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| <p>Operational Services Division One Ashburton Place 10th Floor Boston, MA 02108</p> | <p>Commonwealth of</p>  <p>Massachusetts</p> | <p>Office of the Comptroller One Ashburton Place 9th Floor Boston, MA 02108</p> |
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MEMORANDUM

To: Secretariat and Agency Chief Procurement Officers, Chief Fiscal Officers and General Counsels

From: Gary Lambert, Assistant Secretary for Operational Services
Martin J. Benison, Comptroller

Date: September 30, 2013

Re: Revised Incidental Purchase Limit, New Due Diligence Posting Requirements, and Revised Procedures for Using Cooperative Purchasing Contracts Issued by Non-Massachusetts Public Entities

- Comptroller Memo FY#2014-11
- OSD Policy 14-01

Executive Summary

The purpose of this policy memorandum is to inform you about changes in the incidental purchase limit, simplified contract requirements for certain incidental purchases, new due diligence posting requirements when making certain purchases that do not qualify as procurement exceptions, and revised procedures for using cooperative purchasing contracts issued by non-Massachusetts public entities. The goal of these changes is to comply with recent legislation and to streamline the process for state agency procurements. The Operational Services Division (OSD) and the Comptroller of the Commonwealth (CTR) have revised multiple policy and guidance documents to reflect these changes, with most significant revisions described below. These policy changes and a new 1-page Quick Reference Procurement Chart can be found in OSD's [Procurement Information Center](#).

Background

These policy changes are being issued in response to:

- Section 6 of Chapter 118 of the Acts of 2012, which amended G.L. c. 7, § 22(2) to grant the State Purchasing Agent the authority to allow for an increase in the incidental purchasing threshold to \$10,000. Pursuant to 801 CMR 21.05(1), Incidental Purchases, are identified as a procurement exception defined as “[a] one-time purchase, or multiple purchases, with a total dollar value that does not exceed the minimum amount established by law, ANF or OSD.”
- Executive Order No. 533, which directed OSD to “[i]nvestigate opportunities to standardize and streamline the Commonwealth’s procurement processes both within OSD and the Executive Department in order to simplify the process for state agency procurement staff when conducting the procurements, for public entity purchasing staff when using the contracts and for interested bidders when bidding on the procurements.”

This new policy only applies to the acquisition of commodities and services by all Executive Departments pursuant to MGL Chapter 7, Section 22; MGL Chapter 30, Sections 51 and 52; and 801 CMR 21.00 and other public entities that follow 801 CMR 21.00.

Incidental Purchase limit has been increased to \$10,000

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| Effective immediately, Executive Departments are authorized to utilize the new \$10,000 threshold for all incidental purchases. Additional revisions to existing OSD policies concerning the incidental purchasing dollar threshold have been made concurrent with the issuance of this memorandum as noted below. | Former Threshold Levels | New Threshold Levels |
| Procurement Type | | |
| Incidental Purchase | Up to \$5,000 | Up to \$10,000 |
| Small Procurement (SBPP terms required) | \$5,000 - \$150,000 | \$10,000 - \$150,000 |
| Large Procurement | Greater than \$150,000 | Greater than \$150,000 |

OSD’s [Procurement Overview](#) and [Exceptions to Competitive Procurements](#) documents in the [Procurement Information Center](#) have been updated to reflect these changes. Departments should refer to the Comptroller’s [Expenditure Classification Handbook](#) to identify which Object Classes allow for Incidental Purchases.

Simplified Contract Requirements for Certain Incidental Purchases

With issuance of this policy, Incidental Purchases of the following Object Classes (from the Comptroller’s [Expenditure Classification Handbook](#)) do not require execution of a Standard Contract Form and Commonwealth Terms and Conditions for purchases under \$10,000: Administrative Expenses (EE); Programmatic Facility Operational Supplies and Expenses (FF); Energy Costs and Utilities (GG); Programmatic Operational Services (JJ); Programmatic Equipment Purchase (KK); and Entitlement Programs (RR). However, departments may choose to execute a Standard Contract Form for more complex contracts. The AGO continues to advise Departments not to sign vendor contracts, purchase orders or invoices with contractual terms.

Incidental Purchases from the following Object Classes are exempt from the Standard Contract Form and Commonwealth Terms and Conditions for purchases only up to \$5,000: Consultant Service Contracts (HH); Programmatic Equipment TELP, Lease and Rental, Maintenance and Repair (LL); Purchased Client Human and Social Services and Non-Human Services Programs (MM); Horizontal and Vertical Construction, Improvements, Maintenance and Repair Costs and Land Acquisition (NN); and Information Technology Expenses (UU).

Small Business Purchasing Program Required for Small Procurements, with Subcontracting Limited to 20% of Contract Value

Consistent with the change in the incidental purchase dollar threshold, the Small Business Purchasing Program (SBPP), which is required for all Small Procurements, now applies to the revised threshold levels (\$10,000 - \$150,000). A **new** SBPP requirement is that subcontracting in these types of procurements be limited to no more than 20% of the value of the contract, unless it is with another SBPP registered participant.

OSD's [Procurement Overview](#) in the [Procurement Information Center](#) has been updated to reflect these changes.

New Requirements when Presented with Opportunities to Make Certain Purchases that Do Not Qualify as Procurement Exceptions

There may be instances where a department:

- is offered something at no cost or well below market cost;
- needs to purchase proprietary licenses or products for systems or software that they have already purchased after previously conducting a competitive procurement; or
- wants to conduct “pilot programs” or “product demos” in order to investigate new and emerging technologies.

While all state finance, procurement and internal control processes and decisions require due diligence on the part of public employees, the purpose of this new policy is to ensure that a due diligence review is completed before accepting such offers or making such purchases without conducting a full procurement. In these cases, the department must obtain OSD's approval and conduct a due diligence posting on Comm-PASS as follows:

1. The Chief Procurement Officer and/or Chief Fiscal Officer of the department must submit a written request for such a purchase on department letterhead to the Assistant Secretary for Operational Services.
2. Once written approval has been received from OSD, the department must post the offer or, in the case of department seeking to conduct a pilot or demo program, draft specifications, on Comm-PASS to determine if there are other interested vendors willing and able to offer the same deal.
3. The department must retain all documentation related to the due diligence posting in a procurement file subject to review by OSD's Quality Assurance Team.

The full description of these requirements is located in the revised [Exceptions to Competitive Procurements](#) document in OSD's [Procurement Information Center](#).

Revised Process for Using Collective Purchase Contracts Issued by the GSA or Other Non-Massachusetts Public Entities

When an active statewide contract for the commodity/service exists, departments are not permitted to purchase from a GSA or another state's contract. When a statewide contract does not exist, the department must notify the Assistant Secretary for Operational Services at purchasing.agent@massmail.state.ma.us, in writing, of its interest in purchasing off a GSA or another state's Collective Purchase contract. OSD will respond to such requests, and copies of all written documentation related to the request and the collective purchase contract (if used) must be maintained in the appropriate procurement file.

The full description of the procedure for using collective purchase contracts issued by the GSA and other non-Massachusetts public entities is located in the revised [Exceptions to Competitive Procurements](#) document in OSD's [Procurement Information Center](#).

Other Revisions to Documents in OSD's Procurement Information Center

The [Procurement Overview](#) (formerly called the Procurement Introduction) document located in OSD's [Procurement Information Center](#) also now includes the following updated information:

- A new 1-page Quick Reference Procurement Chart
- Requests for approval not to use a statewide contract
- SST/PMT membership terms

Repealed Policies

This policy memo also repeals the following 9 OSD policies consistent with Governor Patrick's directive in Executive Order 533 to streamline OSD's procurement policies and procedures:

| Repealed Policy Document | Into Which Document is this Repealed Policy Now Incorporated |
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| Incidental Purchasing Policy Guidance | Exceptions to Competitive Procurements and Procurement Overview |
| Commodities and Services | State Finance Law and General Contract Requirements |
| OSD Policy Guidance 04-19 - Policy Regarding Use of Federal General Services Administration (GSA) Contracts | "Collective Purchase" section of Exceptions to Competitive Procurements |
| OSD Policy Guidance 04-23 - Policies and Guidance Regarding MMARS | Procurement Overview and State Finance Law and General Contract Requirements |
| OSD Policy Guidance 05-11 - Changes to "A Deal Too Good to Pass Up" | "Due Diligence Posting for Certain Purchases" section of Exceptions to Competitive Procurements |
| OSD Policy Guidance 05-19 - Procurement and Contract Management Policy Changes | Procurement Overview |
| OSD Policy Guidance 10-35 – New Comm-PASS Policy Requirements for Small Procurements and Select Statewide Contract Purchases | Procurement Overview |
| OSD Policy Guidance 11-03 - Revised Commodity Purchase Order (PC) Approval Process | Procurement Overview |
| OSD Policy Guidance 11-05 – Revised Procurement Threshold Levels and Revised Small Business Purchasing Program Requirements | Procurement Overview |

The policy changes outlined in this document can be found on the following webpages: [OSD's Policy](#) webpage; OSD's [Procurement Information Center](#); and the [Comptroller's Policy](#) webpage. If you should have any questions regarding this policy please feel free to contact OSD's Legal Policy and Compliance Office at OSDlegal@osd.state.ma.us.