OFFICE OF THE COMPTROLLER
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BOSTON, MASSACHUSETTS 02108

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

Commodities and Services Policy

Effective: July 1, 2004
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Executive Summary

This policy is issued jointly by the Office of the Comptroller (CTR) and the Operational Services Division (OSD). This policy addresses the purchase of commodities or services for a department's use or on behalf of department customers or clients.

Definitions

Commodities include any article of trade, goods, products, supplies, information technology resources hardware, software, and systems.

Services include, but are not limited to, the furnishing of time, labor, effort, or specialized skills by a contractor. Services shall include operational, professional, maintenance and repair, non-professional, consultant, and human and social services.

Considerations

Departments procuring commodities or services must comply with contract and procurement-related policies issued by CTR, OSD, and the Executive Office for Administration and Finance.

OSD Statutory Authority and Oversight of Procurement of Commodities and Services

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.

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, §3; and St. 1993, c. 495, s. 99 and M.G.L. c. 29, § 29B, to oversee the procurement of human and social services by Commonwealth human and social services departments. 808 CMR 1.00 governs contract compliance, financial reporting, and auditing requirements applicable to all procurements of human and social services and to M.G.L. c. 71B, which governs 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.

The State Purchasing Agent and OSD have statutory authority to oversee the procurement of commodities and services by Commonwealth entities, pursuant to M.G.L. c. 7, § 22, M.G.L. c. 30, § 51 and M.G.L. c. 30, § 52. These statutes specifically exempt the legislative branch and military division from their applicability, and also do not apply to all or part of the procurements of the following Commonwealth entities:

- The judicial branch
    - The judicial branch is not subject to OSD oversight 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. The judicial branch may voluntarily choose to follow OSD's procurement requirements.

- Cities, towns, and existing county entities of the Commonwealth
    - Procurement by cities, towns, and existing county entities is conducted pursuant to M.G.L. c. 30B, and although they may purchase off of OSD statewide contracts per M.G.L. c. 7 § 22A and M.G.L. c. 30B § 1(c), OSD has no oversight authority over M.G.L. c. 30B or these entities.
- The University of Massachusetts, State Colleges and Community Colleges and the Higher Education Consortium
    - The University of Massachusetts, State Colleges and Community Colleges and the Higher Education Consortium have the statutory authority to conduct certain procurements pursuant to M.G.L. c. 75 § 13, M.G.L. c. 73 § 15, M.G.L. c. 15A § 24 and M.G.L. c. 15A § 24A. However, where these statutes are silent, these entities fall under OSD's statutes and authority.

For more information on OSD's legal and regulatory authority, please contact OSD's Legal Bureau at OSDLegal@osd.state.ma.us.

Procurement Requirements

Procurement of commodities and services must be conducted in accordance with applicable procurement laws, regulations, policies, and procedures for the department's procurement level, as described below.

The requirements for state grants and federal subgrants, subsidies, interdepartmental service agreements (ISAs) and interdepartmental chargebacks are the same for all departments irrespective of their procurement level.

Department Procurement Levels

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.

For a list of all departments and their specific level, please refer to CTR's List of Departments by Procurement Level. The following sections outline the requirements for procurement of commodities and services for each of the department procurement levels.

Level 1: Exempt Departments

Level I Departments are exempt from M.G.L. c. 7 § 22, M.G.L. c. 30 § 51, and M.G.L. c. 30 § 52. Level I Departments are encouraged to conduct procurements consistent with 801 CMR 21.00 and the OSD Best Value Handbook. Level I departments are subject to M.G.L. c. 7A and c. 29; Comptroller regulations, policies, and procedures; and any other laws, rules and regulations specific to that department's purchasing and expenditures.

A Level I Department that utilizes Mosaic transaction processing delegation should comply with the following conditions:

- 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.

Internal written procurement policies and procedures should include the following:

- Compliance with M.G.L. c. 7A and c. 29, Comptroller regulations, policies, and procedures.
- The advertisement and receipt of bids for commodities and services that stimulate open and public competitive procurements and best value.
- Approved exceptions to the competitive procurement process. This includes procedures for making incidental purchases that may not exceed the threshold established by OSD pursuant to M.G.L. c. 7 § 22.
- The department's use of the following Commonwealth contract forms:
    - The applicable Commonwealth Terms and Conditions
    - Commonwealth Standard Contract Form
    - Contractor Authorized Signatory Listing Form (CASL) for Corporations
    - Contractor Authorized Signatory Listing Form (CASL) for Sole Proprietors
- The department should conduct all commodities and services purchases in accordance with the department's internal policies, procedures and requirements. The department should also provide CTR and other authorized departments access to the department's internal policies, procedures, requirements, for quality assurance and audit purposes.

Level II Departments: Executive Branch – Non-Executive Departments

Level II departments are required to conduct competitive procurements consistent with M.G.L. c. 30 § 51 and M.G.L. c. 30 § 52. These statutes require that all services and commodities be purchased in accordance with M.G.L. c. 7 § 22. M.G.L. c. 7 § 22 outlines the procurement requirements for supplies, equipment, and other property of departments.

Level II departments are subject to M.G.L. c. 7A and c. 29; Comptroller regulations, policies, and procedures; any other laws, rules, and regulations specific to that department's purchasing and expenditures; and the below conditions for transaction delegation if the department accepts (takes advantage) of transaction delegation (Mosaic transaction processing without prior CTR or OSD review).

Level II departments are encouraged to conduct procurements using 801 CMR 21.00 and the OSD Best Value Handbook. Level II departments that do not conduct procurements under 801 CMR 21.00 must document that department's written internal procurement policies and procedures for audit purposes and must provide a copy upon request to CTR or OSD for purposes of secondary review of contracts or quality assurance review purposes.

A Level II department that utilizes Mosaic transaction processing delegation must comply with the following conditions for transaction delegation:

The department should establish internal written procurement policies and procedures. Internal written procurement policies and procedures should include, at minimum, the following:

- State that all services and commodities shall be purchased in accordance with M.G.L. c. 7 § 22, M.G.L. c. 30 § 51, and M.G.L. c. 30 § 52.
- Reference compliance with M.G.L. c. 15A § 24; M.G.L. c. 15A § 24A; M.G.L. c. 73 §15, for State and Community Colleges.
- Reference requirements to comply with M.G.L. c. 7A and c. 29, Comptroller regulations, policies and procedures.
- Requirements for the advertisement and receipt of bids for commodities and services that stimulate open and public competitive procurements and best value.
- Requirements for approved exceptions to the competitive procurement process. This includes

procedures for making incidental purchases that may not exceed the threshold established by OSD, pursuant to M.G.L. c. 7 § 22.

- Requirement for the department to use the Commonwealth contract forms:
  - The applicable Commonwealth Terms and Conditions
  - Commonwealth Standard Contract Form and Instructions
  - Contractor Authorized Signatory Listing Form (CASL) for Corporations
  - Contractor Authorized Signatory Listing Form (CASL) for Sole Proprietors
- The department should agree 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 departments are required to conduct competitive procurements consistent with M.G.L. c. 30 § 51 and M.G.L. 30 § 52. These statutes require that all services and commodities be purchased in accordance with M.G.L. c. 7 § 22. M.G.L. c. 7 § 22 outlines the procurement requirements for supplies, equipment, and other property of departments.

Level III departments must also follow 801 CMR 21.00 and the OSD Best Value Handbook when purchasing commodities and services.

Required Purchasing - Statewide Contracts

Executive departments must purchase from available statewide contracts unless they have requested and received in writing from OSD approval to conduct a procurement for a commodity or service available from an existing statewide contract.

Procurement Exceptions

For Level III – Executive departments, exceptions for commodities and services contracts are defined under 801 CMR 21.00 and the OSD Best Value Handbook, as follows:

- Emergency contracts - an unforeseen crisis or incident has arisen which requires or mandates the immediate acquisition of commodities or services, or both, to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.
- Interim Contract – to prevent a lapse in performance to complete a contract or until a new procurement is completed. The Interim Contract must be requested and approved in writing from OSD. Based on OSD policy, interim contracts may last for a maximum period of three months.
- Legislative or Legal Exemption - Includes legislative earmarking, a court judgment or other legal restriction.
- Contract Employees - postings are similar to other state employees which replaces RFR; Please see CTR's Individual Contractors – Contract Employees vs. Independent Contractors policy for details on individual contractors, including contract employees and independent contractors.
- Incidental Purchase - small dollar, one time, non-recurring need; a department that follows 801 CMR 21.00 for its internal procurement policy must comply with the incidental purchase requirements outlined in the OSD Best Value Handbook)" and the "Incidental Purchase Quick Reference Guide."
- Collective Purchase - as approved by OSD.

Mosaic Transaction Processing Delegation

Mosaic transaction processing delegation allows departments to process certain Mosaic encumbrance transactions for commodities and services contracts to final status without prior review by CTR, OSD, or another state agency. Mosaic transaction processing delegation includes authorization 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.

Departments have increased responsibility and accountability when given Mosaic transaction processing delegation. This increased responsibility and accountability includes creating and maintaining a management environment that:

1. Provides the appropriate level of review and approval of encumbrance transactions processed within the department.
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 both general/overall procurement compliance reviews and comprehensive quality assurance (QA) reviews on selected procurements and contracts. Contracts are also subject to post audit by the State Auditor's Office, the Office of the Inspector General, the State Ethics Commission, and the Attorney General's Office. Please see CTR's and OSD's Delegation of Mosaic / Contract and Transaction Processing Authority and Quality Assurance policy for additional information.

Consultant Contract Requirements

Executive departments purchasing consultant services (HH and N01-N14 and U05 object codes) must have the following records to comply with M.G.L. c. 29, § 29A:

- a written contract (applicable Commonwealth Terms and Conditions and Commonwealth Standard Contract Form)
- a resume or statement of qualifications
- disclosure of any other Commonwealth income (Contractor Mandatory Submission Form);
- disclosure of persons with a financial interest in the contract of more than one per cent of the capital stock of a corporation contracting to provide the services.

Consultants may not supervise state employees and may not substitute for state positions, pursuant to M.G.L. c. 29 § 29A.

Please refer to the OSD Best Value Handbook for detailed instructions related to consultant contracts.

Capital Assets – Acquisition, Impairment, and Accounting Policy and procurement considerations when purchasing durable commodities

The CTR Capital Assets – Acquisition, Impairment, and Accounting Policy outlines the requirements that apply to fixed assets, including procurement considerations and recording responsibilities. Departments that purchase durable commodities are required to conduct such purchases in accordance with the relevant procurement requirements and the Fixed Asset Acquisition Policy. Fixed assets must be recorded in Mosaic within 7 days of acceptance.

Unless otherwise specified, the CTR Capital Assets – Acquisition, Impairment, and Accounting Policy applies 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 Mosaic.

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 Mosaic.

Contract Execution and Retaining Relevant Documents

Departments are responsible for completing contracts and retaining relevant documents in accordance with CTR and OSD guidance. Below are some key requirements of those policies:

Contract Forms

Level II and Level III departments, and any Level I departments that take advantage of Mosaic transaction processing delegation, must use the following standard Commonwealth contract forms (where applicable):

- Applicable Commonwealth Terms and Conditions
- Commonwealth Standard Contract Form
- Purchase Order for Commodities and/or Services, or equivalent
- Change in Contractor Identify Form (Change in business structure or contract assignment)
- Interdepartmental Service Agreement Form

Departments must retain these records as prescribed by the Office of the Comptroller.

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. Any department may use an alternative contract form for student interns. Alternative contracts for student interns must offer liability protection and require the student to comply with department policies and procedures in accordance with law. Departments are encouraged to review alternative student intern contracts with CTR and/or OSD.
- Alternative contracts are acceptable for contracts with the federal government. Upon review by the contracting department's legal counsel, CTR, and/or OSD counsel, the 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. The department may execute an alternative contract or Memorandum of Understanding, provided the document has been reviewed by the contracting department's legal counsel, 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. For example, in emergency, critical need or exceptional circumstances, as outlined in 801 CMR 21.08 (2), in the event a contract cannot 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.

Contract Attachments

The following attachments must be part of the contract file:

Competitive Procurements

- Request for Response (RFR); Copy of the RFR or screen print of the COMMBUYS 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
- Scope of performance and budget
- Copy of posting and resume (contract employees)

Other attachments

- Employment Status Form (required for all Contracts with Individuals)
- Contractor Authorized Signatory Listing Form (CASL) for Corporations
- Contractor Authorized Signatory Listing Form (CASL) for Sole Proprietors
- 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.
- Other attachments required by OSD's Forms Page and in the Best Value Handbook; or required by the department or the procurement.
- Additional negotiated terms not in conflict with RFR or contract terms.
- Other Required Contract Forms
- Form W-9 if contractor is not registered as a vendor in Mosaic Vendor/Customer file
- Electronic Funds Transfer (EFT) Authorization Form (unless one-time payment or hardship)

Contract Effective Start Dates and Contract Termination Dates

For commodities and service contracts, the contract effective start date will be the latest of the execution dates of the Standard Contract Form by the parties, or a different date specified in the contract. The contract will terminate on the date listed in the contract unless properly amended prior to that date, or unless terminated earlier in accordance with the terms of the contract.

See the CTR Amendments, Suspensions and Terminations Policy for additional information and further guidance regarding amendments prior to termination.

Contract Encumbrances Considered "Commodity-Based Encumbrances"

In Mosaic the term "commodity" applies to both commodities and services. Non-commodity-based encumbrances reserve funds for any reimbursement of employee-related expenses, pension and insurance-related expenses, postage, subscriptions and memberships, advertising expenses, fees, fines, licenses, and permits, confidential investigation expenses, sales tax, 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 Mosaic transactions, please refer to CTR's job aids for procurement/contracts and the CTR Bill Payments Policy.

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

Prior to submitting a Mosaic contract encumbrance transaction to final status, the department administrator processing the transaction must ensure that the dates in Mosaic match the effective start date based upon the signature and approval dates. Submission of the transaction to final status is the department head's certification that Mosaic accurately reflects the start date based upon the signature and approval dates appearing in the contract. The effective start date and the contract termination date listed on the contract must match the dates on the encumbrance and payment documents in Mosaic.

The only exception to this rule involves statewide contracts or master service agreements for leases or maintenance contracts where the contracts 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 Mosaic entries in relation to supporting contract documentation.

Department Head Authorization of MMARS transactions

Every Mosaic action must be confirmed/authorized by the department head or an authorized signatory. Department head authorization can be accomplished in one of two ways:

1. Electronically, by an individual with administrator security with department head signature authorization. A paper copy of the transaction does not have to be retained since MMARS is the official record of the transaction. The "Transaction ID" of the Mosaic transaction needs to be recorded on all supporting documentation or on the Transaction Records Management / Signature Authorization Form as the cover sheet to the supporting documentation.

2. Written approval of a Mosaic transaction on a screen print of the document or on the Transaction Records Management / Signature Authorization Form as an authorized signatory if the individual who will be processing the document to final status has administrator security without department head signature authorization. Written approval must be obtained prior to processing the document to final status inMosaic.

Bill Payments Policy – Payments – Prompt Payment Discounts

Departments are required to make payments in accordance with the terms of a contract and the CTR Bill Payments Policy. For details on payments, see CTR Payments Policies, including the Commonwealth CTR Bill Payments Policy. These policies provide 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. Also, see the CTR Prompt Payment Discounts Policy for additional details.

Amendments

Amendments are subject to state finance law requirements. All amendments must be formalized using the Standard Contract Form executed by the parties contemporaneously with the need for amendment but prior to the contract termination date. Amendments to fiscal information must be reflected in the MMARS encumbrance document modification and vendor/customer information must be updated accordingly.

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. Therefore, departments must finalize the amendment in the same manner as the contract, with signatures by authorized signatories of the department and contractor.

Not less than 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, program, etc. will be ongoing.

A contract which is not amended prior to its termination date terminates by operation of law. A contractor is not authorized to continue performance after the termination date of a contract even if the department has notified the contractor that it has exercised an option to renew or plans to amend the contract but has not done so.

Please see the CTR/OSD Amendments, Suspensions, or Terminations policy for additional detailed information regarding amendment, material changes in contractor identity, contract disputes, mediation, litigation, settlements, and prior year deficiencies.

Internal Controls

Departments are required to establish proper internal controls related to the procurement of commodities or services. Please refer to the CTR Internal Control Guide.

Records Management

In accordance with 815 CMR 10.00, the department is the keeper of the official record copy of the contract document and contract/procurement file. The contract/procurement file must contain, or refer to the location of, all documentation related to a procurement and resulting contract(s). A department is responsible for retaining and archiving contract records in accordance with the disposal schedules issued by the Secretary of the Commonwealth's Records Conservation Board. Please see the CTR Fiscal Records Management Policy for more information.

Mosaic is the official record of the encumbrance and payment transactions, and will supersede any conflicting paper copies of the same information.