payments (PV).
Which department is responsible for maintaining the procurement file?	OSD.	OSD-Designated procuring department.	Procuring department .	Procuring department compiles and maintains procurement file for its own use. Other department users compile and maintain procurement file (for their own use. However, procurement file is limited to documentation created by the department user. Procurement or contract documentation created by procuring department is not required.	Procuring department.
Which department is responsible for contract management and monitoring contractor performance?	OSD with assistance from the PMT.	OSD-delegated procuring department with assistance from the PMT.	Procuring department with assistance from the PMT.	Procuring department acts as contract manager and monitors contractor performance (with assistance of PMT) for its own use. Other department users act as contract managers and monitor contractor performance for their own use.	Procuring department.

AGREEMENT GUIDANCE FOR STATEWIDE CONTRACT PROCUREMENTS CONDUCTED BY OSD-DESIGNATED DEPARTMENTS

The Operational Services Division (OSD) is continually identifying opportunities for establishing new or improved statewide contracts; however OSD has limited resources or expertise to pursue all of these options. Therefore, OSD must select, from many potential projects, which statewide contracts are most urgently needed by departments. Pursuant to 801 CMR 21.04, OSD may designate another department to take the lead in establishing a statewide contract in the areas of its particular expertise or interest.

An OSD-designated department will act as the procuring department and lead the Procurement Management Team (PMT) for the commodities and services to be procured. The PMT for the statewide contract will be comprised of members from "customer" departments that have expressed a need for, or have historically procured, the specified commodities or services.

The OSD-designated department and OSD have a common interest in insuring a successful procurement and contract. In order for both parties to understand each other's responsibilities and expectations, the OSD-designated department and OSD will execute a formal designation agreement (signed by a person in each department with signatory authority). This agreement will specify the procurement scope and each department's responsibilities and tasks. Please use the following as a guide for writing the formal designation agreement.

The agreement should include these fundamental items:

The procurement scope

The OSD-designated department agrees to –

- assemble a statewide PMT with regularly scheduled meetings.
- perform all the same procurement and contract responsibilities and duties as normally provided by OSD for statewide contracts by following 801 CMR 21.00 and *The Commonwealth of Massachusetts Procurement Policies & Procedures Handbook* issued by OSD.
- be the Commonwealth's signatory for all contract documentation and contract amendments.
- maintain the statewide contract procurement file.
- maintain the record copy of the statewide contract as part of its procurement file and act as the recordkeeper for that statewide contract in accordance with M.G.L. Chapter 66 and MMARS MEMO #287, or as amended.
- provide the primary point of contact responsible for the RFR.
- work cooperatively with OSD and Commonwealth departments for a best value contract.
- set the procurement schedule and make reasonable efforts to keep the PMT to that schedule.

OSD agrees to –

- provide technical assistance.
- provide a PMT member as needed.
- publish and distribute the *OSD Update* with amendments, as necessary
- finalize MMARS table information

The following is a table of specific tasks that must be completed. Most tasks will be the responsibility of the OSD-designated department unless the designation agreement specifies otherwise. The agreement should be clear as to the tasks each department takes as their responsibility. This agreement should not include this table, but instead use the table as a checklist of some items to be considered in the agreement.

		Dept	**OSD**
	The RFR process		
1.	Research the Commonwealth's purchasing habits and requirements		
2.	Research the industry and past procurements here and in other government entities		
3.	Decide on the best value strategy including the number of contractors, cost and other items		
4.	Write the RFR sections with standard statewide contract language and Commonwealth required forms		
5.	Write the RFR business sections		
6.	Write the RFR technical sections		
7.	Decide on MMARS table organization		
8.	Write the evaluation criteria		
9.	Post and maintain the RFR and contract information on Comm-PASS		
10.	Receive and secure the proposals until the contract is signed		
11.	Evaluate the proposals		
12.	Send W-9 and T&C documents to the Comptroller. Enter VU as needed		
13.	Sign the contracts	X	
14.	Finalize MMARS table information		
15.	Update MMARS for the Statewide Contract		X
16.	Write the OSD Update as the contract announcement		
17.	Publish and distribute the *OSD Update* with amendments, as necessary		X
	The Contract process		
18.	Be the primary point of contact for eligible entities and contractors		
19.	Make on-going decisions about contract scope, equipment and services		
20.	Use reports and performance measures to monitor contract and contractor effectiveness on a regular basis		
21.	Make decisions on contractor removal, retention, execution of options to renew and enrollment periods as needed		
22.	Recommend changes to MMARS based on contract changes		
23.	Update MMARS tables		X
24.	Write new *OSD Updates* after contract changes and extensions		
25.	Publish and distribute new *OSD Updates*		X

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