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<p><b>Joint Policy:</b></p>	<p><b>Procurement/Contracts</b></p>	
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## Commodities and Services

### Executive Summary

This Chapter is issued jointly by the Office of the Comptroller (CTR) and the Operational Services Division (OSD). This Chapter outlines the policies related to contracts for Commodities (goods) and Services. 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's Procurement Information Center \(PIC\)](#) for details and procedures.

### Considerations

Commodities and services include any purchase of commodities or services for a department's use or on behalf of department customers/clients. Commodities include any article of trade, items, 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 including operational, professional, maintenance and repair, non-professional, consultant and human and social services.

In addition to the policies in this Chapter, departments are also responsible for the policies in [Contracts - State Finance Law and General Contract Requirements](#) and any other applicable [contract](#) and [procurement](#) policies issued by CTR and OSD under the **Procurement Information Center (PIC)**.

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## **MMARS Document Processing Delegation**

MMARS document processing (transaction) delegation enables departments to process MMARS encumbrance documents for commodities and services 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 OSD and other identified laws, regulations policies and procedures and the use of specified Contract Forms.

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 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.

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](#)

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 "**Contracts – Delegation of MMARS Processing Authority**" for additional information.

## **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 [MGL c. 7, s. 22](#), [MGL c. 30, s. 51](#) and [MGL 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 [M.G.L. c. 30B](#), although they may purchase off of OSD statewide contracts per [M.G.L. c. 7, s. 22A](#) and [M.G.L. c. 30B, s. 1\(c\)](#). OSD has no oversight authority over M.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 M.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 [MGL c. 75, s. 13](#), [MGL c. 73, s. 15](#), [MGL c. 15A, s. 24](#) and [MGL 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 [MGL 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 [MGL 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).

### **Procurement Requirements**

Procurements of commodities and services must be conducted in accordance with applicable procurement laws, regulations, policies and procedures for the department's procurement Level.

### **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 purchase 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.

### **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 (**APC, BBE, CJC, CPC, HOU, LEG, MHL, SEN, SJC, TRC, UMS, MIL**)
- **Level II Departments** – Executive Branch - Non-Executive Departments (**AGO, ART, BCC, BER, BHC, BRC, BRI, BSC, CCC, CPF, CPI, CSW, DAA, DAC, EAS, ETH, FRC, FSC, GCC, GOV, HCC, HSD, HST, IGO, LOT, MAS, MBC, MCA, MCC, MID, MMA, MWC, NAC, NEC, NFK, NOR, NSC, NWD, PLY, QCC, RCC, SAO, SDB, SDE, SDF, SDH, SDM, SDW, SEC, SSA, STC, SUF, TRE, VWA, WES, WOR, WSC, SDA (LTG, GCN) currently in GOV**)
- **Level III Departments** – Executive Branch – Executive Departments (**ADD, AGR, ALA, ANF, ATB, BCA, BLC, BSB, CAD, CDA, CHE, CHS, CJT, CME, CSC, DCC, DCP, DCR, DFS, DIA, DMH, DMR, DOB, DOC, DOE, DOI, DOL, DOR, DOS, DPH, DPS, DPU, DPW, DSS, DYS, EEC EED, EHS, ELD, ENE, ENV, EOL, EPS, EQA, EQE, FWE, GIC, HCF, HLY, HRD, ITD, JLM, LIB, LRC, MAC, MCB, MCD, MRB, MRC, OCD, OHA, ORI, OSC, OSD, PAR, PER, POL, REG, RGT, RMV, SCA, SEA, SOR, SRB, SRC, TRB, TRP, VET, WEL**)

**NOTE:** For procurement purposes, the requirements for each of the Procurement Levels differs primarily for contracts for commodities and services.

***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.***

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 [M.G.L. c. 7, § 22](#), [M.G.L. c. 30, § 51](#) and [M.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 M.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):

1. 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 M.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 M.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 and Instructions
  - o Commonwealth Standard Contract Amendment 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 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 [M.G.L. c. 30, § 51](#) and [M.G.L. c. 30, § 52](#) which state that all services and commodities shall be purchased in accordance with [M.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 M.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 [M.G.L. c. 7, § 22](#), [M.G.L. c. 30, § 51](#) and [M.G.L. c. 30, § 52](#). In addition, references to 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; and reference to the requirements to comply with M.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 M.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 and Instructions
  - o Commonwealth Standard Contract Amendment 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 [M.G.L. c. 30, § 51](#) and [M.G.L. § 30,s.52](#), which state that all services and commodities shall be purchased in accordance with [M.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 COMMBUYS, 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 COMMBUYS 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 [M.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 and Instructions);
- 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 [M.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**

For Level III – Executive Departments, exceptions for commodities and services contracts are defined under 801 CMR 21.00 and the **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;
- **Contract Employees** - postings are similar to other state employees which replaces RFR; Please see Policy Chapters “Individual Contractors – Contract Employees vs. Independent Contractors” and “**State Finance Law and General Contract Requirements**” for details on Individual Contractors, including Contract Employees and Independent Contractors.
- **Incidental Purchase** - small \$ - one time, non-recurring need; 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 “**Procurement Information Center (PIC)**” and the “**Incidental Purchase Quick Reference Guide**” Please see Policy Chapter “**Contracts – State Finance Law and General Requirements**” for details about incidental purchases for Department Procurement Levels II and III.
- **Collective Purchase** - as approved by OSD;

Please refer to the **Procurement Information Center (PIC)** for more information regarding exceptions and requirements.

### **CONTRACT EXECUTION AND FILING**

Departments are responsible for completing contracts and contract filing in accordance with Contracts Policy “**State Finance Law and General Contracts Requirements**”. The following sections contain some of the key items in that policy.

#### **Contract Forms**

All Level II and Level III departments, and any Level I departments that take advantage of MMARS document processing delegation (transaction delegation) are required to use standard Commonwealth contract boilerplates:

- [Commonwealth Terms and Conditions Form](#)
- [Commonwealth Standard Contract Form](#)
- [Commonwealth Terms and Conditions for Human and Social Services](#) (Level III - Executive Only)
- [Standard Contract Amendment 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](#)
- Contracts must be filed as prescribed by the Comptroller. Fixed Assets must be recorded in MMARS within 7 days of acceptance. See [State Finance Law and General Contract Requirements](#) and General Contract Requirements and the [Fixed Assets – Acquisition Policy for details](#).

### **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. Please see Policy Chapter “**Contracts - State Finance Law and General Requirements**” for the following contract form exceptions: student interns, contracts with the federal government, multi-state collaboratives, emergency or special circumstances and the prohibition against execution of vendor contracts.

### **Contract Attachments**

#### **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\(all\)](#)
- *Consultant Contractor Mandatory Submission Form* (consultant Contracts – HH, N01-N14 and U05 Object Codes – Level II – Non-Executive and Level III – Executive)
- *Northern Ireland Certification* (all)
- *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 the procurement
- Additional negotiated terms not in conflict with RFR or Contract terms.

### **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)

### **Required Approvals**

Please see Policy Chapter “**Contracts - State Finance Law and General Requirements**” for additional details on the following required contract approvals: department head, secretariat signoff, Attorney General Approval of Legal Service Contracts (all departments), Office of the Chief Counsel to the Governor



signoff of all legal services (Executive Departments) and oversight department secondary review or oversight department secondary review.

### **Contract Effective Start Dates and Contract Termination Dates.**

The contract effective start date for commodities and services contracts will be the latest of the execution dates of Standard Contract Form by the parties, including required approvals or a later 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.

Please see Policy Chapters: **Contracts – State Finance Law and General Requirements** for more details regarding effective start and termination dates. See **Contracts – Amendments, Suspensions and Terminations** for additional information and further guidance regarding amendments prior to termination.

### **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 documents are considered “Commodity-based” documents and are the only MMARS documents with a “commodity” line.
- Non-commodity based encumbrances reserves funds for any reimbursements to 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 MMARS documents please see Job Aids for Procurement/Contracts and Policy Chapters under “**Accounts Payable**” for payments.

### **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 in MMARS match the effective start date 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.

Please see Policy Chapters: **Contracts – State Finance Law and General Requirements** for more details on compensation and other state finance law general requirements related to contracts.

### **Electronic Signature and Department Head Authorization of MMARS documents**

Electronic signatures are limited to MMARS documents and certain COMMBUYS 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 COMMBUYS 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 FORM W-9 (MASSACHUSETTS SUBSTITUTE W-9 FORM) Forms.*

With the implementation of the MMARS accounting system the Office of the Comptroller is aligning Electronic Security with Department Head Signature Authorization (DHSA) in fiscal year 2005 in order 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:

- (1) Electronically by an individual with **Administrator Security With Department Head Signature Authorization.** A paper copy of the document does not have to be retained since MMARS is the official record of the transaction. The Doc Id of the MMARS document needs to be recorded on all supporting documentation or on the **Document Authorization/Records Management Form** as the cover sheet to the supporting documentation.
- (2) Written approval of MMARS Document on a screen print of the document or on the **Document Authorization/Records Management Form** by 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 in MMARS.

#### **What does electronic signature of a MMARS document 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 document, **and that**
- they are either an authorized signatory of the department head who is authorized to approve the MMARS document 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 document 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 document 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.

Please see Policy Chapter "Department Head Signature Authorization and Electronic Signatures for MMARS Documents" and "Contracts - State Finance Law and General Requirements" for additional details.

#### **Bill Paying Policy – Payments – Prompt Payment Discounts**

The Comptroller is required to establish a vendor payment schedule. [M.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 **Accounts Payable Policies**, including the **Commonwealth Bill Paying Policy**, which includes guidance on standard payment policies (EFT payment within 30 days), 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. See also the policy chapter on "**Prompt Payment Discounts**" for additional details on including this cost savings mechanism in contracts.

### **Amendments**

For 801 CMR 21.00 contracts, a department may negotiate any element of performance within the scope of the contract. Any element may be negotiated which results in a better value than the original response. Other contracts may negotiate terms based upon scope of contract, language in procurement and applicable procurement rules. All amendments are subject to state finance law requirements (available funding etc.) All amendments must be formalized using the Standard Contract Amendment Form executed by the parties contemporaneously with need for amendment but prior to contract termination date. Amendments to fiscal information must be reflected in the MMARS encumbrance document modification and update Vendor/Customer information if needed.

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 final execution of contracts or amendments. Electronic signatures are only authorized for the MMARS documents and certain OSD COMMBUYS documents supporting a contract or amendment or for those COMMBUYS documents that may be submitted electronically by COMMBUYS subscribers that are submitting electronic bids.** 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.

At least six months prior to the termination of a procurement, 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 and can not be amended. 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. **Performance made during any lapse in time between the original Contract termination date and the execution of a new Standard Contract Form can not be compensated under either the original or the new Contract.**

Please see Policy Chapter "**Contracts – Amendments, Suspensions and Terminations**" for additional detailed information regarding amendment, material changes in contractor identity, contract disputes, mediation, litigation, settlements and prior year deficiencies.

### **Internal Controls**

Please see: [Internal Controls Procurement, Contracting, Bill Paying, Payroll](#).

### **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. MMARS is the official record of the encumbrance and payment documents and will supersede any paper copies of the same information. 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 State Records Conservation Board. Please see Policy Chapter under "**Records Management**".

## **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)
- [G.L. c. 29, § 66](#) (State Finance Law Violations)

Attachments

- [Employment Status Form](#) (must be completed for all Individual Contractors)
- [Quick Reference - Commodities and Services](#)
- [Quick Reference – Commodities and Services, Grants, Subsidies, ISAs and Chargebacks](#)
- [MMARS transaction Records Management/Authorized Signature Form](#)
- [Attorney General Review Form for Attorneys Providing Legal Services](#)
- [Attorney General Policy for Prior Review of Attorneys](#)
- [Commonwealth Terms and Conditions Form](#)
- [Commonwealth Standard Contract Form](#)
- [Commonwealth Terms and Conditions for Human and Social Services](#) (Level III - Executive Only)
- [Standard Contract Amendment 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](#)
- For Standard Contracts for Construction (See Policy Chapters on Vertical and Horizontal Construction Contracts under construction)
- For Standard Contracts for Real Property Leasing (See Policy Chapter on Real Property Leasing Contracts – under construction)

- [Contractor Authorized Signatory Listing Form](#)
- [Electronic Funds Transfer \(EFT\) form](#)
- [Form W-9 \(Massachusetts Substitute W-9 Form\)](#) (if not listed as vendor in the MMARS Vendor Customer file)
- [Consultant Contractor Mandatory Submission Form](#)

Links:

- [801 CMR 21.00](#) (Required for Executive Departments (Level III))
- [808 CMR1.00](#) (Required for Executive Departments (Level III))
- [Procurement Information Center \(PIC\)](#) Required for Executive Departments (Level III),
- Contacts - [CTR Solution Desk](#)

REVISIONS

- November 1, 2005. Updates to reflect joint issuance of policy with OSD concurrent with launch of Procurement Information Center (PIC).
- **November 1, 2006.** Removed language referencing the Knowledge Center and updated relevant links to Mass.gov/osc portal site.