

 <p style="text-align: center;">Massachusetts Department Of Correction</p> <h1 style="text-align: center;">POLICY</h1>	Effective Date	Responsible Division Deputy Commissioner, Administration
	4/4/2022	
	Annual Review Date	
	4/4/2022	
Policy Name	M.G.L. Reference:	
103 DOC 340 DEPARTMENTAL PURCHASING PROCEDURES	M.G.L. c. 29 § 29A; M.G.L. c. 30 §§ 51 & 52; M.G.L. c. 124 §§ 1(c), (m), (o) & (q); M.G.L. c. 149, §§ 44A-M; M.G.L. c. 30, §§ 39M; 801 CMR 21.00, <u>Procurement of Commodities or Services, Including Human and Social Services</u>	
	DOC Policy Reference:	
	103 DOC 342	
	ACA/PREA Standards:	
	5-ACI-1B-08; 5-ACI-1B-15; 2-CO-1B-09; 2-CO-1C-17; 4-ACRS-7D-26	
Attachments	Inmate Library	Applicability: Staff
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Public Access		Location:
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Department's Central policy file Each Institution's policy file
PURPOSE:		
To establish certain Departmental purchasing procedures and to summarize state procedures which pertain specifically to the Department of Correction ("Department").		
RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:		
Deputy Commissioner, Administration Executive Director of Administrative Services Superintendents/Division Heads Fiscal Officers		
CANCELLATION:		
103 DOC 340 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules and/or regulations regarding purchasing practices which are inconsistent with this policy.		
SEVERABILITY CLAUSE:		
If any part of 103 DOC 340 is for any reason, held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.		

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340.01

GENERAL PURCHASING PROCEDURES AND PHILOSOPHY

1. The Commonwealth of Massachusetts and the Department are committed to the procurement of all goods and all services, unless otherwise exempted under 801 CMR 21.00, Procurement of Commodities or Services, including Human and Social Services, through the competitive, best value, bid procedure in a manner in which their interests can be best served. Procurements shall be considered in the best interest, or best value, to the Commonwealth and the Department 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 the Commonwealth and the Department's procurement planning and implementation.

2. All Department employees who are responsible for the purchase of services, materials, supplies and equipment shall become familiar with the Massachusetts Management, Accounting, and Reporting System "MMARS" policies, procedures and job aids, the Commonwealth of Massachusetts' Expenditure Classification Handbook, 801 CMR 21.00, and the Operational Services Division's Procurement Information Center. For procurement of construction contracts employees should be familiar with Massachusetts General Laws, Chapter 149, Sections 44A-M and Chapter 30, Section 39M.

The Procurement Information Center and 801 CMR 21.00 are available on the Internet at

<https://www.mass.gov/handbook/conducting-best-value-procurements>

The Expenditure Classification handbook is also available on the Internet at <https://www.macomptroller.org/expenditure-classification-handbook> policies and procedures as well as job aids and forms are

available on the Internet at the Office of the State Comptroller's Intranet site at <http://www.comptroller.state.ma.us/>

Contract forms are also available on the Intranet of the Office of the State Comptroller and the Operational Services Division at the following sites:

<https://www.macomptroller.org/forms>

and

<https://www.mass.gov/lists/osd-forms>.

3. 103 DOC 340 is intended to supplement the State Purchasing Agent's and Comptroller's policies and not to replace them.

4. Under M.G.L. c. 30 §§ 51 & 52, the state purchasing agent is charged with overseeing of the procurement of goods, supplies, equipment, and services incidental thereto, except for the purchases of legislative or military supplies unless otherwise provided for by executive order or other statutory mandate. All procurement from funds under the control of the Department are covered by the provisions of this policy.
5. As per the regulation 103 CMR 455.15 § 2, all state, county and municipal agencies must purchase available items and materials from Correctional Industries provided that specifications and time schedules for delivery can be met. The catalog is available on the Internet at <http://www.masscor.us/>.

340.02

MASTER BLANKET PURCHASE ORDERS

1. Since many of the commodities or services purchased are used in common by many state agencies, contracts are negotiated and entered into by the Operational Services Division (“OSD”) with vendors to furnish items at definite prices covering certain specified periods of time. This type of contract, along with Departmental contracts, is referred to as Master Blanket Purchase Orders (MBPOs). These contracts can be found on the Commonwealth’s web page at <https://www.commbuys.com/bs/>
2. When a statewide contract is awarded to a vendor, agencies are then notified via OSD updates at <https://www.commbuys.com/bs/>
3. A Master Blanket Purchase Order (MBPO) includes the following:
 - a. General award description.
 - b. Period covered by the award.
 - c. Item(s) covered by the award.
 - d. Unit of measure and unit price.
 - e. Minimum order requirements.
 - f. Contract number (MBPO number).
 - g. Item number (line number).
 - h. Vendor and vendor code.
 - i. Commodity code.
 - j. Shipping charges (if applicable).
 - k. Discounts (if applicable).
4. Department institutions are required to purchase items from the vendors listed in such master agreements during the period covered by the award.

340.03 **ENCUMBRANCE DOCUMENTS**

All expenditures for goods and services should be made against an encumbrance (the setting aside funds for a specific item or items to be purchased).

Funds may be encumbered for the purchase of goods or services in one (1) of the following modes:

1. Commodity Purchase Order
2. General Accounting Encumbrance
3. Master Blanket Purchase Order
4. Internal encumbrance
5. Recurring Payment Order

340.04 **GENERAL ACCOUNTING ENCUMBRANCE**

General accounting encumbrance is used for the procurement of commodities and services that are not on Master Blanket Purchase Order and have a value of less than the Departmental incidental purchase level or for certain recurring obligations exempted from this dollar limit. Please refer to the Expenditure Classification Handbook for exact limitations.

340.05 **COMMODITY PURCHASE ORDER**

A Commodity Purchase Order is used for the purchase of all goods except for those listed in section 340.04.

340.06 **CONTRACTS**

For the purpose of this policy, contracts shall pertain to all contractual agreements executed from subsidiaries CC, EE, GG, HH, JJ, LL, MM, NN, RR, and UU (as described in the Expenditure Classification Handbook at <https://www.macomptroller.org/expenditure-classification-handbook> the exception of Intra-governmental Service Agreements (ISA's).

1. General Provisions
 - a. No contract shall be used as a substitute for state positions.
 - b. The duration of contracts shall be for a specified period of time or the duration of the bond account.
 - c. No contractor or employee of a contractor shall directly or indirectly supervise any employee of the Commonwealth. Employees of other public or private organizations providing a service to the agency are accountable to the administrative officer of the program in which they work.

- d. Individual contractors shall not be compensated for any time, including, but not limited to vacation time, sick time, or holidays during which the contractor has not actually worked or performed services pursuant to the contract.
- e. Contractors shall not be eligible for inclusion in the state employee group insurance; however, contracted individuals who have an employee/employer relationship with the Commonwealth are eligible for retirement coverage in accordance with the Omnibus Budget Reconciliation Act of 1990 (OBRA).
- f. Contracts for legal services shall also be approved by the Office of the Attorney General prior to submission to the Office of the Comptroller. Such approval shall be in writing and utilize the Attorney General Review Form for Attorneys Providing Legal Services. See the instructions at: <http://www.mass.gov/ago/docs/ourorganization/review-approval-process-legal-services.pdf>.

2. Open Order Contracts

An open order contract may be utilized to request authorization of related services provided by more than one (1) contractor so long as the following conditions are met:

- a. The services to be provided all fall within the same object class.
- b. The number of separate contractors shall be at least three (3) or the number of contractors may be impossible to predict at the time.
- c. The work to be performed is recurrent and intermittent, such that the scope of services to be provided by an individual contractor may be difficult to determine. If the total exceeds the Department's incidental purchase level annually, contract conditions shall apply.

When utilizing an open order contract or amending same, an Open Order Request for Approval form located on the Comptroller's internet site <https://www.macomptroller.org/forms> titled "Open Order Request for Approval" must be attached to all documents. The use of an open order is not considered a procurement method. It is only an accounting treatment and does not take the place of a procurement method.

3. Contract Document Requirements

a. With the exception of the MM object class and Master Blanket Purchase Orders, the following contract documents are required for agreements exceeding the Department's incidental purchase level:

1. RFR Procurement Evidence;
2. Business Reference Form
3. Signed Standard Contract Form (Commonwealth Terms and Conditions included);
4. Signed Contractors Authorized Signatory Listing Form;
5. If over \$250,000.00, a Supplier Diversity Plan Form.
6. W-9, Request for Verification of Taxation Reporting Information.
7. Prison Rape Elimination Act (PREA) Form
8. Prompt Payment Discounts (PPD) Form,
9. Environmentally Preferred Products (EPP)
10. Electronic Fund Transfer (EFT) Form,
11. Attachment A (pricing) - if necessary,
12. Certificate of Insurance,
13. Omnibus Budget Reconciliation Act (OBRA) Form - individuals only;
14. Open Order Request for Approval Form (if applicable).

4. Payments

A contractor shall not begin performance nor be paid until a standard contract form has been 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:

- 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 Attorney General; or,
- d. A later date specified in the standard contract form.

340.07 **INTERNAL PURCHASES**

- 1. The internal encumbrance shall be used to record the encumbrance of funds for goods and services provided by a seller department. The internal encumbrance document shall be entered into a "held" status until the document is edited and approved by the buyer department. Examples would include, but not be limited to:

Surplus Food -	Department of Education (DOE)
Fuel Charged -	Department of Public Works (DPW)
Surplus Property -	Operational Services Division (OSD)
Tier Training -	Commonwealth's Human Resources Division (HRD)

- 2. Surplus Property Purchases

The purchase of any surplus motor vehicle requires prior written justification and subsequent approval from the director of administrative services and the Executive Office of Administration and Finance.

340.08 **CONTRACT FOR CONSTRUCTION**

Contracts for construction shall be in accordance with either M.G.L. chapters 30 or 149.

340.09 **CONTRACT FOR LEASE**

Please refer to 103 DOC 342, *Rentals/Leases* to set up an encumbrance for all lease, Tax Exempt Lease Purchases ("TELP") or rental agreements.

340.10 **EMERGENCY PROCEDURES**

State agencies may make emergency purchases of goods and services when necessary to protect life and property. The following procedures shall be followed:

1. Non-Capital Funds
 - a. Whenever feasible, bids shall be solicited prior to the purchase.
 - b. If over the department delegation amount, please follow procedures for applicable goods or services as contained herein.
2. Capital Funds
 - a. Whenever feasible, bids shall be solicited prior to the purchase.
 - b. The Office of Administrative Services - Headquarters shall be notified at the earliest opportunity of the nature of the emergency.
 - c. The Division of Capital Asset Management and Maintenance (DCAMM) must issue an EMERGENCY WAIVER OF PUBLIC BIDDING LAWS. This waiver still requires at least three (3) bids which may be conducted by telephone; however, requires a memorandum documenting the action taken and the persons contacted.
 - d. All payment vouchers shall be signed by the project engineer before it can be processed. Therefore, all invoices shall be sent to the institution or project manager for signature before being sent to the respective fiscal office.

340.11

PURCHASE OF SERVICE CONTRACTS (POS)

For the purpose of 103 DOC 340, the purchase of service contracts shall construe the procurement of client services from providers of social, habilitative, rehabilitative, health, mental health, mental retardation, special education, employment and training, elder services, and all expenditures under the MM object class, objects M01, M03, MM3, M04.

1. General Provisions
 - a. The Department shall take affirmative measures to implement the Supplier Diversity Program in Accordance with Executive Order 565 and with the guidelines issued by the Operational Services Division which promotes equality in the state contracting market by ensuring full participation of minority and women owned business enterprises (M/WBEs), Service Disabled Veteran Owned Businesses (SDVOBEs), Veteran-Owned Business Enterprises, Disability-Owned Business Enterprises, and LGBT-Owned Business Enterprises.

- b. The conduct of all parties to a procurement is governed by the Massachusetts Conflict of Interest Law, M.G.L., chapter 268A.
- c. Fiscal conduits are prohibited. No institution shall award a contract:
 - To acquire any goods for institutional use.
 - To defray the expenses of services rendered by individuals hired or supervised in the daily performance of their work by personnel in the classified service of the Commonwealth.
 - Solely to acquire payroll or fiscal management for a program of client services.
- d. No provider shall use funds, received pursuant to any agreement, to lobby staff or members of the General Court for additional appropriations to the procuring institution/program which awarded said contract or cooperative funding agreement.
- e. In contemplation of procurement, the procuring institution/program may prepare a written solicitation of interest and information for the Internet on COMMBUYS or other appropriate means of dissemination to interested parties. The solicitation shall be described in sufficient detail to enable interested parties to respond appropriately. In general, the purposes of such a solicitation are to determine the extent of potential competition for a contemplated procurement or to solicit the advice of interested parties concerning appropriate procurement specifications. Such a solicitation shall not obligate the procuring institution/program to issue a request for response nor shall the failure of any party to respond to the solicitation limit its ability to respond to a subsequent request for responses. All such solicitations shall be coordinated through the Contract Review Office.
- f. No institution/program shall award a contract to any provider or approve a subcontract or assignment to any state or federal department.
- g. Funds shall be available prior to any purchase of service contract being processed.
- h. Each institution/program shall maintain all records associated with the procurement, including the RFR, the bids, and evaluations, and all contract documents including justification statements and waivers for the period as determined by the Records Conservation Board pursuant to M.G.L., chapter 30,

§ 42, and subsequent performance measurements, data, and contract monitoring systems and files.

2. Procurement of Purchase of Service Contracts

- a. All procurement of purchase of service agreements whether a competitive, competitive exemption under 801 CMR 21.00, or pre-qualified service procurement shall adhere to the procedures as prescribed by 801 CMR 21.00 issued by the OSD.
- b. Contract compliance, financial reporting and auditing requirements for all purchase of service procurements shall be in accordance with the procedures as prescribed, under 808 CMR 1.00, Compliance and Auditing.
- c. The institutional program shall notify the successful vendor in writing of the award of the contract. All other unsuccessful qualified vendors shall also be notified in writing.

3. Purchase of Services Contract Completion

Purchase of service contracts in the MM subsidiary shall adhere to the contract regulations in 801 CMR 21.00, auditing in 808 CMR 1.00, and forms required as defined in the Procurement Information Center issued by the OSD and listed on the Internet on COMMBUYS at <https://www.commbuys.com/bsol/>.

*Statement of Work and Objectives

The agreement shall include a full and detailed description of the scope and nature of the program of services to be rendered by the provider including any minimum or mandatory program requirements.

The agreement also shall include specific and measurable criteria and standards for evaluating the provider's productivity and performance in relation to desired individual client outcomes or overall program objectives.

*Fiscal Terms

In the case of fee-for-service, the agreement shall cite the applicable Rate Setting Commission's regulation (if applicable), specify the unit rate and its effective date, and define the service unit and any limitations on billable units. Except in the case of pre-qualified services agreements, the maximum obligation shall also be stated. A fee-for-service agreement may provide that services are to be paid at rates to be determined from time-to-time by a Rate Setting Commission. In such cases, the then current rate shall be specified in

the agreement. In the case of cost reimbursement, the agreement shall state the maximum obligation and shall incorporate a detailed budget. In the case of a cooperative funding agreement, the agreement shall state the agreed amount of the provider's financial support of the program, if any. In all cases, the agreement shall specify the methods and scheduling of payments.

*Required Reports and Applicable References

The agreement shall describe the content, timing, and where applicable, the format of all reports required of the provider during the term of the agreement and specifically cite all applicable statutes, regulations, policies, and procedures.

*Duration/Termination/Renewal

The agreement, shall, at a minimum, specify the anticipated duration defined in initial duration and any options to renew and provide for termination for cause, at any time, upon reasonable notice. In addition, the agreement may provide for termination without cause, upon proper notice.

*Performance Measures

All purchase of service contracts shall contain quantifiable performance measures that clearly articulate results and level of performance expected from the contract.

4. Purchase of Service Contract Modifications

All amendments which materially affect the agreement of the parties or any contract or cooperative funding agreement may be amended by mutual agreement of the parties involved provided that the conditions of 801 CMR 21.00 are satisfied and the appropriate contract forms are utilized.

340.12

CONTRACTS - CAPITAL FUNDS

Construction contracts shall be publicly bid. All contracts funded from capital funds shall be bid from the Office of Administrative Services, Headquarters.

1. General Procedures

- a. Once capital funds are identified, a project number shall be assigned. This number shall be used on all correspondence and contract documents.
- b. The project manager shall complete a Request to Bid form, include all appropriate documents, i.e., specifications, general

terms and conditions, etc. and submit same to the Office of Administrative Services for processing.

2. Construction Document Requirements

A standard construction contract shall be used for all non-emergency construction contracts funded from capital accounts. Hereinafter, all construction contract packages shall include:

- The advertisement for bids;
- Notice to Proceed Letter, which includes the dates of service for the project;
- Assurance that prevailing wage rates are being followed;
- In accordance with M.G.L. Chapter 149, contracts over \$25,000 shall include payment and/or performance bond(s) in accordance with the Massachusetts Public Construction Procurement laws (<https://www.mass.gov/service-details/important-changes-to-the-massachusetts-public-construction-procurement-laws>);
- A statement of tax compliance;
- A Bid price on the contract that parallels the encumbrance on the MMARS document;
- Schedule of participation in the Supplier Diversity Program.
- An Owner-Contractor Agreement.

3. Change Orders

Any deviation from the original scope of work shall be noted with a notice of intention and an extra work order and must be attached to a change order request. The change order request shall be signed by the project manager. With the exception of emergencies, funds need to be identified by the Administration Division before any work is authorized by a change order.

4. Payments

No final payments shall be made until the Office of Administrative Services receives a certificate of final inspection, release and acceptance.

340.13

RESPONSIBLE STAFF

1. The Director of Administrative Services, under the supervision of the Deputy Commissioner of Administration, is responsible for implementing and monitoring this policy throughout the Department. The Director of Administrative Services or his/her/their designee shall have access to all institutions and their fiscal records.

2. The respective fiscal office shall be responsible for implementation of this policy and for the development of any and all necessary and appropriate institutional policies and procedures.

340.14

RETENTION OF ACCOUNTING RECORDS/SOURCE DOCUMENTS

The department (facility/institution) copy of all fiscal documents shall be systematically filed to facilitate later retrieval for audit purposes.