**RFR - Required Specifications for Purchase of Service (POS)**

Published Date: September 18, 2024

The following RFR provisions must appear in all Commonwealth competitive procurements conducted under 801 CMR 21.00. In general, most of the required contractual stipulations are referenced in the *Standard Contract Form* *and Instructions* and the *Commonwealth Terms and Conditions* *for Human and Social Services* (also referred to as Purchase of Service).

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*, 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. Additional definitions may also be identified in this RFR. Other terms not defined elsewhere in this document may be defined in OSD’s [Glossary of Terms](https://www.mass.gov/info-details/glossary-of-terms-for-osd). Unless otherwise specified in this RFR, all communications, responses, and documentation must be in English, and all cost proposals or figures in U.S. currency. All responses must be submitted in accordance with the specific terms of this RFR.

COMMBUYS Market Center. COMMBUYS is the official source of information for this Bid and is publicly accessible at no charge at [www.commbuys.com](http://www.commbuys.com). Information contained in this document and in COMMBUYS, including file attachments and information contained in the related Bid Questions and Answers (Q&A), are all components of the Bid, as referenced in COMMBUYS, and are incorporated into the Bid and any resulting contract.

Bidders are solely responsible for obtaining all information distributed for this Bid via COMMBUYS. Bid Q&A supports Bidder submission of written questions associated with a Bid and publication of official answers.

It is each Bidder’s responsibility to check COMMBUYS for:

* Any amendments, addenda, or modifications to this Bid, and
* Any Bid Q&A records related to this Bid.

The Commonwealth accepts no responsibility and will provide no accommodation to Bidders who submit a Quote based on an out-of-date Bid or on information received from a source other than COMMBUYS.

COMMBUYS Registration. To respond to a Bid, Bidders must register and maintain an active COMMBUYS Seller account. Bidders may elect to obtain a free COMMBUYS Seller registration which provides value-added features, including automated email notification associated with postings and modifications to COMMBUYS records.

All Bidders submitting a Quote (previously referred to as Response) in response to this Bid (previously referred to as Solicitation) agree that, if awarded a contract: (1) they will maintain an active seller account in COMMBUYS; and (2) in the event the Commonwealth adopts an alternate market center system, successful Bidders will be required to utilize such system, as directed by the procuring entity. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

COMMBUYS introduces new terminology, with which bidders must be familiar to conduct business with the Commonwealth. To view this terminology and to learn more about COMMBUYS, please visit the [Learn about COMMBUYS](https://www.mass.gov/learn-about-commbuys-resources) page on www.mass.gov.

Multiple Quotes. Bidders may not submit Multiple Quotes in response to a Bid unless the RFR authorizes them to do so. If a Bidder submits multiple quotes in response to an RFR that does not authorize multiple responses, only the latest dated quote submitted prior to the bid opening date will be evaluated.

Quote Content. Bid specifications will prevail over any proposed Bidder terms entered as part of the Quote, unless otherwise specified in the Bid.

Supplier Diversity Program (SDP) for POS Contracts. Required for contracts with an estimated annual value greater than $250,000.00

**Program Background**

Pursuant to [Executive Order 599](https://www.mass.gov/executive-orders/no-599-reaffirming-programs-to-ensure-diversity-equity-and-inclusion-for-diverse-and-small-massachusetts-businesses-in-state-procurement-and-contracting), the Commonwealth’s [Supplier Diversity Program](https://www.mass.gov/sdp) (SDP) promotes business-to-business relationships between awarded Contractors, including health and human service providers, and diverse businesses and non-profit organizations (“SDP Partners”) certified or recognized by the [Supplier Diversity Office (SDO)](https://www.mass.gov/supplier-diversity-office).

**Financial Spending and Reporting Requirements**

**All** Bidders responding to this solicitation are required to make a significant **annual** financial commitment (“SDP Commitment”) to partnering with one or more SDO-certified or recognized diverse business enterprise(s) or non-profit organization(s). Providers that are issued a contract from this procurement (Bid) will be required to submit an **annual** “Supplier Diversity Program (SDP) Plan Form for Purchase of Service (POS)” with their Uniform Financial Report (UFR) through the [Operational Services Division’s (OSD) eFiling](https://ufr.osd.state.ma.us/) site.

Providers that file a UFR exemption request are to submit the SDP Plan Form for POS with their exemption request. The plan will be evaluated yearly by the Commonwealth Department with the most Purchase of Service funding to a provider during the previous fiscal year. This Department commonly is referred to as the Principal Purchasing Agency (PPA).

No contract shall be awarded to a Provider without an SDP Commitment that meets the requirements stated herein. This requirement extends to **all** Providers regardless of their own supplier diversity certification.

**SDP Commitment Goal for POS Providers**

It is **desirable** that Providers aim to direct at least 1% of their Commonwealth contract revenue toward spending with SDP Partners. The Provider’s percentage of spending with SDP Partner(s) for the prior fiscal year can be seen as “PERCENT (%) OF POS SPEND” on the completed “SDP Plan Form for POS” for that fiscal year.

**SDP Plan Form Submission Requirements for this RFR**

Providers responding to this RFR are required to submit a copy of the “SDP Plan Form for POS” most recently filed via the [OSD’s UFR eFiling](https://ufr.osd.state.ma.us/) website. If the content of the “SDP Plan Form for POS” being submitted with the response to this RFR deviates from the form filed via the [UFR eFiling](https://ufr.osd.state.ma.us/) website or if the form was not filed, the Bidder is additionally required to submit the “SDP Plan Form for POS” via the UFR as a “Refile UFR/Piecemeal UFR Filing.”

Providers that do not currently hold POS contracts with Commonwealth Departments are to complete the Form and include it with their proposal. The “SDP Plan Form for POS” may be found at the COMMBUYS Bid Solicitation; File Attachments Section.

**Eligible SDP Partner Certification Categories and Directories**

SDP Partners must be business enterprises and/or non-profit organizations certified or recognized by the SDO in one or more of the following certification categories:

* Minority-Owned Business Enterprise (MBE)
* Minority Non-Profit Organization (M/NPO)
* Women-Owned Business Enterprise (WBE)
* Women Non-Profit Organization (W/NPO)
* Veteran-Owned Business Enterprise (VBE)
* Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)
* Disability-Owned Business Enterprise (DOBE)
* Lesbian, Gay, Bisexual, and Transgender Business Enterprise (LBGTBE)

Only spending with SDP Partners that appear in the [SDO Directory of Certified Businesses](https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx) or in the [U.S. Dept of Veterans Affairs VetBiz Vendor Directory](https://vetbiz.va.gov/advancedsearch/) shall be counted toward a Contractor's compliance with their SDP Commitment. Spending with SDP Partners that do not appear in the directories above shall not be counted towards meeting a Contractor’s SDP Commitment.

It is always the responsibility of the Contractor to ensure they meet their SDP Commitment, and the SDO, and the issuing Department, assume no responsibility for any Contractor’s failure to meet its SDP Commitment.

**Eligible Types of Business-to-Business Relationships**

Bidders and Contractors may engage SDP Partners as follows:

* **Subcontracting**, defined as a partnership in which the SDP partner is involved in the provision of products and/or services to the Commonwealth.
* **Ancillary Products and Services**, defined as a business relationship in which the SDP partner provides products or services that are not directly related to the Contractor’s contract with the Commonwealth but may be related to the Contractor’s own operational needs. These may include but are not limited to the following examples: professional services (e.g., IT, legal, advertising, HR, accounting etc.), maintenance services (e.g., cleaning, landscaping, tradespersons services, etc.), office expenses (e.g., office supplies, furniture, IT supplies, etc.). Anything declared as a business expense in which a certified vendor is used would qualify.

Other types of business-to-business relationships are not acceptable under this contract. All provisions of this RFR applicable to subcontracting shall apply equally to the engagement of SDP Partners as subcontractors.

**Program Flexibility**

The SDP encompasses the following provisions to support Bidders in establishing and maintaining sustainable business-to-business relationships meeting their needs:

* SDP Partners are **not** required to be subcontractors.
* SDP Partners are **not** required to be Massachusetts-based businesses.
* SDP Partners **may be changed or added** during the term of the contract, provided the Contractor continues to meet its SDP Commitment.

**Evaluation of SDP Forms**

To encourage Bidders and Contractors to develop substantial supplier diversity initiatives and commitments as measures valuable to the Commonwealth, at least 25% of the total available evaluation points for this bid solicitation shall be allocated to the evaluation of the SDP Plan submissions. A portion of the score may also be allocated to the evaluation of additional equity and inclusion criteria relevant to health and human services, including but not limited to addressing racial disparities, health equity, as well as cultural and linguistic accessibility and proficiency; however, the total score allocation for such additional criteria may not exceed 10% of the total evaluation score

**SDP Spending Verification**

The SDO and the contracting Department reserve the right to contact SDP Partners at any time to request that they attest to the amounts reported to have been paid to them by the Contractor.

**Program Resources and Assistance**

Contractors seeking assistance in the development of their SDP Plans or identification of potential SDP Partners may visit the SDP webpage, [www.mass.gov/sdp](http://www.mass.gov/sdp), or contact the SDP Help Desk at sdp@mass.gov.

Best Value Selection and Negotiation. The Procurement Management Team or PMT (also known as Strategic Sourcing Team or SST) may select the response(s) which demonstrates the best value overall, including proposed alternatives that will achieve the procurement goals of the department. If services are not rate regulated, 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 a more cost effective or better value.

Bidder Communication. Bidders are prohibited from communicating directly with any employee of the procuring department or any member of the PMT regarding this RFR 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 COMMBUYS.

Contract Expansion. If additional funds become available during the contract duration period, the department reserves the right to increase the maximum obligation or the number of units purchased 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 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. *POS requirement only.* Non-successful bidders may request a debriefing from the department that issued the RFR. Department debriefing procedures may be found in the RFR. Non-successful POS 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. *POS requirement 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. *POS requirement 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 policies in the OSD Procurement Information Center, 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 Operational Services Division, Legal and Compliance Office, Room 1608, 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 Operational Services Division 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 Operational Services Division shall not prohibit the department from proceeding with executing contracts.

Electronic Communication/Update of Bidder’s/Contractor’s Contact Information. It is the responsibility of the prospective bidder and awarded contractor to keep current on COMMBUYS the email address of the bidder’s contact person and prospective contract manager, if awarded a contract, and to monitor that email inbox for communications from the PMT, including requests for clarification. The PMT and the Commonwealth assume no responsibility if a prospective bidder’s/awarded contractor’s designated email address is not current, or if technical problems, including those with the prospective bidder’s/awarded contractor’s computer, network, or internet service provider (ISP) cause email communications sent to/from the prospective bidder/awarded contractor and the PMT to be lost or rejected by any means including email or spam filtering.

Electronic Funds Transfer (EFT). All Bidders must agree to participate in the Commonwealth Electronic Funds Transfer (EFT) program for receiving payments. Additional information about EFT is available on the Comptroller’s VendorWeb site located at: <https://massfinance.state.ma.us/VendorWeb/vendor.asp>.

Upon notification of award, Contractors are required to enroll in EFT by completing and submitting the “Authorization for Electronic Funds Payment Form” to the SST for review, approval, and forwarding to the Office of the Comptroller, unless already enrolled in EFT. A copy of the form will be supplied to the successful bidder upon award. This form, and all 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.

Executive Order 509, *Establishing Nutrition Standards for Food Purchased and Served by State Agencies.* Food purchased and served by state agencies must comply with Executive Order 509, issued in January 2009.  Under this Executive Order, all contracts resulting from procurements posted after July 1, 2009, that involve the purchase and provision of food must comply with nutrition guidelines established by the Massachusetts Department of Public Health (DPH).  The nutrition guidelines are available at the Department’s website: [Executive Order # 509 Guidance](https://www.mass.gov/executive-orders/no-509-establishing-nutrition-standards-for-food-purchased-and-served-by-state-agencies).

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

HIPAA: Business Associate Contractual Obligations. Bidders are notified that any department meeting the definition of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will include in the RFR and resulting contract sufficient language establishing the successful bidder’s contractual obligations, if any, that the department will require to comply with HIPAA and the privacy and security regulations promulgated thereunder (45 CFR Parts 160, 162, and 164) (the Privacy and Security Rules). For example, if the department determines that the successful bidder is a business associate performing functions or activities involving protected health information, as such terms are used in the Privacy and Security Rules, then the department will include in the RFR and resulting contract a sufficient description of business associate’s contractual obligations regarding the privacy and security of the protected health information, as listed in 45 CFR 164.314 and 164.504 (e), including, but not limited to, the bidder's obligation to: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information (in whatever form it is maintained or used, including verbal communications); provide individuals access to their records; and strictly limit use and disclosure of the protected health information for only those purposes approved by the department. Further, the department reserves the right to add any requirement during the course of the contract that it determines must be included in the contract to comply with the Privacy and Security Rules. Please see other sections of the RFR for further HIPAA details, if applicable.

Minimum Quote (Bid Response) Duration. Bidders’ Quotes made in response to this Bid must remain in effect for at least 90 days from the date of quote submission.

Public Records. All responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L., c. 66, s. 10, and to c. 4, s. 7, ss. 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.

Restriction on the Use of the Commonwealth Seal. Bidders and contractors are not allowed to display the Commonwealth of Massachusetts Seal in their bid package or subsequent marketing materials if they are awarded a contract, because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposesis prohibited by law.

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. Human and social service subcontractors also 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.

Workplace Violence Prevention and Crisis Response Plan. 101 CMR 19.00, Workplace Violence Prevention and Crisis Response Plan, governs the procedures and criteria for workplace violence prevention and response plans for programs that provide direct services to clients that are operated, licensed, certified, or funded by a department, commission, office, board, division, institution, or other entity within the Executive Office of Health and Human Services under M.G.L. c. 6A § 16. Any direct service program that contracts with the Executive Office of Health and Human Services (EOHHS) or the constituent agencies of EOHHS must comply with 101 CMR 19.00, including having a plan that meets the criteria set forth in 101 CMR 19.04, which is updated annually, available electronically, and provided to any human service worker upon request. The regulations and response plan guidelines are available at the following web site: <https://www.mass.gov/regulations/101-CMR-1900-workplace-violence-prevention-and-crisis-response-plan-0>.