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CONTRACTING WITH REGIONAL PLANNING AGENCIES:
OSD POLICY GUIDANCE 26 - 02

TO: Commonwealth Secretariats, Chiefs of Staff, Department Heads, Chief Procurement Officers, Chief Fiscal Officers, and General Counsels
FROM: Mark S. Fine, Assistant Secretary for Operational Services
DATE: March 3, 2026
RE: **OSD Policy Guidance 26-02: Contracting with Regional Planning Agencies**

Purpose

This policy guidance clarifies the procurement of services provided by Regional Planning Agencies (“RPAs”) by executive branch agencies (“agencies” or “departments”) under the jurisdiction of the Operational Services Division (“OSD”). OSD has received questions from agencies about how to partner with RPAs while remaining compliant with procurement statutes, regulations and policies. Based on its review of applicable state law, OSD has determined that departments may directly contract with RPAs as an exception to competitive procurement. The rationale for this finding is set out in the sections below.

Establishment of Regional Planning Agencies

RPAs are public bodies established under the regional planning law, G.L. c. 40B, to provide coordinated planning and development expertise and assistance to various state and local government partners on issues including land use, principal highways and expressways, bridges, airports, public utilities, public facilities, parks, recreational areas, public institutions and a variety of other matters.ⁱ

Competitive Procurement Requirements

The foundational rule described in state procurement law, G.L. c. 7 § 22, and OSD’s procurement regulation, 801 CMR 21.06, is that purchases of goods or services require competitive procurement. Executive departments generally meet this requirement by using OSD competitively procured Statewide Contracts (“SWCs”) when available, as required by 801 CMR 21.04. For instance, when OSD SWCs are not available or are found not to meet a department’s needs, departments may conduct their own competitive procurement, subject to OSD’s regulations and policies.

Competitive Procurement Exceptions

OSD’s procurement regulation at 801 CMR 21.05 identifies several competitive procurement exceptions, situations that do not require competitive procurement. One of those exceptions, 801 CMR 21.05(2), is known as the legislative exception, which provides “[a] 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.”

In accordance with the regulation’s directive that OSD will interpret its regulation and may take whatever actions necessary to carry out its purposes,ⁱⁱ OSD has interpreted this provision to include services that other governmental entities are “statutorily authorized to provide.”ⁱⁱⁱ

Application to RPAs

Governmental entities that are statutorily authorized to provide services are usually well-qualified to provide such services and it is generally cost-effective to work with those entities, which promotes the regulatory purpose of achieving the Best Value for the Commonwealth. OSD has further interpreted its regulation to treat certain types of quasi-governmental public entities, such as RPAs, similarly to other governmental entities because these entities, created by statute, serve a public purpose and operate with characteristics similar to government entities. Based on OSD's review of G.L. c. 40B, and both OSD's and the Commonwealth RPAs' enabling statutes,^{iv} RPAs are statutorily authorized to provide services to state agencies and so qualify for the competitive procurement exception under 801 CMR 21.05(2).

Therefore, departments may directly contract with RPAs if the agency determines that such a contract meets its needs and represents Best Value; prior approval from OSD is not required. A direct contract with a statutorily created Commonwealth RPA is compliant with OSD regulations and policies so long as a copy of the language authorizing or justifying the exemption is kept as part of the contract and procurement file.^v Departments may also choose to procure these services on a SWC, if available.

Departments should reference the statute that authorizes the specific RPA to contract with state agencies as the "other procurement exception" in the Standard Contract Form and include a short note in the procurement file. OSD's Conducting Best Value Procurements Handbook ("BVH") provides that a Due Diligence Notice of Intent is not required for contracts with other government entities that fall under this exception.^{vi} Departments are similarly not required to seek approval from OSD to contract directly with RPAs.

If you have any questions regarding the issues addressed in this policy guidance, please reach out to OSDLegal@mass.gov.

ⁱ G.L. c. 40B, §5

ⁱⁱ 801 CMR 21.01(2)(a).

ⁱⁱⁱ Conducting Best Value Procurements Handbook ("BVH"), available at <https://www.mass.gov/doc/conducting-best-value-procurements-handbook/download>, p. 17.

^{iv} Four RPAs were established by separate legislation. These include the Cape Cod Commission (1989 Mass. Acts ch. 716), the Central Massachusetts Regional Planning Commission (1972 Mass. Acts ch. 0578), the Martha's Vineyard Commission (1974 Mass. Acts ch. 637), and the Nantucket Planning and Economic Development Commission (1973 Mass. Acts ch. 561).

^v BVH at p. 22.

^{vi} BVH at p. 17.