

<p><b>Office of the Comptroller One Ashburton Place 9<sup>th</sup> Floor Boston, MA 02108</b></p>	<p><b>Commonwealth of</b></p>  <p><b>Massachusetts</b></p>	<p><b>Operational Services Division One Ashburton Place 10<sup>th</sup> Floor Boston, MA 02108</b></p>
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**Joint Policy:** Procurement/Contracts  
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## State Finance Law and General Contract Requirements

### Executive Summary

This policy is jointly issued by the Office of the Comptroller (CTR) and the Operational Services Division (OSD) to identify the key state finance law and the minimum state accounting and contracting requirements related to purchases made by all state Departments in all branches of state government. This document identifies key areas and the Policy Chapters in which each item is discussed in more detail. For example, procurement requirements that apply to the purchase of Commodities and Services by Executive and Non-Executive Departments are identified briefly in this document and Departments subject to [OSD's oversight](#) for these purchases should refer to [OSD Procurement Information Center \(PIC\)](#) for details and procedures. This chapter is by no means exhaustive and Departments are responsible for compliance with all state finance laws and related regulations and policies that apply to any given expenditure.

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**Considerations**

Departments are responsible for making expenditures in accordance with state finance law and other applicable laws, regulations, policies and procedures. The Office of the Comptroller has provided the [Expenditure Classification Handbook](#) and this Policy Chapter to identify expenditures and related requirements.

**Policy**

**Comptroller Implementation of State Accounting System and Internal Controls**

The Comptroller has broad authority to prescribe accounting rules and instructions for all state Departments and the appropriate use of the state accounting system. Pursuant to [G.L. c. 7A, § 7](#), [G.L. c. 7A, § 8](#), [G.L. c. 7A, § 9](#) and [G.L. c. 29, § 31](#) the Comptroller is required to implement a state accounting system (including a centralized payroll system) and issue instructions for the accounting practices to be used by all Departments for supplies, materials, assets, liabilities, equity, debt, encumbrances, expenditures, revenues, expenses and obligations of all Commonwealth funds and accounts, including payroll, unless specifically exempted by general or special law. The Comptroller has full authority to prescribe, regulate and make changes in the method of keeping and rendering accounts and is authorized to direct state Departments to implement changes in their systems to meet these statewide standards.

**OSD Statutory Authority And Oversight Of Procurement of Commodities and Services**

The statutory authority vested in the State Purchasing Agent and OSD to oversee the procurement of commodities and services by Commonwealth entities is found in [G.L. c. 7, s. 22](#), [G.L. c. 30, s. 51](#) and [G.L. c. 30, s. 52](#). These statutes form the basis of OSD’s issuance of its procurement regulation, 801 CMR 21.00, which provides all Commonwealth Departments with uniform rules and standards governing the procurement of commodities or services, or both, including human and social services for clients. While these statutes specifically exempt the legislative branch and military division from their applicability, they also do not apply to all or part of the procurements of the following Commonwealth entities:

- The judicial branch pursuant to Article 30 of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts, which sets forth the separation of powers principle in the Massachusetts Constitution. There is also case law, which supports the separation of powers of the three branches of state government but specifically states that it does not preclude participation on a voluntary basis.
- Cities and towns and still-existing county entities of the Commonwealth, which must follow [G.L. c. 30B](#), although they may purchase off of OSD statewide contracts per [G.L. c. 7, s. 22A](#) and [G.L. c. 30B, s. 1\(c\)](#). OSD has no oversight authority over G.L. c. 30B or these entities. Although not required to do so, cities and towns frequently purchase from statewide contracts because it saves them the time of conducting their own procurement under G.L. c. 30B and the prices available from statewide contracts are often more competitive due to the Commonwealth’s purchasing power.

- The University of Massachusetts, State Colleges and Community Colleges and the Higher Education Consortium, which have statutory authority to conduct certain procurements pursuant to [G.L. c. 75, s. 13](#), [G.L. c. 73, s. 15](#), [G.L. c. 15A, s. 24](#) and [G.L. c. 15A, s. 24A](#). However, where these statutes are silent, these entities fall under OSD's statutes and authority.

In addition, OSD has the authority, pursuant to St. 1993, c. 110, s. 274, as amended in St. 1993, c. 151, s. 113; St. 1993, c. 296, s. 3; and St. 1993, c. 495, s. 99 and [G.L. c. 29, s. 29B](#) to oversee the procurement of human and social services by Commonwealth Human and Social Services Departments.

These statutes form the basis for issuance of OSD's regulation, codified as 808 CMR 1.00, which governs contract compliance, financial reporting and auditing requirements applicable to all procurements of Human and social services and to [G.L. c.71B](#) approved private schools subject to the authority of OSD. Regulation 808 CMR 1.00 also describes the methods used by OSD in authorizing prices for approved private school special education programs. For more information on OSD's legal and regulatory authority, please contact OSD's Legal Bureau at [OSDLegal@osd.state.ma.us](mailto:OSDLegal@osd.state.ma.us).

### **Quality Assurance**

The Comptroller has been granted full access to the books and papers of all Departments unless specifically exempted by general or special law. The Comptroller has the authority to access all Departments records related to accounting transactions, and may conduct quality assurance reviews to ensure Department compliance with state finance law and Comptroller accounting instructions. CTR works cooperatively with OSD to ensure compliance with procurement and contract requirements. Please see Policy Chapter "[Contracts – Quality Assurance](#)" and OSD's [Procurement Information Center \(PIC\)](#).

### **MMARS is the Official Record of Fiscal Activities**

The uniform system of accounting is known as the Massachusetts Management and Accounting System (MMARS). MMARS is a computerized electronic accounting system that has been established as the official record of the Commonwealth's accounting activities. The Comptroller has established a series of fiscal controls in the system to manage financial risks, reduce incorrect and incomplete entries and to prevent the payment of expenditures which exceed available funding.

What appears in the MMARS system will be considered the "official record" or "record copy" of fiscal activities and will supersede paper or other formats of the same information. Departments must remember that MMARS is an accounting system, used to accurately record and report on fiscal activities.

### **Fiscal Activity Based Upon a Series of Reliances**

**It is imperative that everything entered into MMARS is verified as accurate and complete before a document is submitted to Final status.**

In order to support the Comptroller's statutory responsibilities, state government fiscal transactions are managed in MMARS through a series of reliances:

The Governor's Council approves the warrant relying upon the "certification" by the Comptroller. ([G.L. c. 29, § 18](#))

The Comptroller certifies expenditures on a warrant relying upon the "certification" of the Department Head or designee evidenced by an electronic signature approval of a transaction in MMARS. ([G.L. c. 7A, s. 3](#), [G.L. c. 29, § 61](#); [G.L. c. 29, § 20](#))

The Department Head certifies expenditures and other obligations in MMARS by relying on the Chief Fiscal Officer and other authorized Department Head signatories to manage the day-to day business of the Department and approve expenditures on behalf of the Department Head; The Chief Fiscal Officer and other Department Head authorized signatories who approve purchases and expenditures, rely on staff to make purchases and confirm receipt, delivery and acceptance of commodities and services (including payroll) in accordance with prescribed laws, regulations, policies and procedures.

Since the Comptroller cannot personally review and certify all payments from all state Departments, the Comptroller has set up the state accounting system (MMARS) with a series of checks and balances to balance fiscal risks with administrative and business efficiencies. The Comptroller relies on Department Heads to ensure that all payments and other documents sent to the Comptroller for certification through MMARS have been approved by the Department Head as being legal, appropriate and properly submitted in accordance with applicable law, policies and procedures.

Although MMARS is an effective management tool, Departments can not rely solely on the MMARS system to manage fiscal responsibility and decisions. MMARS will not always prevent mistakes or incorrect entries. Some documents will pass all the system tests (edits) and be processed to Final status even though the expenditure, underlying procedures, procurement process, or contract documentation is legally deficient. Therefore, just because Department staff are capable of processing a document to Final status in MMARS will not be interpreted to mean that the document, or underlying documentation are automatically legal, appropriate or in compliance with applicable laws, regulations, policies or procedures. Compliance responsibility remains at all times with the Department staff who process documents to Final status. Since MMARS will track the staff who approves documents, quality assurance reviews will identify not only the documents that will be reviewed, but also the security identification of the individual(s) who entered and approved the documents.

In order to support the series of reliances, the Comptroller establishes requirements for the management of Department Head Signature Authorization, Internal Control Plan Updates and Electronic Signatures for MMARS transactions. These policies and any applicable procedures shall apply to all Departments unless specifically exempted. A Department's use of MMARS requires at a minimum, agreement to comply with Comptroller laws, regulations, policies and procedures, even if other general or special laws exempt the Department from compliance with Executive Branch requirements.

### **Filing of Department Head Signature Authorization (DHSA) as part of Internal Controls**

Pursuant to [G.L. c. 7A, s. 3](#), [G.L. c. 29, § 61](#) and [G.L. c. 29, § 31](#) prior to certifying any expenditure for payment on a warrant the Comptroller requires that legislative leadership, judicial branch administrators, elected officials, secretariats and Department Heads certify in an affidavit that articles have been furnished, services rendered (including payroll) or obligations incurred, as certified.

A Department Head is responsible for all activities conducted by the Department. A Department must be authorized to enter into contracts in order to make payments against contracts and the Department Head or designee must approve itemized expenditures. See [G.L. c. 29, § 19](#).

In order to obtain MMARS Security, all Department Heads (including new Department Heads) are required to accept these responsibilities and conditions.  
See: [Department Head MMARS Security Certification Form](#)

Since a Department Head cannot personally review and certify all business transactions, the Department Head is responsible for setting up the Department's business operations with a series of checks and balances (known as internal controls) to balance fiscal risks with administrative and business efficiencies. A Department Head relies on the delegation of signature authorization to authorized signatories within the Department who conduct the day-to-day business of the Department.

A Department Head delegates signature authority to staff who will be responsible for conducting business on behalf of the Department Head in accordance with applicable law, regulations, policies and procedures. Delegation of Department Head signature authorization (DHSA) is an efficient administrative tool that allows a Department Head to designate key staff who can incur obligations, make expenditures and conduct the day to day Department activities on behalf of the Department Head.

In order to support the use of electronic signatures each Department agrees that it will conduct all fiscal business in accordance with state finance law, including but not limited to G.L. c. 7A and G.L. c. 29, and laws, regulations, policies and procedures of the Office of the Comptroller.

If a Department is within the Legislative or Judicial Branch or is a non-Executive Department or institution, agreeing to comply with state finance laws, including Comptroller laws, regulations, policies and procedures will not by implication extend compliance to Executive Orders or other Executive Branch directives that this Department would not normally be subject to, unless the ability to use certain MMARS transactions, system functionality or benefits (such as transaction delegation or incidental purchases) involves compliance with certain minimum requirements (such as the use of standard Commonwealth boilerplate contracts, or compliance with minimum procedures). If a Department chooses to take advantage of these benefits, the Department will comply with the minimum requirements identified by CTR for these benefits, unless otherwise provided.

All staff with Department Head signature authorization to sign or approve documents, obligations or expenditures will be assigned to MMARS Administrator security roles. Staff processing documents with these roles will not be required to obtain a signature or any additional authorization prior to processing a document to Final status. MMARS transactions processed with "Administrator" roles without Department Head Signature Authorization will require sign off by an authorized signatory prior to making the document final. Such delegation shall not relieve the Department Head from any obligations or responsibilities under applicable general and special laws, regulations, policies and procedures.

Since Administrator roles have the security to incur obligations and make payments, the Security Officer is responsible for ensuring that any Administrator roles are approved by the Department Head. Changes to Administrator roles must be approved promptly by the Department Head and filed as part of the Department's Internal Controls and will also be communicated without delay to the Comptroller's Security Officer.

Any MMARS transaction submitted to Final status and any underlying supporting documentation shall operate as the Department Head's certification that the documents are accurate and complete and that the expenditure or other obligation is supported by sufficient legislatively authorized funds and is made in accordance with this Department's legislative mandates and funding authority; and complies with all applicable laws, regulations, policies and procedures. Please see Policy Chapter "[Department Head Signature Authorization and Electronic Signatures for MMARS transactions](#)" and Policy Chapters on MMARS "[Security](#)" for additional information.

### **Direct Authorization for Department Head and Secretariat Signature Authorization (DHSA) – No Sub-delegation**

Each Department Head must directly authorize individuals to be their designee for approval of fiscal documents or other legal obligations on their behalf. **There can be no sub-delegation by designees. An individual granted signature authorization may not in turn sub-delegate Department Head Signatory Authority to other individuals.** Each individual exercising signature authorization must be directly authorized by the Department Head.

### **Appointment of New Department Head**

When a new Department Head is appointed several duties the new Department Head must complete include:

1. executing a [Department Head Certification Form](#) accepting electronic signature, record keeping and compliance with Comptroller laws, regulations, policies and procedures related to MMARS;

2. the designation or ratification of [Key State Finance Law Compliance Officers](#) who will be responsible for assisting the Department Head with state finance law compliance;
3. the verified [Assignment or ratification of individuals with MMARS Security Administrator roles, including Administrator roles with Department Head signature authorization](#) in each of MMARS functional areas. MMARS security roles will remain in place during any transition period when a new Department Head is appointed, but must be assigned or ratified within 30 days after a Department Head assumes Department Head responsibilities.

### **Secretariat Signature Authorization**

Direct delegation also applies to secretariat signatories. Cabinet Secretaries must directly authorize individuals within their own Department, or in other Departments within the secretariat, to be their designee to approve legal obligations, fiscal documents or other legal documents on the Secretary's behalf. Secretariat signoff is limited to circumstances requiring secretariat signoff. For example, a Cabinet Secretary who wishes to enable Departments within the Secretariat to signoff on consultant service contracts in the "HH" and "NN" object classes and "U05" object code pursuant to G.L. c. 29, Section 29A, and Human and Social Service contracts in the "MM" object class pursuant to G.L. c. 29, Section 29B, must directly designate those individuals who will have this signature authorization at each Department.

However, ***secretariat signoff provided to a Department within the secretariat will NOT authorize the Department designee to sign off on a secretariat contract, invoice, payroll or other obligation.*** A Department designee with secretariat authorization can only provide secretariat signoff for ***its own Department obligations, not obligations of the secretariat as a Department.***

Secretariat signoff is not captured as part of MMARS transaction approvals and therefore, there is no MMARS security role which reflects secretariat signoff delegation, and no cross-Department security. Secretariats and Departments that have secretariat signoff delegation will be required to record this delegation as part of its internal controls. For contracts requiring secretariat signoff, the approval must be obtained ***prior*** to the effective start date of contract. CTR and OSD will not verify secretariat signoff as part of prior review (if applicable) but will verify signoff as part of quality assurance reviews. There is no standard format for secretariat signoff. The Department can obtain secretariat signoff of the RFR or the contract, provided the signoff is obtained prior to the effective start date of the contract and the format for obtaining the secretariat signoff is reliable and verifiable. Processing a contract MMARS transaction to Final status will act as a certification to the Comptroller that secretariat signoff has been obtained. Compliance with this requirement shall be subject to audit.

### **Department Head and Secretariat Signature Authorization Delegation Must Support Department Business Needs**

Since Department Head and Secretariat authorized signatories may not sub-delegate their authorization to other individuals, Department Head and Secretariat Signature Authorization should be structured to ensure that there are sufficient staff authorized to approve contracts, transactions, payroll and other critical business needs during staff vacations, maternity leave, sick leave or other leave or unavailability.

For example, a Payroll Officer who is authorized to approve payroll, or a Chief Fiscal Officer who is authorized to approve contracts, may not in turn sub-delegate Department Head signature authorization responsibility to other individuals during their absence or unavailability. Department Head Signature Authorization should support Department business needs so that these officers have back up staff for necessary approvals. Each Department should establish internal controls that identify how signature authorization will be implemented during these absences.

### **Live Signatures And Dates Required On Contracts And Other Legal Obligations**

***Electronic signatures are authorized only for the MMARS electronic accounting transactions which support a Department's business and legal obligations.***



Therefore, electronic signatures are authorized only to encumber funds, authorize payments or other fiscal transactions necessary to support contracts (grants, InterDepartmental Service Agreements (ISAs), leases, subsidies, etc.) payments and other legislatively authorized activities.

Unless otherwise authorized by the Comptroller, the record copy of all contracts, payrolls and other legal obligations and related supporting documentation must be maintained by the Department in paper and must contain "live" signatures and dates. The record copy of a contract or other legal obligation includes the following:

- An original or duplicate original contract or document signed by the Department Head (or authorized signatory) and an authorized signatory of the Contractor.
- A copy of the original contract or document bearing the words "Certified True Copy" or "True Attest Copy" and bearing the signature and date of the individual who is certifying or attesting that they have seen the original and have compared the copy with the original document and certify that the copy is a true copy of the original contract or document.

Live signatures and dates are entered in pen by the Department Head or authorized signatory, and a Contractor or other party (if applicable). The date of a signature is an inseparable part of the signature, which documents the actual date of a signatory's authorization. Date stamps, typed or any other method of pre-filled dates do not comply with this requirement.

When CTR, OSD or other oversight Department performs a secondary review in order for a document to be completed to Final status in MMARS, a Department should submit photocopies (not originals) of the documents and supporting documentation to the oversight Department. Any original documents and transactions (including duplicate originals if not clearly marked duplicate original) submitted for processing will be returned to the Department. Contracts, payments and other documents must reference applicable electronic accounting transactions (by document reference or identification number). Photocopies reviewed by CTR, OSD or other oversight Department will not be considered record copies and will be disposed of after use.

The only exception to these instructions will apply when the Comptroller or another oversight Department is responsible for contracting or making payments on behalf of a Department, such as for Statewide Contracts, Settlements or Judgments, Tort Claims, Prior Year Deficiencies, or when the original of a document is required to be filed at the oversight Department (such as MA substitute *Form W-9s* for Vendor or Customer registration, the *Commonwealth Terms and Conditions*, or the *Commonwealth Terms and Conditions* for Human and Social Services filed at the Office of the Comptroller). Departments will be responsible for submitting the original or a certified copy of the original contract or other document. A certified or attested copy is a copy that has been reviewed and compared with the original documentation, and is certified by the reviewer as a true copy of the original documentation. The Comptroller or other oversight Department will be responsible for retaining and archiving the record copy of these documents in accordance with the requirements of the Records Conservation Board and 815 CMR 10:00.

Departments will be responsible for maintaining and archiving the record copies of contracts and other legal obligations in accordance with records retention requirements of the Records Conservation Board and 815 CMR 10:00. MMARS financial records will be maintained by the Comptroller with the assistance of the Information Technology Division in accordance with records retention requirements of the Records Conservation Board, the Information Technology Division and G.L. c. 110F.

### **Electronic Signatures in MMARS**

Electronic signatures are limited to MMARS transactions and certain Comm-PASS documents. **Electronic signatures can not yet be used for contracts, amendments or Tax Identification Form including, but not limited to the Commonwealth Standard Contract Form, Standard Contract Amendment Form or the Commonwealth Terms and Conditions.** However, OSD does allow, for Comm-PASS subscribers that are submitting a bid electronically, the electronic submission and signature of other forms as long as final contract execution includes wet ink signatures on the Commonwealth Standard Contract,

Standard Contract Amendment, Commonwealth Terms and Conditions, Authorized Signatory Listing and MA substitute W-9 Forms.

This restriction does not apply to RFRs and responses to RFRs that are submitted electronically through Comm-PASS, provided that contracts, amendments and other documents requiring signatures (W-9s etc.) are submitted in hard copy with a wet signature. Therefore, Departments may negotiate a contract, an amendment or communicate electronically, but any contract or amendment must be finalized with written (wet) signatures by authorized signatories of the Department and Contractor.

Under G.L. c. 110G, the Uniform Electronic Transactions Act (added by St. 2003 c. 133) an "electronic signature" is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." An electronic signature will be treated as if the authorized individual executed a written signature and date.

In accordance with G.L. c. 110G, the Comptroller is authorized to specify additional requirements for the retention of electronic records subject to the Comptroller's jurisdiction. Since all MMARS activity is subject to the Comptroller's authority, the Comptroller establishes the minimum necessary requirements for the use of electronic signatures for MMARS activity in addition to any requirements of the Information Technology Division and the Records Conservation Board in accordance with G.L. c. 110G.

**Electronic Signature and Department Head Authorization of MMARS transactions**

With the implementation of the MMARS accounting system the Office of the Comptroller is aligning Electronic Security with Department Head Signature Authorization (DHSA) begun in fiscal year 2005 to take advantage of electronic signatures for MMARS processing. Every MMARS action must be confirmed/authorized by the Department Head or an authorized signatory. Department head authorization can be accomplished in one of two ways:

- **Administrator Security with DHSA.** If the employee (Administrator - system processor) who submits a document to Final status is a Department Head authorized signatory, the data in the MMARS system will be sufficient documentation. What appears in MMARS will be the record copy of the document.
  - **Recording Doc Id on all supporting documentation.** Since there is no paper copy required for the MMARS transaction the Department will be required to include the MMARS transaction Identification number (Doc ID) on all supporting documentation to "match" the supporting documentation with the electronic record of the MMARS transaction which will reside on MMARS. Recording the Doc Id on all supporting documentation can be accomplished by entry of the MMARS Doc Id on the first page of the supporting documentation, or by entering the Doc Id on a MMARS transaction **Authorization/Records Management Form** which will act as the cover sheet to the supporting documentation for records management purposes.
- **Administrator Security without DHSA.** If the employee (Administrator - system processor) who will be submitting a document to Final status is not a Department Head authorized signatory, the Administrator must obtain a live ("wet") signature from an authorized signatory approving the document **PRIOR** to submitting the document to Final status in MMARS.
  - **Review of document and supporting documentation.** Since a Department Head is required to authorize the official record of a MMARS transaction, which is what **actually appears in the MMARS system**, Departments must ensure that whoever authorizes the document has reviewed the document and related supporting documentation prior to authorization.
  - **Written authorization.** The written authorization may appear on a screen-print of the document as entered and validated, but prior to final submission, or on a **MMARS transaction Authorization/Records Management Form** prescribed by CTR to capture the prior authorization for documents.



- **Filing of authorization with supporting documentation.** Authorization documentation must be kept on file at the Department along with the record copy of other supporting documentation related to the MMARS transaction. See **Records Management** below.

### **What does electronic signature of a MMARS transaction mean?**

When a Department electronically submits a document to Final status in MMARS, the Department Head is certifying to the Comptroller that the individual, on behalf of the Department Head, understands that their UAID (universal access identification) is being recorded for any entries made in the MMARS system **and that** that individual certifies under the pains and penalties of perjury that:

- it is their intent to attach an electronic signature approval and date to the MMARS transaction, **and that**
- they are either an authorized signatory of the Department Head who is authorized to approve the MMARS transaction as part of the Department Internal Control Plan, **OR**
- that the document they are processing and any supporting documentation have been approved by an authorized signatory of the Department Head, secretariat and any other required prior approval (including secretariat signoff if required) and a copy of these approvals are available at the Department referencing the MMARS transaction number, **and that**
- any expenditure or other obligation is supported by sufficient available legislatively authorized funds and is in accordance with the Department’s enabling legislation and funding authority; **and that**
- the MMARS transaction and any underlying supporting documentation are accurate and complete and comply with all applicable general and special laws, regulations and policies including public record intention and disposal requirements.

The fact that the MMARS system “allows” a document to process to Final status does not mean that the document is automatically legal, in compliance with legislative or funding authority, or properly authorized by a Department Head. Therefore, staff must be trained that merely finding a systemic way to process a document to Final status is insufficient, and that they will be held responsible and accountable for all activity under their UAID. Individuals unsure of proper processing or required approvals have an obligation to obtain guidance and approvals from their Chief Fiscal Officer prior to processing a document to Final status.

Individuals who are granted electronic security access to submit MMARS transactions to Final status are capable of incurring legal obligations and making expenditures of Department funds that will be binding upon the Department. Since documents submitted to Final status will be considered electronically approved by the Department Head, a Department will be responsible for all actions made by any individual provided with electronic approval security and may not later claim that an individual was not authorized to approve an expenditure, obligation, transfer or payment.

Therefore, a CFO and Security Officer should not grant electronic security Administrator access to allow submission of MMARS transactions to Final status unless the Department can maintain sufficient internal controls, oversight and quality assurance (post audit) reviews to ensure that individuals exercise such electronic security authorization in accordance with applicable laws, regulations, policies and procedures.

Since approval security in MMARS acts as the Department Head’s approval and certification, Department Heads should ensure that electronic approval security in MMARS is granted only to individuals who have been delegated Department Head Signature Authorization (DHSA). In larger Departments, the number of individuals granted (DHSA) by the Department Head may not be able to personally process all of the fiscal documents necessary to support the fiscal actions they approve. In addition, a Department Head may not want to grant Department Head signature authorization to the number of individuals necessary to process these fiscal transactions. Therefore, the CFO and Security officer will be responsible for authorizing electronic security to enable efficient Department business provided that **no MMARS transaction, under any circumstances is submitted to Final status without first being approved by an authorized signatory of the Department Head.**

It is a serious breach in internal controls and MMARS fiscal policies for any document to be submitted to Final status without first being approved by an authorized signatory of the Department Head. Compliance with these policies will be subject to Quality Assurance reviews by the Office of the Comptroller.

Department heads will be required to execute a certification accepting electronic signature, record keeping and compliance responsibilities under MMARS before any electronic security is granted to a Department. Please see Policy Chapter "**Department Head Signature Authorization and Electronic Signature for MMARS transactions**" for additional information.

### **A Department's Role In Implementing State Finance Law**

Department's are responsible for carrying out it's mission in accordance with the Department's enabling legislation and General and Special laws, including State Finance Law. A Department's mission is defined by both General and Special Laws.

- **General Laws** identify the Department's enabling legislation, including the Department's mission, powers, duties, goals and responsibilities (and for certain Departments, revenue receipt and expenditure authorization).
- **Special Laws** provide appropriations (funding) to carry out the Department mission, with additional requirements and restrictions (e.g., specifically earmarked funds for a particular recipient or purpose, and for certain Departments, revenue receipt and expenditure authorization).
- **State Finance Law** (both General and Special Laws) identifies the manner or process by which a Department expends funds in carrying out its mission, and the potential penalties for noncompliance [G.L. c. 29, s. 66 – Violations of State Finance Law - Penalties](#).

### **Recommendations for Managing within State Finance Law**

The following are high level recommended steps to support compliance with State Finance Law when making expenditure of public funds. The Department's [Internal Controls](#) will document detailed protocols, based upon the unique statutory mandates of a Department, that supports fiscal accountability and risk mitigation.

- Determine:
  - Planned activity or expenditure
  - "Legal" authority for planned activity or expenditure (statute, line-item, regulation)
  - "Funding" sufficient to support planned activity or expenditure (line-item appropriation, federal grant or trust)
- Identify:
  - [Expenditure Classification Handbook](#) object class (subsidiary) and object code for the planned activity or expenditure. (If funding account subsidiarized by Legislature an object code must be selected within that subsidiary. If not subsidiarized, select the most appropriate object code for the activity or expenditure).
  - Comply with applicable requirements identified for the selected object code including procurement rules, contract boilerplates and supporting documentation.
  - Comply with applicable [CTR Regulations](#), policies, and [job aids](#) for activity or expenditure.
- Evaluate internal controls, ethics issues, conflicts or risks.
- Conduct purchase or disbursement in accordance with Department protocols and applicable requirements.
- Document decision-making and retain all supporting materials to respond to public information requests/audits in accordance with the [Statewide Disposal Schedules](#) issued by the Secretary of State Records Conservation Board. .

### **State Finance Law Compliance Appointments and Responsibilities**

CTR maintains a database of individuals, formally appointed by a Department Head, who are responsible for the Department's compliance with various aspects of state finance law. CTR uses this database to communicate information and relies on these individuals as the knowledge base of the Departments in

their areas of expertise. These individuals are *appointments* by the Department Head with very specific duties.

The Internal Control Officer should be responsible for ensuring that the DHSA, MMARS security, and Key Appointments are up to date, both at the Department and at the Comptroller's Office. These responsibilities are vital for maintaining the series of reliances CTR uses to approve the warrant. During this transition period to MMARS and with staff turnover, it is critical that Departments notify CTR promptly of any changes so that we can accurately communicate information to your Department.

Department Head	
Chief Fiscal Officer	Payroll Director
Internal Control Officer	Security Officer
MMARS/MMARS Liaison	GAAP Liaison
General Counsel	Single Audit Liaison

Department Heads should review the list of personnel who coordinate policy and procedures on their behalf and reappoint individuals to these roles. Please review the current list within your Department and forward any changes. For a description of the responsibilities of each individual, go to [State Finance Law Compliance Appointments and Responsibilities](#). Each individual listed requires access to the Intranet (either through access behind the firewall or through VPN access if the Department is outside the firewall) in order to retrieve and process documents, policies and other information posted on the Knowledge Center and MMARS by CTR and OSD.

CTR will communicate important information to these individuals and will rely on these individuals as the knowledge base of the Departments in their areas of expertise. Please see also Policy chapter "Department Head Signature Authorization and Electronic Signatures for MMARS transactions" for additional information.

### **Delegation of MMARS transaction Processing (Transaction Delegation)**

MMARS transaction processing (transaction) delegation enables Departments to process MMARS encumbrance documents for commodities and service contracts within certain dollar limits to Final status without prior review by CTR, OSD or another state agency, provided the Department complies with CTR and other identified laws, policies and procedures and the use of specified Contract Forms. CTR and OSD conduct comprehensive Quality Assurance (QA) reviews on selected procurements and contracts which are also subject to post audit by SAO, IGO, ETH and AGO.

As stated previously, if the Department is within the Legislative or Judicial Branch or is a non-Executive Department or institution, agreeing to comply with state finance laws, including Comptroller laws, regulations, policies and procedures will not by implication extend compliance to Executive Orders or other Executive Branch directives that this Department would not normally be subject to, unless the ability to use certain MMARS transactions, system functionality or benefits (such as transaction delegation or incidental purchases) requires compliance with certain minimum requirements (such as the use of standard Commonwealth boilerplate contracts, or compliance with minimum procedures). If a Department chooses to take advantage of these benefits, the Department must comply with the minimum requirements for these benefits, unless otherwise specified.

Departments are afforded greater responsibility and accountability as a result of the delegation of high volume/low risk transaction encumbrance processing. Delegation means that a Department will have more authority and responsibility in processing financial transactions and filing contracts. Increased authority includes the ability to:

1. Process encumbrance transactions up to a certain dollar limit within the Department.
2. Make incidental purchases up to a certain dollar limit without a structured procurement process or contract.
3. Eliminate individual payments up to a certain dollar limit by using the Commonwealth's credit card.

Increased responsibility includes creating and maintaining a management environment that:

1. Provides the appropriate level of review and approval of encumbrance transactions processed within the Departments.
2. Provides a framework to achieve best value for incidental purchases without a structured procurement or contract.
3. Trusts and empowers employees to use Commonwealth credit cards for Commonwealth business, thus eliminating multiple processes for incidental transactions.

CTR and OSD conduct comprehensive Quality Assurance (QA) reviews on selected procurements and contracts. Contracts are also subject to post audit by SAO, IGO, ETH and AGO. Please see Policy Chapter "[Delegation of MMARS Processing Authority](#)" for additional information.

### [Expenditure Classification Handbook](#)

This handbook includes the object code descriptions and instructions regarding the encumbering and expenditure of all funds. The object codes in this Handbook are used for all expenditures of the Commonwealth regardless of whether the payment is to employees, contractors, individuals, recipients, beneficiaries, political sub-divisions, etc. Object codes fulfill tax reporting obligations and identify procurement, contract, legal authority, transaction document and other key information.

**Departments are responsible, PRIOR to incurring an obligation, to ensure that they have identified the appropriate object class and object code for the given obligation, and that they comply with identified requirements or restrictions.**

### **Revenues - Department Acceptance And Expenditure**

The following Constitutional, General and Special Laws govern a Department's acceptance of revenue and determine the Department's ability to expend that revenue:

- [Massachusetts Constitution](#): Article LXIII. **Section 1.** "*Collection of Revenue. - All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof.*"
- [G.L. c. 30, s. 27](#): "*Except as otherwise expressly provided, all fees or other money received on account of the commonwealth shall be paid daily into the treasury thereof.*"
  - This means that the total revenues collected by a Department must be deposited and accounted for in the state accounting system (MMARS).
  - If a Contractor assists a Department in the collection of revenue (e.g., debt collection agency, revenue maximization Contractor, or a cost avoidance Contractor) the total of all revenues collected must first be deposited and accounted for in the state accounting system prior to payment being made to the Contractor. (i.e., no "netting" of revenues and fees).
- [G.L. c. 10, s. 17B](#) Unless otherwise provided by law, all moneys received by a Department shall be deposited with the state treasurer (subject to the approval of the Governor) and expended, subject to appropriation.
  - This means that a Department can **receive** funds from any source (gift, grant or bequest) but **must have specific legislative authority** (language) to expend the funds (subject to appropriation).
    - Examples of specific legislative authority (language) authorizing receipt and expenditure of funds include:
      - "...and may expend such funds without further appropriation...", or
      - "...and may expend such funds for the purposes of this section..."
    - If a General or Special law is silent as to the ability of the Department to expend the funds, or states that expenditures are "subject to appropriation", the Department may not obligate or expend the funds received until the Legislature authorizes (appropriates) the expenditure of fund through a GAA, SAA or other Act.
  - [G.L. c. 6A, s. 6](#). Subject to approval of ANF, a secretary may apply for and accept funds, grants, bequests, gifts or contributions, from any person and expend in accordance with law. Approval of

an expendable trust by ANF is governed by [801 CMR 50.00 Expendable Trust Regulation](#). Contact the Legal Division of ANF for more information. The Trust language determines how the funding may be expended.

- [G.L. c. 29, s. 29E](#), 815 CMR 8.00 and annual Special Laws provide the authorization for contingent fee contracts for non-tax revenue maximization and cost avoidance projects.
- **Example of Trust established by General Law:** ex. [G.L. c. 29D - Health Care Security Trust](#)
  - **Example of Retained Revenue Account established by Special Law:** Chapter 159 of the Acts of 2000, section 2. ss. 1775-0900 "*The Operational Services Division may expend revenues in an amount not to exceed \$100,000 collected pursuant to chapter 449 of the acts of 1984... from the sale of federal surplus property*"
  - **Example of Interdepartmental Chargeback established by Special Law:** Chapter 159 of the Acts of 2000 section 2B. ss. 1100-1108 – "*For the office of dispute resolution for the costs of mediation and another services provided to certain agencies*  
.....\$300,000
- **NOTE:** Irrespective of source of funding, Departments are required to encumber and expend funds in accordance with state finance law requirements identified by CTR (e.g., [Expenditure Classification Handbook](#); Comptroller Knowledge Center Policies; Fiscal Year Updates and Fiscal Year Closing and Opening Instructions. See also the policies under [Non-Tax Revenue](#).

### **Department Procurement Levels**

In order to clarify and standardize the Commonwealth’s procurement practices, all state Departments have been classified into one of three “Procurement Levels” based upon governing statutes and procurement laws.

**Level I Departments** – Legislative, Judicial Branch and other Exempt Departments

**Level II Departments** – Executive Branch - Non-Executive Departments

**Level III Departments** – Executive Branch – Executive Departments

### **Departments by Procurement Level Table**

### **Procurement Requirements per Level**

For procurement purposes, the requirements for each of the Department Procurement Levels differs primarily for contracts for “commodities and services” which fall under [OSD’s jurisdiction](#) and 801 CMR 21.00. The details of procurement requirements for commodities and services are found in this Policy and OSD’s [Procurement Information Center \(PIC\)](#).

**[The requirements for state grants and federal subgrants, subsidies, Interdepartmental Service Agreements \(ISAs\) and Interdepartmental Chargebacks are the same for all Departments irrespective of Procurement Level. Please see the Policy Chapter for each type of Contract for additional information and requirements.](#)**

The following sections outline the particular requirements for commodities and services procurements for each of the Department procurement levels.

### **LEVEL I: EXEMPT DEPARTMENTS**

#### **Level I Procurement Requirements – Commodity and Service Contracts**

- Level I Departments are exempt from [G.L. c. 7, § 22](#), [G.L. c. 30, § 51](#) and [G.L. c. 30, § 52](#) although Exempt Departments are encouraged to conduct procurements consistent with 801CMR 21.00 and the **Procurement Information Center (PIC)**. Level I Departments are subject to G.L. c. 7A and c. 29; Comptroller law, regulations, policies and procedures, other laws, rules and regulations governing the Department’s purchasing and expenditures, and the five conditions for

transaction delegation if the Department accepts (takes advantage) of transaction delegation (MMARS document processing without prior CTR or OSD review).

A Level I Department that accepts transaction delegation (takes advantage) of the ability to process MMARS documents to final status without prior review by CTR, OSD or other oversight agencies, MUST comply with the following five conditions for transaction delegation (none of which can be waived):

- The Department must establish internal written procurement policies and procedures that, at a minimum, contain the laws, rules and regulations governing the Department's purchasing and expenditures, including reference to the requirements to comply with G.L. c. 7A and c. 29; Comptroller regulations, policies and procedures,
- The internal procurement policies must contain the requirements for the advertisement and receipt of bids for commodities and services that stimulate open and public competitive procurements and best value.
- The internal procurement policies must contain the requirements for approved exceptions to the competitive procurement process, including procedures for making incidental purchases (a one time purchase or a series of purchases for a one time, non-recurring need) that may not exceed the threshold established by OSD pursuant to G.L. c. 7, § 22 when in the judgment of the Department, it is expedient.
- The internal procurement policies must include a requirement for the Department to use the Commonwealth contract boilerplates as follows:
  - *Commonwealth Terms and Conditions*
  - *Commonwealth Standard Contract Form*
- The Department agrees to conduct all commodities and services purchases in accordance with these transaction delegation requirements and shall provide access to CTR and other authorized Departments for quality assurance and audit purposes.

## **LEVEL II DEPARTMENTS – EXECUTIVE BRANCH - NON-EXECUTIVE DEPARTMENTS**

### **Level II-Procurement Requirements – Commodities and Services**

- Level II Departments are required to conduct competitive procurements consistent with [G.L. c. 30, § 51](#) and [G.L. c. 30, § 52](#) which state that all services and commodities shall be purchased in accordance with [G.L. c. 7, § 22](#) which outlines the procurement requirements for supplies, equipment and other property of Departments. In addition, Level II Departments are subject to G.L. c. 7A and c. 29; Comptroller law, regulations, policies and procedures, other laws, rules and regulations governing the Department's purchasing and expenditures, and the five conditions for transaction delegation if the Department accepts (takes advantage) of transaction delegation (MMARS document processing without prior CTR or OSD review).
- Level II Departments are encouraged, although not required, to conduct procurements using 801 CMR 21.00 and the Commonwealth's **Procurement Information Center (PIC)**.
- Level II Departments that do not conduct procurements under 801 CMR 21.00 must document Department's written internal procurement policies and procedures for audit purposes, and shall provide a copy upon request to CTR or OSD for purposes of secondary review of contracts or for Quality Assurance review purposes.

A Level II Department that accepts transaction delegation (takes advantage) of the ability to process MMARS documents to final status without prior review by CTR, OSD or other agency, MUST comply with the following five conditions for transaction delegation, (none of which can be waived):

1. The Department must establish internal written procurement policies and procedures, that at a minimum state that all services and commodities shall be purchased in accordance with [G.L. c. 7, §](#)



[22, G.L. c. 30, § 51](#) and [G.L. c. 30, § 52](#). In addition, references to compliance with [G.L. c. 15A, § 24](#); [G.L. c. 15A, § 24A](#); [G.L. c. 73, §15](#) for State and Community Colleges; and reference to the requirements to comply with G.L. c. 7A and c. 29; Comptroller regulations, policies and procedures;

2. The internal procurement policies must contain the requirements for the advertisement and receipt of bids for commodities and services that stimulate open and public competitive procurements and best value.
3. The internal procurement policies must contain the requirements for approved exceptions to the competitive procurement process, including procedures for making incidental purchases (a one time purchase or a series of purchases for a one time, non-recurring need) that may not exceed the threshold established by OSD pursuant to G.L. c. 7, § 22 when, in the judgment of the Department, it is expedient.
4. The internal procurement policies must include a requirement for the Department to use the Commonwealth contract boilerplates as follows:
  - o *Commonwealth Terms and Conditions*
  - o *Commonwealth Standard Contract Form*
5. The Department agrees to conduct all commodities and services purchases in accordance with these transaction delegation requirements and shall provide access to CTR and other authorized Departments for quality assurance and audit purposes.

### **LEVEL III DEPARTMENTS – EXECUTIVE BRANCH – EXECUTIVE DEPARTMENTS**

#### **Level III Procurement Requirements – Commodities and Services**

Level III Departments are required to conduct competitive procurements consistent with [G.L. c. 30, § 51](#) and [G.L. § 30,s.52](#), which state that all services and commodities shall be purchased in accordance with [G.L. c. 7, § 22](#), which outlines the procurement requirements for supplies, equipment and other property of Departments.

All Level III Departments are required to purchase commodities and services in accordance with [801 CMR 21.00](#) and the **Procurement Information Center (PIC)** which provides the details and procedures for how to conduct commodities and services procurements.

For Level III - Executive Departments (and other Departments adopting 801 CMR 21.00), *unless circumstances support an exception*, purchases shall be done as either a:

- **Small Procurement** (total value of procurement for duration of procurement does not exceed threshold set by OSD). Request for Response (RFR) distributed to at least 3 potential bidders, one of which must be a certified minority or woman owned business if available; OR
- **Large Procurement** (total value of procurement for duration of procurement does not exceed threshold set by OSD)
  - o RFR posted on Comm-PASS, final awards posted when complete;
  - o If RFR seeks performance covered by World Trade Organization (WTO) which exceeds threshold RFR must be posted 40 days (may include days of notice on Comm-PASS of forthcoming RFR posting).

Please refer to the **Commonwealth’s Procurement Information Center (PIC)** for detailed instructions related to purchasing and procurements of commodities and services.

#### **Consultant Contract Requirements**

Executive Departments purchasing consultant services (HH and N01-N14 and U05 object codes) have the following requirements under [G.L. c. 29, § 29A](#):

- Secretariat approval of a Request for the need for the consultant service (Request for Response (RFR) or contract)
- a scope of services and duration of work (Request for Response (RFR));
- a written contract (*Commonwealth Terms and Conditions* and *Commonwealth Standard Contract Form*);
- a resume or statement of qualifications;
- a disclosure of any other Commonwealth income (Contractor Mandatory Submission Form).
- a disclosure of persons with a financial interest in the Contractor of more than one per cent of the capital stock of a corporation contracting to provide the services. Pursuant to [G.L. c. 7A, § 6](#) the comptroller requires a statement of financial interest prior to filing a contract. (Contractor Mandatory Submission Form).
- a work structure that recognizes that consultants may not supervise state employees and may not substitute for state positions.

Please refer to the **Commonwealth’s Procurement Information Center (PIC)** for detailed instructions related to consultant contracts.

### **Procurement Exceptions – Commodities and Services Contracts**

For Level III – Executive Departments, exceptions for commodities and services contracts are defined under 801 CMR 21.00 and the OSD **Procurement Information Center (PIC)** as follows:

- **Statewide Contracts** - Executive Departments must purchase from available Statewide Contracts unless approval to conduct a procurement for a commodity or service available from an existing statewide contract has been requested and received in writing from OSD;
- **Emergency contracts** - to prevent or cure health or safety risk or substantial harm to the functioning of government;
- **Interim Contract** – to prevent a lapse in performance to complete contract or until new procurement completed;
- **Legislative or Legal Exemption** - such as legislative earmarking, a court judgment or other legal restriction;
- **Collective Purchase** - as approved by OSD;
- **Contract Employees** - postings are similar to other employees which replaces RFR; (See section below on Individual Contractors and Contract Employees). See also Policy “Individual Contractors – Contract Employees vs. Independent Contractors”.
- **Incidental Purchase** - small \$ - one time, non-recurring need; (See section below)

Please refer to [OSD Procurement Information Center \(PIC\)](#) for more information regarding exceptions and requirements.

Level II (Executive Branch -Non-Executive Departments) and Level I (Exempt) Departments utilize similar exceptions under internal procurement policies. Level II and Level I Departments that choose to take advantage of Incidental Purchases, Statewide Contracts, Contract employees and Collective purchase options agree to comply with applicable policies and procedures for those options as required by CTR or OSD. Level I and II Departments do not have to utilize Statewide Contracts for commodities or services when seeking to conduct an incidental purchase.

### **Incidental Purchases**

Incidental Purchases are authorized under G.L. Chapter 7, Section 22 under the jurisdiction of the Purchasing Agent (OSD). Incidental Purchases are one-time, unanticipated, non-recurring purchases of commodities (goods) or services that are not available from a Statewide Contract. Executive (Level III) and any other Department that follows 801 CMR 21.00 for its internal procurement policy must comply with the incidental purchase requirements outlined in the **OSD Procurement Information Center (PIC)** and the **“Incidental Purchase Quick Reference Guide”**.

**Non-Executive (Level II) Department** procurements of commodities and services are governed by G.L. Chapter 7, Section 22. Level II Departments that do not adopt 801 CMR 21.00 as internal procurement

practices must have written internal incidental purchase procedures that comply with the OSD policies and procedures for incidental purchases.

**Exempt (Level I) Departments** are not subject to G.L. c. 7, § 22 or the OSD policies and procedures for incidental purchases. However, the use of incidental purchases is a privilege granted to Departments based upon assurances of state finance law compliance. As part of obtaining MMARS security Department Heads certified that their Departments would comply with all applicable laws, regulation, policies and procedures. In addition, Level I Department Heads also certified that if the Department chose to take advantage of incidental purchases the Department would comply with CTR policies related to incidental purchases and MMARS transaction processing delegation. For Level I Departments, the CTR policy for incidental purchases requires any Level I Department that chooses to use incidental purchases to have written internal incidental purchase procedures that are consistent with the “one-time, unanticipated, non-recurring” use and dollar threshold restrictions set for incidental purchases by OSD for Executive (Level III) and Non-Executive (Level II) Departments.

**Level I and II Departments** can identify the types of commodities and services eligible for incidental purchases, and the Departments will not be required to use Statewide Contracts first if available for the type of purchase required. Incidental Purchases do not require a competitive procurement or contract. The vendor’s invoice is the minimum necessary documentation for payment. Ongoing or recurring purchases of commodities (goods) or services (performance that recurs annually) are not Incidental Purchases and must be procured using a competitive procurement.

The GAE is the encumbrance for incidental purchases, although no encumbrance is necessary. If a Department chooses to encumber funds using a PC or CT document for incidental purchases then a *Standard Contract Form* and *Commonwealth Terms and Conditions* must also be completed and retained in the Department’s procurement file.

For more detailed information Departments should consult the **OSD Procurement Information Center (PIC)** and the “**Incidental Purchase Quick Reference Guide**”

### **Documentation Requirements for Incidental Purchases**

Purchases which do not exceed the incidental purchase limit and are not available from a statewide contract may be done without a competitive procurement. The encumbrance transaction for incidental purchases is the GAE (General Accounting Encumbrance document) and the payment transaction is the INP (Incidental Payment document). For most incidental purchases, only the invoice is required. On the other hand, Departments may determine it is in their best interest to execute a *Commonwealth Terms and Conditions* and *Standard Contract Form*. If they elect to do a CT (Contract Encumbrance document), RPO (Recurring Payment Order), or PC (Commodity Purchase Order), then both of these forms are required. Each Department should develop internal controls on procurement and documentation that are appropriate to the nature of incidental purchases that the Department is likely to encounter. Please see the associated guidance entitled [Incidental Purchasing Policy Guidance](#) under OSD’s [Procurement Information Center \(PIC\)](#).

### **INDIVIDUAL CONTRACTORS – CONTRACT EMPLOYEE OR INDEPENDENT CONTRACTOR**

This policy, which is jointly issued by the Operational Services Division, Office of the Comptroller and Human Resources Division, highlights the differences between the two types of individual workers: contract employees and independent contractors. It provides guidance to Departments in determining whether to hire a contract employee or to contract with an independent Contractor and then provides guidance pertaining to the recruitment and contract execution for contract employees. This guidance includes the Commonwealth’s three-part test, which incorporates the requirements of state and federal law and which must be utilized by Departments in determining whether an individual is a contract employee or an independent Contractor.

When a Department requires the services of an individual, it must determine, before acquiring the services, if the service is a competitive procurement exception (contract employee) or if it must conduct a

competitive procurement (independent Contractor). In addition, when a Department has conducted a competitive procurement, which was not specifically for the services of an individual but which has resulted in the selection of an individual, the Department must review the specific working circumstances of the contract and the individual's work status to determine if the individual will be deemed a contract employee or independent Contractor in their working relationship with the Department.

For more detailed guidance for determining whether to hire a contract employee or to contract with an independent Contractor, and guidance pertaining to the recruitment and contract execution for contract employees, See the policy Chapter under either "Contracts" or "Payroll" for "[Individual Contractors – Contract Employee vs. Independent Contractor](#)".

### **Employment Status Form (Combined State and Federal Tests for Employment Status)**

An [Employment Status Form](#) has been developed to assist Departments in two ways:

1. To make the determination PRIOR to the procurement of services, as to whether the type of work to be performed will trigger an employment relationship (contract employee) or a non-employment relationship (independent Contractor) in order to determine the proper procurement method to be used to acquire the services, and
2. To confirm the employment status when a contract is signed with an individual Contractor selected from either an RFR (independent Contractor) or posting (contract employee), which is a required attachment to the *Standard Contract Form*.

The checklist on the *Employment Status Form* reconciles the Federal IRS 20 factors (which are focused primarily on whether an employee falls under the "supervision and control" of a Department) with the stricter Massachusetts presumption that an individual will be considered a contract employee "unless" the individual passes all three parts of the Massachusetts three-part test.

While the IRS factors consider the work context and the overall balance of the 20 factors, the Massachusetts law requires that the employer/employee relationship be definitively established. The Massachusetts Attorney General has interpreted this test to be rigid, thus resulting in the presumption that an individual Contractor will be considered a contract employee unless the three-part test under G.L. c. 149, s. 148B is met. The burden is on the Department to defend a determination of independent Contractor status. Massachusetts law imposes strict penalties when a worker is misclassified. Therefore, a Department must complete the "*Employment Status Form*" in order to certify the status for all individual contractors and attach it to the *Standard Contract Form*.

**The *Employment Status Form* is available under [Forms-Payroll and LCM](#) in the CTR Website and as part of the policy "[Individual Contractors – Contract Employee vs. Independent Contractor](#)".**

### **Posting or Procurement?**

A Department does not always know in advance whether services can be best performed by an individual Contractor or by a company or firm. Therefore, whenever services are being performed, the Department should make the following determinations:

1. **Identify the Business Needs of the Department:** The hiring Department should develop performance specifications for the services necessary to meet the Department's business needs, including where the work needs to be performed, the level of control and supervision that will be required for performance, whether the work hours or schedule will be set by the Department or the Contractor, whether the work is performed as part of or outside the usual course of business of the Department.
2. **Apply the Commonwealth Three-Part Test to the Business Needs: (*Employment Status Form*):** The Department must determine if the type of work to be performed can be performed by a firm or an individual and if the type of oversight relationship will trigger an employer-employee relationship or that of an independent Contractor. To make this determination, the Department must

**review** the *Employment Status Form* to determine if an employer-employee relationship will be created if an individual is selected for performance, as follows:

- a. If the work can be performed by a firm or an individual, or the Department is unsure of how best to perform the requisite service, and the review of the *Employment Status Form* 3-part test indicates that there will not be an employer-employee relationship, the Department is required to conduct a procurement for these services. See *How to Do a Competitive Procurement* in the OSD Procurement Information Center ([www.mass.gov/osd](http://www.mass.gov/osd)).
- b. If the work can only be performed by an individual, and the review of the *Employment Status Form* 3-part test indicates that there will be an employer-employee relationship, the Department is required to post the contract notice for a contract employee, as outlined below.

### **Commonwealth Three-Part Test**

Current employment law establishes separate tests for determining employment status under both state and federal law. State law, G.L. c. 149, s. 148B, establishes a three-part test that presumes an individual is a contract employee unless:

1. The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact.
2. The service is performed outside the usual course of the business of the employer.
3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

This test is a much stricter test than the federal IRS SS-8 test, which Departments have used in the past to determine employment status. Any individuals who were classified as independent contractors using the SS-8 test should be reassessed to determine whether they are also independent contractors under the Commonwealth's laws. If the individual would be classified as an independent Contractor under the SS-8 test, but as a contract employee under the Commonwealth Three-Part test, the individual should be reclassified as a contract employee. The Attorney General's Office may impose penalties if the three-part test shows that an individual should be a contract employee, and the individual was misclassified as an independent Contractor.

### **Contract Employees (Procurement Exception Under 801 CMR 21.05(6))**

The hiring of contract employees is a competitive procurement exception under 801 CMR 21.05(6) since individuals deemed contract employees will be hired under the normal personnel procedures of the Department.

**Determine the compensation of the contract:** Departments should determine the rate or range of compensation based on the performance and qualifications requirements and available funding. Departments may adjust the rate or range to reflect to lack of fringe benefits for contract employees and the selected candidate's qualifications. Then, Departments should determine the total compensation for the anticipated contract duration.

**Post the contract notice:** Departments should post, advertise or solicit contract candidates as deemed appropriate, e.g., colleges and universities, newspapers, trade journals, electronically ([MassCareers](http://MassCareers)), and in accordance with any internal procedures on recruitment developed for the Department. The posting should include the description of performance requirements or functions, any minimum qualifications, the compensation rate or range, expected duration and possible options to renew. It should also include instructions for how and when candidates should respond to the posting.



**Select the Contractor:** Selection of a contract employee should be in accordance with the Department's standard interview process. The evaluation should take into account the performance requirements and minimum qualifications of the posting. See HRD's [Model Hiring Plan](#), Structured Interview Guidelines. See the [Massachusetts Commission against Discrimination Pre-Employment Inquiries Fact Sheet](#) for additional information on appropriate interview questions and topics.

**Contract Forms.** Contract employees must execute the *Commonwealth Terms and Conditions* and the *Standard Contract Form*. The attachments should include a copy of the contract posting or an alternative attachment containing the description of the contract performance, any minimum qualifications, the compensation rate or range and a copy of the Contractor's résumé (or statement of qualifications). Include completed *Employment Status Form*.

**Amendments.** After contract execution, annual or other options to renew or amendments to the contract are exercised at the Department's option in accordance with the duration listed in the posting by executing a Standard Contract Amendment Form prior to the termination date of the contract.

### **Payroll System Requirements for Contract Employees.**

- Contract employees must be paid through the state payroll system that automatically makes tax deductions and alternative retirement contributions.
- Contract employees are subject to alternative retirement contributions under COBRA 1990.
- Contract employee labor will be distributed the same way regular employee labor is distributed. By default, all charges will be attributed to the HR/CMS position accounting line (Department, Unit, and Appropriation). If the position distribution needs to be changed or additional data needs to be captured for labor history reporting, a default distribution, pay period exception, or labor adjustment should be created in LCM. Contract employee payroll payments will be incorporated into LCM predictive/production payroll reports so that Departments can monitor and manage funded/unfunded payroll accounts. LCM Labor History and CIW reports can be used to track contract employee payroll expenses.
- The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to hire an unauthorized worker. Employers must comply with this requirement by verifying the identity and right to work of all employees hired after November 6, 1986. Prior to hiring any individual, employers can protect themselves by obtaining proof of the right to work in the U.S. This proof of right to work is known as *Form I-9, Employment Eligibility Verification*. This form is available at: [Form I-9, Employment Eligibility Verification](#).
- Make sure the name matches Social Security Administration records. Correct names and social security numbers (SSN) on W-2 wage reports are the keys to successful processing of the Commonwealth's annual wage report submission. Not only can the Commonwealth be subject to penalties when employee names and SSNs don't match Social Security Administration records, but also unmatched wage reports can cause earnings that are not posted to your employees' records. To verify the name and SSN match, call the SSA toll-free number for employers - 1-800-772-6270 provide Social Security Number, Date of Birth and Gender. The Commonwealth EIN is 04-6002284. Double check to make sure you have entered the SSN correctly into the payroll system.
- Upon hiring or rehiring an individual verify Medicare Status. For Rehires verify that a 'break in service' has not occurred. Validate Income and Medicare taxes are appropriately withheld from wages paid to contract employees, in amounts determined by the employees' withholding certificates and governmental withholding tax tables".
- Contract employees receive a W-2 for state and federal tax purposes.

### **Massachusetts Labor Relations Commission Test:**

For the purposes of determining collective bargaining status, the Massachusetts Labor Relations Commission does not distinguish between a contract employee and an independent Contractor. Only those individuals who meet the Labor Relations Commission's standard of independent Contractor will be exempt from the definition of employee pursuant to G.L. c. 150E and, as such, exempt from union membership. In determining whether an employee is an independent Contractor, the Labor Relations Commission examines whether the alleged employer retains control over the worker. In analyzing the



control issue, the Labor Relations Commission examines the duties of the workers, the type of supervision they receive, how the employer treats the workers, and the method in which the workers are paid. The funding source for the position is irrelevant to the Labor Relations Commission's analysis.

**Fixed Assets – Acquisition Policy and Procurement Considerations when purchasing durable commodities (applies to all Departments)**

Unless otherwise specified, the policies identified for the acquisition of fixed assets including durable commodities apply to all branches of state government. Acquisition includes cash purchase, receipt of a donation, construction, rental, license, term lease, lease purchase (TELP) or eminent domain, regardless of the source of funds used. All acquisitions of fixed assets must be recorded in accordance with existing laws and policies of the Commonwealth. The Commonwealth owns an asset when the full title of the asset rests with the Commonwealth.

**All purchases of commodities such as furniture, vehicles, equipment, computer software, electrical and computer components with a value exceeding \$1,000 must be recorded as inventory and when exceeding \$50,000 must be recorded as fixed assets in MMARS.**

**Department must comply with Fixed Asset - Acquisition Policy for these types of purchases, and for guidance on the appropriate considerations for rentals, leases, outright purchases and Tax Exempt Lease Purchases (TELPs).**

The cost of purchasing an asset includes all costs necessary to put that asset into existing use and location, including but not limited to freight, insurance and installation (i.e., ancillary costs). These costs may include legal costs, eminent domain costs or environmental remediation. The custodial responsibilities of an asset will reside within a particular Department. All GAAP fixed asset transactions must be entered in MMARS.

The Fixed Asset – Acquisition Policy outlines the requirements that apply to fixed assets, including procurement considerations and recording responsibilities. Departments that purchase durable commodities are required to conduct these purchases in accordance with the relevant procurement requirements AND the Fixed Asset Acquisition Policy. Please see Policy Chapter "[Fixed Asset – Acquisition Policy](#)" for additional information and requirements.

**STATE GRANTS AND FEDERAL SUBGRANTS PROCUREMENT REQUIREMENTS.**

A formal public notice of a grant application will be required under [815 CMR 2.00](#) whenever a Department plans to disburse **discretionary** grant funding of state appropriated funds which do not specifically identify the grant recipients to receive funding **and**:

- a. the total anticipated value of any **single** grant award may exceed \$50,000 for the duration of the grant or grant program, or
- b. the pool of potential eligible grant recipients includes, or may include, non-public entities, or
- c. the total available funds for disbursement in any fiscal year exceeds \$200,000;

unless the grant meets an authorized exception.

- **Legislative or Legal Exemption** - earmarked or designated grantees;
- **Incidental Grants** - small \$ - one time, non-recurring grants;
- **Interim Grant** - to complete performance or to prevent a lapse in performance until a new grant application process is completed;

- **Best value** –a formal posting on [Comm-PASS](#) or other public posting of a Notice of Intent to Award a grant(s) on Comm-PASS with justification of why the selection of the grantee(s) without a procurement is the best value common sense decision, as efficient, fair and reasonable and in the best interests of the Department and the Commonwealth.

State and Federal Subgrants are subject to all other contract and accounting requirements as any other contract. Federal Subgrants may have additional federal reporting and federal grant requirements. Please see Policy Chapter “[Contracts – State Grants and Federal Sub-grants](#)”. Procurement exceptions do not apply to Subsidies, ISAs and Chargebacks. Please see Chapters for each Contract type for additional information regarding procurement exceptions.

### **Requirements for Vendors Receiving Federal Funds (DUNS Numbers)**

The United States Office of Management and Budget (OMB) requires all vendors (defined as sole proprietor, corporation, profit and non-profit, partnership municipal or regional government, that receive federal grant funds have their Dunn and Bradstreet Universal Numbering System (DUNS) number recorded with and subsequently reported by the granting agency. To meet this requirement, the *MA-W-9 Form* includes the field DUNS number. All vendors must submit their DUNS number using the form MA-W-9. Any entity that does not have a DUNS number can apply for one on-line at <http://www.dnb.com/> under the “D&B D-U-N-Number” Tab. Individuals cannot obtain and do not need a DUNS number, . i.e., foster parents who are paid using their social security number. Departments should enter or update using a Vendor/Customer Entry (VCC) or a Vendor Customer Modification (VCM).

### ***Use of the Commonwealth DUNS numbers by non-Commonwealth entities is Prohibited –***

Issuance of the Commonwealth’s DUNS numbers to **non-Commonwealth** entities such as sub-recipients is prohibited. If this is done, the Commonwealth may be put into a position of being reported as being primarily responsible for a secondary entity’s activities. See The Use of DUNS Numbers in Federal Grants Policy. If a Contractor has multiple DUNS numbers, the Contractor should provide the primary number listed with the Federal government’s [Central Contractor Registration \(CCR\)](#).

### **Federal Grant Funding**

Special requirements must be met when accepting and expending federal grant funds, including disbursing federal grant funds through a federal subgrant or through an Interdepartmental Service Agreement (ISA). Departments are required to carefully follow cost accounting requirements for coding federal grants. See [Federal Grants and Cost Accounting](#) Page on the web site for applicable [policies](#), job aids and document profiles. See the policy chapters on “[State Grants and Federal Subgrants](#)” and “[Interdepartmental Service Agreements \(ISAs\)](#)” for additional information and requirements for use of federal grant funding

### **CONTRACT EXECUTION AND FILING**

The following sections identify the requirements for the use of contracts, contract execution, filing, and contract management.

### **Types of Contracts**

The following is a listing of the most common types of contracts. This section contains many of the general requirements that apply to these types of contracts (with the exception of construction and real property leases.) Please see the Contracts Policy Chapter for each contract type for additional requirements and information. The [Expenditure Classification Handbook](#) identifies the required Contract Form to be used for each object code, if applicable.

- **Subsidies** (Non-discretionary Legislatively Mandated Payment to Specified Recipient(s))
- **Commodities and Services** (Including Health and Human Services, Leases, TELPS, Consultant Contracts, Incidental Purchases and Statewide Contracts)
- **Grants and Federal Subgrants** (including Federal Subgrants and Incidental Grants) (Financial Assistance for a Public Purpose)

- **Interdepartmental Service Agreements** (Joint Venture between Departments)
- **Interdepartmental Chargebacks** (Legislatively authorized service fees or charges)
- **Horizontal Construction Contracts** (Roads, bridges)
- **Vertical Construction Contracts** (Buildings)
- **Real Property Leases** (Space or land leases)

### **Contract Forms**

All Level II and Level III Departments, and any Level I Departments that take advantage of MMARS transaction processing delegation (transaction delegation) are required to use standard Commonwealth contract boilerplates. The following are the most common standard [Commonwealth contract boilerplates](#). Please see Policy Chapters for each type of Contract for additional requirements and information. Forms are available under the Procurement/Contract Page under "Forms":

- *Commonwealth Terms and Conditions* Form
- *Commonwealth Terms and Conditions* for Human and Social Services (Level III - Executive Only)
- *Commonwealth Standard Contract Form*
- Purchase Order for Commodities and/or Services
- Change in Contractor Identify Form (Change in business structure or contract assignment)
- Interdepartmental Service Agreement Form
- Subsidy Agreement
- Construction Contracts (vertical) and Real Property Leasing see the [Division of Capital Asset Management Forms](#).

### **Contract Form Exceptions**

There are a few exceptions to the general requirement of using Commonwealth boilerplate contracts. These circumstances are rare and should be negotiated sparingly, as follows:

- **Alternative contracts are acceptable for student interns.** Although primarily an issue with higher education institutions which routinely employ student interns as part of normal business and as part of work study curriculum, any Department may use an alternative contract form for student interns. If the student is covered by G.L. c. 258, the commonwealth has some protection, however, a contract which offers liability protection and requires the student to comply with Department policies and procedures in accordance with law is sufficient. Departments are encouraged to review alternative student intern contracts with CTR and/or OSD for comments.
- **Alternative contracts are acceptable for contracts with the federal government.** The federal government, when performing contract work for the Commonwealth, routinely refuses to sign the Commonwealth boilerplates. Upon review of Department legal counsel and CTR and/or OSD counsel, a Department may develop its own alternative form to memorialize performance requirements or sign a form prescribed by the federal government. Agreements with quasi-federal entities are not included within this exception.
- **Alternative contracts are acceptable for contracts with multi-state collaboratives.** In some cases, a Department will be one of several states included in a multi-state, or state-federal collaborative. In these circumstances the Department may execute an alternative contract or Memorandum of Understanding, provided the document has been reviewed by Department counsel and CTR and/or OSD to ensure that signature would not bind the Commonwealth to obligations in violation of state law, or attempt to obligate the Commonwealth to appropriate funds in a future fiscal year(s) for the collaborative.
- **Waiver of use of contract in emergency or special circumstances.** In certain very *rare* circumstances, a waiver of the use of a contract may be necessary. For example, in emergency, critical need or exceptional circumstances as outlined in 801 CMR 21.08 (2) funding for emergency or special performance it is anticipated that a contract will be executed with the Contractor providing the emergency service. In the event a contract can not be executed by the parties contemporaneously with the need for the performance, the Department shall not be required to retroactively attempt to have a contract signed. Instead, the Department shall follow the contract settlement and release process. This remedy should not be assumed to be a routine remedy for administrative failure to obtain timely executed contracts, and use of settlements will be strictly

reviewed as part of quality assurance reviews by CTR and OSD, and will be subject to audit. This section applies to any type of contract.

### **Prohibition against Execution of Vendor Contracts**

CTR and OSD support the Office of the Attorney General's recommendation against the execution of any vendor or contract boilerplate, or the acceptance of vendor invoices or purchase orders with contractual terms. Many of these forms contain terms which contradict standard Commonwealth boilerplate terms, provide a benefit to the vendor to the detriment of the Commonwealth, restrict the AGO's ability to successfully defend or litigate on behalf of the Commonwealth or severely limit contract recoveries for breach of contract.

The AGO has approved the use of the *Commonwealth Terms and Conditions* (T&C and T&C HHS) for the use by Commonwealth Departments as well as other listed Commonwealth boilerplates. A vendor contract may be attached unsigned to a Commonwealth contract if the document contains relevant performance requirements, however, conflicting terms should be crossed out. Even if terms are not crossed out, conflicting terms will be superseded by the Commonwealth contract terms.

Departments are strongly advised ***not to execute vendor contracts***, even if a vendor requests signature in return for the vendor's signature of the Commonwealth contracts. Departments may be faced with unusual circumstances in which a Contractor refuses to sign the Commonwealth contracts, conditions the signature on material changes to the contract, or demands the Commonwealth's signature on a vendor Contractor or the vendor will not provide performance. These circumstances should be immediately communicated to the Department's legal office for resolution.

The issue of vendor contracts arises more often when Departments are procuring incidental purchases in which no procurement or contract is required (such as being required to execute a rental contract for a short term rental of equipment, furniture or space.) Even though a Commonwealth contract boilerplate is not required, this does not mean that signing a vendor contract is acceptable. On the contrary, if any contract is used, it must be a Commonwealth boilerplate, not a vendor contract. Since Departments are ultimately in control of their business decisions, Departments that choose to execute a vendor contract, under any circumstance, assume any risks, costs or liabilities associated with this decision and the AGO may choose not to represent the Department in any resulting litigation.

### **Insurance and Indemnification**

Departments are prohibited from insuring Commonwealth property under [G.L. c. 29, § 30](#) absent specific legislative authorization. This means that a Department is prohibited from insuring its property or equipment from damage or loss. The Commonwealth is "self-insured", which means that it does not purchase separate personal and property liability insurance, but pays for damages through its own funding appropriated by the Legislature.

In addition to being prohibited from insuring its own property, a Department may not insure property it does not own (lease or TELP). The leasing company is responsible for insuring any property it owns and leases to the Commonwealth. The leasing company may calculate a lease payment to include its cost for having insurance, but may not tack on a separate fee for insurance, or require a Department to obtain separate insurance for leased property.

Massachusetts employees are covered under the Massachusetts Tort Claims Act under [G.L. c. 258](#) which covers liability for personal and property damages caused by the Commonwealth in the course of its official duties. Claims that are properly presented and finalized are paid by the Commonwealth in accordance with this statute, subject to appropriation and available funds in the Liability Management Reduction Fund (created under [G.L. c. 7A, § 16](#)).

Vendors requesting that the Commonwealth provide an insurance policy or purchase insurance for an event, equipment, etc. should be informed that the Commonwealth is self-insured and does not pay for additional insurance. The Commonwealth does not provide certificates or other proof of insurance since

this is provided for in the statute [G.L. c. 258](#) (which has the same affect). Therefore, providing this information should obviate the need for providing further proof of insurance.

The Massachusetts Constitution mandates that all claims for money due and owing are "subject to appropriation". Any language in a contract which attempts to obligate the Commonwealth to indemnify or otherwise obligate the Commonwealth to pay damages at some future date (in advance of an appropriation) is deemed void. Therefore, no contract may contain language obligating the Commonwealth to pay damages or to indemnify a Contractor (absent legislative language to the contrary) without an appropriation. The *Commonwealth Terms and Conditions* contains language stating that contractors may be indemnified "in accordance with law", which means that if the Commonwealth is found liable for a breach or other damages that are awarded to a Contractor through litigation or other contract claim, the Contractor will be paid "subject to appropriation" by the Legislature. There can be no guaranteed entitlement to indemnification or damages. A Contractor must always file a claim and prove damages.

These restrictions do not prohibit a Department from negotiating as part of a contract an amount or calculation of liquidated damages that could be paid, subject to appropriation, in the event certain damages occurred and were proven by a Contractor. This language would be binding only as to the "amount" or "calculation" to be used if damages are proven, and would not be binding upon the Commonwealth as an entitlement to payment. There is still no guarantee of payment since the Contractor must still bring a claim for damages, and the Contractor must prove damages, and any payment for substantiated damages would be subject to appropriation by the Legislature.

Departments may not negotiate language that limits the Commonwealth's right to indemnification or limits a Contractor's liability for damages, except as authorized in the *Standard Contract Form*. The Attorney General's Office has determined, as the Authorized Attorney for the Commonwealth, that the right to full recoupment of contract damages and personal and property damage to the Commonwealth is required and may not be reduced, except as authorized under the "Limitation of Liability for Information Technology Contracts" section of the [Standard Contract Form](#).

Attempts to reduce the Commonwealth's rights to indemnification or reducing a Contractor's liability for damages shifts the risk of loss from the Contractor (who is in a better position to insure for these damages) to the Commonwealth. In the event of a loss, the Commonwealth would need to cover the losses with appropriated dollars and might not be able to recoup the full extent of damages caused by the Contractor. Insuring for contract damages, and for personal and property damages to the Commonwealth are a normal business expense that is properly borne by a Contractor and which are costs that are prorated across all contracts a Contractor has, not just the Commonwealth contracts. Therefore, having sufficient insurance to cover damages should already be factored into contract pricing and Departments should be wary of Contractors claiming that having this insurance "costs the Commonwealth more money" since this type of insurance should be already be in place for all Contractor customers. .

See [Contract Negotiation](#) section below.

Questions on insurance or indemnification should always be referred to the Department's legal counsel.

### **Contract Attachments**

Contract attachments and contents vary depending upon the type of contract. Please see the policy chapter for each type of contract for details regarding contents and attachments. Please see also the Policy Chapter "**Quick Reference – Commodities and Services, Grants, Subsidies, ISAs and Chargebacks**" and the "Quick Reference" for each of the contract types. Contracts must be filed as prescribed by the Comptroller.

### **Competitive Procurements:**

- Request for Response (RFR); Copy of the RFR or screen print of the Comm-PASS Contract Summary tab containing the RFR title and reference number, or other solicitation document.
- Contractor response to RFR or response to other solicitation document



## **Procurement Exceptions:**

- Supporting documentation justifying procurement exception (Note: documentation must explain the authority for the exception, include the cite and language of any statutory or legal exemption, and the circumstances supporting the exception. For exceptions other than a legislative earmark specifically naming the Contractor and amount, a detailed justification detailing all the circumstances of the exception and why the contract is appropriate must be attached.
- Detailed Scope of performance and budget. A single line scope or budget is not sufficient. Performance expectations, dates for performance, reporting, and other details of performance must be included.
- Copy of posting and resume (Contract Employees)

## **Other attachments:**

- [Employment Status Form](#) (required for all Contracts with Individuals)
- [Contractor Authorized Signatory Listing](#) (all)
- [Consultant Contractor Mandatory Submission Form](#) (consultant Contracts – HH, N01-N14 and U05 Object Codes – Level II-Non-Executive and Level III – Executive)
- [Human and Social Service Contract Attachments](#) (Level III – Executive Only)
- [Purchase Order for Commodities and/or Services](#) (located on the OSD Forms page) or an equivalent to confirm the selection of equipment and services, if the specific terms are not already included as part of the contract. Any terms and conditions and/or agreements included in or attached to the form that differ from or are in addition to the terms and conditions of the contract are superseded and shall be deemed void.
- [Other attachments required by OSD](#) (See Procurement Information Center (PIC); or required by the Department or under the procurement
- Additional negotiated terms not in conflict with RFR or Contract terms.
- Justification Statements or supporting documentation for amendments, why a Prompt Pay Discount is not be taken for accelerated payments (See Bill Payment Policy) or other justifications for procurement exceptions, emergency contracts, interim contracts or any other deviation from the normal procurement or contracting process, or other relevant information for quality assurance or audit purposes.

## **Other Required Contract Forms.**

- [FORM W-9 \(MASSACHUSETTS SUBSTITUTE W-9 FORM\)](#) if Contractor not registered as vendor in MMARS Vendor/Customer file
- [Electronic Funds Transfer \(EFT\) form](#) (all, unless one-time payment or hardship)

## **Contract Negotiation**

The following negotiation terms reference 801 CMR 21.00 but are incorporated by reference herein and apply to all contracts using the [Commonwealth Terms and Conditions](#) and [Standard Contract Form](#).

The identification of a selected bidder(s) or a grant award do not create a contractual obligation on the Department or the Commonwealth until negotiations have been successfully concluded and a contract has been executed by both parties. The following sections provide guidance on negotiating contracts with selected bidders. Departments are encouraged to include programmatic, Affirmative Market Program Coordinators or their designees and fiscal and legal staff during contract negotiations.

In addition, Departments should remember that, pursuant to G.L. c. 106, s. 2-205, bidders' responses/bids made in response to a Request for Response will only remain in effect for 90 days from the date of bid submission. If it appears during contract negotiations that the negotiations may cause this 90 day effective bid period to lapse, then the Procurement Management Team should ask the bidder to renew their bid proposal in writing.

## **What Is Negotiable?**

Pursuant to 801 CMR 21.07(1), the PMT may negotiate with selected bidder(s) prior to execution of a



contract based on what was specified in the RFR. The *Standard Contract Form* identifies the following hierarchy or order of precedence of documents:

1. the applicable [Commonwealth Terms and Conditions](#),
2. the [Standard Contract Form](#) including the Instructions and Contractor Certifications,
3. the Request for Response (RFR) or other solicitation,
4. the Contractor's Response, and additional negotiated terms,
5. provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in [801 CMR 21.07](#), incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

801 CMR 21.07 (1(a) and (b) allow additional terms and clarifications to take precedence over the original RFR and Contractor's Response ONLY if the terms do not change the boilerplate terms of the contracts (specifically or by implication) and are within the scope of the RFR and Contractor's Response.

The better value standard described in 801 CMR 21.07(1)(c) allows the Department and a selected bidder, or a Contractor, to negotiate a change in any element of contract performance or cost identified in the RFR or the bidder's response which results in lower costs, or a more cost-effective or better value commodity or service than was presented in the bidder's original selected response. The additional terms will take precedence over the terms in the RFR or Contractor's Response provided the terms do not change the boilerplate terms of the contracts (specifically or by implication) and results in a better value than identified in the RFR and Contractor's Response.

Affirmative Market Program (AMP) Plan Negotiations: Prior to signing a contract, agencies may negotiate the AMP Plan and benchmark for spending with SOMWBA certified M/WBEs for the duration of the contract, but only to increase what was committed to in the original response. Please see the *Affirmative Market Program* guidance for more information pertaining to AMP plan negotiations. Negotiated changes must be included in the procurement file.

Additional Negotiated Items Agreed to by Both Parties: Pursuant to 801 CMR 21.07(1)(b), the PMT and a selected bidder, or a Contractor, may negotiate additional language which clarifies their understanding of, but does not change, the language of the contract or contract performance identified in the original RFR and a bidder's response. These clarifications may provide a more detailed description of the language in an RFR and the response. They may also provide additional terms and the meaning of terms in the applicable *Commonwealth Terms and Conditions* and the *Standard Contract Form*. Clarifications may fill in the gaps and "spell-out" the understanding of the Department and the Contractor regarding their respective contract responsibilities. Clarifications may not be used to have the effect of negating, modifying or replacing language in the applicable *Commonwealth Terms and Conditions* and the *Standard Contract Form*. The following are examples of acceptable clarifications or additions to a contract, which clarify, but do not change, the intent of the contract language or the rights of the Department:

<b>Acceptable Clarifications</b>
<ul style="list-style-type: none"><li>• For the purposes of this contract, the term "records" in the contract shall include performance records with the dates and times of all service calls, the reasons for the calls and how these were resolved.</li><li>• For the purposes of this contract, "normal wear" shall mean natural forces acting upon equipment while it is operated within product specifications. Normal wear shall not include negligence, misuse, external forces or the use of commodities or services that are not compatible with the Contractor's stated specifications.</li><li>• The Contractor and Department agree that "notice" under this contract may be delivered initially by fax but shall not be effective until the date of postmark of First Class Postage Prepaid, addressed to the contract manager of either party at the address listed in the contract.</li><li>• The Contractor agrees, pursuant to negotiations, to supply a newer, more advanced model of the commodity procured pursuant to this RFR for the same price as the Contractor's bid price,</li></ul>

**Acceptable Clarifications**

which provides better value to the Commonwealth.

The following selected examples are not acceptable clarifications or additions to a contract since they materially change the intent of the contract language and the rights of the Department:

**Unacceptable Clarifications**

- For the purpose of this contract, the term "Contractor" shall not include subcontractors.
- The Contractor shall not be responsible for delays in performance or negligence of a subcontractor.
- Pursuant to the certification which states that "The Contractor represents that it is qualified to provide the performance specified in the contract and possesses or shall obtain all requisite licenses and permits," shall be modified by adding at the beginning of this sentence, "To the best of its knowledge and belief."
- The section entitled "Indemnification" in the *Commonwealth Terms and Conditions* shall be deleted and replaced with the following language, "[any alternative language of bidder...]."
- The Contractor may change the costs in the cost section at any time without prior notice.

What Is Not Negotiable? A Department may not negotiate the terms or a change to the *Standard Contract Form* or the applicable *Commonwealth Terms and Conditions*. Acceptance of any other bidder-submitted standard form or contract should not be construed as a Department's approval of any conflicting language that may be on these documents.

The Office of the Attorney General has recommended that Departments not sign additional bidder-submitted contracts, invoices, or other documents containing contractual terms. Departments that choose to sign these types of documents do so at their own risk and are responsible for any associated costs, legal representation or damages.

In certain circumstances, however, the PMT may wish to consult with the OSD Legal Bureau regarding software license agreements or other contractual issues. In addition, Departments may not negotiate for any new commodities or services that are outside the scope of the original RFR.

Since the applicable *Commonwealth Terms and Conditions* and the *Standard Contract Form* are available electronically, it is important to note that any changes or electronic alterations by either the Department or the Contractor to the official version of these forms, as jointly published by ANF, CTR and OSD, shall be void. Furthermore, Departments are advised to include language in their RFR informing bidders that, by submitting a response, they are agreeing to execute these and other Commonwealth standard forms as is and may not raise exceptions or make changes to these forms if awarded a contract.

Unsuccessful Negotiations: If the Department is unable to negotiate the programmatic, fiscal or administrative terms of the contract with the initially selected bidder(s) in a reasonable period of time, then the Department may disqualify that bidder and begin negotiations with the next qualified bidder. A Department may also choose to cancel the procurement and either begin again or pursue any other option permitted under the regulation.

Pursuant to 801 CMR 21.07(2)(d), a selected bidder's response may be disqualified if, according to the PMT, the bidder

1. Intentionally delays the timely execution of the applicable *Commonwealth Terms and Conditions* or the *Standard Contract Form* or is unable to execute timely even for reasonable delays.
2. Conditions the execution of the applicable *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 or in addition to the applicable *Commonwealth Terms and Conditions* or the *Standard Contract Form*.
6. Is unable to reach final agreement on contractual terms with the Department within a reasonable time as determined by the Department.

☞ For POS Only: Other Negotiation Considerations: Department staff who are responsible for negotiating human and social service contracts also need to be familiar with and understand the limitations imposed on such contracts by statute (including G.L. c. 29, s. 29B; St. 1993, c. 110, s. 274, as amended), regulation (including 808 CMR 1.00) and funding source (legislative language or federal grant language). For example, reimbursements for commodities and services that are not directly required for the specific client service are prohibited.

Department negotiators should also carefully review 808 CMR 1.00, especially sections 1.03 on price and reimbursement limitations and 1.05 on non-reimbursable costs. (See also the associated guidance entitled *General Audit and Compliance Requirements* available via a link at the end of this document.) While the failure of a Department to identify contract terms that do not conform to such provisions does not relieve the Contractor of its obligation to comply, it is obviously better for all if such problems can be avoided.

### **Contract Signed/Dated by Authorized Signatories**

Contracts must have live signatures and dates by an authorized signatory of the Department and the Contractor. The date is an inextricable part of a contract signature and cannot be pre-filled, pre-typed or added by anyone other than the signatory. The signatory must execute the contract and indicate the date their signature was made. Signatories may not enter dates that are prior (retroactive) to the actual date the signature was made. Department head or authorized signatory and authorized signatory of the Contractor must sign (wet signature) and date Contract or amendment prior to start of performance, or contemporaneously with the need for an amendment. Minor changes or corrections made after execution of a contract or amendment must be initialed by the authorized signatories of both parties, or the documents must be re-executed to reflect the corrections.

**Electronic signatures can not be used for contracts, amendments or underlying supporting documentation requiring a signature. Electronic signatures are limited to the MMARS transactions that support contracts and amendments.** This restriction does not apply to RFRs and responses to RFRS that are submitted electronically through Comm-PASS, provided that contracts, amendments and other documents requiring signatures (W-9s etc.) are submitted in hard copy with a wet signature.

Department Head Authorized Signatories will be listed as part of a Department's MMARS security roles. Individuals who are assigned "Administrator" security Role with Department Head Signature Authorization may authorize any MMARS transaction on-line or on behalf of any other staff and may also authorize any underlying supporting documentation, including executing contracts.

Please see section above [Live Signatures and Dates Required on Contracts](#). Please see Policy Chapter on "**Department Head Signature Authorization and Electronic Signatures for MMARS transactions**" and Policy Chapter on MMARS "**Security**" for additional information.

### **Contractor Authorized Signatory Listing (CASL)**

A **Contractor Authorized Signatory Listing (CASL)** is required for any Contract executed by the Department. This policy applies to all state Departments within the Judiciary, Executive and Legislative Branches. A **Contractor Authorized Signatory Listing (CASL)** must be obtained for any contract regardless of value.

Submitting a document to Final status in MMARS will be interpreted as the Department Head's certification that the document and all underlying supporting documentation are supported by sufficient authorized

funds and comply with Comptroller policies and procedures and other requirements of law (including procurement requirements, legislative requirements, etc.).

**This certification includes the requirement outlined in this policy that the Department is responsible for verifying the authority of any contract signatory to sign a contract (both for the Department and the Contractor) and the authenticity of the signature on a contract (the signature was actually made by the authorized signatory and not a designee). Therefore, a Department may not submit any contract related MMARS transaction to Final status unless the contract signatories have been validated in accordance with this policy.**

At a minimum, a list of authorized signatories for a Contractor must be attached to the **record copy** of each contract or contract amendment filed at the Department. This CASL may be obtained **once per Contractor** (as part of either the procurement or contract execution process) and photocopied and attached to each contract the Department has with that Contractor until the listing is updated.

- The CASL listing **DOES NOT** have to be attached to:
- Any photocopy of a contract submitted to CTR or OSD for PEND review and processing; or
- Any *Commonwealth Terms and Conditions* or *Commonwealth Terms and Conditions for Health and Human Services*, submitted to CTR for filing.

Review of proof of Contractor signature authorization will be made during Quality Assurance and other post-audit reviews. Departments will be reviewed or audited based upon the policies identified in this Policy.

**Please see “Contracts – Contractor Authorized Signatory Listing Policy” for additional information and [Vendor/Customer File and W9s](#) for requirements for Department verification of any VCC or VCM.**

### **Detailed Description of Performance**

The scope of contract performance must be detailed enough to identify the expected performance, the appropriate classification of expenditure (object codes) and the proper state accounting system (MMARS) transaction type. (Please see the [Expenditure Classification Handbook](#) for object codes and accompanying authorized transactions and other requirements). For most contracts, the performance will be outlined in a procurement document and a Contractor’s response to the procurement. For other contracts, these details will be negotiated after the contract award as part of the contract scope of performance and budget. Contracts which are executed for a multi-year period must reflect terms which are applicable for the full period of the executed contract.

### **Required Approvals**

The following approvals may be required for a contract. Some approvals are required to be obtained prior to the execution of a contract and may affect the contract effective start date. The purchasing Department is responsible for obtaining all necessary approvals for contract execution and for notifying the Contractor when all approvals are received and funding is available to begin performance.

- **Department Head Approval.** Department head or authorized signatory must sign (wet signature) and date Contracts, amendments or other obligations **prior** to the start of performance, or contemporaneously with the need for an amendment, payment etc. Electronic signatures can not yet be used for contracts, amendments or underlying supporting documentation. A Department must be authorized to enter into contracts (appropriation to support contract) in order to make payments against contracts and the Department Head or designee must approve itemized expenditures. See [G.L. c. 29, § 19](#).
- **Secretariat Signoff.** Secretariat signoff is required for consultant contracts (G.L. c. 29, § 29A); human and social service contracts (G.L. c. 29, § 29B) **prior** to the effective start date of contract; CTR and OSD will not verify secretariat signoff as part of prior review, but will verify signoff as part of quality assurance reviews. There is no standard format for secretariat signoff. The Department

can obtain secretariat signoff of the RFR or the contract, provided the signoff is obtained prior to the effective start date of the contract and the format for obtaining the secretariat signoff is reliable and verifiable. Processing a contract MMARS transaction to Final status will act as a certification to the Comptroller that secretariat signoff has been obtained. Compliance with this requirement shall be subject to audit. Please see section on [Secretariat Signature Authorization](#) above.

- **Attorney General Approval Legal Services Contracts (all Departments).** All Commonwealth Departments are required to obtain prior written review by the Office of the Attorney General (AGO) for any legal services performed for the Department under a contract. The AGO review of legal services contracts is limited to determining that any attorney/firm hired by a Department is a member of the Massachusetts Bar (or out of state bar) in good standing, has no apparent conflicts of interests, and if providing litigation services, will appear in court on behalf of the Commonwealth only after his/her appointment as a Special Assistant Attorney General (SAAG) by the AGO. The [Attorney General Review Form for Attorneys Providing Legal Services](#) form must be completed and mailed (with required attachments) to the AGO for any new legal services contract, and for any significant amendment to the scope of services under an existing contract, PRIOR to the start of performance or change in performance. Please see: [Attorney General Policy for Prior Review of Attorneys](#). The form must include:
  - An attached detailed **Scope of Services** outlining the specific legal services (H09 and N03 object codes) that will be performed by the attorney or firm. AGO **PRIOR** to beginning any services.
  - A copy/printout of the Board of Bar Overseers record of good standing **for each attorney** listed who will be assigned to perform services, or who are identified as “key personnel” under the Contract. Link to the following Internet site:  
<https://www.mass.gov/orgs/massachusetts-board-of-bar-examiners>.
  - Locate each attorney assigned to perform contract services and print out the “Attorney Status Report” for each attorney. Similar documentation of licensure and good standing must be provided for any out-of-state attorney. Departments must annually verify that any attorney(s) assigned to the contract remains in good standing for the duration of the contract.
  - Executive Departments must attach a [Consultant Contractor Mandatory Submission Form](#) completed by the Contractor with all required attachments. (Pursuant to [G.L. c. 29, s. 29A](#) and [G.L. c. 7A, s. 6](#)); Non-Executive Departments must attach a statement of financial interest from the attorney(s) pursuant to [G.L. c. 7A, s. 6](#) and may use the *Consultant Contractor Mandatory Submission Form* or other appropriate format.)
- **Office of the Chief Counsel to the Governor signoff of all legal services.** The Office of the Chief Counsel to the Governor requires signoff of all legal services contracts (H09, N03) prior to procuring the services or executing a contract (Level III –Executive only) (See G.L. c. 30, § 65 and 801 CMR 21.00).
- **Oversight Department Secondary Review.** CTR, OSD and other oversight Department may require secondary review for contracts exceeding the MMARS transaction processing delegation threshold. MMARS transactions are targeted for workflow to the relevant oversight Department to complete the review in order to process the document. OSD reviews MMARS transactions for Commodities and Services for non-statewide contracts which exceed a Department’s delegation threshold. Please see OSD’s [Procurement Information Center \(PIC\)](#) for more detailed information related to commodities and services secondary review. CTR reviews services contracts, grants, subsidies, construction contracts which exceed a Department’s delegation threshold, and all ISAs. OSD’s and CTR’s secondary review is not a legal review and signoff will not be interpreted to mean that the underlying document, supporting documentation and process are legal. The Department Head makes this certification when the document is submitted to Final status and sent to workflow. Oversight Departments conduct quality assurance and administrative reviews of the paperwork and document to ensure basic compliance state finance law and other applicable requirements.
- **Payroll Approval Relative to personnel.** Sometimes all or a portion of the payroll of a state employee may be funded from a contract (usually an InterDepartmental Service Agreement (ISA)). The Comptroller requires a certification from each spending authority on the bi-weekly payroll confirming the hours worked by employees and that the payments are in compliance with state



finance law. This certification includes a certification required under G.L. c. 29, § 31 from each spending authority that each employee receiving a salary under the warrant is being paid for “duties performed directly for the employing agency and not for duties performed for another state agency”. Therefore, employee from one Department may not perform the duties of another Department absent specific legislative authorization. Departments need to ensure that contracts and payroll are approved in accordance with these requirements. Please see [InterDepartmental Service Agreements \(ISAs\)](#) for additional information on the use of ISAs to fund payroll costs for state employees.

### **Contract Effective Start Date and Termination Date**

Pursuant to 801 CMR 21.00, 815 CMR 2.00, 815 CMR 6.00, and this CTR policy, the contract effective start date for all contracts using the *Commonwealth Terms and Conditions and Standard Contract Form*, or the InterDepartmental Service Agreement Form will be interpreted to be the latest date the contract is signed and otherwise approved by the parties, or a later date specified in the contract. Notwithstanding any verbal or written representations the legal effective start date of a contract shall be determined by the latest dates the contracts were executed:

- by an authorized signatory of the Contractor (verified through Contractor Authorized Signatory Listing which must be attached to the contract) and
- by an authorized signatory of the Department (verified through checking Department Head Signature Authorization/Security plan filed as part of the Department’s Internal controls),
- the date the contract received Secretariat or other approvals required by law or regulation, if applicable, including:
- Secretariat signoff required for consultant contracts (G.L. c. 29, § 29A); human and social service contracts (G.L. c. 29, § 29B) **prior** to the effective date of contract. (CTR and OSD will not verify secretariat signoff as part of prior review, but will verify signoff as part of quality assurance reviews.)
- AGO approval for attorneys as Special Assistant Attorneys General (SAAGs) for attorneys representing Departments in court (litigation services) unless attorney already approved as SAAG. Applies to all Departments (Levels I-III) and must be obtained prior to start of performance.
- Office of the Chief Counsel to the Governor signoff of all legal services contracts (H09, N03) prior to submitting to Final status in MMARS (Level III –Executive only) (See G.L. c. 30, § 65).

And,

- any LATER date for performance to begin listed in the contract.

A contract (including a grant, subsidy or ISA) will terminate on the date listed as the termination date in the contract unless the contract is properly amended prior to that date or unless terminated earlier in accordance with the terms of the contract.

Pursuant to G.L. c. 29, § 26, § 27 and § 29, obligations may not be incurred unless there are sufficient appropriated or non-appropriated funds available to support the obligations. Therefore, contract execution which occurs prior to the beginning of the fiscal year in which funds are to be appropriated will not authorize obligations to be incurred prior to the appropriation of funds (Interim budget or GAA).

### **Effective Start and Termination Dates in Contract Must Match Encumbrance and Payments**

Prior to submitting a MMARS contract encumbrance document to Final status the Department Administrator processing the document is responsible for ensuring that the dates, amounts and other key information in MMARS match the information that appears on the contract documents including verifying the contract effective start date and termination dates based upon the signature and approval dates. Submission of the document to Final status acts as the Department Head’s certification that MMARS reflects the legal effective start date based upon the signature and approval dates appearing in the contract.

The effective start date and the contract termination date listed in the Contract must match the dates on the encumbrance and payment documents (transaction) in the state accounting system (MMARS). The only exception to this general rule involves certain statewide contracts or MSAs for leases or maintenance



contracts which may have contracts that begin during the start and termination dates of the Statewide Contract or MSA but may have payment obligations which extend beyond the termination date of the procurement and underlying Statewide contract or MSA. Departments will be audited based upon the accuracy of MMARS entries in relation to supporting contract documentation.

Interdepartmental Service Agreements (ISAs) require that ISA performance may not begin until the ISA is executed AND funding is available for expenditure in the Seller Department's Child account. See [Interdepartmental Service Agreements \(ISAs\)](#) and the [Interdepartmental Service Agreement \(ISA\) Form](#).

### **Checking Debarment Status of Contractor**

Contractors signing the *Standard Contract Form* certify that neither the Contractor nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, [Executive Order 147](#); [G.L. c. 29, s. 29F](#) [G.L. c.30, § 39R](#), [G.L. c.149, § 27C](#), [G.L. c.149, § 44C](#), [G.L. c.149, § 148B](#) and [G.L. c. 152, s. 25C](#).

**All departments must check the debarred vendor lists below before awarding or renewing a contract in order to ensure that they are not awarding a contract to a debarred vendor.**

No Department shall knowingly accept a response or award a contract to any Contractor, or approve a subcontract to any party which is currently subject to any state or federal debarment order or determination, including, but not limited to, [G.L. c. 29, s. 29F](#) [G.L. c.30, § 39R](#), [G.L. c.149, § 27C](#), [G.L. c.149, § 44C](#), [G.L. c.149, § 148B](#) and [G.L. c. 152, s. 25C](#). Pursuant to 801 CMR 21.06 (10), a "Procuring Department shall disqualify any response that the Department determines to be unresponsive, including, but not limited to: ... (d) Responses submitted by a Bidder, or which identify a subcontractor, currently subject to any State or federal debarment order or determination."

The following websites contain lists, which are updated periodically, of businesses, which have been debarred:

- [Federal Government's Excluded Parties List System](#)
- [Division of Capital Asset Management Debarred Contractor's List](#)
- [Businesses Issued Stop Work Orders by the Department of Industrial Accidents](#)
- [Office of the Attorney General Debarment List](#)
- [Contractors Suspended or Debarred by MassDOT](#)

[See Vendor Debarment](#). If you have questions about debarment, you may contact OSD's Legal Bureau via [email](#).

The Federal General Services Administration (GSA) has posted the Federal Government's List of Parties Excluded from Federal Procurement and Non-procurement Programs on the World Wide Web. OMB Circular A-87 Attachment A and U.S. Executive Order 12459 state that a contract should not be made with any party that has been debarred or suspended. Noncompliance could result in a reduction or termination of federal funds to a state Department that provides federally-funded programs. The GSA prepared list includes contractors that are excluded from Federal procurement. Similarly, [M.G.L. c. 29, § 29F](#) requires the Secretary of Administration to establish and maintain a consolidated list of contractors to whom public contracts shall not be awarded and from whom offers, bids, or proposals shall not be solicited. The statute mandates that any Contractor debarred or suspended on these lists cannot participate in State contracts.

Currently, ANF supports the use of the GSA list as the ANF listing required under the statute. All Departments should consult the federal GSA list before moving forward with any procurement related decisions.

- The address of the GSA site is: <https://www.gsa.gov/>.
- For ease of access you can also access the Federal General Services Administration (GSA) list from the Operational Services Division Home Page or the Massachusetts' Procurement Access &

Solicitation System (Comm-PASS) Home Page. OSD/Comm-PASS Home Page:  
<http://www.mass.gov/osd>

- Once at the site, do the following:
- Enter your Name (you will be asked to accept the provisions of the "Computer Matching and Privacy Act of 1988" before you can access the data.)
- Select the "Search Menu" Option
- Select the "Search by Name" Option
- Enter the Name of the Party You Wish to Search.

In addition, the Central Register published by the Secretary of the Commonwealth contains a list of contractors suspended or debarred by the Division of Capital Asset Management and a list of parties debarred by the Fair Labor and Business Practices Division of the Office of the Attorney General.

In the event a Department seeks to debar a Contractor for severe circumstances, the Department must contact the Secretary for Administration and Finance who has the authority to debar vendors in accordance with the notice and hearing provisions outlined in [G.L. c. 29, § 29F](#). Further guidance on procurement can be found in the **OSD Procurement Information Center (PIC)**.

### **Contract Funding Requirements - Obligations May Not Exceed Appropriation**

Pursuant to [G.L. c. 29 § 26](#), [§ 27](#) and [§ 29](#), Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary. Departments may not incur a liability for the Commonwealth in excess of their appropriation or allotment. This means that a Department cannot authorize performance to begin under a contract (including a grant, ISA, chargeback, lease, rental or TELP), request or accept commodities or services (including personnel) in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds.

Available funding means funds that have been appropriated and allotted, or otherwise available which can be encumbered and expended (including federal funds that have been authorized and are available for draw down, or trust funds with sufficient cash). Funding identified in a filed but not yet enacted appropriation act, supplemental budget or other legislative act shall not qualify as available funding and will not be sufficient authorization for continued performance or new performance. Authorization by House and Senate Ways and Means Committees, the Governor's Office, Executive Office for Administration and Finance or any other oversight agency shall not be sufficient authorization for continued performance or new performance since this authorization is not legislative authorization for expending appropriated funds Please also see "[Commonwealth Bill Payment Policy](#)" for additional requirements..

### **Insufficient Appropriations for Required Expenditures, Expiring Accounts**

Appropriations and allotments must be spent in accordance with prescribed subsidiary schedules. [G.L. c. 29, § 27](#); [G.L. c. 29, § 26](#). Departments must do everything legally allowed to manage within their appropriation. Departments must immediately notify ANF and House and Senate Ways and Means Committees of the estimated amount of anticipated deficiency in any appropriation. [G.L. c. 29, § 9E](#). In addition, to support the series of reliances and delegation, Departments must also notify CTR.

If funding is not available for encumbrance and expenditure, a Department may not authorize performance to begin or continue, and any performance must halt, personnel reassigned or suspended, or other business adjustments made so that no obligations will be incurred in excess of current available funding.

If accounts are not reauthorized past the termination date (such as on June 30<sup>th</sup> for operating accounts, or at the end of a capital bond authorization), or for federal grant awards that have not been made (even if recurring), Departments may not continue to incur obligations or continue to accept services from employees or contractors in these accounts. ***Contracts must be terminated or suspended, personnel***

***must be terminated, or contracts and personnel transferred to another appropriate account legislatively authorized to fund these types of obligations and expenditures.***

Pursuant to [G.L. c. 149, § 148](#), employees must be paid for performance within 5 days of the close of the pay period in which they have performed services. Therefore, it is a serious legal violation, subject to severe penalties, to request or allow any employee to work without available funding to pay for the performance within the required payment period. Therefore, when budget cuts or shortfalls are anticipated, Departments may not request or allow employees to work unless funding will be available to pay the employees for the work performed. Layoff notices must be done with sufficient lead time (45 days or longer in some cases) to ensure that performance is suspended prior to funding run outs.

Expenditures **may not** be made against other accounts to “front” funds during this time period and such expenditures may not be retroactively transferred (Expenditure Correction - EX) to these accounts should the accounts be re-authorized or a new account(s) established. The Comptroller may not make journal entry (expenditure correction) between accounts if the account ultimately to be charged had insufficient funds at the time the amount was expended from the other account, unless prior notice is sent to HOU and SEN Ways and Means. (See [G.L. c. 7A, § 3](#)).

“The Comptroller shall refuse to permit a disbursement or incurring of an obligation if funds, or allotments of funds, under an appropriation account or subsidiary account under an appropriation account, sufficient to cover such disbursement or obligation are not available and shall immediately give notice of such refusal to the Department, office, commission, or institution proposing the expenditure” See [G.L. c. 29, § 29](#).

This means that expenditures made to another current account because a supplemental budget has not yet passed, or ISA funding has not been set up, cannot later be charged to the new accounts or reauthorized accounts when the supplemental budget passes, without prior written notice to the House and Senate Committees on Ways and Means (unless the supplemental budget account is authorized with an effective date prior to the date of the expenditures)

If delays are anticipated for any source of funding (including delays in bond funds or the re-award of federal grant funds) the Chief Fiscal Officer has an obligation to immediately notify CTR of the anticipated delay, as well as their budget analysts at ANF (if applicable) to seek guidance.

Please also see “[Commonwealth Bill Payment Policy](#)” for additional requirements.

#### **Obligation Authorization Limited by Fiscal Year - Interim Budgets and Accounts Payable.**

GAA appropriations shall be for ordinary maintenance for the fiscal year unless otherwise authorized. Appropriations are authorized for commodities, services and other obligations incurred, received and accepted in the current fiscal year and may not be used to pay for future fiscal year obligations (advance payments) nor for prior fiscal year obligations. See [G.L. c.29, § 12](#). This means commodities and services to be paid for with current fiscal year appropriations must be received within the fiscal year (July 1-June 30) (see [G.L. c. 4, § 7, Ninth](#)).

Lawful obligations that do not exceed Department’s 1/12<sup>th</sup> allotment (made quarterly) may be made between July 1 and passage of GAA if there is an interim budget. No commodities or services may be accepted for the new fiscal year and no funds may be expended without an Interim Budget or GAA. See [G.L. c. 29, § 12A](#).

CTR and ANF will submit an Interim Budget request in the event that the GAA is not passed by the Legislature and signed by the Governor by July 1<sup>st</sup>. This will provide funding for the continuation of essential services across the Commonwealth. While no new programs or projects are supported as part of the interim budget, all routine business to carry out Department missions is included (i.e., payrolls, client benefits, leases, commodities and services). Once you are notified that the Interim Budget is signed, Departments should proceed with routine business, including paying bills in 30 days. Departments are

responsible to expend only funds from accounts that are in both the House and Senate Budgets. If there is a question about whether an account will be funded, the CFO should confer with ANF.

The accounts payable period to pay encumbrances for fiscal year ending on June 30th runs from July 1st through August 31st. The Fiscal Affairs Division (FAD) may extend the accounts payable period to pay encumbrances until September 15th subject to special request from Department. State finance law requires that remaining balances revert to the General Fund on or before September 15th. [G.L. c.29, § 13.](#)

Please also see "[Commonwealth Bill Payment Policy](#)" for additional requirements.

### **Contract Compensation Must be Identified and Reserved**

Departments are responsible for identifying funding availability (appropriation and allotments) prior to incurring any obligation (including allowing personnel to work) or executing a contract. Each contract must have a maximum obligation or specified rates for the full period of the contract. The full value of the contract (maximum obligation) or the full value of "anticipated expenditures" must be reserved (pre-encumbered or encumbered) for the full period of the contract in the MMARS state accounting system upon execution of a contract and contemporaneously with the start of performance, to enable payments to be processed timely (within 30 days of the first invoice, or earlier if specified in the Contract or if prompt payment vendor discounts are available), or to establish the accounts necessary to support an ISA. (Please see "[Accounts Payable – Bill Paying Policy](#)" for bill payment requirements. Please see Policy "[Contracts – Interdepartmental Service Agreements \(ISAs\)](#)" for the funding requirements for ISAs.)

Higher Education Departments may have contracts that are funded with appropriated state funds on MMARS and non-appropriated trust funds that are outside MMARS. If a contract is funded from both MMARS and non-MMARS funds there must be supporting documentation (a detailed budget showing the amounts funded through MMARS and through the university) as a part of the contract. The contract must identify the MMARS and non-MMARS related portion so that the total maximum obligation matches the contract.

### **Contract Encumbrances Considered "Commodity-Based Encumbrances"**

Under MMARS the term "commodity" applies to **both** commodities *and* services. Commodities include but are not limited to any articles of trade, items, products, supplies, information technology resources, automated data processing and telecommunication hardware, software and systems. Services include but are not limited to furnishing of time, labor, effort, specialized skills by a Contractor including operational, professional, maintenance, consultant, maintenance and repair, non-professional and human and social services.

The contract related MMARS transactions are considered "Commodity-based" documents and are the only MMARS transactions with a "commodity" line. These documents require a commodity code.

### **Non-Commodity Based Encumbrances**

Non-commodity based encumbrances reserves funds for postage, subscriptions and memberships, advertising expenses, fees, fines, licenses, and permits, confidential investigation expenses, donations, exhibits/displays, electricity, sewage disposal, water, natural gas, ***incidental purchases and other expenditures that do not require a procurement and contract.***

Departments should refer to the [Expenditure Classification Handbook](#) for details on which encumbrances are available for selected object codes. For additional guidance related to MMARS transactions see Job Aids for Procurement/Contracts and Policy Chapters under "[Accounts Payable](#)" for payments.

### **Contract Filing**

All Departments are required to file complete original or certified copies of contracts as directed by the Comptroller prior to payment. [G.L. c. 7A, § 5](#). Pursuant to 815 CMR 10.00 each Department shall be the record keeper of the original copy ("record copy") of all contracts and supporting documentation. The record copy shall be filed at the Department. Copies of a contract may have to be submitted to CTR or OSD for prior review and processing if the total value of the contract exceeds the MMARS transaction processing (transaction) delegation limit for the Department.

The Comptroller requires that all contracts are encumbered and filed promptly upon execution to ensure timely payment for all performance in accordance with state finance law and the Commonwealth Bill Paying Policy. Please see "**Accounts Payable – [Commonwealth Bill Paying Policy](#)**".

### **Proper IRS/Contractor Registration (Vendor/Customer File)**

A Contractor or other payee must be registered with the proper IRS form (*Form W-9-Massachusetts Substitute W-9 Form, or W-8 – Foreign Payees*) in the state accounting system. Please see Policy Chapter "Accounts Payable – Vendor Management and W-9s".

Submitting a document to Final status in MMARS will be interpreted as the Department Head's certification that the document and all underlying supporting documentation are supported by sufficient authorized funds and comply with Comptroller policies and procedures and other requirements of law (including procurement requirements, legislative requirements, etc.).

**This certification includes the requirement outlined in this policy that the Department is responsible for verifying the authority of any contract signatory to sign a contract (both for the Department and the Contractor) and the authenticity of the signature on a contract (the signature was actually made by the authorized signatory and not a designee). Therefore, a Department may not submit any contract related MMARS transaction to Final status unless the contract signatories have been validated in accordance with this policy.**

The Accounts Payable Bureau of CTR is considered the official Commonwealth Clearinghouse for all matters related to Federal Income Tax reporting to the IRS and State Income Tax reporting to the Department of Revenue (DOR). This involves the filing of tax reporting forms as an employer (W-2, 1099s etc.) and upkeep of the Internal Revenue Services' and DOR's rules and regulations for compliance. The Accounts Payable Bureau provides technical guidance to Departments regarding their responsibilities pertaining to issuing and filing tax reporting information which is not captured at the detail level in MMARS and/or statewide automated payroll systems (HR/CMS and e\*mpac). **Please see [Vendor/Customer File and W9s Policy](#) for Department requirements to verify authority and validate all vendor information.**

### **VendorWeb**

Departments are encouraged to instruct Vendors to use **VendorWeb** at <https://massfinance.state.ma.us/VendorWeb/vendor.asp> to track contract payments (with the exception of interdepartmental payments). Vendors can see their scheduled payments and payment history by logging on VendorWeb. On-line you find the tentative scheduled payment date or the actual payment date, payment number, vendor invoice number, contract number, line amount, any associated text information and the Department making the payment.

The VendorWeb application was created to help the Commonwealth's vendors get their payment remittance information free and easily. Vendors access VendorWeb with their Commonwealth Vendor Code. Vendors can view or download information for payments made and payments scheduled in old and new MMARS to be paid. Payment information can be generated using date ranges and can be sorted by a selected Department or by payment from all Departments.



Departments within the Magnet firewall can also access the CTR Intranet for state employees through the main CTR website (<https://www.macomptroller.org/>) under "Vendor lookup" to verify payments without having to log in to MMARS.

### **Payments Require Current Appropriation, CTR Certification and Approved Warrant**

No payments shall be made without current appropriation, [Department Head approval](#), Comptroller certification and approved Governor's warrant. [G.L. c. 29, § 18](#). MMARS has been established with internal controls which prohibit payments from being made unless there are sufficient funds appropriated, allotted and encumbered to support the payments. See [G.L. c. 29, § 20](#).

In addition, the Comptroller will not certify payment until a Department Head or designee approves the expenditures. Submitting a document to Final status in MMARS will be interpreted as the Department Head's certification that the document and all underlying supporting documentation are supported by sufficient authorized funds and comply with Comptroller policies and procedures and other requirements of law (including procurement requirements, legislative requirements, etc.).

Once Comptroller certification occurs systemically, the successful processing of payment is entered on the warrant and processed in accordance with the warrant approval process.

### **Bill Paying Policy – Payments**

The Comptroller is required to establish a vendor payment schedule. [G.L. c. 7A, § 5](#). Departments are required to make payments in accordance with the terms of any contract and the Commonwealth's Bill Payment policy. For details on payments see [Non-Tax Revenue Policies](#), including the **Commonwealth Bill Paying Policy**, which includes guidance on standard payment policies, intercept, prompt pay discounts, late penalty interest, retainage, prohibition of pre-payments, payment for result-based performance, payment for obligations incurred, payment limited to current fiscal year obligations, recurring and ready payments, contingent fee payments, overpayments and contract back outs.

### **Prompt Payment Discounts (PPD)**

**Departments are required to have Contractors complete the PPD section of the Standard Contract Form or identify a legitimate hardship.**

**Departments may NOT negotiate accelerated payments in less than the standard payment cycle of 45 days and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payment is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under [G.L. c. 29, s. 23A](#)).**

- Requiring a PPD to be identified as part of a procurement or contract does not mean that an automatic discount will be taken or that the Contractor is required to make a price reduction. The discount on the total payment will apply **ONLY** if the Contractor requests "accelerated" payments in LESS than the standard payment cycle (currently 45 days).
- Contractors that do not want to offer a PPD agree that all payments will be made in the normal course of business using the standard payment cycle and may not later request an accelerated payment unless a PPD is offered.

### **Exceptions for PPD**

All Commonwealth contract payments will be processed in the standard payment cycle of 45 days from the date of an invoice receipt unless there is another legally mandated payment cycle such as:



- [G.L. c. 30, § 39G](#) – payments on horizontal construction and maintenance projects (roads, bridges, etc.), within 30 days.
- [G.L. c. 30, § 39K](#) – payments on vertical construction and maintenance projects (buildings), within 30 days for periodic payments.
- [G.L. c. 79, § 37](#) - payments under certain conditions on Eminent Domain within 30 days.
- Certain credit card payments that require payment within 21-25 calendar days.
- Ready Payments for human and social services under [G.L. c. 29, s. 23A](#).
- Other statutory or regulatory payment cycles of less than 45 days.

Federal and state grant awards are not exempted from the PPD policy will be paid under the standard payment cycle. Delay in getting contracts executed, financial hardship, or demands for prompt payments are not sufficient legal reasons for automatically accelerating **ALL** payments under a Contract. The first grant or contract installment or payment may be accelerated for the **first** invoice or initial grant installment, but subsequent periodic installments or invoice payments must be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the [Commonwealth’s Bill Payment Policy](#) unless a PPD is provided or an earlier payment date is legally mandated.

NOTE: For any contract with an annual single payment, the standard payment cycle must be used unless a PPD is provided and this payment may NOT be scheduled to be accelerated in less than the standard payment cycle.

Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes justifying the requirement for an accelerated payment and why the standard payment cycle could not be followed for all payments. .

**Even if a Department has not included the Prompt Payment Discount (PPD) as part of the RFR process, or for contracts when a procurement is not required, the Department should require a Contractor to complete Prompt Payment Discounts during the contract execution, renewal or amendment process to ensure that Prompt Payment Discounts are available to both the Contractor and the Department to the maximum extent possible.**

See also the “[Prompt Payment Discounts Policy](#)” for additional details on including this cost savings mechanism in contracts.

**Assignment of Payments**

Pursuant to [G.L. c. 106, § 9-318](#), a Contractor may freely assign payments under a contract to a third party. The third party receiving payment is called an assignee. An assignee is not considered a “Contractor” and may not have a separate vendor code established for an assigned payment. All contract payments are due and owing to the Contractor and the assignee has no legal right to make any claims to the Department under the contract. The assignment of payments merely re-directs payments that have been lawfully earned and paid to the Contractor to another address. All reports of payments and tax reporting are recorded for the Contractor.

The Department has an obligation to verify that the request for the assignment of payments is legitimate and requested directly by the vendor and not the third party. Absent a court order (verified by the Office of the Attorney General), **a Department has no obligation to honor any demands for assignments made by a third party, even if the third party produces an assignment agreement signed by the vendor.** The Department must still obtain confirmation from the Contractor that the assignment is allowable and a W-9 with the new remittance address is submitted.

**A Department MAY NOT establish a new vendor code or obtain a W-9 form or a *Commonwealth Terms and Conditions* from the assignee.**

1. The Department must receive documentation from an authorized signatory of the Contractor that the Contractor agrees to assign payments to a third party assigned under a particular contract(s).
2. The Department then submits to the Accounts Payable Bureau a Vendor/Customer Modification Form (VCM) for the Contractor with a *FORM W-9* (MASSACHUSETTS SUBSTITUTE W-9 FORM) to add an additional "payment address" (remittance address) with "Attn." or "c/o" or "payable to:" and the assignee's name and payment address.
3. **The Contractor's Legal Name, TIN and Legal Address MAY NOT be changed.** The Department must also submit EFT (Electronic Fund Transfer) documentation (required for all payees unless a one-time payment or a hardship accepting EFT) as applicable to enable payments to the assignee electronically.
4. Payments are then made using the vendor code with this **additional payment address**. A Department MAY NOT change the Contractor's legal address to the address of the third party since the legal address is necessary for tax reporting purposes and the third party assignee should not get the Contractor's tax forms.

The assignment of payments will be made on a contract-by-contract, and Department-by-Department basis and will not be made on a statewide basis for all payments due a Contractor (unless approved by both OSD and CTR for a Statewide Contract). In the event a payment is inadvertently issued to the Contractor, the Department will have no obligation to "chase" the payment. The Contractor will be legally obligated to forward that payment to the assignee. The assignee has no rights against the Department under any assignment agreement or under any contract.

**Please see "[Commonwealth Bill Payment Policy](#)" for additional requirements and [Vendor/Customer File and W9s](#) for requirements for Department verification of any VCC or VCM.**

### **Comm-PASS Posting Requirements (if the Request for Response was Posted on Comm-PASS)**

In addition to executing the *Standard Contract Form*, certain Comm-PASS posting requirements associated with the contract are mandatory for RFRs posted on Comm-PASS. Specifically, Departments must "post the contract" on Comm-PASS. The Comm-PASS system, through its contract "wizard," guides the Department through the entries of contract award date, additional team members, if any, contract documents (the upload of these documents, other than the *Standard Contract Form*), vendors, vendor documents (such as price lists), vendor SOMBWA certification and EPP participation and contract updates.

Departments are required to either post the contract or update the solicitation within 60 days of the close date of the solicitation even if a contract has not yet been awarded. Please see the associated guidance entitled *Comm-PASS Policies* in the **Procurement Information Center (PIC)**.

*Note:* Comm-PASS does not automatically transform a Solicitation into a Contract. To complete the solicitation portion of the procurement process on Comm-PASS, Department users are required to perform an Update, which requires the selection of a status: Closed-Pending Evaluation, Closed-Pending Award, Closed-Contract Awarded, or Closed-Cancelled.

Once the Solicitation reaches a Closed-Contract Awarded status, the Department user must use the Contract functionality to create a separate Contract record.

### **Contract Management**

The purpose of contract management is to ensure that Departments are satisfied with Contractor performance and that the Contractor is in full compliance with all of the terms and conditions of the contract. Additionally, contract management supports the Contractor to ensure that Departments make payments in accordance with payment terms, are familiar with procurement processes of the Commonwealth and the automated systems that support the procurement and payment process, i.e.,

MMARS, Ready Payment, Recurring Payment, EFT and Comm-PASS. Contract management is customer service. Its primary role is to assist and/or resolve any and all issues, concerns and problems that may arise from customers and contractors as it relates to contracts administered by the Commonwealth.

### **Contract Managers**

A contract manager is assigned responsibility for the oversight and management of the activity within a contract, including compliance with state finance law and applicable laws, regulations, policies and procedures. Part of effective internal controls, fiscal responsibility and effective and efficient expenditure of Commonwealth funds is dependent upon careful oversight and management of a contract by the Contract manager. Contract managers who are listed on the *Standard Contract Form* are considered authorized representatives who can manage the contract on behalf of the Department. Among other tasks, a contract manager may:

- Provide document processing and technical assistance to contractors and customers;
- Conduct market research and analysis to determine the strengths and/or weaknesses of the marketplace which will assist in determining the effectiveness of the contract and whether or not the terms, conditions and costs are competitive in the current environment;
- Generate usage reports to determine dollar volume and what services or products are being utilized and measure this information against projections;
- Measure Contractor performance against established performance criteria to ensure compliance with the terms and conditions set forth in the contract;
- Confer with customers, contractors and potential bidders in order to exchange information and keep up to date with current needs and current products being offered by the industry;
- Coordinate and attend exhibitions and conferences to become familiar with new commodities and services for Department use;
- Initiate contract negotiations and determine whether contracts should be renewed;
- Confer with legal staff to determine corrective action, when necessary, to bring a Contractor back into compliance with a contract; and
- Conduct user surveys to determine the effectiveness of existing contracts and the potential for new contracts.

Departments are encouraged to communicate regularly with Contract Managers, especially when new policies are distributed to the Department's key state finance law officers, and ensure that staff are appropriately trained and have access to the tools necessary to ensure state finance law compliance.

### **Monitoring And Evaluating Contractor Performance And Compliance**

The Commonwealth has a responsibility to conduct monitoring and evaluation of the commodities and services it purchases. These activities can assist in identifying and reducing fiscal and programmatic risk as early as possible, thus protecting both public funds and clients being served. In addition, federal monitoring requirements must be observed if federal funds are used to purchase services.

Contract managers and Department Affirmative Market Program (AMP) Coordinators are responsible for monitoring Contractor performance and other issues that arise during the life of the contract. In developing monitoring and evaluation procedures, the Commonwealth, through its Departments or PMTs, should strive for methods which rely on, among other things, national or industry standards and which are coordinated, cost efficient and appropriate to the level of risk to the Commonwealth in the purchase of the commodities or services.

The following are some tips that may provide assistance during contract monitoring:

#### **Contract compliance:**

- Assign a contract manager with the authority, resources, time, skill and adequate training to do the monitoring.
- Periodically review the language in the contract to verify the Contractor is complying with terms of the contract.
- Ensure compliance with any state or federal laws or regulations which have been specified in the contract. The contract manager may ask for documentation from the Contractor at any time to verify

this compliance. Examples include tax compliance, current worker's compensation contributions, current unemployment insurance documentation or compliance with the Affirmative Market Program Plan.

- If the RFR required bidders to include resumes of key individuals they planned to use to fulfill the requirements of the contract, Departments should periodically check to be sure these same key individuals are, in fact, performing those contract requirements.
- Manage Affirmative Market Program (AMP) Plans by ensuring compliance of M/WBE commitments; review reports regarding usage of subcontractors M/WBEs for the purposes of Departmental credit toward fiscal year benchmarks.

#### **Contract performance:**

- Document the date, time and name of the Contractor representative who has contacted the Department regarding contract performance, questions, etc. Document any responses given.
- Review and require progress reports to verify if the Contractor is meeting targeted performance deadlines or ask for documentation to support that performance is on schedule.
- Conduct announced or unannounced site visits and record reviews.
- Solicit customer feedback on Contractor performance, outcomes and value.
- Document the date, time and name of the Contractor representative who has contacted the Department regarding contract disputes. Document how the dispute was resolved. If the dispute is not immediately resolved, or may involve contract interpretation, immediately contact the Department legal staff for guidance (if the Department has no legal staff, then contact the secretariat). If the dispute involves the potential for or a threat of litigation, the Department legal staff should immediately consult with the Attorney General's Office Trial Division for guidance.

#### **Contract deliverables and payment:**

- Review all deliverables submitted or shipped to the Department to ensure they are in compliance with the contract specifications. Departments should be careful to instruct individuals signing for packages that it is necessary to, at a minimum, verify the type and number of items or packages received prior to signing for any shipping order. Some contractors use shipping companies rather than delivering packages themselves. It is important to verify at least the number of packages received. Final review and acceptance or rejection of the items delivered may be made later.
- Compare invoices and charges to contract terms and conditions.
- Promptly review invoices upon receipt and return any rejected invoice with an explanation for its rejection. Depending upon Department established internal control procedures, the contract manager or the responsible accounts payable person generally does this review. A Department may hold or reject an invoice, upon notice to a Contractor, until a Contractor has completed required performance or corrected poor performance. It may also hold or reject an invoice in the event of a breach of contract or default.
- Withhold final payment or invoice until final performance is completed.
- Retain documentation supporting delivery and/or payment issues with the Contractor.

#### **Contract termination or renewals:**

- At least six months prior to the termination date of the contract (longer for complex procurements), determine any remaining available options to renew or begin a new competitive procurement process.
- If exercising an option to renew, forward the amendment documentation for completion and execution at least 30 days prior to termination date of contract.
- If the contract is being terminated, notify the Contractor of the termination date. Include any performance which has not been completed and a list of Department data, personal data, files, equipment or other Department property which must be returned to the Department at the termination of the contract.

#### **General:**

- Review the procurement file to verify that all documentation is available and that its location, if electronic or in another file, is identified.
- Require formal or informal audits of a Contractor's records as specified in the Request for Response.

The contract manager may want to develop a checklist that can be attached to the procurement file, or an electronic file with an automatic date flag to remind the contract manager of deadlines and other reminders during the contract period. Contract managers should regularly evaluate the quality and overall success of the Contractor in meeting the requirements of the contract by asking:

- Considering all factors, did the procurement generate the best value for the customer?
- Were customers or recipients of the service satisfied with the performance of the Contractor?
- What are suggestions for improving service delivery and how can they be incorporated into the existing contract or future procurements?

If a Contractor's poor performance is serious enough to suggest contract termination, debarment or disqualification actions, documentation regarding customer satisfaction should be used to support the contract manager's decision.

### **Guidelines for Monitoring and Enforcing Compliance of the Affirmative Market Program (AMP) Plan for Large Procurements**

The Executive Office for Administration and Finance (ANF) and the Operational Services Division (OSD) jointly issue the Affirmative Market Program (AMP) portion of the RFR for use by agencies. It is the expectation that all parties act in good faith in the execution of this AMP policy. The prime Contractor should immediately communicate any difficulties relative to compliance with AMP requirements to the contract manager, PMT or AMP Coordinator. Once the contract manager, PMT or AMP Coordinator has had an opportunity to make an assessment of the circumstances and issues involved, appropriate measures will be taken to address any concerns or issues of non-compliance for all parties involved. A Contractor may be considered out of compliance with the AMP Plan under certain conditions, including, but not limited to, the following:

- The timeline of the benchmark has not been met.
- The AMP form(s), verification(s) of certification or verification of expenditures with M/WBEs are materially incomplete by the due date or have not been submitted in accordance with the contract requirements.
- There has been a change in or substitution to identified M/WBEs without prior notification to and approval by the contract manager or AMP Coordinator.

If the Contractor or subcontractor is not in compliance with the terms agreed to in the AMP Plan, the contract manager or AMP Coordinator should work closely with the Contractor to resolve any outstanding issues. This may involve informal discussions with the Contractor about the specific AMP related problem and include a meeting with the Contractor to discuss the issue. The Contractor shall provide information as is necessary in the judgment of the contract manager, PMT or AMP Coordinator to ascertain its compliance with the terms agreed to in the AMP Plan.

If no resolution occurs and the problem continues, more formal steps should be taken, including the following:

- Send written notice to the Contractor from the contract manager, PMT or AMP Coordinator describing the problem, proposed solution and response time required. Send a copy of the notice to the PTL and OSD, if applicable.
- Conduct follow-up meetings with the Contractor.
- Initiate formal corrective action plans with written notice from the procuring agency or OSD, as appropriate, if no resolution has occurred at this point.
- Review invoices upon receipt for the purpose of determining whether to reject said invoices. Any rejected invoices will be returned with a written explanation for its rejection. This may occur at any

time during the period of non-compliance with the AMP Plan (depending upon agency-established internal control procedures, the contract manager, PMT or AMP Coordinator and in conjunction with the responsible accounts payable person). Upon notice to the Contractor, an agency may suspend a contract until a Contractor has resolved the AMP non-compliance. An agency may also impose a penalty fee, upon notice, if it has statutory authority and has specified the potential for a penalty in the RFR.

- Refer the matter to the agency's legal counsel if a Contractor's poor performance in meeting their AMP Plan benchmarks is serious enough to suggest contract termination, debarment or disqualification actions.

The contract manager, PMT or AMP Coordinator should maintain sufficient documentation of all written or verbal communication to support the actions taken to resolve any non-compliance issues with the AMP Plan. Please see the associated guidance entitled *Affirmative Market Program*, available via a link at the end of this document for more information.

### **Resolution of Customer Complaints**

A key part of customer satisfaction is the resolution of customer complaints. Once received, the complaints should be responded to promptly and a resolution process begun. One suggested approach for resolving complaints might include the following:

- Acknowledge the complaint and get details from the end-user/complainant.
- Critically review the Request for Response/contract for adequacy, specificity and clarity.
- Informally contact the Contractor about the specific complaint, RFR or contract language, and propose or invite a solution, such as:
  1. Ad hoc fix.
  2. Contract change, if needed.
  3. Need for additional complaint details.
  4. Joint meeting with Contractor and customer, if desired.

Place all documentation related to the resolution in the procurement file.

Usually, this informal process will resolve most complaints. However, the contract manager may wish to follow-up with the customer in question, as well as other customers who have not complained, to ensure the problem is successfully resolved and is not indicative of a pattern of poor performance. If no resolution occurs and the problem continues, more formal steps should begin as follows:

- Provide written notice from the Department to the Contractor, indicating the problem, the solution and the response time required; send a copy to the PTL and OSD, if applicable.
- Conduct a follow-up meeting with Contractor.
- Initiate formal corrective action plans (with written notice from the procuring Department or OSD, as appropriate) if there is no resolution.

### **Amendments**

Effective contract management requires a Department to monitor Contractor performance and compliance. Although day to day contract correspondence and communications may be made electronically (email or fax) any changes in performance, funding, obligations, or changes in the terms of a contract (including grants, subsidies, ISAs, etc.) must be memorialized contemporaneously with the need for the change in a formal contract amendment. **Electronic signatures or contracts are not yet authorized for contracts or amendments**. Therefore, Departments may negotiate an amendment electronically, but must finalize the amendment in the same manner as the contract with written (wet) signatures by authorized signatories of the Department and Contractor.



Please see "[Amendments, Suspensions and Termination Policy](#)" for additional detailed information regarding amendments, changes in performance, changes in dates of service, time extensions, exercising options to renew, material changes in Contractor identity, changes in Contractor Tax Identification Number (TIN), Contractor legal name or address changes, contract suspensions and terminations.

*Note:* Regardless of Comm-PASS Subscriber status, every active vendor listed on a Contract in Comm-PASS receives email notifications when a Contract is amended. An amendment on Comm-PASS does not constitute a legal change, but is merely a change to the record by the Contract manager. This means that Department contract managers can use the Comm-PASS amend capabilities to communicate with all vendors. For example, an amendment "reason" might read, "Fill out and return Affirmative Market Program (AMP) Plan, if applicable." The form can be attached to the Forms and Terms page for easy access.

### **Contract Disputes, Litigation or Mediation**

In most cases, contract disputes or conflicts arise due to miscommunication, misunderstandings, or lack of accurate or timely information. Enhanced communication and careful monitoring of contract performance can usually resolve most disputes. Departments are encouraged to develop internal methods for resolving disputes. If a Department is unsuccessful at resolving a dispute the Department may consider other methods such as litigation or mediation.

Fiscal Staff should be instructed that they have an obligation to notify their General Counsel immediately whenever a potential contract dispute arises that may trigger the need for intervention, alternative dispute resolution, or that may potentially result in litigation. The Department General Counsel is the key contact with the AGO and should contact the Attorney General's Trial Division (617) 727-2200; for further assistance with approvals for mediation or to refer potential contract dispute litigation.

Please see Policy "[Amendments, Suspensions and Termination Policy](#)" for additional information and recommendations related to amendments, suspensions and terminations.

### **Violation of State Finance Law**

Any Department Head or designee ***who knowingly violates state finance, or authorizes or directs another officer or employee to violate any provision*** of G.L. c. 29, or any rule or regulation promulgated there under, or any other provision of law relating to the incurring of liability or expenditure of public funds law shall be punished by fine of \$1,000 or imprisonment for one year, or both. See [G.L. c. 29, § 66](#).

### **Conflict of Interest**

The Conflict of Interest Law, G.L. c. 268A, is one of several laws that govern dealings with public officials and employees. Contractors certify compliance with G.L. c. 268A each time they execute a Commonwealth *Standard Contract Form*. In order to ensure the integrity that is critical to the public procurement process, all Departments must make certain that employees and participants involved in the procurement process are free from all conflicts of interest. A summary of the requirements is included below. Additional information can be obtained from Departmental legal counsel or the [State Ethics Commission guidelines](#) and [Disclosures](#).

- **Bribery** - A Contractor may not offer or give anything to a public official in exchange for that official agreeing to perform or not perform an official act.
- **Registered Executive and Legislative Agents** - If a Contractor's responsibilities involve interaction with the state legislature, the Executive branch, or independent authorities, the Contractor should contact the Secretary of the Commonwealth's office regarding the requirement to register as an executive or legislative agent. Registered agents may not give anything to a

public official or policy-making public employee, or to an immediate family member of a public official or policy-making public employee.

- **Gifts and Gratuities** - Even if a Contractor is not a registered agent, the Contractor may not give a public official or any public employee anything "of substantial value" for or because of the official's duties. State employees may, under appropriate circumstances, attend Contractor sponsored seminars or trade shows where the state will benefit by receiving information about products, new techniques, business trends, and other matters of concern to state purchasing.
- **Hiring Public Employees** - Except in rare instances, a Contractor may not pay or otherwise compensate a public employee in connection with any matter that is "of direct and substantial interest" to their public employer.
- **Hiring Former Public Employees** - Former public employees and their business partners may never accept pay or other forms of compensation in connection with matters in which they participated as public employees. Also, even if they did not personally participate in the matters, there is a one year period before former public officials may personally appear before government Departments in connection with matters that had been under their official responsibility.

**Contractor Code of Conduct and Business Ethics.** In the [Standard Contract Form](#) a Contractor certifies that performance under a Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse. The Contractor certifies that a Code of Conduct and Business Ethics will be available for review upon request within 60 days of the Effective Date of this Contract which will be provided to all employees and subcontractors involved in contract performance.

### **Records Management – Procurement and Contract Files**

In accordance with [815 CMR 10.00](#), the Department is the keeper of the official record copy of contracts and invoices and all back up supporting documentation. MMARS is the official record of the encumbrance and payment documents entered into the system and will supersede any paper copies of the same information. The contract/procurement/payment file must contain or refer to the location of all documentation related to the particular contract and payments. A Department is responsible for retaining and archiving contract records, (including invoices, back up supporting documentation and invoice verification) in accordance with the [Statewide Disposal Schedules](#) issued by the Secretary of State Records Conservation Board. Please see Policy "[Records Management](#)".

**Public Records and Access.** In the [Standard Contract Form](#) a Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under [Executive Order 195](#) and [G.L. c. 11, s.12](#) seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under [950 C.M.R. 32.00](#).

### **Procurement/Contract File Contents**

During the life of the contract, additional information, which may be maintained electronically unless the original or a written signature is required, will be added to the procurement file. This is in addition to documents regarding the procurement process and contract execution. The file should be an accurate representation of all the facts, circumstances and details of both the procurement and ongoing contract

performance/management. Please see the policy document entitled [How to Conduct a Procurement](#) for information about creating a procurement file.

*Note:* Comm-PASS supports file versioning and file segregation, which can reduce the amount of paper files. As long as an electronic version exists and does not contain information which is exempt from public record law, e.g., bank routing codes, Department users can upload files to either the contract's Forms and Terms page or the Vendor(s) detail page. If a file must be replaced or updated, the previous versions will be retained within the record's Amendment History located on the Other Information page.

Contract management related documents may include:

- Copies of all invoices or where located (electronic or manual as required internally), including rejected invoices and notices to Contractor with reasons for rejection.
- An accounting of all payments made or where located (electronic or manual).
- Copies of any written notices or other faxes, memoranda or correspondence with the Contractor.
- Documentation related to Contractor legal name change or material change in identity, including the *Change in Contractor Identity Form*, if applicable.
- Contract amendments and related transactions, if applicable.
- *Purchase Order for Commodities and/or Services*, if applicable.
- Documentation of contract monitoring and evaluation activities, such as performance reports, satisfaction surveys, site visit or audit documents, etc.
- Affirmative Market Program (AMP) Plans and vendor SOMWBA certification letters, if applicable.
- Information related to any contract disputes, including resolution.
- Documentation identifying any default, breach or unsatisfactory performance (notice should identify language in the contract detailing performance requirements and how the Contractor is failing to comply).
- Any other information or documentation about the Contractor and contract performance that the contract manager deems relevant.
- Documentation related to negotiations pertaining to options to renew.

### **Payroll Documentation**

The following list includes some examples of the types of documentation to be retained for payroll and human resource (HR) purposes. Departments are required to keep all human resource (HR) and payroll related documentation confidential and in a secured location accessible only to personnel required to enter HR or payroll related transactions and adjustments.

- Time and attendance records signed by employee and supervisor, including hours worked and leave taken;
- Posting to cumulative records;
- Signed contracts describing scope of services and rate to be paid to contract employees;
- Proper allocation or distribution of employees' time and cost to applicable Department;
- Hiring letters or appointment documentation;
- Payroll certifications; and approvals where necessary;
- W-4 Forms and other documentation related to tax deductions;
- Voluntary and Involuntary payroll deduction or garnishment forms, including direct deposit, deferred compensation programs, Dependent Care Assistance forms, Insurance forms and changes, reimbursement requests;
- back up documentation related to payroll activities, changes or adjustments;
- Employment claims, grievances, law suites and resolution documentation;
- Performance reviews; and
- Any other documentation related to employment.

### **Internal Controls**

The Comptroller publishes Internal Control guidelines in consultation with the State Auditor's Office. All Departments are required to file an Internal Control Plan and review and update this plan to ensure fiscal responsibility and accountability. [See G.L. c. 7A, § 9A](#). Departments should be evaluating the risks related to contracts and payments based upon the specific types of contracts and payments made and developing

internal controls to mitigate these risks. See [Internal Controls for Contracts and Payments](#) and [Internal Controls and Fraud Prevention](#).

## **Information Sources**

- Related Policy:
  - [Key State Finance Law Compliance Appointments and Responsibilities](#)
  - [Department Head Signature Authorization and Electronic Signature for MMARS Documents](#)
  - [Contracts Policies](#)
  - [Payments Policies](#)
  - [Records Management Policies](#)
  - [OSD Procurement Information Center \(PIC\)](#)
  
- Legal Authority:
  - [Expenditure Classification Handbook](#);
  - [M.G.L. c. 7A](#) (Office of the Comptroller); [M.G.L. c. 29](#) (State Finance Law);
  - [G.L. c. 110F](#) (Uniform Electronic Transactions Act); [G.L. c. 30, § 65](#) (Legal Services);
  - [G.L. c. 29, § 29D](#) (Debt Collection); [G.L. c. 29, § 29E](#) (Revenue Maximization);
  - [M.G.L. c. 30, § 27](#) (Revenue Receipt); [M.G.L. c. 10, § 17B](#) (Revenue Receipt); Massachusetts Constitution [Article LXIII Section 1](#) (Revenue Receipt);
  - [M.G.L. c. 7, § 22](#) (OSD – Commodities); [M.G.L. c. 30, § 51](#); (OSD – Services) [M.G.L. c. 30, §. 52](#); (OSD – Services)
  - [G.L. c. 29, §. 29A](#) (Consultants) (Level III – Executive only);
  - [M.G.L. c. 29, §. 29B](#) (Human/Social Services) (Level III - Executive only)
  - [M.G.L. c. 15A](#) and [M.G.L. c. 73](#) (state and community colleges)
  - [M.G.L. c. 75](#) (UMASS); General or special laws governing expenditures;
  - [Massachusetts Executive Orders](#) (Level III – Executive Only);
  - [Administrative Bulletins](#)(Level III – Executive Only);
  - [Comptroller regulations](#) (815 CMR 2.00 10.00);
  - [M.G.L. c. 29, § 66](#) (State Finance Law Violations)
    - [Comm-PASS](#)
    - [Comm-PASS Policies](#)
    - [801 CMR 21.00](#)
    - [808 CMR 1.00](#)
  
- Attachments:
  - [Quick Reference – Commodities and Services, Grants, Subsidies, ISAs and Chargebacks](#)
  - [Comptroller Forms](#)
  - [OSD Forms](#)
  
- Contacts – [CTR Solution Desk](#) 617-973-2468 [comptroller.info@state.ma.us](mailto:comptroller.info@state.ma.us)
  
- [Comptroller Website](#)

## **REVISIONS**

- November 1, 2005. Policy re-issued jointly with the Operational Services Division (OSD) concurrent with the launch of the Procurement Information Center (PIC). Policies formerly appearing in the Procurement and Policies Handbook have been incorporated into this policy. Additionally, updates related to state finance law, including accepting revenues and federal grant funds have also been updated.
- November 1, 2006. Removed language referencing Knowledge Center and updated relevant links to Mass.gov/osc portal site.
- May 20, 2011. Updated to reflect changes in practice, updated contract forms, and updates to PPD, EFT and other state finance law policies.

