

801 CMR: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

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

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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 State's 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.

21.05: continued

(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.

(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.

NON-TEXT PAGE

21.05: continued

(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:

(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.

21.06: continued

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

21.06: continued

(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 Bidder offers to provide EPPs as part of Contract performance, and for any RFR Reponse 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.

21.07: continued

(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;
- (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 and Executive Orders 279 and 350.