The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Operational Services Division
Maura Healey, Governor
Kim Driscoll, Lieutenant Governor
Matthew Gorzkowicz, Secretary

Gary J. Lambert
Assistant Secretary for Operational Services

To: **Executive Agency Chief Procurement Officers**
From: **Sherri L. Hannan, OSD Legal Compliance**
Re: **OSD Legal Compliance Quarterly Communication**

November 2023

SharePoint Site Launch for Executive Departments

The OSD Legal Compliance team assembled this communication containing pertinent compliance information for Executive Departments. We are pleased to share that this communication, and additional information about agency compliance responsibilities, relevant Executive Orders, and compliance directives, may be found on the new OSD Legal Compliance Corner SharePoint site. You are encouraged to bookmark the page and check back regularly, as the site will be updated more frequently than the quarterly communication distribution. We hope this is a helpful resource and invite you to share your feedback about how OSD may better communicate compliance responsibilities. If you are unable to access the SharePoint link, please let us know at osd.compliance@mass.gov.

Compliance Scoring

The OSD Legal Compliance Team continues to identify areas where Departments may focus efforts to improve compliance scoring. See page 6 of this communication titled "COMMBUYS User Errors Impacting Department Compliance" for additional information. Please share this information with procurement staff to improve Department scores.

Statewide Contract Compliance – Master Agreement Reminder

OSD is developing applications that support compliance of the mandatory use of Statewide Contracts by Executive Departments. Additionally, OSD has partnered with the Office of the Comptroller (CTR) to ensure proper reference is made to the Master Agreement on encumbrances in MMARS to match to Statewide Contracts.

Collaboration with CTR supports OSD's focus on inconsistencies in the volume of purchases recorded in the state accounting system (MMARS) versus activities in COMMBUYS.

CTR's Weekly Update for October 4, 2023, includes this Master Agreement Reminder: *OSD is currently reviewing Executive Department FY24 encumbrances and may be contacting them for resolution if they find a discrepancy where there is no Master Agreement reference or Internal Award field completed if using another procurement type. After an encumbrance has been finalized, reference to a Master Agreement cannot be added, so the encumbrance would need to be closed out and a new one entered. If any funds were spent under the old encumbrance, a Doc Comment referencing the old and new encumbrance should be added. If a reference to a department procurement or a listed exception was omitted, it can be added in a later version without closing the encumbrance.*

RFQ Templates for IT Professional Services and SaaS – Webinar November 15, 2023
OSD and the Executive Office for Technology Services and Security (TSS) developed two RFQ Master Templates that incorporate the essential factors buyers need to consider for the procurement of software and services in the ITS Contract category, simplifying the RFQ process for procuring IT services and SaaS. The template may be used by any entity, although nonexecutive agencies are advised to consult their legal counsel. The webinar will teach attendees how to use this new template. Register for the webinar today!

New Feature Announcement: Departmental RFR Template Available in COMMBUYS CLM
OSD developed a convenient departmental RFR template for use by Executive Departments in CLM. The full announcement, including a webinar and training video may be found here. Additional guidance and CLM resources may be found on the OSD Legal Compliance Corner SharePoint site.

Contract End Date Reports for Executive Departments
Contract End Date Reports have been developed to allow Executive Departments to review MMARS contracts/encumbrances that are set to expire within the current and subsequent fiscal year. This report is designed to be used as a planning tool for procurement staff. By providing agencies with a quick look at contracts expiring over the next two years, OSD hopes to reduce use of competitive procurement exceptions, including interim contracts. Stay tuned for your department's first report!

Periodic Review of Departmental IT Contract Clarifications
Periodic review of certain Executive Department contract clarifications is underway. Departments are asked to promptly respond to OSD's request for documents and cooperate with any direction therein.

Procurement Exceptions
The Job Aid for How to Request a Procurement Exception in CLM, including instructions on how to post bids for due diligence, interim contracts, and Statewide Contract waivers, has been expanded to include the next steps. Once an exception request is approved, a COMMBUYS CLM user may find the expanded Job Aid helpful in using the sourcing strategy to create a CLM bid package for a number of these bids.

Mandatory Training Requirements - Reminder
In the previous Quarterly Communication, the OSD Legal Compliance unit announced new mandatory training requirements for Level III Executive Agency procurement staff. In addition to the previously required CPO training, COMMBUYS Training classes will be required of all COMMBUYS users based on user roles and, in some cases, will need to be completed and/or repeated at regular intervals before COMMBUYS credentials are issued.

OSD has seen a large uptick in enrollment for mandatory class offerings and attributes this to the great effort by Executive Departments to ensure procurement staff are trained, uptrained, and compliant with the new requirements. As we transition into the new compliance program, OSD will release a Q1 training report for Chief Procurement Officers. Future quarters will include additional COMMBUYS user roles. OSD will release metrics ahead of any scored reporting.

Exception Requests

On August 1, 2023, requests for approval of Due Diligence postings, Interim Contracts, use of Collective Purchase Contracts, and authorization to conduct departmental procurements for goods or services covered by a Statewide Contract, or other procurement exceptions, transitioned from an email approval process to a request process within the COMMBUYS CLM tool. Exception requests no longer are accepted via purchasing.agent@mass.gov.

Requesting Exceptions: Departments should review carefully the requirements for each request, which may be found in Appendix A of the Conducting Best Value Procurements Handbook, and include the required information and documentation with each request. Departments are advised that including more detail will assist OSD in reviewing and responding to requests in a timely manner. Departments also should note that these requests often require research and discussion within OSD and the requesting agency and, as a result, may take some time before a decision is made. OSD strongly advises that, whenever possible, Departments utilize their Contract End Date Report to begin the planning process early and determine if an exception will be required well before the deadline for completing the procurement.

OSD created a Job Aid and training video, which are available on the OSD Legal Compliance Corner CLM Resources Page. Questions related to OSD policies may be directed to the OSD Compliance team at OSD.Compliance@mass.gov. For technical assistance with CLM, please contact the OSD Help Desk at OSDHelpDesk@mass.gov or 1-888-627-8283 or 617-720-3197.

Complete Procurement Folder and Complete Contract Folder

To reduce confusion, OSD Legal Compliance has renamed the "Complete Procurement Folder" to be the "Complete Contract Folder" in COMMBUYS CLM. This simple name change more accurately describes the documents contained within the folder.

COMING SOON: Maintaining a Complete Contract Folder (formerly known as Complete Procurement Folder)

The OSD Legal Compliance Unit is preparing to begin checking compliance with the requirement for Executive Agencies to maintain a Complete Contract Folder as announced in the June 16, 2021, Compliance Advisory.

Development continues on a compliance tool that will use data in CLM to evaluate compliance with this requirement. Please refer to Appendix G in the Conducting Best Value Procurements Handbook for details on where the required documents should be stored. OSD Legal Compliance is scheduled to begin assessing compliance and providing reports to Departments in June 2024.

Reminder: A Complete Contract Folder should include everything in the procurement file (RFR, Bidder Q&A, RFR Amendments, bid responses, evaluation criteria and final scores, and awarded vendor list) and also the following: **SDP Plan forms, evaluation forms, fully executed copy of the Standard Terms and Conditions, contract amendments, W-9, Contractor Authorized Signatory Listing form, Prompt Payment form, Electronic Funds Transfer form, bid bond and/or performance bonds if applicable**.

Please contact OSD Legal Compliance (OSD.Compliance@mass.gov) with questions regarding any of the items above.

Executive Agency Training Class Requirements for Compliance

Organization Administrators are responsible for reviewing user roles in COMMBUYS and CLM to ensure approval pathways are properly constructed and maintained. For more information, see the CLM OA Handout and visit OSD's Legal Compliance Corner, where you will find a page dedicated to CLM Resources.

Role: COMMBUYS CLM Agency CPO (COMMBUYS CLM Single Sign On)
- Essentials of State Procurement
  - Must be completed within 60 days of issuance of COMMBUYS system credentials.
  - Must be taken every three years.
- Strategic Sourcing Certificate Program (five-day class 9:00 am -3:30 pm – meets weekly for five weeks)
  - Required completion within six months of date of hire/appointment for CPOs and suggested for others heavily engaged in the full procurement process.
  - Strategic Sourcing Certificate Program Refresher
    - Annual eLearning module within MassAchieve* when published.
    - Complete retake of the program every 10 years.
    - *May require a webinar depending upon the scope of changes.
- COMMBUYS CLM Procurement for Executive Department Procurement Staff (9:00 am -3:30 pm)
  - Must be completed within 60 days of issuance of COMMBUYS system credentials.
  - Must be taken every three years.

Role: COMMBUYS/CLM Organization Administrator (OA)
- COMMBUYS Organization Administrator (2 hours)
  - Must be completed prior to issuance of COMMBUYS system credentials.
  - Must be completed every year.
- COMMBUYS CLM Organization Administrator for Executive Department Procurement Staff (1 hour)
  - Must be completed prior to issuance of COMMBUYS CLM system credentials.
  - Must be completed yearly. (This is becoming a video and the content will be included within the CB OA class listed above.)[1]

Role: COMMBUYS CLM Procurement (single sign on user – conducting procurement activities)
- COMMBUYS Purchasing (9:00 am -3:00 pm)
  - Must be completed prior to issuance of COMMBUYS system credentials.
  - Must be taken every three years.
- Essentials of State Procurement (9:00 am -3:30 pm)
  - Must be completed within 60 days of issuance of COMMBUYS system credentials.
  - Must be taken every three years.
- COMMBUYS CLM Procurement for Executive Department Procurement Staff (9:00 am -3:30 pm)
  - Must be completed within 60 days of issuance of COMMBUYS system credentials.
  - Must be taken every three years.
- Strategic Sourcing Certificate Program (5-day class 9:00 am -3:30 pm- meets weekly for five weeks)
  - Suggested for those heavily engaged in the full procurement process.
  - Should be completed within six months of date of hire/appointment.
  - Strategic Sourcing Certificate Program Refresher

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[1] CLM OA training requirement will be eliminated when this training is merged into COMMBUYS OA training.

- Annual eLearning module within MassAchieve[2] when published.
- Complete retake of the program every 10 years.

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[2] May require a webinar depending upon the scope of changes.

COMMBUYS User Errors Impacting Department Compliance

Procurement Type

COMMBUYS users are reminded to select the correct Procurement Type when creating a solicitation. OSD Legal Compliance often encounters mislabeled bids in reporting. Executive Departments should observe the chart below and note that mislabeling a bid may impact compliance scores.

Procurement Type	Applicable Use	Estimated Award Date Required
Request for Response	A Bid being conducted as a competitive procurement which will result in a Contract Award	Yes
Request for Quote	A Bid being sent to a group of prequalified bidders resulting in quotes to be evaluated for award	Yes
Due Diligence Posting	Posting required for certain Acquisitions and Purchases as defined in the Best Value Procurement Handbook	Yes
Grant Opportunity	Grant Applications or Notice of Intent to Award Grants	No
Request for Information	A Bid posted to solicit informational responses and will not result in award	No
World Trade Notification	Advertisement of Contracts valued at amounts greater than established WTO thresholds	No
Construction Project > $50K	Vertical construction projects valued at greater than $50K	No
Construction Project ≤ $50K	Vertical Construction projects valued at less than or equal to $50K	No

Maintaining Compliance with Your Complete Procurement File

OSD Legal Compliance has identified trends in reporting for Complete Procurement File. In addition to selecting the correct bid category, COMMBUYS users should ensure bidder Q&A is enabled, and that evaluation criteria is uploaded separately from the RFR. OSD's compliance tool will not pick up your evaluation criteria if it is embedded in your RFR and you will receive a failing score.

<u>Close vs. Cancel</u>

Beginning in December 2022, a COMMBUYS upgrade was introduced that allowed users to close bids with a reason category instead of cancelling them. The effect of this enhancement is impactful to your department, OSD, and the inquiring public. Cancelled bids are not properly viewable by the public and do not provide a proper audit trail. Departments must only use the cancel option in the case of a true error in posting. Errors include, but are not limited to, typographical errors in documents and errors in dates that cannot be corrected in COMMBUYS. COMMBUYS users are encouraged to reach out to the OSD Help Desk prior to cancelling bids if unsure whether this course is proper. Improperly cancelled bids may require significant repair on behalf of the Department and OSD, up to and including a rebuild of the bid in COMMBUYS and a posting of a notice of the erroneous cancellation in COMMBUYS.