OFFICE OF THE COMPTROLLER
ONE ASHBURTON PLACE, 9TH FLOOR
BOSTON, MASSACHUSETTS 02108

OPERATIONAL SERVICES DIVISION
ONE ASHBURTON PLACE, 10TH FLOOR
BOSTON, MASSACHUSETTS 02108

CTR/OSD Amendments, Suspensions, and Terminations Policy

Effective: July 1, 2004
Last Updated: October 5, 2026

This policy discusses the requirements and best practices related to contract amendments, suspensions, and terminations. This policy is jointly issued by the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for contracts under the jurisdiction of each of these departments. Unless otherwise provided by law, this policy applies to all commonwealth departments.

Pursuant to M.G.L. c. 7A §§ 7, 8, 9 and M.G.L. c. 29 § 31, the Comptroller is required to implement a state accounting system and centralized payroll system, and issue instructions for the accounting practices to be used by all departments related to the expenses and obligation of all commonwealth funds and accounts, unless specifically exempted by general or special law. The Comptroller's authority includes prescribing the appropriate use of the statewide enterprise accounting and financial reporting system ("the system" "Mosaic"), including any amendment, suspension, or termination of a department's contractual obligations.

OSD's procurement regulation, 801 CMR 21.00, provides all Commonwealth departments with uniform rules and standards governing the procurement of commodities and services, including human and social services for clients.

Contract Amendments

Various contract amendments can occur throughout a contract's lifecycle. Below, this policy will discuss the most common contract amendments, and how to properly execute them.

Changes to Informational Items or Accounting Information

Informational changes are changes made to items that are not "material" contract terms. This includes changes in telephone numbers, email addresses, or other references that may require a change in Mosaic. Informational changes do not require a formal contract amendment and are kept as part of the procurement/contract file.

Accounting informational changes, such as the account from which a contract is funded, are not material terms of a contract. A department may redistribute funding sources, change accounts, object codes, or other accounting information without a contract amendment form signed by the contractor. Accounting informational changes may be made by a department during the term of the contract without notice to the contractor or a formal contract amendment.

A change in a contractor's legal name is considered an informational change. If a contractor changes its legal name, the contractor must notify any department with which it has contracts about its legal name change, with documentation supporting the change. One department will be responsible for updating

the Vendor/Customer file with the new information. Please see the CTR Vendor/Customer File and Form W-9 Policy for more information on contractor name and address changes. Departments must also update the COMMBUYS contract record to reflect the most current information and any system records to ensure that the encumbrances and payments reflect the correct legal name of the contractor.

Departments cannot change an account identified in a legislative earmark, grant or other programming identified in law. Additionally, object codes must accurately match the type of expenditure being made. Object code changes are permitted only to correct mistakes; they may not be used to shift expenditures between subsidiaries due to lack of funding. Intentionally misclassifying expenditures could be considered a violation of state finance law under M.G.L. c. 29 § 66.

Material Contract Changes

When is an Amendment Form Required?

An amendment must be executed whenever there is a significant or "material" change to the terms from what was contained in the original contract or a previous amendment.

Examples of material changes include:

- Changes in dates of performance
- Fixed costs
- The type, number, cost, or rates of goods or services
- The requirements for performance (adding, deleting, or altering)
- Reporting requirements (content, timing, or recipients)
- Budget line items (deletions, additions, or changes)

Material changes must be memorialized in a formal contract amendment contemporaneously with the need for the change.

An amendment must be negotiated and executed by both parties. The unilateral modification of material terms of a contract by either party can result in breach or default; therefore, it is important for both the department and the contractor to review their contracts on a regular basis to ensure the terms remain current.

Adjustments to budget line items or performance may not be a material change depending upon how the contract and procurement were structured. Also, a contract can contain language that "minor" adjustments can be made without a formal amendment, provided both parties confirm the changes in writing. For example, some contracts have performance requirements that change based upon volume of use or need and will need flexibility throughout the contract. Other contracts purchase "availability" of services, maintenance, beds, hours or goods, which may or may not be fully utilized during a fiscal year and may be adjusted to allow utilization of other listed budget items.

Process for Documenting Amendments

When a material contract change is made, an amendment is made by attaching the details of the amendment to the Standard Contract Form (or other appropriate amendment form for ISAs, construction, leases, etc.). The amendment is sent by the department to the contractor for signature.

The amendment must be executed by both parties contemporaneously with the need for the amendment, and prior to the contractor incurring any obligations based upon the amendment.

The department and contractor may agree in advance, as part of the procurement or contract, what items of performance or cost are subject to minor adjustments, and how these minor adjustments will be documented. This documentation must be in writing and must be included as part of the contract and/or procurement file if an amendment is not used. Emails documenting agreed changes must be kept as part of the contract file. All key information related to a contract must be attached to the record copy of the contract. When in doubt as to whether a change is material, departments should execute an amendment using the Standard Contract Form.

Departments should ensure that amendments are timely negotiated to maintain contract coverage for all Commonwealth projects and programs. This is especially important when a department is faced with budget or allotments cuts. Departments may be faced with having to terminate, suspend, or amend contracts to reduce maximum obligations or the scope of anticipated performance.

When departments seek to implement contract reductions, some contractors may refuse to agree to a contract amendment reducing the contract performance or the maximum obligation of a contract. In these instances, a notice of termination or suspension, usually in the form of a letter distributed to the contractor, is necessary. A department has the option to provide a notice of contract amendment outlining a contract reduction which also contains language for a notice of termination or suspension if the contractor refuses to negotiate or agree to the contract reduction.

The notice may contain language authorizing performance up to a specified time limit or not to exceed a set dollar limit above which the department will no longer accept or pay for performance. Since contract increases and decreases must be mutually agreed, a unilateral contract amendment reducing a contract is not permitted. If a contractor refuses to negotiate a contract amendment, the contract will terminate or be suspended by operation of law unless it is first terminated or suspended by the department.

State Finance Law Applies to Amendments.

Any amendment that increases the financial obligation for the Commonwealth is subject to appropriation of available funds and other funding rules.

Performance under an amendment is subject to the same funding rules as an obligation or expenditure. Departments must do everything legally allowed to manage their contractual obligations within current appropriations. Departments must immediately notify their Executive Office of Administration and Finance ("A&F") analyst of any anticipated deficiency in an appropriation as required under M.G.L. c. 29 § 9E.

Departments are required to reflect any amendment having a fiscal impact (increase, decrease, change in performance dates, rates, etc.) in the state accounting system using the appropriate transaction modification form. If funding is not available for encumbrances and expenditures under an amendment, or if accounts are not reauthorized past the termination date, a department may not authorize performance to begin or continue under an amendment. Also, expenditures for obligations under an amendment 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. For more information, please refer to the CTR Expenditure Corrections (EX) Policy.

If performance is partially but not fully completed by the close of the fiscal year (by June 30) and the performance is severable and capable of being paid for in subsets, all performance capable of being accepted should be compensated using current fiscal year funds.

Types of Amendments

Amendment to Contract Amount

Amendments to contract amount are considered a material contract change requiring a formal amendment in most cases. The scope and language of the original contract, procurement documents, grant application process, or other authorization will determine whether a department and a contractor will be able to negotiate amendments to contract dollars or duration, consistent with 801 CMR 21.

Amendments to Contract Performance

Departments may want or need to modify the terms of performance. Departments may negotiate changes to the original performance measures, reporting requirements, or payment methodologies tied to performance at any time during the contract duration. However, consistent with 801 CMR 21.07, amendments may not waive the requirements of the original procurement process. If there is no change to the contract fiscal terms, no system encumbrance modification transaction is required. A Standard Contract Form must be executed to include any required or optional attachments whenever there is a "material" change to the performance requirements listed under the contract or the performance expectations of the department.

Amendment to Contract Duration

Amendments to contract duration are also considered a material contract change.

A contract must specify a definite period or duration of the contract that cannot be open-ended or ambiguous. If the procurement document states, for example, "two years initial duration plus two additional options to renew not to exceed one year each," the resulting contract will be limited to a maximum of four years. The dates of the total anticipated duration (including options to renew) specified in the procurement document, grant application, or other authorization will determine the allowable duration for a contract.

An increase or extension of the duration of a contract beyond the maximum period identified in a procurement document or other authorizations is allowable only to:

1. Enable a contractor to complete performance (time only extension). No additional or new performance or additional dollars are allowable under this option. This option is only available to finish a contract, not to extend performance over a longer period of time with continuing payments; or
2. Enable a department to implement an authorized "Interim Contract" under 801 CMR 21.00 or under a Level II or I department's procurement policies and procedures, or an Interim Grant under 815 CMR 2.00 (See State Grants, Federal Sub-Grants, and Subsidies Policy). An Interim Contract or Grant is used solely to provide a temporary extension to complete a new procurement process.

Close out of Fiscal Year Obligations

In rare circumstances, a vendor may fail to submit an invoice for goods or services (performance) that were delivered prior to June 30 and were accepted by the department as contract compliant. It is presumed that, as part of fiscal year closing activities, the department has internally verified receipt and acceptance and the value of the performance delivered on or before June 30, in accordance with the contract terms, in preparation for verifying invoices once received. Departments should make every effort to notify vendors of outstanding invoices and the value of the performance provided by the vendor that has been verified by the department. For more information, please refer to the CTR Job Aid: Late Submission of Invoices and Liquidation of Payments.

Exercising Options to Renew

Procurements and other authorizations may include options to renew. Although options to renew are made at the discretion of a department, the exercise of an option(s) to renew is considered a contract amendment, which will not be effective until documented by the execution of an amendment by the department and contractor on or before the termination date of the contract. A department may exercise more than one option to renew at a time, if multiple options are still available under the procurement. For example, a procurement with three, one-year options to renew may exercise all three options at once and execute a multi-year contract for the three-year period.

If a contract is scheduled to terminate prior to using the time left under a procurement, grant application, other procurement process (such as a contract employee posting) or other authorization (such as a budget line-item earmark for the contractor), any remaining time or options to renew that are still available may be used by the department provided the amendment:

- Will not extend the contract duration beyond the maximum period authorized in the procurement document, grant application, other procurement document (such as a contract employee posting) or authorization (such as a budget line-item earmark for the contractor);
- Is executed under the same terms and conditions stated in the original procurement and contract. However, a department and contractor may negotiate any of the details of performance which were identified in the contract, the procurement document, grant application, other procurement or the contractor's original response;
- Is supported by sufficient appropriations or other legally available funds; and
- Is exercised through a formal amendment by the contractor and the department. Departments should ensure that the amendment is included in the procurement/contract file with the original record copy of the contract.

The procurement period or any remaining time available under another authorization remains the same, even if the contract terminates and performance stops for a period of time. The department and contractor may agree to continue performance at a later date within the authorized procurementperiod, but any lapse in time between the original contract termination date and the execution of an amendment will be lost and may not be added on to the end of the original procurement period.

Performance Outside Scope of Contract/Amendment – Settlements and Prior Year Deficiencies

A department is not authorized to request that performance begin or continue, or that any obligation be incurred by a contractor, prior to the effective start date of the contract or amendment, or after the termination date of that contract.

Any oral or written representations, commitments, or assurances made by the department or any other Commonwealth representative are not binding and a department may not back-date a contract or amendment in order to cover the delivery of performance prior to the contract effective date. The contract effective date is determined by the date of the last required signature, or another date specified in the agreement.

The Commonwealth has no legal obligation to compensate a contractor for performance that is not requested and is intentionally delivered by the contractor outside the scope of a contract. However, a department may not accept performance outside the scope of a contract and then refuse compensation. If performance is accepted by the department, accrued to the benefit of either the department, the Commonwealth or customers/clients, and the department deems that performance is compensable, the department and the contractor may negotiate the reasonable value for the delivered and accepted performance under a settlement. When performance has been delivered and accepted without a valid contract, a Settlement and Release Form is used to document the details of the circumstances, the negotiated compensation, and the release language which ensures that the contractor cannot come back at a later date seeking additional funds related to the same performance.

There are three types of contract settlements:

1. **Contract Performance Completed Without a Contract**
   On rare occasions when a contract is required, but performance is authorized, completed, and accepted without a contract, the Settlement and Release Form serves as the contract documentation to enable compensation for this performance.
2. **Performance prior to the Effective Start Date of a Contract or Amendment.**
   Departments may not authorize new or continued performance prior to the contract effective date. If a department improperly incurs obligations for which compensation will be invoiced prior to the Contract Effective Date, and the performance is accepted by the department, these obligations must be resolved through a settlement process.

   The department will be required to:
   - Identify this performance (as part of an initial or amended contract) by the date performance started in the "Anticipated Start Date" of the Standard Contract Form and Instructions. This will identify when the start of performance related to the contract or amendment actually occurred, even though the contract/amendment is executed after this date.
   - Check off option #3 under "Anticipated Start Date" of the Standard Contract Form that indicates that the performance is part of a settlement.

   Departments must also:
   - Attach the performance and costs incurred, unless the performance is

already identified as part of the Scope of Services and Budget attachments.

- Include in the contract file a justification or the reasoning for the performance, for quality assurance or audit purposes.
- Include the amounts covered by the settlement obligations within the same encumbrance transaction (Transaction ID in Mosaic) as the contract or amendment, so that all obligations and payments for the contract are together. The department has the option of identifying the settlement payments on a separate line of the encumbrance, but this is not necessary. The encumbrance must reflect the total amount of obligations for the contract, including the Settlement amounts.

3. **Disputed performance or compensation under a current or expired contract**
   Contract disputes that are settled during the period of the contract may be documented using the options outlined in #2 above "Performance prior to the Effective Start Date of a Contract or Amendment".

   Any claim settled after the term of the contract should be resolved using the Settlement and Release Form, or if the claim was resolved after the commencement of litigation, following the process for Settlements and Judgments under 815 CMR 5.00 with prior approval from CTR.

Quality Assurance and Audit Review - System Transactions Must Match Extensions and Amendments

Mosaic must match the underlying contract or supporting documents, including extensions and amendments. What appears in Mosaic 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 be especially careful when modifying system transactions, such as encumbrances, to support contract extensions and amendments, specifically effective dates. It is improper for departments to enter a modification to a system transaction to reflect start and end dates that are not supported by the underlying contract documentation. When contracts are audited, review will include whether the dates listed in Mosaic are accurate and are supported by the contract, amendment, or settlement.

Departments cannot rely solely on Mosaic to manage fiscal responsibility and decisions. Mosaic will not always prevent mistakes or incorrect entries. Some transactions will pass all Mosaic tests (edits) and be processed to "Final" status even though the expenditure, underlying procedures, procurement process, or contract documentation is legally deficient.

Therefore, the fact that department staff are capable of processing a transaction to "Final" status in Mosaic will not be interpreted to mean that the transaction, 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 employees who process transactions to "Final" status. Quality assurance reviews will identify not only the transactions that will be reviewed, but also the security identification (UAID) of the employee who approved the transactions.

Guidelines On Material Changes in a Contractor's Identity

Decisions to continue contracts after a contractor has materially changed its identity are made by departments on a contract-by-contract basis. Since the analysis may be different for each contract, one department is not bound by another department's decision. Departments are strongly encouraged to seek the advice of their legal counsel whenever these circumstances arise. In addition, a Change in Contractor Identity Form is available for documenting information in such circumstances.

A change in the contractor's Tax Identification Number (TIN) usually signals a material change in the contractor's identity, such as a merger, acquisition, consolidation or other organizational restructuring. When this occurs, the procuring department must determine the impact on its contracts. OSD makes the determination for statewide contracts. The department must require, review, and place in the procurement/contract file a clear and detailed statement of the material change sufficient to enable the department to decide, in its best interests, whether it will permit the assignment of the contract to the successor entity, award the remaining performance to the next best value bidder (or grantee), conduct a new procurement or take any other action permitted under the relevant procurement regulations, policies and procedures.

Material Change in Contractor Identity: Merger, Buyout or Consolidation

A merger, buyout or consolidation is a structural change to a contractor in which the assets and liabilities of one or more organizations (one being the contractor) are combined into a single successor entity. Both mergers and consolidations are governed by state statutes, which require a formal filing with the Secretary of the Commonwealth and that certain conditions are met. One important provision to note, under M.G.L. c. 156B § 80 and M.G.L. c. 180 § 10A, is that the new entity assumes all of the obligations and responsibilities of the prior entity.

Merger or Buyout

One or more organizations merge into another, or one organization buys another, and one becomes the surviving organization. For example, Organization A merges into, or is bought out by, Organization B and the surviving entity is Organization B, with A no longer existing as a separate legal entity.

In that case, if the department's current contractor is Organization B, the merger or buyout will not change the underlying contract documentation. The department should verify, however, that the merger or buyout by the contractor will not result in any changes to the performance responsibilities of the contractor under the current contract(s).

If, however, the department's current contractor is Organization A, which is merged into, or is bought out by, Organization B, this presents a substantial structural change in the contractor which does affect the underlying contract(s) and procurement, and may trigger the "assignment" or "termination" clauses of the applicable Commonwealth Terms and Conditions.

Consolidation

Two or more organizations combine ("consolidate") into a new or resulting corporation (A+ B = C, with both A and B no longer existing as separate legal entities). If the department's current contractor is either Organization A or B which are consolidated into a new Organization C, this presents a substantial structural change in the contractor which does affect the underlying contract(s) and procurement and may trigger the "assignment" or "termination" clauses of the applicable Commonwealth Terms and Conditions.

Contract Options with a Material Change in Contractor Identity

The Commonwealth Terms and Conditions contains provisions on termination and contract assignment which assert the Commonwealth's control over with whom it does business. While a contractor may freely make organizational or structural changes any change that materially alters its identity may result in termination of its existing contracts. The procuring department has the sole authority to determine what to do with the remaining contract performance in all such instances.

Executive departments should invoke the procurement principles stated in 801 CMR 21.01(1) to evaluate the proposed or actual business change of the contractor for goods and services contracts. The procuring department should develop, review, and place in the procurement file a clear and detailed statement of the material change sufficient to enable the department to decide, in its best interests, whether it will continue the underlying contract(s) or undertake any other action.

Departments have the following options when faced with a material change in contractor identity:

1. Continue the contract through assignment to the successor entity, upon review and justification as outlined further in this document;
2. Award a short-term interim contract to the intended successor entity on a competitive procurement exception basis in order to permit adequate time for a review and/or re-procurement and potential transition to a new contractor;
3. Award the remaining contract performance as an interim contract to another contractor (the next best value bidder from the original procurement, or another eligible grantee) on a procurement exception basis, if justified;
4. Consolidate the contract into another existing contract if scope is arguably within the scope of the original procurement;
5. Allow the contract to lapse or terminate the contract;
6. Suspend or terminate the current contract and re-procure the contract; or
7. Take any other permitted contracting or procurement action that supports common-sense procurement decision making and fiscal responsibility based upon the circumstances.

Contract Assignment

A contract assignment refers to an assignment of the remaining contract performance to a successor contractor or to another department. A department should approve the assignment of the remaining

contract obligations, duties or responsibilities under a procurement to another entity only in certain circumstances. These are usually limited to circumstances in which a contractor's identity changes and the department has determined that the assignment of the remaining performance is essential. In addition, departments may freely assign a contract to another Commonwealth department. When a contractor is planning a merger or other significant organizational transformation, it is important that the relevant Commonwealth departments be informed as early as possible; at least 60 days advance notice of the potential change is desirable. If the contractor holds contracts with multiple procuring departments, each procuring department will then undertake a review and may grant approval of a contract assignment, including the establishment of conditions, if appropriate, or may take any other contract management action it deems advisable under the specific circumstances. A decision made by one procuring department is not binding on any other procuring department contracts with the same contractor.

Evaluating the Impact of a Material Change in Contractor Identity

The primary responsibility of department staff is to protect the interests of the Commonwealth and consumers being served under a contract.

In considering whether to permit a contract assignment when there is a material change in contractor identity, a department should conduct and document a thorough review of the potential impact.

Factors to consider include:

1. **Critical Services or Continuity of Program or Project**
   In certain circumstances, such as a critical need to prevent a lapse in services for certain types of long-term service projects, mandated client services, clients in residence, etc., it may be prudent to permit these contracts to be assigned to a successor organization, rather than terminating and re-awarding these contracts to another contractor.

   For most commodity contracts, and many service contracts, where clients or a program are not involved, a requested contract assignment to a successor entity should be scrutinized. Since the successor entity may not be one of the original bidders (or grant applicants), this entity has no automatic right to the remaining contract performance, absent extreme or special circumstances that warrant a contract assignment. Instead, departments should consider whether the assignment is appropriate or if it should enter into an interim contract with other bidders under the original procurement, or current eligible grantees.

2. **Original Procurement Requirements**
   The successor entity must meet the same requirements as the contractor under the original procurement. Some of these requirements include basic qualifications under the procurement document, years of experience, M/WBE status or subcontracts, consumer-controlled or non-profit organization status (which might affect its competitive ranking or eligibility for a contract award) and internal contract management capacity.

   Absent special circumstances, a resulting successor entity that does not meet or exceed the same material requirements as the contractor under the original procurement should not be awarded a contract performance assignment.

3. **Assumption of Liabilities**
   Will the successor entity assume all the obligations and liabilities of the prior contractor under prior year contracts within the current contract cycle of the contract to be assigned? While this is required in mergers and consolidations (see M.G.L. c. 156B § 80 and M.G.L. c 180 § 10A for relevant legal requirements in Massachusetts), in other situations, such as a contractual affiliation, the department should assure itself that all outstanding or potential obligations and liabilities will be covered. Pursuant to M.G.L. c. 106 § 2-210, "No delegation of performance relieves the party delegating of any duty to perform or any liability for breach."

4. **Administrative Process for a Material Change in Contractor Identity**
   When involving a material change in contractor identity may affect more than one department, the affected departments may identify a principal procuring department or another agreed upon Commonwealth department to assume responsibility for coordinating and facilitating communication among other affected departments. This communication is key to ensure that there is no disruption of payments to the current or new entity if an assignment occurs.

   It is important to note, however, that the decision whether to assign or terminate a contract may vary within and among departments, depending on the program specific elements of the contract review as well as other administrative factors. A department should explain to the current contractor and successor entity that any changes will apply solely to the department (unless a statewide contract or other multi-Department Master Agreement (MA) is being modified) and that the same process will need to be repeated with each Commonwealth department with which the contractor does business.

   Departments must also identify and plan the appropriate administrative steps necessary if the review indicates that a contract assignment is desirable. Probably the most critical issue facing departments affected by material changes in contractor identity is preventing disruption of client services or ongoing service projects or programs.

   To ensure the timely authorization to assign performance, departments must coordinate the end date of performance and funding for the current contractor with the start date and remaining performance and funding for the successor or new contractor. Departments must allow sufficient time to gather and process information to determine the legal form of contractor change in identity and the corresponding administrative requirements, including tax status and board governance requirements.

   Detailed discussions should be held with the current contractor as soon as possible to determine accurate and complete obligation levels for the contract(s), up to the date when contract performance will be assumed by the successor entity. These discussions must identify all services or service units which have been delivered and any outstanding or supplemental units expected to occur within the time frame determined. It is especially important to identify and review all payment invoices not yet submitted, or submitted and not yet paid, and to identify and resolve any service delivery or reimbursement problems.

   Also, for all cost reimbursement contracts, the current contractor must confirm that all incurred costs up to the planned transfer date have been identified and included in the

final obligation amount. Once contract dates and funding levels for the current and successor contractors are agreed upon, the department should prepare a Change in Contractor Identity Form, which serves to document the details associated with the change in contractor for the underlying contract, including all outstanding payments due to the current contractor and the remaining performance authorized for transfer to the new contractor.

CTR and OSD can provide guidance on how a planned contractor change in identity might affect the underlying original procurement or contracts. The secretariat may make policy determinations for cross-agency program/funding implications and determine principal procuring department or lead coordinator, if necessary.

For POS Only: Examples of OSD regulatory interpretations include the UFR filing determination and whether related parties result from the change, etc.

Required Documentation for Material Change in Contractor Identity

A material change in contractor identity, such as mergers, buyouts, and consolidations resulting in a new successor entity, also involve a legal structural change and a new TIN. Therefore, along with identifying contract-specific information to assign contract performance to the successor entity, several documents are required. There may be instances where the successor contractor is technically not "new," but rather is an existing contractor with a contract for the same type of service, into which the department may decide to incorporate the performance assignment.

The successor contractor must complete and execute, as appropriate:

1. A MA-W9 Request for Taxpayer Identification Number and Certification (Massachusetts Substitute Form W-9), if not listed as vendor in the Mosaic Vendor Customer file;
2. A Change in Contractor Identity Form to document any remaining performance and payments to the current contractor and the balance of performance and anticipated amounts to be expended by the new contractor. The Contractor Change in Identity Form documents the new contractor's commitment to assume all outstanding obligations and responsibilities under the current contract. This process replaces the need to do an amendment with the current contract to close-out the current contract, and a new Standard Contract Form and Instructions with the successor entity. All assignment information for the current and successor entities are retained in the same place;
3. Any required attachments that were required under the original procurement document (such as Contractor Authorized Signatory Listing, Affirmative Market Program (AMP) Plan, and any other attachments required by the department) and,
4. For POS Only: Written Disclosure of Current and Anticipated Related Parties pursuant to 808 CMR 1.04.

The department must also update the Vendor/Customer Table with the new W-9 and EFT. Please see the CTR Vendor/Customer File and Form W-9 Policy.

Contract Suspension and Termination - When and How to Suspend or Terminate a Contract

A contract termination is a permanent cancellation of the contract and should be used only in situations when the department does not foresee continuing business with a contractor. At least six months prior to the termination of a contract, departments should review any remaining available options to renew or begin a new procurement process if the performance or program will be ongoing.

A contract suspension is appropriate for multi-fiscal year contracts requiring a temporary halt to performance. A temporary halt in performance can be for a period of days, weeks, months, on a certain date, or upon completion of a specific amount of performance with anticipated continued performance at a future date. A suspension is preferable to a termination if funding is anticipated to be made available at a later date because this places all the contract documentation into a "suspended" status or "on hold" and when funding becomes available, the contract documentation can be easily "reactivated" through a contract amendment, rather than a full contract execution with all contract attachments. For contract suspensions, the notice of suspension should identify whether the amount of the reduction for the period of the suspension will be deducted from the overall maximum obligation of the contract or moved into subsequent fiscal years of the contract.

When suspension or termination takes place prior to the expiration date specified in the contract, the party initiating the action must provide prior written notice to the other party. The department taking the action should take steps to obtain documentation, evidencing the basis for the termination or suspension, and confirming actual delivery of notice to the contractor.

Departments should refer to the contract to determine any specific standards for the timing and other procedural requirements regarding contract suspension or termination. Also, the rights of the parties as expressed in the applicable Terms and Conditions are not exclusive, but are in addition to any other rights and privileges the parties may have under operation of law or as otherwise negotiated as part of the contract. Therefore, it is vital that department review any anticipated suspension or termination actions with legal staff and their CFO prior to taking any action.

Department legal staff must also contact the Attorney General's Office Trial Division if the planned termination or suspension involves potential litigation. This is especially important when a procuring department wants to suspend or terminate a contract used by other departments, such as a Statewide Contract or Master Agreement. Because such actions affect all departments using the contract, the repercussions extend beyond the procuring department alone. Also, legal staff and OSD may be able to suggest other solutions, such as mediation or contract negotiation, which may resolve the issues and forestall termination or suspension.

There are two types of contract suspension or termination:

1. **Suspension or termination for cause**
   A termination or suspension for an emergency is limited to a rare unforeseen public emergency that mandates immediate department action to address an acute public health or safety incident. This circumstance may arise due to a death, assault or injury to a Commonwealth client or employee in connection with a contractor's performance, or a public emergency having no connection with a contractor's performance, such as flood,

fire, hurricane. Depending upon the severity or duration of the emergency, a department may either temporarily suspend performance or payments or may terminate the contract upon prior written notice to the contractor.

2. **Suspension or termination or without cause**
   Departments may not incur obligations in excess of appropriations in the event an appropriation or allotments are eliminated or reduced, departments must take the appropriate actions to reduce contract obligations to match available appropriations and allotments, which may require immediate suspension or termination.

Although contract payments are "subject to appropriation" by the legislature, a department may not escape contractual obligations through contract termination (especially contracts for term leases, space leases, tax exempt lease purchase (TELP) or other long term commitments) unless the appropriation under the account funding the contract, or the specific language that authorizes the funding of that contract, is eliminated and the department has no other available funds that could be unobligated or otherwise made available to pay for these obligations.

In the event of a statutory reduction of allotments pursuant to M.G.L. c. 29 § 9C, executive departments must take the appropriate steps to reduce obligations to ensure that expenditures do not exceed the spending limits set by ANF. Even with executed contracts with maximum obligations and line-item earmarks specifying "not less than $__ be expended" for a particular purpose or recipient, the department does not have the authority to spend above the authorized spending limits and may be required to reduce contracts accordingly.

TELPs and other mandatory payment commitments

A department may not terminate a lease or TELP contract for lack of funding without prior approval of the Comptroller, to ensure that the termination is legally and fiscally appropriate and the termination will not negatively impact the Commonwealth's financial bond rating. For more information about TELPs, please see the CTR Capital Assets: Acquisition, Impairment, and Accounting Policy.

Reduction in Funding

For most contracts, if the available funding is eliminated or reduced for a contract, for any reason, the contractor must be notified immediately in writing and the contract (or the underlying document under a statewide, OSD-designated statewide or multiple departmental contract) shall be suspended and the contractor shall not be entitled to compensation for any performance provided after the date of suspension. A department does not have the authority to negotiate this with a contractor, nor may a department accept continued performance pending additional funding.

When a department is faced with a reduction in available funding or a reversion of funds, the department's mandate is the primary priority, however, the department must honor long term commitments (such as leases) if at all possible or suffer the consequences of potentially severe termination penalties. If the available funding is not enough to cover all of the remaining contracts, the department has three options:

1. Suspend a contract or portion of performance until available funding is received;
2. Amend a contract to reduce the amount of allowable performance; or

3. Terminate a contract with sufficient notice.

If a lack of available funding occurs, the department has no authority to request or authorize continued contract performance or to compensate the contractor for any performance provided during the period of the lapse in available funding. If available funding is pending, the department must suspend contract performance until the available funding is in place, at which time contract performance may continue. If available funding is not pending or imminent, and the department has no other legally available funding from any other sources, the department must either continue the suspension or terminate the contract. In the event the department receives available funding during the period of the original procurement, the department and the contractor may lift the suspension or execute a new contract for the remaining duration of the procurement.

If funding is not available for encumbrance and expenditures, if accounts are not reauthorized past the termination date (such as on June 30 for operating accounts, or at the end of a capital bond authorization) a department may not authorize performance to begin or continue. The department may not continue to incur obligations or continue to accept services from employees or contractors in these accounts (even if the employees or contractors want to volunteer to continue work). Contracts must be terminated or suspended, personnel must be terminated, or contracts and personnel transferred to other appropriate accounts legislatively authorized to fund these types of obligations and expenditures.

Departments must immediately notify contractors and must work with appropriate budget staff whenever available funding for a contract may be in jeopardy.

For POS Only: For contracts subject to the Commonwealth Terms and Conditions for Human and Social Services, the following specific bases for immediate termination or suspension exist:

- the absence of appropriation, allotment, or availability to the department to discharge its obligations under the contract in the fiscal year;
- a change in general or special law or regulation which prohibits or limits the department's authorization to spend available funds for the purpose of the contract (such as M.G.L. c. 29 § 9C reductions);
- a party's default, breach or any intervening casualty which poses an immediate threat to the life, health or safety of a client;
- the indictment of the contractor or one of its principals or officers for an offense or offenses related to the provisions of services;
- fraudulent activities on the part of the contractor in its dealings with the Commonwealth; or the filing for bankruptcy by the contractor.

For termination due to reduction in funding, depending upon the reason for the reduction, the department will determine the appropriate action for termination, suspension, or amendment. If an appropriation is not re-authorized, is vetoed or otherwise reduced, a department may not incur obligations that exceed appropriations. Whenever possible, the department should provide a minimum of 45 days notice unless the department alternatively provides a conditional notice of termination with a proposed amendment to a contract, subject to sufficient allotments.

Whenever an appropriation is reduced or discontinued, or under M.G.L. c. 29 § 9C when revenues are insufficient to support appropriations, and a reduction in allotments is insufficient to support continued performance during a 45 day notice period, departments must take appropriate suspension, amendment or termination actions to ensure that obligations are not incurred that exceed authorized appropriations, allotments or other available funding. Departments should provide contractors with as much prior notice as possible.

Suspension/Termination for Cause

If a contractor breaches any material term or condition of a contract or fails to fulfill any material obligation required by a contract, a procuring department may terminate or suspend a contract for cause by providing the contractor with prior written notice.

Termination without Cause

Departments may terminate a contract without cause whenever deemed appropriate by the department, upon prior notice to the contractor. Termination without cause is also referred to as termination for convenience. Termination without cause enables a department to terminate a contract without penalty, without giving a reason. This method enables the department to terminate a contract without having to prove a breach, a lack of available funding, an emergency, change of circumstances, or any other reason.

Termination without cause is appropriate for contracts such as fee for service or product contracts, rate contracts, or other contracts in which performance is upon request and the units are severable.

Cancellation of a contract may reduce the contractor's potential profits, but in most circumstances, a contractor has not committed resources to completion of performance since items have not been requested.

Departments are cautioned to consider the basis for termination without cause. A department must be careful to avoid actions that could be found to constitute bad faith. For example, encouraging a contractor to incur costs in order to meet contract performance and then terminating without cause might give rise to a claim of bad faith. Contracting for a specified number of units of a specialty product over the course of a fiscal year, which requires the contractor to purchase materials and incur other obligations in order to meet the contract obligations, might also trigger a claim of bad faith if a department terminates without cause, unless the department negotiates mutually acceptable terms for the termination.

The termination without cause option may also be deemed in bad faith and inappropriate in circumstances in which a contractor is required to provide an end product, system, software, or report and cannot receive compensation until performance is delivered and accepted, and the department terminates without cause prior to the delivery and acceptance of the product. If the contractor was performing in accordance with the contract performance requirements and there were no emergency or other funding implications to support a termination, the department may be deemed to have unfairly terminated the contract.

When providing notice of termination without cause, a department should identify the period of notice (if not specified as part of the contract) and what allowable performance is anticipated and authorized during the notice period. The department should negotiate final costs associated with the termination.

Termination without cause will not relieve a department from compensating the contractor for performance provided and accepted by the department and costs incurred in accordance with the terms of the contract up to the effective date of the termination, or as otherwise negotiated by the parties.

For most "off the shelf" products or "upon request" fee-for-service contracts, which have no guaranteed amounts of performance or units, 30 days prior notice of termination is standard. For other contracts involving projects or product development, or which require the contractor to commit to provide services (such as maintenance contracts, leases and TELPs) notice periods should be negotiated to reflect the needs of the parties. Some parties may agree to have notice periods that equal "the remaining time of the contract" in effect negating this option as available and requiring termination only for cause or a loss of funding. Many leases and all TELPs limit without cause terminations, or subject terminations to substantial penalties.

For POS Only: Either party may terminate without cause with 60 calendar days' written notice (provided the department is not under a M.G.L. c. 9C allotment reduction mandate which would require an earlier termination date to prevent spending above authorized allotments).

Recommendations and Considerations for Amending, Suspending or Terminating Contracts

The following are recommended best practices that departments should consider when amending, terminating, or suspending a contract. Departments should consult with their CFO and legal counsel prior to any formal action to amend, suspend, or terminate a contract.

Establish Communication with Appropriate Staff

Internal department policies should include legal counsel consultation prior to implementing any action to terminate, suspend, reduce, or amend a contract, especially during times of fiscal constraints. Internal department policies should also include any required notification to or consultation with other commonwealth departments, including but not limited to:

- The Attorney General's Office (AGO) regarding any anticipated termination, reduction, suspension or amendment which may involve a potential threat of litigation, or which is foreseen to involve a current or potential dispute or difficulty. The department General Counsel is the key contact with the AGO and should contact the Attorney General's Trial Division (617) 727-2200.
- The Executive Office Administration and Finance (ANF) must be notified immediately by the department's CFO regarding potential deficiencies.
- The Operational Services Division (OSD) for questions related to whether an amendment falls within the scope of the procurement document under 801 CMR 21.00.
- The Executive Office of Technology Services and Security (EOTSS) regarding any amendment, suspension, or termination related to IT related contracts.

Carefully Review Contract Terms Related to Amendments, Suspensions, or Terminations

A department's ability to amend, suspend, or terminate a contract is determined by the terms of the contract, the procurement's description of performance, governing statutes, and appropriation language.

Consider the Costs of Amendments, Terminations, or Reductions

Unless otherwise specified in the contract, the department is responsible for compensating the contractor for reasonable performance requested, received, and accepted until the contract termination or amendment date. Also, pursuant to M.G.L. c. 29 §§ 26 & 27, departments may not request or accept performance outside the scope of a contract, or otherwise incur obligations in excess of department appropriations and allotments. Therefore, departments should consult with their legal counsel to carefully consider the costs related to amending, terminating, or reducing a contract.

Good Faith and Fair Dealing - Notice of Amendment, Suspension, or Termination

Departments must demonstrate good faith and fair dealing when initiating any notice of amendment, suspension, or termination. Demonstrating good faith means that departments must be able to show that a good business justification or legal necessity supports the contract change. Any notice provided to a contractor must be made by an authorized signatory of the department head in consultation with the department CFO and legal counsel.

The language of the contract should determine the notice period, how and when notice is considered delivered and received, and designated notice recipient for each party. If the contract is silent on any of these notice terms, the department should consult with its legal counsel to determine a reasonable notice period.

Requirements for the notice's content are also usually prescribed in the language of the contract. Notices of termination, suspension, or amendments are usually in the form of a letter distributed to the contractor(s).

For all notices, departments must document a contractor's actual receipt of the notice. Notice may be given orally, but written notice must also be provided in the format authorized under the contract, provided that actual receipt is confirmed. The notice period does not start until actual receipt of the notice by the contractor.

For additional information related to notice requirements, please see the Commonwealth Terms and Conditions, the Best Value Procurements Handbook, and Standard Contract Form and Instructions.

Breach of Contract

A breach of contract generally occurs when there is a "violation" of the contract terms and conditions or a "default" or "failure to perform." A breach is considered "material" if the contractor violates a major requirement of the contract. Examples of material breaches include transfer of performance to a subcontractor without the department's prior approval, lapse in Worker's Compensation or other mandatory insurance, or the contractor defaults on performance of a significant stated requirement of the contract.

Performance measurements that are clear, complete, and detailed in the procurement document and/or contract terms are helpful in determining breach or default. If a department has clearly specified how performance will be judged and what the expected standard of performance is, the contractor may be held to that standard. If no performance standards are identified, and no performance deadlines or thresholds are set, it is harder to argue that the contractor breached or defaulted on the contract. Oral agreements, amendments, or conversations are almost always deemed unenforceable.

Departments are responsible for establishing an internal protocol to follow when a full or partial breach occurs. A department's internal protocol for a full or partial breach should include documenting and verifying the breach by more than one department individual, notifying appropriate staff of the breach, consulting the General Counsel to determine if a legal dispute or litigation is suspected due to the breach, and drafting the writing notice and delivering such notice to the contractor.

Litigation or Mediation

Litigation can be expensive for both the Commonwealth and a contractor, and may exceed the value of the amount in dispute. To avoid litigation, the department and the contractor may agree to voluntary mediation through the Massachusetts Office of Public Collaboration (MOPC) of any contract dispute.

MOPC is the lead agency for overseeing the use of mediation by Commonwealth departments and other forms of alternative dispute resolution. MOPC has established a contract that may be used by all Commonwealth and private entities per MOPC's enabling statute, M.G.L. c. 75 § 46. The contract offers qualified mediators with expertise in a wide range of substantive areas. Departments must contact MOPC if they are considering mediation and may not separately procure these services. Private sector mediators under this contract have been selected and trained by MOPC. Thus, the mediators are not employees of MOPC or the department, and they act independently as impartial mediators on behalf of both the department and the contractor to reach a solution.

A department and contractor who agree to pursue mediation are expected to share the costs of a mediation. For more information about mediation, dispute resolution systems design, facilitation and consensus-building, dispute resolution skills training, and other services offered by MOPC, call (617) 287- 4040.

Notifying The Office of the Attorney General of Potential Litigation

All staff have an obligation to immediately notify their General Counsel whenever a potential contract dispute arises that may trigger the need for intervention, alternative dispute resolution, or potentially result in litigation. The General Counsel is the department's key contact with the AGO and is obligated to immediately inform the AGO of any suspected potential litigation. The AGO reviews these disputes to determine whether the AGO can or will represent the department. The AGO also balances a variety of concerns that go beyond the scope of a particular dispute that may determine whether a contract dispute should be litigated, mediated, or otherwise resolved.

The AGO only represents departments in disputes involving litigation and will not represent a department during mediation or other administrative proceeding or hearing. However, a department must obtain the approval of the AGO before agreeing to mediation or dispute resolution.

Although the department will not be charged for legal services provided by the AGO, the department will usually be responsible for fees associated with expert witnesses, sheriffs' fees for service of process, deposition fees and the staff time and resources necessary to prepare and testify at depositions and trial if the litigation is not immediately resolved.

Records Management

Contract amendments, suspensions, and terminations, and related documents are public records under M.G.L. c. 66 and M.G.L. c. 4, § 7, ss. Twenty-sixth. Departments should be aware that records related to a contract, including contents of the procurement file, are generally subject to public disclosure under the public records law. If litigation results from the action related to the contract, the procurement file contents may also be subject to legal discovery.

Department counsel is responsible for maintaining the original or certified "Record copies" of all documents related to a contract or identifying the repository for these records in accordance with the records retention schedule published by the Supervisor of Public Records - Records Management Unit and CTR's Fiscal Records Management Policy. CTR will retain documents submitted for administrative processing in accordance with the records retention schedule; this does not relieve department counsel from their retention obligations for these records. Public record requests for copies of documents related to a claim will be fulfilled if CTR is in possession of the requested documents. If CTR does not have a copy, it will refer the request to the department that submitted it.

Internal Controls

Department heads are required to annually certify that the department has a system of written internal controls, training, and monitoring actively in place as part of daily operations to achieve the department's mission, ensure compliance with CTR's published guidance (PowerDMS, MAComptroller.org, Fiscal Year Memos, CTR Statewide Trainings), and prevent fraud, waste, and abuse of Commonwealth resources. This policy is included in the annual certification. CTR will conduct quality assurance reviews and audits of payments made by departments. Departments are responsible for complying with this policy, and making any corrections necessary to bring documentation or payments into compliance if a department finds it has made a payment contrary to CTR's instructions.