

	<b>The Commonwealth of Massachusetts</b> Operational Services Division One Ashburton Place, Room 1017 Boston, MA 02108 <b>Procurement Policies and Procedures</b>	
<b>Policy:</b>	<b>How to Draft a Request for Response (RFR)</b>	
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**A special note: The procurement process, which includes drafting a Request for Response, is not necessary if the commodity or service is available from an existing statewide contract (which must be used by all Executive departments and by those other departments who have elected to follow 801 CMR 21.00). Executive departments are required to use OSD’s statewide contracts, if one is available, for their commodity and service needs. Exceptions for not using statewide contracts will only be permitted with prior written approval from the State Purchasing Agent. The process that departments must follow when requesting this approval is explained in *OSD Policy Guidance 05-19 - Procurement and Contract Management Policy Changes*, available via a link at the end of this document. Also, one department may use another department’s procurement if they have so indicated in their RFR.**

**Executive Summary**

The Request for Response (RFR) is the heart of the procurement process. It communicates contract performance specifications to potential bidders. An RFR is also known as a “solicitation” or “procurement” and these terms are used interchangeably throughout this document.

The bids, quotes, responses or other submissions from bidders, regardless of format, are all considered responses. Regardless of how well every other element of the procurement process flows, a weak or limited RFR may prevent a department from achieving its procurement goals. The RFR is the place to include *all* information concerning a procurement. An RFR that is complete and detailed can withstand subsequent challenges.

*Note:* All RFR documents uploaded to the Comm-PASS system should be in their original software format (Word, Excel, etc.) to ensure compliance with federal law under the Americans for Disability Act (ADA). When requested, provision of any alternate-access format, including PDF, is allowed on Comm-PASS, and is the responsibility of the department.

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### **HOW TO DRAFT A REQUEST FOR RESPONSE (RFR)**

This document provides step-by-step instructions for drafting an RFR, including the 10 requirements for every RFR. RFRs are drafted by a department to fit a particular procurement need based upon the complexity and total value of a contract. Not only can RFRs be "built to suit," they may also be "built to grow" depending on the changing or expanding needs of a department.

Comm-PASS: Throughout this document, certain "Comm-PASS" procedures are referenced, as appropriate. Comm-PASS stands for the Commonwealth Procurement Access and Solicitation System and is the online system for posting procurement and contract information. These references are intended to provide general notice to departments that certain Comm-PASS actions are either required or available rather than to provide specific instructions for using Comm-PASS. Detailed "how to" instructions are available in the associated guidance entitled *Comm-PASS Policies*, available via a link at the end of this document.

Purchase of Service: Also, a notation of "*☞ For POS Only*" indicates that the text that follows pertains only to the "Purchase of Service" system and the procurement of human and social services.

### **Minimum Contents of a Request for Response (RFR)**

The minimum RFR contents are listed below followed by separate sections detailing each component.

1. Description or purpose of the procurement
2. Acquisition method (fee-for-service, outright purchase, rental, term lease, Tax Exempt Lease-Purchase and/or license)
3. Request for single or multiple contractors
4. Use of a procurement by a single or multiple departments
5. Anticipated duration of the contract, including renewal options
6. Anticipated expenditures and compensation structures
7. Performance and contract specifications
8. Instructions for submission of responses
9. Deadline for responses and procurement calendar
10. RFR attachments/required specifications

### **1. Description or Purpose of the Procurement**

This section of the RFR should outline a department's anticipated plan, purpose or goals for the delivery of commodities or services. It is a good place to present an overview of the department, including any history or experience the department has had with the same or similar types of commodities and services. Many contractors have no experience with state government or the unique business needs and day-to-day problems that departments face.

This section of the RFR is designed to brief potential bidders about the environment, circumstances and obstacles that a contractor will face. Bidders submit responses based upon the information contained in the RFR. Therefore, this section of the RFR provides bidders with a sketch on how the department or the Commonwealth as a whole operates and what the contractor should expect during performance.

For many procurements, this section will be brief, especially for simple, routine purchases. A separate

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section of the RFR is used to elaborate on the details of the contract and performance specifications (RFR Section 7). Depending on the size and complexity of the RFR, this section may combine the summary with the complete specifications described in RFR Section 7.

*Note:* Do not copy this section in its entirety into the Comm-PASS template's Header page description field. The Comm-PASS Header page is reserved for a very brief description of the procurement in order to provide bidders with enough information to decide whether or not to read further under the Comm-PASS Specifications tab.

## **2. Acquisition Method**

Requests for Responses are developed for the purchase of either services or commodities (consumable or durable), or both, as explained more fully below. Departments must use one (or more, if necessary) of these acquisition methods unless another method is legislatively authorized and approved by the Operational Services Division (OSD) or the Office of the Comptroller (CTR). Some RFRs may include more than one acquisition method based on the needs of the department.

### **Services**

Fee for service is another term for service contract, which may be either unit based or project based (explained in the compensation structures section of this document). Depending on the type and predictability of use of the service, this contract will either be a rate contract (amount per unit) or a maximum obligation contract (a total amount).

Service contracts may have both services and commodities (such as materials). However, the commodity components of a service contract must be in addition to the services. Maintenance service contracts may be structured with separate rates for time and materials, or a service call rate that includes both. Certain maintenance is periodic and may be more cost-effective through one-time service calls. Other types of service contracts, including contingency fee contracts, are discussed in further detail in this document.

### **Commodities - Consumable or Durable**

Consumable: These commodities are "consumed" and have a limited useful life. Products such as paper, pens, light bulbs, food, etc., are usually acquired through an outright purchase acquisition method. Certain types of equipment are also considered consumable because the useful life of the equipment is short (less than one year) and they have an insignificant purchase cost.

Durable: Durable commodities, such as informational technology (IT) equipment, furniture, vehicles, etc., have a useful life that generally exceeds one year. Some durable commodities may also have an insignificant purchase cost. On the other hand, capital commodities are durable commodities that have a useful life of more than one year *and* a significant cost. These commodities are capitalized and carried on the Commonwealth's financial statements. Durable commodities may also have an ownership value. They are appropriate for outright purchase, Tax Exempt Lease Purchase (TELP), term leasing and rental acquisition methods.

Acquisition of Durable Commodities: When deciding to acquire durable commodities, departments and Procurement Management Teams (PMTs) should assess their requirements and consider these options:

1. *Outright Purchase:* Immediate ownership. (When the value of the commodity is \$50,000 or greater, this is considered a Commonwealth fixed asset.)
2. *Rental:* Temporary short term use without ownership (limit 6 months).

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3. *Term Lease*: Temporary use without ownership for over 6 months. (These leases must be reviewed for categorization as capital or operating.)
4. *Tax Exempt Lease-Purchase (TELP)*: Purchase of commodity with financing and ultimate ownership. (This should be reported as a capital lease. When the value of the commodity is \$50,000 or greater, it is considered a Commonwealth fixed asset.)
5. *License*: Temporary use without ownership of intellectual property or software.

Obtaining best value should always guide the decision. Please see the associated guidance entitled *Acquisition Policy*, available via a link at the end of this document, for more guidance on this RFR requirement.

### **3. Request for Single or Multiple Contractors**

The RFR must indicate whether the department plans to award a single contract or multiple contracts. This decision depends on the department's needs, the market, the availability of bidders and other factors. If the department is uncertain, the RFR should indicate that either choice is a possibility, and bidders should respond accordingly.

Qualified Contractor Lists: *When the commodities or services are not already covered under an existing statewide contract*, a department may conduct a competitive procurement to solicit multiple qualified bidders. Qualified contractor lists, including open and rolling enrollment contracts, are a way by which departments can ensure adequate coverage. This section addresses the decision to request multiple contractors, including the concepts of qualified contractor lists and open and rolling procurements. All information pertaining to multiple contractors must be maintained in the procurement file.

Qualification of bidders is one method of identifying multiple contractors by establishing a set of criteria for inclusion on the list. Qualifications may include technical expertise, experience, quality, location, availability, rates, prices or catalogs, among other things. Thus, departments will have a ready source of contractors when needed. Qualified contractor lists generally reflect factors other than cost, particularly best value considerations. Such criteria include, but are not limited to, financial stability, past performance, professional references and testimonials.

Qualified lists do not guarantee work for any contractor, and a department is under no legal obligation to use all of the qualified contractors. However, departments may want to allocate work among the contractors either by rotation or by another basis designed to promote competition. Also, the PMT may include an option to limit the number of contractors on the list, selecting only those who meet the minimum qualifications and provide best value. Departments may also state that underutilization of contractors may result in contract termination or that under-utilized contractors' contracts may not be renewed at contract renewal time. The RFR and the evaluation criteria should clearly indicate these options.

Departments may negotiate the details of their procurement which may include prices via requests for quotations (if prices were not established as part of the qualification process) as well as other basic terms. The RFR should include an option to enable the department to get quotes or estimates for a particular project or performance requirement from several of the contractors on the list in order to get the best rates or performance options. All departments who use qualified lists should request price quotes whenever possible in order to achieve the greatest cost savings. Departments are strongly encouraged to get quotes (as sound business practice) even if this option was not specified in the RFR. This is not a new procurement, and all the necessary contract documentation is already on file. The quotes must be provided within the parameters of the RFR and the contractors' original responses. If a department does not take the extra step to get quotes, it may not get the best price for the commodity or service.

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*Note:* Comm-PASS offers a Line Item solicitation template which can support requests for quotes for commodities or services which are based on price-quantity criteria.

Open and Rolling Enrollment Qualified Contractor Lists: In addition to selecting a qualified pool of vendors for the duration of the procurement, RFRs for multiple contractors may also be open or rolling procurements. The open method allows new bidders to submit responses after the initial selection period at specified intervals or as deemed necessary by the PMT. The rolling method allows bidders to submit responses at any time during the procurement.

*Open:* Since the open enrollment method allows new bidders to submit responses after the initial selection period, departments should consider incorporating this powerful leveraging tool into their RFRs to foster competition and better pricing.

Although the department may have no intention of opening up the procurement, having the option to do so may be very beneficial in certain circumstances. If, however, the department does plan to open the procurement periodically, the RFR should state how often additional responses will be reviewed. As usual, the PMT receives responses for the initial period until the deadline date for submission.

PMTs must ensure that responses received during the open enrollment period (after the initial selection process) are handled in the same manner as any other RFR response. Late responses on an open enrollment for which the close date has elapsed may not be held for the next open procurement. In such cases, the PMT should return the response and late bidders may resubmit their responses during the next open enrollment period.

*Note:* When conducting Open Enrollment procurements, the initial Solicitation record must be established in Comm-PASS using the Open Enrollment option within the Calendar Type value. This enables Re-Open functionality that can be selected once the initial selection period has passed and the Solicitation is Closed. Re-Open functionality does not allow modification to any of the data values or file attachments provided within the original record. If any of this information has changed, users may have to use the Copy function in order to modify data values or file attachments. Please see the associated guidance entitled *Comm-PASS Policies* for step-by-step Comm-PASS procedures (via a link at the end of this document).

*Rolling:* On the other hand, under a rolling enrollment process, the RFR never closes, allowing bidders to respond at any point during the life of the solicitation. Managing rolling enrollments may require additional staff resources so departments should plan accordingly for this type of procurement.

*Note:* When conducting Rolling Enrollment procurements, the initial Solicitation record must be established in Comm-PASS using the Rolling Enrollment option within the Calendar Type value. This requires the user to provide the initial Open date and the Last Submission date. While the user must indicate the end of the initial submission period within the RFR, the Solicitation on Comm-PASS remains in an OPEN status until the Last Submission date. The period between the Rolling Enrollment Solicitation's Last Submission Date and the Rolling Enrollment Contract's End Date should be adequate and reasonable enough to support evaluation of final responses, award of final contracts, and purchases until the end of the Contract term. In other words, accepting responses one week or even one month before the contract expires may not be adequate to evaluate responses, execute contracts, and support purchasing.

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**4. Use of a Procurement by a Single or Multiple Departments**

RFRs should be drafted using one of the following five options identifying whether the RFR will be used only by the procuring department or by multiple departments:

1. Statewide Contract Procurement Conducted by OSD [Comm-PASS - Open to All Eligible Public Entities] This option is only available for OSD use. These procurements are conducted and managed by OSD on behalf of the Commonwealth. These contracts are easy to use and departments can purchase commodities and services without having to execute additional contract documentation, except for the *Purchase Order for Commodities and/or Services* (or its equivalent). Executive departments and those that have elected to follow 801 CMR 21.00 must use statewide contracts.
2. Statewide Contract Procurement Conducted by OSD-Designated Department [Comm-PASS - Open to All Eligible Public Entities] This option is available to any department with PRIOR written approval by OSD. These procurements are conducted and managed by a department (formally designated by OSD) on behalf of the Commonwealth. The department and OSD execute a formal designation agreement specifying each department's respective responsibilities. A sample agreement is included in the document titled "Statewide Contract, Designated Contract and Single or Multiple Departments Contract Guidance" which may be accessed through a link at the end of this document. The documentation requirements of statewide contracts issued by OSD apply to the designated statewide contracts as do the Procurement and Contract Management Policies found in OSD Policy Guidance 05-19 and subsequent guidance, as applicable. Executive departments and those that have elected to follow 801 CMR 21.00 must use statewide contracts.
3. Multiple Department Procurement/Limited Department User Contracts [Comm-PASS - Restricted to Use by Defined Entities Only] This option is available to all departments. These procurements are conducted and managed by a self-selected group of departments. One department posts the RFR and executes contracts and amendments on behalf of the group. Any department identified in the RFR, or later approved by the PMT (if this option was specified in the RFR), can purchase from the contract without having to execute additional contract documentation. Departments with permission to use these contracts are authorized to by the lead department in MMARS. *Note:* Comm-PASS supports designation of Defined Entities on the Eligible Entities page.
4. Single Department Procurement/Multiple Department User Contracts [Comm-PASS - Open for Use Under Separate Contract Execution] This option is available to all departments. These procurements are conducted and managed by a department for its own needs. The department indicates the procurement can also be used by other departments and OSD approved eligible entities. Subsequent departments may use the RFR and winning bidder responses as the procurement basis for the execution of contracts. OSD considers this option to be a "best practice" and departments are strongly encouraged to authorize this option when conducting their own procurements because other departments can benefit from the procurement. Care should be taken to write the RFR in terms that are general enough to allow for use by other departments while still meeting the specific needs of the department.
5. Single Department Procurement/Single Department User Contract [Comm-PASS - Restricted to Use by Issuing Entity Only] This procurement option is available to all departments. These procurements are conducted and managed by the department solely for its own needs. If the RFR is silent as to its possible use by additional departments or OSD approved eligible entities, then the RFR is limited to use only by the procuring department.

For additional information, RFR drafting considerations, contract filing requirements and related transactions, please refer to the associated guidance entitled "*Statewide Contract, Designated Contract*

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*and Single or Multiple Departments Contract Guidance” via a link at the end of this document.*

**5. Anticipated Duration of the Contract, Including Renewal Options**

While 801 CMR 21.00 does not prescribe any set limits for procurement duration, the RFR must identify the total “*anticipated duration*” of the contract, including options to renew. This duration must be stated in the RFR.

*Note:* Although the Comm-PASS contracts pages contain duration information, the solicitation page only contains fields for the open and close dates of the solicitation (and not the contract). The contract duration must be included in the RFR solicitation document itself.

The duration cannot be open-ended or ambiguous since the department and contractor will be limited to that total period. The duration in the RFR takes precedence over any other dates that may be published on Comm-PASS or elsewhere. The RFR should also specify the circumstances under which the department would choose to exercise its option to renew, such as performance or price considerations. Therefore, determining the appropriate duration requires the consideration of a variety of factors, including the type of commodities or services, the length of time the contract will be required (temporary or long term), the type and duration of the funding and best value principles.

However, the department may choose to include language in the RFR that restricts or allows for flexibility in the initial duration period of the procurement. Phrases such as “up to one year” or “year” provide the greatest flexibility for the initial duration while other phrases are more restrictive. Examples of restrictive initial duration language would be “fiscal years” and language which indicates a specific set of dates.

Under 801 CMR 21.00, there is great flexibility to structure the procurement process and contract duration in the RFR. A department may establish a “multi-year” contract which could be executed by the parties once for the full period or partial period of the total anticipated duration identified in the RFR. Any contract that is executed for more than one fiscal year, or that crosses at least two fiscal years, is considered a multi-year contract.

Although the duration of any contract procured under 801 CMR 21.00, including any options to renew, shall be the period determined by the PMT as necessary to obtain the required commodities or services at the best value for the department and the state, ***the duration is subject to available funding for the contract.*** Available funding is defined as an “annual appropriation, capital, trust or federal funds which have been appropriated or authorized for the purposes of the contract.” The exception to this general rule applies to contracts that allow for multiple users and, as such, are not limited by one department’s appropriation. Each department using the contract is limited by its own appropriation levels and availability of funding within the appropriation.

In addition, 801 CMR 21.06 (2) specifies certain limitations on duration, irrespective of what the contract identifies as a duration. These types of limitations arise from statutorily set requirements such as annual appropriation accounts which are limited to each fiscal year, or limitations set on capital appropriations, retained revenue accounts and federal grant appropriations.

Please see associated guidance on drafting this section of the RFR in the documents entitled *Request for Response/Contract Duration* and *☞ For POS Only: Multi-Year Contracting for Human and Social Services* via links at the end of this document.

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**6. Anticipated Expenditures and Compensation Structures**

This section of the RFR should be determined in conjunction with the acquisition method and duration in order to provide bidders with enough information to submit an informed response. What follows is a discussion of expenditures. Common compensation structures are then discussed, followed by compensation considerations, including Purchase of Service considerations and limitations.

**Anticipated Expenditures**

Executive departments must specify either an estimated dollar value or units (and specify the type of unit) in the RFR. The Comm-PASS capability to accept entry of zero values or Not Available indicators for both fields does not relieve departments of the requirement to provide an actual estimate in either the Estimated Value or Estimated Units field. These are estimates only and a department is not bound by these figures.

Estimated Value: Specifying the total estimated funding assists bidders in submitting accurate responses. Departments may want to issue an RFR that identifies the total estimated funding for a project and evaluate bidders based on the amount of service, or the number of items the bidder is willing to provide for the available dollars. Providing the total estimated funding may also make sense if the PMT is releasing a solution-based RFR for responses or if the resulting contracts will have a maximum obligation.

Procurements should reflect the total procurement value (Comm-PASS Estimated Value Field), which represents the estimated initial contract duration and all options to renew. As an example, if the department spent approximately \$2 million each year on a commodity and the procurement duration was for a two-year initial contract duration with 1 one-year option to renew, the estimated value field should reflect \$6 million. Even though the option to renew is at the discretion of the department and not guaranteed, the field should indicate the total amount as if all options to renew were going to be exercised. *Note:* Comm-PASS supports the entry of both numbers and text (case, gallon, etc.).

Estimated Number of Units: On the other hand, PMTs may be reluctant to provide a structure for bidders' responses that would result in their matching an amount specified in the RFR. Further, a PMT may not want to limit the RFR to the maximum obligation cited. In that case, RFRs that result in the establishment of rate contracts (price per unit or service) do not specify a maximum obligation but provide the estimated number of units. If the number of units is unknown, departments should try to include historical usage.

*Note:* The RFR must indicate if federal funds will be used to fund the contract and any resulting federal requirements for the contractor.

**Compensation Structures**

This section provides guidance to departments in structuring compensation terms to obtain the best value. Several compensation structures are described to assist departments in thinking about how a compensation structure can best support these objectives. OSD is available to provide guidance pertaining to specific commodities or service groups.

Rate or Maximum Obligation Compensation Contracts: Contracts are split into two basic compensation categories, "rate contracts," that are unit based contracts which specify no maximum obligation in the RFR or the contract, and "maximum obligation contracts" which specify a total amount.

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A rate contract is used when the rate per unit of performance (commodity or service) is known, but the number of units, or contractors, is either unknown or unpredictable. Departments can use a rate contract when they require flexibility or are unable to accurately predict (despite historical data) the number of units, the number of contractors, and other factors such as timing and length of service. Examples include snow and ice removal, supplies or price per hour of counseling. The use is unpredictable and periodic. The total compensation is based on the number of units delivered multiplied by the rate per unit.

The maximum obligation structure is used when the contractor is known and the use is predictable and measurable. Even if a maximum obligation is not specified in the RFR, a resulting contract may contain a maximum obligation, which can later be amended.

The contractor is not guaranteed the maximum amount. The amount is the maximum the contractor can be paid if all units and services are provided. It is not a guarantee of payment.

#### Common Compensation Structures Which May Be Either Rate or Maximum Obligation:

*Project Based Compensation:* Project based compensation is used when contract performance cannot be divided neatly into severable units. The payment may be a flat rate or an all-inclusive amount (all related costs, overhead, administrative costs, time, materials, etc.). The bidder provides an actual or estimated cost for the completed contract performance based on the RFR specifications (which should be very comprehensive). Payment may be based on a schedule of predetermined events or deliverables, or upon completion and acceptance by the department of the entire project. Contractors who underestimate their costs may not request additional compensation. This type of compensation structure, which may be combined with a unit based structure, is strongly encouraged.

*Unit Based Compensation:* A unit structure pertains to rates which are set by the unit (per item, hour, day, week or service). Unit based compensation is valuable when a performance based compensation structure is not feasible. Units are customarily independent components of a contract and the number can change depending on the department's needs. A department pays only for the units requested and delivered. There are two additional options within the unit-based structure. The accommodation rate defines the unit in terms of its availability rather than actual delivery. An example is a shelter bed where its availability is the critical factor. Another type of unit-based compensation is the non-negotiated unit rate in which a rate setting department or other entity is authorized to set the price.

*Capitated Structure:* A range of services for a group of consumers, rather than the same services for all participants, may be desirable. In such a "capitated" or "per head" structure, all services required by a particular consumer are provided, either directly or indirectly, by the contractor. However, the bundle of services required by different consumers, particularly where there is a broad range of service needs, varies in both substance and intensity. Departments pay the same amount per consumer periodically, regardless of the particular needs of each consumer. In theory, the continuum of service needs of the consumers is satisfied within the confines of the capitated payment system. The contractor can then move consumers to less restrictive or costly services as needed. This structure is best suited to high volume services purchased by a single department or multiple departments who have combined their purchasing power. Benefits include volume discounts or risk sharing between the department and contractor.

*Risk Sharing Structure:* Often, departments may not be able to precisely determine the reasonableness of a particular compensation structure, or the department desires a system whereby it does not alone assume the expense of increases in certain costs. In these circumstances, the department and the contractor can share in the risk of cost overruns or enjoy the benefits of cost savings. For example, the department may agree to assume 60% of the contractor's cost over a specified amount in year one, provided that certain outcomes have been achieved. On the cost savings side, the department may allow, for example, the contractor to retain 10% of savings which are directly attributable to the contractor's efficiency, provided

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certain outcomes are achieved in year one, and increase that percentage by an additional percentage point for each of the remaining contract years.

☞ *For POS Only:* Departments should consult with OSD and their secretariat prior to using a risk sharing structure. A waiver of regulation 808 CMR 1.00, *Compliance, Reporting and Auditing for Human and Social Services*, may be necessary.

*Contingency Fee or Revenue Generating Structure:* Contingency fee contracts allow contractors to be paid a percentage fee from revenues collected on behalf of the Commonwealth. These contracts must be legislatively authorized and procured under 801 CMR 21.00 (with an approval of the RFR and accounting mechanisms by the Office of the Comptroller). They are not procurement exceptions. An example of a contingency fee contract is debt collection (M.G.L. c. 29 s. 29D, 815 CMR 9.00). Pursuant to M.G.L. c. 30 s. 27 contractors must deposit all collections first and then bill the department for their payment.

*Cost Reimbursement Structure:* In this type of structure, the department reimburses the contractor for costs incurred up to the maximum obligation. This structure provides the least support for the delivery of outcomes, since its focus is on expense rather than performance. While use of this mechanism should be limited, it may be warranted in certain circumstances in order to provide for close monitoring, determine future prices for new services or when a complete budget is required to meet federal standards, among other reasons.

### **Compensation Considerations**

Regulation 801 CMR 21.00 supports a variety of compensation structures. This structure should be considered in tandem with the anticipated expenditures. In general, given the flexibility of the procurement process, PMTs and departments are encouraged to develop innovative compensation structures that directly support the achievement of outcomes.

Focus on outcomes, not costs, wherever possible: Compensation structures should be more than a formulaic exercise designed to reduce payments to the contractor to a manageable form. Generally, they should support desired outcomes.

Use research and analysis to determine, in advance, a range of reasonable costs: Although an individual contractor's costs are important when reviewing compliance with contract or regulatory terms, they may be particularly relevant to the compensation structure for procurement of commodities and services in two instances: 1) as a guide to assist departments in determining the reasonableness of the proposed price and 2) to assist departments in determining whether subsequent contract negotiations should include adjustments to that price.

During RFR development, procurement staff should familiarize themselves with the potential range of prices for the commodity or service being procured. In order to accomplish this, a variety of tools can be utilized by staff to determine whether the price which is proposed either in the RFR or in a bidder's response is reasonable, provides the best value to the department and supports the achievement of desired outcomes. No single tool will provide all the assurance that a department needs to determine whether or not a proposed price accomplishes these purposes, and often these judgments will have to be made using the best information available, even though imperfect.

Often, it will be possible to investigate and analyze the prices paid to contractors by other departments, other states and the federal government (General Services Administration contracts) for the same or similar commodities or services in order to determine the reasonableness of prices. In these cases, discussions with contract management staff of other agencies can provide insight into particular

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compensation characteristics of the desired outcome. It may also be possible to analyze the prices for the commodities or services (or outcomes) in the broader marketplace.

Also, the use of the Internet can be a very helpful research tool. Factors such as geography, availability of alternate resources, consumer access and other issues may have to be weighed in determining the value of the outcomes. Finally, reviewing the price information available through Comm-PASS and the Massachusetts Management and Reporting System (MMARS) as well as an analysis of the history of the current contractor's actual costs in delivering the commodity or service may be helpful. All of the above research methods enable departments to establish "benchmarks" of prices paid by other purchasers from which to negotiate downward.

Analysis may indicate that departments should incorporate the flexibility afforded by true multi-year contracting to provide an opportunity to refocus the compensation structure from a one-year-at-a-time to a longer-term view. Compensation structures should take into account such variables during the term of the contract, rather than during the current contract year. These considerations may be extremely important in performance based payment structures, where it might be expected that a contractor's performance will improve over time and departments may choose to introduce the concept of incentive payments for long term-success.

If a risk sharing structure is indicated, departments may also want to consider a different risk sharing arrangement for the first year of a contract than for the fifth year. In many circumstances, it is desirable for departments to review anticipated compensation for "out-years" as well as the current contract year.

Generally, departments are encouraged to analyze and develop a compensation structure which best supports the delivery of outcomes, encourages efficiencies and effectiveness of services and provides for the best value to customers. Several compensation structures have been described to assist departments in thinking about how a compensation structure can best support these objectives.

☞ For POS Only: Compensation Considerations: Another tool available to determine the value of the outcomes is the analysis of the actual costs experienced by a group of similar programs through the use of the data contained in *Uniform Financial Statements and Independent Auditor's Reports* (see the associated guidance entitled *General Audit and Compliance Requirements* via a link at the end of this document). In these instances, additional factors, such as differences between the services of similar programs and those services being procured, should be considered.

There are several other items which should be noted by human and social service departments when developing a pricing system. Several of these common issues are discussed below. Other issues may also arise in addition to those identified below as pricing structures are developed.

*Utilization factor for unit rates:* Departments may choose to take anticipated program utilization into account when developing prices in a unit rate compensation structure. In effect, a slightly higher unit rate is developed in order to compensate for the fact that the program will not always operate at maximum (peak) capacity due to client absences or other reasons. Since an absence does not alleviate the program's operating costs, a slightly higher unit rate will mitigate this potential loss. In many programs, a utilization factor may be appropriate if the department recognizes that there may be vacancies in the program during the contract term which may impair the contractor's ability to provide services to other consumers in the program. The exact utilization factor that is negotiated should be based on the program's prior utilization history, if available, or the average for all programs of the same type.

The inclusion of a utilization factor in unit rate contracts may result in a situation where a specific contractor is serving consumers at a higher utilization level than negotiated or anticipated and thus reaches the maximum obligation of the contract (or "bills out") before the end of the contract period. In

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this case, the contractor is required to provide services up to the total capacity purchased by the contract (see line 5 of *POS Attachment 4: Rate Calculation/Maximum Obligation Calculation Page* located on the OSD Forms page) for the remainder of the contract period with no additional funding. The application of a utilization factor does not result in the contractor delivering “free” services; rather, in these cases, a contractor has merely been fully reimbursed for the costs associated with the program in a shorter period of time than the full contract duration. On the other hand, departments may be able to reasonably project that a program may be fully utilized during the contract period, and the use of a utilization factor would not be appropriate. As a general rule, utilization factors of 85% to 100% are considered reasonable. Utilization factors of less than 85% are discouraged, except in exceptional circumstances.

*Commercial fees for for-profit contractors pursuant to 808 CMR 1.03(6):* A number of human and social service contractors are organized on a for-profit basis. In order to avoid confusion and subsequent audit findings, departments must be explicit in the contract about the amount of fee in excess of cost, if any, that can be earned by a for-profit contractor. Each contract executed between a department and a for-profit contractor must either a) explicitly indicate when a commercial fee has not been established by indicating that the earnings allowance is zero or b) clearly indicate the amount of the negotiated earnings allowance, by percentage or dollar amount, in the contract. This requirement of explicitly stating either zero or the percentage or dollar amount negotiated applies to all available compensation structures and all types of POS contracts with the exception of cost reimbursement contracts.

The amount of fee that a contractor may retain must be noted, for informational purposes only, on *POS Attachment 3, Fiscal Year Program Budget*. A commercial fee may not be added into the price (rate) paid by the Commonwealth. In those contracts where an *Attachment 3* is not used, the amount of the commercial fee, if any, must be included within the contract specifications.

Departments may consider several approaches in developing a reasonable commercial fee. To arrive at a commercial fee, departments may agree upon a fee based on the maximum obligation of the contract or the total payments made by the department or a percentage of the surplus as defined in 808 CMR 1.03(6). In addition, when determining what is a reasonable fee, departments may want to consider profit margins of the for-profit industry as a whole, if available, or the limitations on surplus funds generated by not-for-profit contractors of human and social service programs (see 808 CMR 1.03(7)).

It is important to remember that, regardless of the fee derived by the above methods prospectively, for-profit contractors may not retain a commercial fee from a contract with a deficit operating result. In addition, cost reimbursement contracts cannot, by their nature, have a commercial fee identified. Cost reimbursement contracts only pay for actual costs incurred by the provider, and thus do not allow for any surplus.

The provisions of the commercial fee also apply to Chapter 71B Approved Special Education Programs for which the Operational Services Division will prospectively negotiate a commercial fee with the private schools. Departments with questions as to an appropriate commercial fee are encouraged to contact OSD or their secretariat.

*Program budgets:* Program budgets by their nature tend to focus attention on the level and type of resources needed to attain the anticipated outcomes of the program. However, primary emphasis should be placed on identifying and determining how to attain the desired outcomes and then on the resources that are necessary to accomplish those outcomes. During the RFR process, program budgets may provide important information to departments in evaluating responses and consequently may be requested. Except for those budgets required as a result of a cost reimbursement compensation structure or for the services that will be paid for with federal funds, program budgets are not required to be attached to human and social service contracts. Contractors, consistent with good practice, should use program budgets to manage expenditures and to plan for the resources needed to accomplish the outcomes of the program.

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☞ *For POS Only: Compensation Structure Limitations:* There are a few limitations on departments' ability to negotiate the compensation for human and social service programs. See also the associated guidance entitled *General Audit and Compliance Requirements* available via a link at the end of this document. Those limitations include:

- *Health care, special education and other authorized rates:* Departments must use prices for programs where those prices have been established pursuant to an independent price setting authority, such as the Division of Health Care Finance and Policy or, in the case of certain special education services, OSD. Under M.G.L. c. 118G, the Division of Health Care Finance and Policy is responsible for establishing rates of payment for "health care services" which includes many services which have been traditionally procured by departments through the Purchase of Service system. Departments must utilize the prices established by the Division of Health Care Finance and Policy for services or programs under its jurisdiction when executing a contract for those services or programs. Further, OSD authorizes, pursuant to 808 CMR 1.06, prices for M.G.L. c. 71B approved private school programs. Departments must utilize the prices authorized by OSD when buying slots in one of these approved programs.
- *The Commonwealth must receive the lowest price:* Generally, the negotiated price may not be greater than the lowest price charged by the contractor for the same service to any other public or private purchaser (see 808 CMR 1.03 (4)).
- *No balance billing.* The negotiated price must be accepted by the contractor as full payment (see 808 CMR 1.03 (5)).
- *Restrictions on the use of client funds or third party payments.* Any client resources or third party payments not specifically anticipated in the price and defined in the contract must go to reduce the department's contract obligation (see 808 CMR 1.03(5)).
- *Prices may not include any non-reimbursable costs.* Prices may not include items which are considered non-reimbursable under the provisions of 808 CMR 1.05.

## **7. Performance and Contract Specifications**

In comparison with the RFR Section 1, Description and Purpose of the Procurement, which outlines the overall goals of the procuring department, this section of the RFR contains the details of performance and any contract specifications. If the procurement is relatively simple, this section may be combined with RFR Section 1. This section contains a brief introduction to performance specifications. Several performance considerations are then offered for assistance in drafting this critical section of the RFR. These considerations are followed by a discussion of the roles of the Affirmative Market Program (AMP) and Environmentally Preferable Products Program (EPP) in RFR specifications.

### **Specifications of the RFR**

In this section of the RFR, the PMT provides a description of the commodities or services it wishes to procure. Departments should provide enough information so that bidders can conceptualize and respond to the elements of the RFR, but not be so prescriptive as to preclude creativity and innovation in the bidder's response. PMTs determine the specific information to be included in this section of the RFR and may include the following:

- Goals and purpose of the procurement.
- Commodities or services being procured.
- Specific service components or bidder requirements without which a response would be considered incomplete or unacceptable.
- ☞ *For POS Only:* Overview of the needs and characteristics of the individuals to be served.

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- ☞ *For POS Only:* Specific requirements including, but not limited to, staffing patterns and qualifications, hours of operation, linkages or affiliations, specialized equipment, training, supplies or site requirements.

The PMT should also consider any statutory, regulatory or funding source requirements or restrictions that may impact on the specifications of the RFR. For example, if an appropriation requires certain reports, this requirement should be specified in the RFR.

Although departments have discretion in developing this section, there are specific provisions required by statute, regulation or policy which must appear in all procurements conducted under 801 CMR 21.00. The required attachment, *RFR - Required Specifications*, in its entirety, must be in all procurements. Also, please see *RFR - Required Specifications for Information Technology*.

Departments may incorporate selections from *RFR - Other Specifications*, into the procurement as well. These specifications are optional for departments. Once selected, they are required for the bidder. These specifications are available via links at the end of this document.

☞ *For POS Only:* The *Discharge Planning Specifications for Certain Procurements* and the *Employment and Training Specifications for Certain Procurements* are required for selected human and social services. These specifications are available via links at the end of this document.

*Note:* Comm-PASS supports electronic file uploads on two separate pages: Forms and Terms and Specifications. Only files unique to the specifications of commodities and/or services defined within the RFR should be loaded on the Specification page. Otherwise, generic information, specifications, and forms should be loaded on the Forms and Terms page. The exception to this guideline is for those procurements that enable Online Response. Bidders using the Online Submission tools in Comm-PASS are (a) required to electronically agree/accept all terms and conditions associated with all files uploaded to the Forms & Terms page and (b) allowed to upload as many single files not exceeding 10MB as they choose regardless of how many files the Issuer uploads on the Specifications tab.

Departments must take care to (a) provide for each file on the Forms & Terms tab an Action Description explaining whether or not the Bidder must return the completed file or simply read and agree/accept and to (b) understand that no system validation occurs to ensure that the Bidder has returned complete and/or accurate response files.

### Performance Considerations

1. Sufficient Detail: Remember: “Less is not more” in RFRs. **“If you know it, put it in the RFR!”** The investment of additional time and effort to present “the big picture” of the procuring department’s overall plan to potential bidders, and carefully documenting the progress and justifications for procurement decisions, will produce more realistic and cost-effective responses and reduce the likelihood of a challenge.

Depending on the complexity of the commodities or services, this section may be as short as a paragraph or many pages. Departments should indicate specific information required in the bidder’s response. The specifications are very important since they provide bidders with a complete and detailed description of the services and commodities. Care should be taken to include as much information as possible to clearly identify the range of required performance, including *any planned, possible or potential future activities, related additional commodities or services that might be added later*. If these factors are specified, the department can purchase additional items or services without conducting a new procurement.

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However, if an RFR is drafted narrowly and a department requires additional commodities or services which were not specified in the original RFR, these will be considered to be outside the parameters of the original RFR and thus require a separate RFR. What this means is the PMT should provide all bidders with notice in the RFR that changes and adjustments to the contract may occur during performance and this notice will give the PMT flexibility to do so.

The quality of the RFR document impacts every aspect of the procurement process. As such, departments should consider and resolve a multitude of both programmatic and fiscal considerations prior to the issuance of a competitive RFR. The language should be *specific, clear, and detailed* so that a reasonable person, with no experience with the RFR or the contract, will be able to understand the expected performance requirements (including definitions of terms) without additional explanation. For example, define unusual or institutionalized language or words used outside of their normal usage. This ensures that bidders understand the RFR without ambiguities to be deliberated later.

Defining the dimensions of an RFR, which define contract performance, is extremely important. Fear of publicizing or “giving away” too much information about internal operations, activities and goals may result in RFRs which are ambiguous and may not attract a sufficient pool of quality bidders (thus jeopardizing competitiveness and best value).

2. Security Sensitive Information: It is the department's responsibility to manage and safeguard security-sensitive information during the procurement of commodities and services when posting on Comm-PASS and otherwise distributing the RFR. Departments should assess whether information contained in RFR documents that are made available through Comm-PASS or other public disclosure could jeopardize public safety if placed in the wrong hands. To mitigate this risk, an RFR may include a document which explains the department's procedure for allowing qualified bidders to access the sensitive material. Departments should establish a procedure that ensures safeguards and control over the release of sensitive information, including, where possible, execution of a non-disclosure agreement or other assurances that the bidder will use the information only in connection with the procurement process. Please see the associated guidance *OSD Policy Guidance 05-13, Protecting Security Sensitive Information During the Procurement Process*, available via a link at the end of this document.

*Note:* Comm-PASS requires that departments acknowledge for each uploaded file the restriction of sensitive documents as specified by the public records law.

3. Emergency Standby Commodities and/or Services: Departments may consider including the language from the *RFR - Other Specifications* pertaining to a declaration of a state of emergency where the safety and well being of citizens are at risk. The language states that departments may request that specific commodities and/or services from its contractors be delivered on a priority basis in the event of such an emergency.
4. Restructuring Existing Ways of Doing Business: Before drafting an RFR, develop a procurement strategy and consider ways to restructure a commodity or service procurement in order to introduce innovative approaches. Examples of innovative approaches include collaborative or bulk purchasing, volume discount incentives, discounts for the expedited payments by the department (“prompt payment discounts”), consumer directed procurements, voucher purchase initiatives and other non-traditional approaches to procurement.
5. Contract Performance Expectations: Defining expectations in the RFR is important to both the department and bidders. Bidders need to determine if the RFR represents an opportunity for them and

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to assess their capacity to handle the requirements. Bidders may be reluctant to bid unless they can predict what resources will be needed in relation to potential profits. Therefore, departments should not leave the *known* details of performance to be resolved during contract negotiation or later. These “details” may substantially change the expectations of the contractor, resulting higher costs and protracted negotiations. Contract execution and performance could also be delayed as a result.

6. Performance Contracting: Performance contracting ensures that contract dollars spent by the Commonwealth on the purchase of commodities and services are, in fact, producing the desired results and meeting the requirements of the contract. In general, payment is contingent upon results rather than effort. RFRs should clearly state the services expected, define performance standards and measurable outcomes, identify performance evaluation methods and include positive or negative performance incentives, if appropriate. Departments may recognize exemplary performance by introducing monetary incentives for exemplary performance and by specifying performance payments for a level of performance that exceeds the goal contained in the contract. On the other hand, departments may specify penalties and other sanctions for contractor non-performance. Initiation of corrective measures, contract reductions or other sanctions may be considered.
7. Performance Dates and Deadlines: Depending on the procurement, the RFR should identify “any applicable performance dates, deadlines, schedule of delivery dates” or other time constraints that must be met by the contractor. Without specified dates, custom and trade practice will determine the interpretation of this portion of the RFR, and a failure to specify deadlines may result in otherwise avoidable delays. Unless a contract specifies that “time is of the essence,” all contract performance shall be considered under the concept of reasonable time for performance. This is extremely important when non-performance or a delay in performance will result in irreparable harm or financial loss to the department or a disruption in the delivery of department services. Examples include exam preparation and response to maintenance requests.
8. Mandatory versus Desirable Specifications: Departments must specify which RFR requirements are “mandatory” (a bidder must provide or the response may be deemed unresponsive) and which are “desirable” (not absolutely necessary but preferred). These specifications are not to be confused with the *RFR - Required* and *RFR - Other Specifications*. Mandatory specifications should allow for an equivalent alternative so that bidders can propose slightly different alternatives unless an alternative would not meet the department’s needs. Departments may rank bidders based upon the quality of their responses to mandatory and desired specifications and may award additional points (extra credit) to bidders that offer more than what is required or desired.
9. Deliverables: The actual “products” or “results” are commonly known as “*deliverables*.” Generally, they are products or end results, such as a report, software, photographs, or other items developed for a department. The Commonwealth is entitled to own and copyright *deliverables* purchased or commissioned with Commonwealth funds. These items may not be copyrighted by the contractor or used for any other purposes unless the RFR specifies the option to bidders. Other *deliverables* are not products but “performance targets” such as a contract for interviewing individuals to gather data or conducting a certain number of training or exam sessions. The contractor is compensated based upon the successful completion of these goals. The department is not limited to specifying only the expected *deliverables*, but should also include any other ancillary or *potential deliverables* that are *possible* or *foreseeable* within the contract.
10. Identifying a “Market Basket” or “Catalog” of Bidder Commodities and Services: The RFR may require bidders to submit responses to the RFR specifications in a variety of ways. One option is to require bidders to submit a “catalog” or “market basket” approach to their available commodities and services.

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For example, a department may prepare an RFR for specific commodities or services from bidders that also provide a much broader selection of commodities and services. In the RFR, the PMT may request that the bidder also offer a specialized or discount rate for other items that are available from the bidder, to create a “market basket” of available commodities or services in addition to those specifically requested in the RFR. The department may accept the discount and purchase these items, as needed, as part of the resulting contract. Departments may also restrict those items, based on environmental considerations and availability on other contracts. A PMT looking for advertising services could require bidders to submit a response based upon specified advertising projects and also ask bidders to provide a full range of their related commodities and services. A PMT looking for employment assessment services could also request bidders to submit a response for follow-up services, as needed, such as resume writing, employment support groups and job placement services. A bidder(s) could be selected on how well it could meet the immediate needs of the department and but also on the comprehensiveness of their responses and on the value it offers the department for future projects. Since all bidders are provided with the same opportunity to respond to the specific project as well as the “catalog” approach, all bidders have the same opportunity to compete for the Commonwealth’s business.

11. Identification of a More Cost-Effective or Best Value Alternative: If a department has no experience with the type of commodities or services being procured, the RFR may require bidders to “educate” the department as to the “*available*” or “*best*” commodities or services to fulfill the contract requirements of the department. This option can also be used when a department has developed specifications, but wants to ensure that the specifications do not inadvertently inflate contract costs when a more cost-effective alternative is available. For example, departments purchasing refrigerators or other appliances may require bidders to include energy costs in addition to the purchase price.

As another example, departments looking for advertising services could require bidders to submit a response based upon specified advertising projects and ask bidders to indicate whether an alternative approach to providing the specified services would be more cost-effective in fulfilling the specified procurement goals. Bidders may still respond and be evaluated based upon the department’s identified specifications. However, the department may receive an added benefit if bidders propose more cost-effective and innovative solutions to the specified goals. These bidders also benefit, since the RFR can give additional points or evaluate and select bidders based upon the more cost-effective best value portions of a response.

This approach relies more on a partnership that is fully supported by the procurement principles. The goal is to obtain the most efficient way to fulfill the department’s goals, rather than responding only to what the department has requested. This is especially important when the department is seeking clarification on the best approach to achieving its goal. By clearly defining a department’s contract goals and needs, this option provides a unique opportunity for bidders to submit comprehensive responses and options from which a department is able to choose. This approach also supports a more flexible RFR since the department and the contractor are able to negotiate any options identified within the RFR and the bidder’s response.

12. Brand Name or Equivalent: Substantially equal specifications should be used unless the PMT determines that:
  - No specification for a common or general use item is available.
  - Time does not permit the preparation of another form of specification which does not contain a brand name specification.

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- The nature of the product or the nature of the department's requirements makes use of a brand name or equal specification suitable for the procurement.
- Use of a brand name or equal specification is in the department's or Commonwealth's best interests.

When using brand name as part of the specification, procuring departments should use "or equal," to substantiate that equivalent products will also be considered. Include additional specifications, i.e., particular design, performance and other characteristics of the brand name to ensure that the product identified is the product required.

Use of brand name only specifications or specifications which restrict a commodity to a pre-determined brand or design specifications are the most restrictive forms of competitive procurement. The use of brand name or pre-determined specifications should only be used if they are essential to the procuring department's needs or the Commonwealth as a whole. Examples include establishing a standard for facility water meters necessary to obtain statewide energy discounts, a computer component or platform necessary for the statewide implementation of a wide area network (WAN) or a specific curriculum or vocational assessment tool necessary to meet accreditation requirements. A procuring department should consult with OSD prior to issuing an RFR with brand name only specifications. When a brand name or equal specification is used in an RFR, the solicitation should contain language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

13. Use of Contractor Owned Materials During Performance: Sometimes the products are already owned or copyrighted by the contractor and are merely provided to fulfill contract requirements. These products should be identified as contractor material, performance requirements or benefits. A common example of a "benefit" is computer software that is owned and copyrighted by a contractor but is adapted or redesigned specifically for a department. The department would contract for this redesign and for a license to use the software. The contract might also include provisions for additional design plans, upgrades and maintenance. Also, departments could purchase training manuals and have a usage license. However, the contractor would maintain ownership and copyright of the content and design of the manuals. The contractor has more of an interest in ownership and copyright of the design and content of the manuals, since these tools can be adapted for a variety of different clients.

Departments should carefully weigh the risk of relinquishing any rights to products that have been created or developed with Commonwealth funds, since the Commonwealth may be entitled to recoup a share of any profits. Failing to provide a statement specifically identifying ownership rights may result in unresponsive responses, delays and disputes over ownership rights. Departments are strongly encouraged to consult legal staff when considering defining ownership rights of contract deliverables.

14. Furnishings or Equipment Required for Contractor Performance: Consider whether the bidder will need furnishings or equipment purchased as part of the resulting contract. Generally, the cost of purchasing any capital items is factored into the unit rate. However, in some instances, such purchases require more attention. Departments may approach the purchase of furnishings or equipment required for the contracted services in one of two ways depending on the owner (the department or the contractor). If the department intends to retain ownership of the items, it should procure them. The department then may make the equipment available to the contractor. These assets must be returned to the department at the termination of the contract. Department ownership should be highlighted in the RFR and must be clearly specified in the resulting contract. If departments choose this approach they should be aware that the assets should be recorded and retained on their

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inventory and/or fixed asset system while on loan to the contractor. If the department does not intend to own the furnishings or equipment, these items should be purchased by the contractor with whom the ownership will reside. Please see the associated guidance entitled *Acquisition Policy* via a link at the end of this document.

☞ *For POS Only:* See *OSD Update 08-03, Purchase-of-Service (POS) Capital Items Procurement Policy*, via a link at the end of this document, for specific guidance on procurement of capital items of furnishings and equipment for human and social service programs.

15. Prevailing Wage Requirements: When contracting with certain licensed professionals and trade persons, departments must require contractors to pay prevailing wage rates, according to M.G.L. c. 149, s. 26. Examples include construction, demolition, carpentry and other trades. In these instances, departments must comply with the requirements set forth by the Division of Occupational Safety. The RFR must require bidders to submit responses based upon the payment of prevailing wages. The wage rate schedule, which will be supplied to the PMT by the Division of Occupational Safety, if applicable, must be included in the RFR, otherwise non-complying bidders will be able to substantially undercut complying bidders in violation of M.G.L. c. 149 and the selection process will not be fair. To determine if particular services are covered by this law, to request specific wage rate schedules or to obtain more information, contact the Division of Occupational Safety at (617) 727-3452.
16. Shipping and Delivery Requirements: The RFR may specify that all items covered in the procurement are exempt from shipping charges and that the bidder may not include shipping charges on any invoice. In the alternative, if shipping charges will be allowed, then the RFR should specify that the amounts must be submitted by bidders so that they may be factored into the bidders' prices.
17. Performance and Payment Time Frames Which Continue Beyond the Duration of the Contract: Departments may consider including the language from the *RFR - Other Specifications* pertaining to term leases, rentals, maintenance or other agreements for services entered into during the duration of the contract, if the performance and payment time frames extend beyond the duration of the contract. The RFR may state that the terms may remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). However, it must also state that no new leases, rentals, maintenance or other agreements for services will be executed after the contract has expired. This also applies to “project” services, such as a consultant that is hired for a two-year project in the final year of the contract. Also, any contract termination or suspension will not automatically terminate any leases, rentals, maintenance or other agreements for services already in place unless the department also terminates said leases, rentals, maintenance or other agreements for service, which were executed pursuant to the main contract.
18. Changes to Performance and Contract Specifications Which Require a Formal Contract Amendment: The RFR must specify the types of amendments (formal and administrative) that may occur. Formal amendments require a newly executed *Standard Contract Form* and are subject to record keeping requirements. Administrative changes do not require a formal amendment; however, they must be documented in the procurement file. The requirements for executing amendments, including limitations on amendments, should be clearly stated in the RFR. Certain changes, if clearly delineated in the RFR, may be considered administrative changes and will not require a formal amendment. Such changes may include, but are not limited to, certain programmatic changes (which are not so significant that the services no longer reflect those which were originally procured), clerical changes (but not a change in contractor identity) and budget variations which do not result in an increase to the maximum obligation. The RFR should state the degree to which shifting line items within a budget may be considered administrative. Please note that a formal amendment is required for increases to the maximum obligation even though one of the RFR required specifications states

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that expansion funding may be incorporated into the contract.

19. Bidder Qualifications: What information do you want to know about a bidder? The RFR may require bidders to provide information about their technical capabilities, experience in providing a specific social service or expertise in serving a particular population. A department may decide to ask bidders to provide organizational information relevant to the procurement.

In addition to delineating the performance specifications, a department may use this section of the RFR to require bidders to present:

- A profile of their firm's operations, qualifications and the organization capabilities. Departments may request samples of products or copies of reports to verify statements regarding capabilities.
  - A detailed description of the bidder's resources and experience relevant to the RFR performance requirements including specific expertise in serving specific populations and/or verification that the bidder is authorized to sell or distribute specific commodities or services.
  - A statement on the historical development of the bidder's organization.
  - An organizational chart.
  - A statement on the experience of staff and the total number of employees (distinguishing between administrative staff, management, principal partners or officers, field, technical and customer support).
  - Copies of professional licenses.
  - Compliance with environmental regulations and/or any other environmental practices that may benefit the Commonwealth.
  - The location of the offices from which the work will be managed and the number of staff employed at each office.
  - The number of years the bidder has been in business and/or the number of years the bidder has been in the business identified in the RFR (which may be separate and distinctly different from their main business line).
  - Key personnel of the business and key personnel assigned to meet the Commonwealth's needs under the contract. (A resume or statement of qualifications must be attached to all consultant contracts pursuant to M.G.L. c. 29, s. 29A.) Departments should carefully review resumes of key personnel to ensure that the skills of the individuals meet those required in the RFR. Departments should also ensure that any changes in key personnel during the contract term require the department's pre-approval.
20. Contract or Project Managers: The RFR may require bidders to designate a contract or project manager who shall be responsible for oversight and management of contract performance and shall act as the contact person for receipt of notice and other communications between the parties. The RFR may state that the contract or project manager may not be changed without prior written notice to the department or that an agreement must be executed between the contractor and the department prior to the change. The RFR may also specify that the contract manager will be responsible for timely written responses, such as within five business days, for all information requests from the PTL and attendance at meetings required by the PTL.
21. Identification of Subcontractors: A department should decide whether contractors will be authorized to use subcontractors to complete contract performance, and if so, include this provision in the RFR. Subcontracting is a good opportunity to use SOMWBA certified M/WBEs. Large procurements require the submission of an AMP plan. For small procurements, departments may require an AMP Plan for subcontracting relationships. The Commonwealth may require a bidder to provide a copy of any subcontract and any additional supporting documentation, verifying that the subcontractor is in good standing, e.g., has complied with tax requirements and has not been debarred. Prior approval of the department is required for any subcontracted service of the agreement.

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All subcontracts should be in writing and contain provisions which are functionally identical to, consistent with, and subject to the provisions of a contract, including reporting and compliance requirements. Unless otherwise provided by law, the Commonwealth is not bound by any provisions contained in any subcontract. Contractors are responsible for the satisfactory performance and adequate oversight of their subcontractors.

22. Business References: A department may require bidders to include a list of these organizations (including names, addresses and telephone numbers). The department has the right to verify all references and to conduct any other reference or credit checks as the PMT deems appropriate. Written references, including documented performance records of a bidder on file with the Commonwealth or submitted during the procurement, may also be considered.
23. Financial Statements: An RFR may require financial statements from bidders in order to evaluate their financial stability. Bidders may be required to demonstrate sound financial condition or that appropriate corrective action is being taken to resolve all identified financial problems. Bidders may also be required to disclose details of any criminal investigation, indictment, debarment or other litigation against the firm which might adversely affect its ability to complete its contract performance. In addition to information provided by the bidder, there are a variety of financial reporting services that can be used by departments when evaluating the financial strength of a bidder. Departments may require the independent reports of such a service as part of the response.
24. Benchmarking: Departments may consider informing the bidders of its intent to use research pertaining to prices paid by other purchasers of the commodity or service in order to establish benchmarks from which to negotiate downward.

Departments should consider and analyze the prices paid by other departments, other states and the federal government (General Services Administration [GSA] contracts) for the same or similar commodity or service in order to determine the reasonableness of prices offered by the prospective bidder. Departments may wish to state they will use benchmarking throughout the contract duration in order to keep prices in line with or lower than those paid by other purchasers.

25. Risk of Loss, Performance Bonds and Insurance: Pursuant to M.G.L. c. 29, s. 30, the Commonwealth is self-insured. Therefore, contractors are required to bear the risk of loss for any deliverables, data or their own materials. The risk of loss may not shift to a department until possession, ownership and full legal title of the items are transferred to and accepted by a department. Contract prices usually reflect the contractor's expenses for providing adequate insurance to cover this risk of loss. Departments should consider whether the procurement warrants a bond or insurance.

Departments may require bidders to submit performance bonds which are usually based upon a percentage of the contract price to be collected by a department in the event the contractor breaches or defaults. Performance bonds are required for certain types of procurements, such as construction and other high-risk situations. Performance bonds should be used sparingly and only in high risk situations, since this requirement usually increases the contract price to the Commonwealth.

A Certificate of Liability Insurance (professional or personal injury) may also be required to show evidence of insurance coverage for professional malpractice and/or personal injury which results in connection with the performance of a contract, naming the Commonwealth as an insured party. Further, any contractors that exercise independent judgment or decision making (doctors, attorneys, arbitrators) should carry professional malpractice or personal injury insurance. Independent decision making, even if daily activities are performed on Commonwealth premises and with department involvement, will take these individuals outside the protections of the Commonwealth under M.G.L. c. 258.

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Regardless of their named status in a contract, independent decision making implies independent contractor status and these individuals must be covered by valid insurance policies during the period of the contract. Other positions, such as temporary help, should be covered by their employers. When contracting with individuals who also happen to work for a corporation, partnership or other entity, departments should ensure that these individuals' contract activities are also covered under the entity's policy. In most instances, contract activities will be outside of the scope of standard insurance policies, therefore, these individuals must obtain separate policies.

26. Tax Compliance Certification: Although tax compliance is certified when the bidder executes the *Standard Contract Form and Instructions*, the PMT may also require the bidder to demonstrate compliance with Commonwealth tax laws pursuant to M.G.L. c. 62C, ss. 49A, 51 and 52 and M.G.L. c. 181, s 16. The PMT may allow the bidder to do this with a self-certification or may require a *Certificate of Good Standing* which has been issued by the Massachusetts Department of Revenue (DOR) within the past year. See [www.mass.gov/dor](http://www.mass.gov/dor) for more information.

Bidders are encouraged to apply for a *Certificate of Good Standing*, even if the PMT has not required it, either online or by faxing a request to DOR at 617-887-6262. DOR will notify the requestor if there are any remaining liabilities or tax requirements. Certificates will be issued only if the organization is in full compliance. Since all applications require extensive research, the bidder should allow sufficient time to process.

27. Invoice and Payment Specifications: The RFR may outline the procedures and requirements for the submission of invoices, including supporting documentation. The RFR may require completion and acceptance of performance prior to the submission of invoices. RFRs may also require monthly invoices that reflect an established recurring payment, such as for a term lease, maintenance contract or Tax Exempt Lease-Purchase.
28. Electronic Funds Transfer: Departments must include a provision in the RFR about the use of electronic fund transfer. Contractors and departments alike favor the use of electronic payments which are significantly more cost-effective than payments distributed by check and through the mail. OSD has developed required specification language that departments must include in their procurements (please see the *RFR - Required Specifications* via a link at the end of this document). *Note*: Participation in EFT is required for all contractors unless it is unduly burdensome.
29. Prompt Payment Discounts: At a minimum, Departments should require all Bidders to complete a Prompt Payment Discount Form or include their prompt payment discount on the Standard Contract Form when responding to any RFR and should use the proposed discounts as an element of evaluation. Expedited payments enable departments to save money and benefit contractors by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. The *Commonwealth's Bill Paying Policy - and General Payment Policies*, available on the Comptroller's website, supports this practice. The Prompt Payment Discount Form, available on the OSD Forms page, may be used as an attachment to the RFR and response. Prompt payment discounts may also be indicated on the Standard Contract Form. Comm-PASS supports the indication of prompt payment terms on the Header page. Select "Solicitation Requires Prompt Payment Terms" if your RFR contains either required or desirable prompt payment discounts.

*Note*: Prompt Payment Discounts are offered in statewide contracts unless this requirement presents a hardship and is waived by the procurement management team. When a statewide contract includes PPD terms, all departments are required to pay their bills as quickly as possible to take advantage of this opportunity to generate savings. OSD has standardized the prompt payment discount terms on all new statewide contracts, requiring that bidders submit their discounts based on a 10 day, 15 day, 20 day and/or 30 day turn around for payment. By reducing and standardizing the number of days,

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departments should find it easier to manage their bill paying process and take advantage of this savings opportunity. The Prompt Payment Discount form and Standard Contract form reflect this standardization for all procurements.

30. Record Keeping Requirements - Security Issues: The *Commonwealth Terms and Conditions* requires contractors to maintain records, including, but not limited to, books, files and other compilations of data, in such detail as shall properly substantiate claims for payment or as required under a contract. Departments may inspect those records as necessary. These records must be kept by the contractor for a minimum retention period of seven years beginning on the first day after the final payment under a contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving the contract. The *Commonwealth Terms and Conditions* also requires contractors to comply with M.G.L c. 66A for any personal data or public records held or used by the contractor during performance.

An RFR may also:

- Require a contractor to agree to take all reasonable and necessary steps to protect the physical security of any personal data or other department data or materials used by the contractor.
- Define physical security to include preventing unauthorized access, dissemination, misuse, reproduction, removal or damage to personal or department data while used by the contractor or while in the contractor's possession.
- Require the contractor to immediately notify the department both orally and in writing if access to or copies of personal or department data are requested through a public records law request, or a subpoena, or at any time the contractor has reason to believe that any such data has been improperly accessed, disseminated, misused, copied or removed.
- Identify requirements for return of data at the conclusion of a contract.

☞ *For POS Only:* See the associated guidance entitled *General Audit and Compliance Requirements* available via a link at the end of this document for information on record keeping.

31. Reporting Requirements: Departments may require that contractors agree to certain reporting requirements (quarterly, semi-annually, etc.), including specific due dates. Departments may further require the types of information to be included on the report, such as purchasers, dates of purchase, quantity and price. It may also require reports pertaining to the Affirmative Market Program and Environmentally Preferable Products, if applicable. Departments may create a form for reporting purposes.

### **The Role of the Affirmative Market Program (AMP) Program**

The Affirmative Market Program (AMP) was instituted pursuant to Executive Order 390, *Establishing an Affirmative Market Program in Public Contracting*. It created a policy to promote the award of state contracts in a manner that develops and strengthens certified Minority and Women Business Enterprises (M/WBEs). To that end, M/WBE participation in the form of an Affirmative Market Program (AMP) Plan must be incorporated into and monitored for all large procurements. Bidders are strongly encouraged to develop business relationships with SOMWBA certified M/WBEs. SOMWBA certified businesses are strongly encouraged to bid on all RFRs as well.

Further, large procurements must include language that requires the submission of an Affirmative Market Program (AMP) Plan. The mandatory language is in the *RFR - Required Specifications*. These specifications and the AMP Plan Form are on the OSD Forms page and in the Comm-PASS library. To assist and encourage bidders' participation in the Affirmative Market Program, the plan must be evaluated at 10% or more of the total evaluation. Agencies must select at least one of the first three

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components for their AMP Plan that includes: subcontracting, growth and development and ancillary uses. Agencies have the flexibility to select any other component for inclusion in the required AMP Plan including past performance, or other additional creative initiatives. Agencies have the discretion to require at least two or more of the AMP components listed above in order for a bidder to be considered to receive all available AMP evaluation points. The submission of an AMP Plan is a requirement of large procurements and no contract will be awarded to a bidder without a strong plan containing measurable M/WBE commitments, barring any documented extenuating circumstances. All bidders, regardless of their certification status, are required to submit a completed AMP Plan Form.

Departments may award additional points (at least 5% or more) to SOMWBA certified bidders, provided it has concluded, and documented through research, that there is an under-utilization of and discrimination against M/WBEs in the procurement area, as evidenced by a disparity study, and that the department has crafted a narrowly tailored plan aimed at correcting any detected disparity. Questions regarding this requirement may be directed to the department's AMP Coordinator, its General Counsel, the Affirmative Market Director or the Legal Bureau at OSD. While a department has flexibility in determining what to require in a bidder's Affirmative Market Program Plan, it is responsible for developing an approach that will help meet its annual AMP spending benchmarks. Once an AMP Plan is submitted, negotiated and approved, the department should then monitor the contractor's performance and use actual expenditures with SOMWBA certified contractors and subcontractors to fulfill their own benchmarks and compliance with Executive Order 390. Please see the associated guidance entitled *Affirmative Market Program* available via a link at the end of this document.

#### **The Role of the Environmentally Preferable Products (EPP) Purchasing Program**

The Environmentally Preferable Products (EPP) Purchasing Program, administered by the Operational Services Division, works with the partnership support of the Massachusetts Executive Office for Administration and Finance (ANF), the Executive Office of Environmental Affairs (EOEA) and the Department of Environmental Protection (DEP) to promote the purchase and use of environmentally preferable commodities and services throughout state and local Commonwealth departments. The purpose of the EPP program is to strengthen markets for recyclable materials and minimize the environmental and health impacts associated with products during their use and disposal.

Statewide contracts, established by OSD under this program, designate products and services with minimum specifications for recycled content, energy efficiency, water conservation, toxic use reduction and waste prevention. Some of these minimum specifications are "mandatory," thus requiring OSD and individual departments (if there is no statewide contract) to incorporate them in their RFRs and requiring that bidders comply in order to be eligible. Other specifications are "recommended"; OSD and departments are encouraged to include them in their RFRs and bidders may receive extra points in the evaluation for addressing these criteria. Departments may offer additional points for responses which 1) offer environmentally preferable products or services under the contract, 2) document the use of environmentally preferable products or services in a bidder's operations (e.g. using recycled content paper for marketing materials or packaging) or 3) demonstrate that the bidder engages in environmentally preferable practices (e.g. delivery fleet uses alternative fueled vehicles). The bidder may also receive extra points for having a corporate environmental policy or an environmental management system.

Specifying and purchasing environmentally preferable products assists departments in complying with two key Executive Orders:

- Executive Order #484, Leading by Example Program, which requires state agencies to address resource use at all state facilities, including a reduction in energy consumption derived from fossil fuels and emissions associated with such consumption.
- Executive Order 438, which requires agencies to develop programs aimed at increasing the purchase of EPPs and innovative technologies to reduce the impact of state government

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purchasing on human health and the environment. In addition, departments are prohibited from using language that precludes the purchase of an EPP, unless a determination has been made that the alternative will not meet the department's needs. Any such determination must be documented in the procurement file.

Departments may also mandate or specify as "desirable" commodities or services which have not been designated by OSD as environmentally preferable. Departments should consider specific environmental criteria which are relevant to the products or services being solicited by the RFR, or develop their own criteria based on available research and information. Departments should request bidders to certify the recycled content and/or low toxicity of their commodities. Departments should also include language in all RFRs which reserves the right to substitute or add EPPs during the contract term, when such products become available at a competitive price.

It is particularly important that departments be prepared to track purchases for the Leading by Example and EPP Procurement Programs and/or include language which requires awarded contractors to report on the quantity and value of EPPs purchased during the contract term. Please see the associated guidance entitled *Environmentally Preferable Products Program (EPP) General Information, Requirements and Guidance*, via a link at the end of this document, and/or visit the EPP Program's website at [www.mass.gov/epp](http://www.mass.gov/epp) for tools and information related to EPP purchasing. The *Request for Response - Required Specifications*, available via a link at the end of this document, contains language pertaining to bidder response requirements for EPP, regardless of the nature of the commodities or services being procured.

*Note:* Comm-PASS supports an indication of EPP requirements on the template's Header page. Select the "Solicitation Contains EPP" if your RFR contains either required or desirable EPP elements.

## **8. Instructions for Submission of Responses**

To avoid confusion, the RFR should be clear about the timing and submission of responses. Consider the following when drafting these instructions:

The RFR Should Identify Any Response Format Requirements: As appropriate, the RFR should specify the paper size, type, page limits (and consequences for exceeding the limit), number of copies, packaging, and whether the qualification and the cost sections of a response must be packaged separately. Also, bidders should be encouraged to submit information that identifies environmental attributes of the products or services being procured (please see above).

The RFR Must Instruct All Bidders Where and How to Submit Their Responses: Departments must accept sealed, hard copies for all large procurements unless electronic submission is offered (please see below). For hard copies, the RFR should include the address of the receiving department, its floor and room number and the name of the receiver. If responses for small procurements will be accepted via fax, the RFR should include the fax number of the receiving department and the name of the person designated to receive the faxed responses.

*Note:* Comm-PASS subscribers may elect to submit bids electronically (if the option is offered by the department on a specific RFR). The Comm-PASS Solicitation Rules tab specifies whether electronic submission is available to subscribers for a given procurement. Certain wet-ink signature requirements, e.g., *Standard Contract Form and Instructions*, the *Commonwealth Terms and Conditions* and the *W-9 Form*, are waived until contract execution.

Joint Response from Multiple Bidders: The RFR may specify that two or more bidders may submit a joint response. A jointly submitted response must designate only one primary contractor. The remaining

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joint bidders may be designated as subcontractors or as members of a joint venture. The primary contractor will be legally responsible for ensuring full performance under a contract.

**9. Deadline for Responses and Procurement Calendar**

Deadline for Submission of Responses: The deadline for responses must be clear. The department may state that its time stamp or time notation will be the controlling time, given any discrepancies raised by a bidder. If Comm-PASS electronic submissions are accepted, the Comm-PASS receipt time is used. Comm-PASS prevents acceptance of electronic responses submitted beyond the Close Date specified in the solicitation through its system clock. In fairness to all bidders, departments must not accept late responses to an RFR, unless, under exceptional circumstances, the PMT grants an exception, such as the closure of state government due to inclement weather conditions, strikes or unforeseen “Acts of God.” Whenever this exception is granted, the Chief Fiscal Officer must formally justify and approve and document the acceptance of a late response.

Procurement Calendar: The department must specify critical procurement dates in order to ensure fair competition, timely completion and best value. These dates should be reasonable, incorporating notice requirements and allowing sufficient time for response and evaluations. The dates may be modified as needed.

The following example identifies typical procurement calendar dates:

Intent to Publish (for World Trade Organization notice), if applicable	March 15, 2006
Release of RFR	April 1, 2006
Bidders’ Conference/Comm-PASS Forum	April 15, 2006
Submission of written inquiries	April 22, 2006 at 2 p.m.
Response to written inquiries	(Estimated) April 29, 2006
<b>Submission of responses deadline date</b>	<b>May 10, 2006 at 2 p.m. EST</b>
Oral presentations/demonstrations, if applicable	(Estimated) Week of May 20, 2006
Notification to bidders of award	(Estimated) June 1, 2006
<b>Start date of contract</b>	<b>(Estimated) July 1, 2006</b>

**10. RFR Attachments/Required Specifications**

This following chart lists the RFR attachments (with required or optional uses). These attachments are on the OSD Forms page and can be loaded to a department’s Comm-PASS library by the department’s Comm-PASS administrator for easy access or automatic upload. The chart is followed by descriptions of each attachment.

Please see the OSD Forms page for the forms as well as the associated guidance entitled *Purchase of Service Attachment Instructions for Human and Social Services* available via a links at the end of this document.

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<b>ATTACHMENT</b>	<b>GUIDANCE FOR USAGE</b>
RFR - Required Specifications	Required attachment to the RFR. Departments must attach these specifications in their entirety (whether or not they pertain to the procurement).
RFR - Required Specifications for Information Technology	Required attachment for Information Technology RFRs. Departments must attach these specifications in their entirety.
RFR - Other Specifications	Optional attachment to the RFR.  Departments may attach selections from these specifications to the RFR.  Specifications from this list are optional for departments and mandatory for bidders if referenced in the RFR.
Standard Contract Form and Instructions	Required attachment to the RFR.  Departments must either: 1) Require bidders to execute as part of the response, or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution.  If the Standard Contract Form is not required in the response, the RFR may include a response cover sheet to be signed by an authorized signatory for the bidder.
Contractor Authorized Signatory Listing	Required attachment to the RFR, regardless of value.  Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with the department), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with the department). Departments may attach a copy of this listing to each contract with the bidder.
Commonwealth Terms and Conditions	Required attachment to the RFR.  Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with CTR), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).
<i>☞ For POS Only:</i> Commonwealth Terms and Conditions for Human and Social Services	Required attachment to the RFR.  Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with CTR), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).
W-9 (Massachusetts Substitute W-9 Form) Request for Taxpayer Identification Number and Certification	Required attachment to the RFR.  Departments must either: 1) Require bidders to execute as part of the response (if the form is not already on file with CTR), or 2) Inform bidders the form is included for informational purposes only and will be required at contract execution (if the form is not already on file with CTR).

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ATTACHMENT	GUIDANCE FOR USAGE
<p>☞ <i>For POS Only:</i> Purchase of Service Attachments:</p> <ul style="list-style-type: none"> <li>• Attachment 1: Program Cover Page</li> <li>• Attachment 2: Performance Measures</li> <li>• Attachment 3: Fiscal Year Program Budget</li> <li>• Attachment 4: Rate Calculation/Maximum Obligation Calculation Page</li> <li>• Attachment 5: Non-Reimbursable Cost Program Offset Schedule</li> <li>• Attachment 6: Capital Budget</li> </ul>	<p>Optional attachments to the RFR.</p> <p>Departments have the option to require bidders to complete as part of their response or complete at time of contract execution.</p> <p>Attachment 1 is required at contract execution.</p> <p>Attachment 2 may be required at contract execution.</p> <p>Attachments 3, 4, 5, and 6 may be required at contract execution, depending on specific requirements.</p>
<p>Consultant Contractor Mandatory Submission Form</p>	<p>Optional attachment for RFRs for consultant contracts paid in HH, NN1 – N06, N12 – N14 and U05 object classes.</p> <p>Bidders must complete form as part of the response or meet the requirements of this form per the Contractor Certification Requirements of the Standard Contract Form.</p>
<p>Affirmative Market Program (AMP) Plan Form</p>	<p>For large procurements: Required attachment to the RFR (encouraged for small procurements).</p> <p>Bidders must complete form as part of response (according to the RFR specifications).</p>
<p>Authorization for Electronic Funds Payment (EFT)</p>	<p>Required attachment to the RFR. Contractors must participate unless it creates a burden.</p> <p>Departments must either:</p> <ol style="list-style-type: none"> <li>1) Require bidders to complete as part of the response (if not already on file with CTR), or</li> <li>2) Inform bidders that the link to this form is included for informational purposes only and will be required at contract execution (if not already on file with CTR).</li> </ol>
<p>Prompt Payment Discount Form</p>	<p>Optional attachment to the RFR.</p> <p>Departments should require all Bidders to complete a Prompt Payment Discount Form or include their prompt payment discount on the Standard Contract Form when responding to any RFR and may use the proposed discounts as an element of evaluation.</p>
<p>Additional Environmentally Preferable Product Information</p>	<p>Optional attachment to the RFR.</p> <p>Departments have the option to require bidders to complete as part of their response. This form is optional throughout the procurement process.</p>
<p>Business Reference Form</p>	<p>Optional attachment to the RFR.</p> <p>Departments have the option to require bidders to complete as part of their response. This form is optional throughout the procurement process.</p>

**Information on RFR Attachments**

RFR - Required Specifications: Certain specifications must appear in all Commonwealth competitive procurements conducted under 801 CMR 21.00. These required specifications address such items as Comm-PASS, bidder communication, reasonable accommodation, best value and the Affirmative Market

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Program. Departments must attach these specifications in their entirety (whether or not they pertain to the procurement).

RFR - Required Specifications for Information Technology: These specifications are required for all Information Technology procurements.

RFR - Other Specifications: The RFR may also contain optional specifications that departments may choose to include. These include, but are not limited to, prompt payment discounts and alternatives. Note: The term optional, as used in this context, pertains to the department's option, not the bidder's option. If a department chooses to include a specification from this list, the specification is then required for the bidder, unless otherwise specified.

Standard Contract Form and Instructions: An authorized signatory of the contractor and the department must execute a *Standard Contract Form* for procurements under 801 CMR 21.00. Electronic signatures cannot yet be used for the *Standard Contract Form*. However, OSD does allow, for Comm-PASS subscribers that are submitting a bid electronically, the electronic submission and signature of other forms as long as the final contract execution includes a wet ink signature on the *Standard Contract Form*.

The contract incorporates by reference the applicable *Commonwealth Terms and Conditions* and includes the RFR, the bidder's response (excluding any clauses or sections that are stricken by the department as unacceptable) and any additional negotiated language as authorized under 801 CMR 21.07(1). The department must maintain the contract as part of the procurement file. The execution and filing of a contract by the department should not be construed as approval of any conflicting language that may have been inserted herein or attached thereto. The department and the contractor may not modify the language contained in the *Standard Contract Form*. Further, any contract attachment which contains conflicting language shall be superseded by the language of the *Commonwealth Terms and Conditions*.

Since the *Standard Contract Form* is available to departments and bidders electronically, it is important to state that any changes or electronic alterations by either the department or the contractor to the official version of this form, as jointly published by the Executive Office for Administration and Finance (ANF) the Operational Services Division (OSD) and the Office of the Comptroller (CTR), shall be void. The Office of the Attorney General has recommended that departments not sign additional contracts, invoices, or other documents containing contractual terms. These forms may contain language that conflicts with the *Commonwealth Terms and Conditions*, the *Standard Contract Form* or other state law or policy. Further, bidder contract forms often contain clauses on choice of law for another state, limits to liability, indemnification of the contractors, penalties and other provisions that are adverse to the department's interests. Departments that choose to sign these types of documents do so at their own risk and will be responsible for any associated costs and damages. Note: There is a provision in the *Commonwealth Terms and Conditions* and the *Standard Contract Form* which states that the language in these forms shall supersede any conflicting language attached, including a bidder's contract form, purchase order or invoice form.

A new *Standard Contract Form*, which was issued on June 8, 2007 and should be used for all contracts being amended and for all new contracts entered into after June 8, 2007, incorporates the following certifications/attachments that no longer need to be attached as separate documents: *Prompt Payment Discount Form* (optional form, still available); *Executive Order 481 Certification* (Undocumented Worker Prohibition); *Northern Ireland Notice and Certification*; *Affirmative Action Commitment Statement*; and *Consultant Contractor Mandatory Submission Form* (optional form, still available).

Contractor Authorized Signatory Listing: A *Contractor Authorized Signatory Listing (CASL)* is required for any contract, regardless of value, executed by the department. This form contains a list of authorized signatories. The department is responsible for verifying the authority of any contract signatory to sign as

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well as the authenticity of the signature on a contract (the signature was actually made by the authorized signatory and not a designee). This form, or its equivalent, may be obtained once per contractor and may be copied and attached to each contract executed by the department. Please see the additional guidance pertaining to the authorized signatory listing entitled *Contractor Authorized Signatory Listing* available via a link at the end of this document.

Commonwealth Terms and Conditions: Please note there are two versions of the *Commonwealth Terms and Conditions*. All Commonwealth contracts for commodities and services, with the exception of contracts for human and social services, execute the *Commonwealth Terms and Conditions*. For human and social service contracts, the *Commonwealth Terms and Conditions for Human and Social Services* must be executed for transactions using object codes “M03” and “MM3.” Contractors who hold contracts with the Commonwealth for both human and social services and commodities and non-human and social services must execute both versions of the document. Unless otherwise stated, references in the policies to the *Commonwealth Terms and Conditions* apply to both versions of the document.

An authorized signatory of a bidder must execute a Commonwealth Terms and Conditions for small and large procurements under 801 CMR 21.00. Execution refers to the “distinct, verifiable signature or symbol of an authorized signatory of a contractor or a department which, when affixed to a document, is legally binding.” The current practice for execution requires an original signature and date (by an authorized signatory).

*Note:* Electronic signatures cannot yet be used for the *Commonwealth Terms and Conditions*. However, OSD does allow, for Comm-PASS subscribers that are submitting a bid electronically, the electronic submission and signature of other forms as long as at contract execution time, the final contract material includes a wet ink signature on the *Commonwealth Terms and Conditions*.

The *Commonwealth Terms and Conditions* is executed only once by a bidder and filed with the Office of the Comptroller (CTR). It is incorporated by reference into any contract for commodities or services executed by the bidder and any department of the state. In addition, for a bidder to be awarded a contract, a *Request for Taxpayer Identification Number and Certification (Massachusetts Substitute W-9 Form)*, that contains the contractor’s correct Taxpayer Identification Number (TIN), name and legal address information, must also be on file with the Office of the Comptroller for the contractor. If the contractor has not previously filed this form with the Comptroller, or if the information has changed, a new *W-9 Form* must be completed and returned to the CTR. See the *W-9 Form* description below. In order to approve the filing of these forms on the MMARS VCUST table, a completed and properly executed *Commonwealth Terms and Conditions* and *W-9 Form* are to be submitted to the Comptroller.

The department and the contractor may not negotiate the terms of the *Commonwealth Terms and Conditions*. Any contract attachment which contains conflicting language shall be superseded by the language of the *Commonwealth Terms and Conditions*. Please note, however, that pursuant to 801 CMR 21.00, the Executive Office for Administration and Finance (ANF), the Operational Services Division (OSD) and the Office of the Comptroller (CTR) have issued language which interprets Section 11, Indemnification, as it applies to Information Technology procurements within certain expenditure classification object codes. Please see *RFR - Required Specifications for Information Technology* via a link at the end of this document for the text of this interpretation and the affected object codes. Since the *Commonwealth Terms and Conditions* is available to departments and bidders electronically, it is important to state that any changes or electronic alterations by either the department or the contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.

W-9 Form (Massachusetts Substitute W-9 Format): A *Request for Taxpayer Identification Number and Certification (Massachusetts Substitute W-9 Form)* must be distributed with every RFR. The *W-9 Form* contains the bidder’s correct TIN (tax identification number), name and legal address information, and

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must be on file with the CTR for any contractor receiving payments through MMARS. Bidders must fill out a *W-9 Form* and return it with the executed *Commonwealth Terms and Conditions* and the bidder's response if it has not previously filed this form with CTR or the information contained on a previously filed form has changed.

*Note:* Electronic signatures cannot yet be used for the *W-9 Form*. However, OSD does allow, for Comm-PASS subscribers that are submitting a bid electronically, the electronic submission and signature of other forms as long as at contract execution time, the final contract material includes a wet ink signature on the *W-9 Form*.

☞ For POS Only: Purchase of Service Attachments: Six contract attachments have been developed specifically to document programmatic and fiscal specifications for human and social service procurements. Instructions for completion and a detailed explanation of the content of each attachment can be found in the associated guidance entitled *Purchase of Service Attachment Instructions for Human and Social Services* available via a link at the end of this document.

Consultant Contractor Mandatory Submission Form: An RFR to procure consultant contracts requires disclosure of several statutory requirements either as part of the RFR Response, by attachment to the *Standard Contract Form* or by using the *Consultant Contractor Mandatory Submission Form* as an attachment. Consultant contracts include any contract paid out of the HH, NN1 – N06, N12- N14 or U05 object classes. This form has the following requirements, regardless of whether the consultant is defined as a contract employee, independent contractor or company:

- *Identification of other contracts with Massachusetts departments:* Pursuant to M.G.L. c. 29, s. 29A, consultant contractors are required to identify income that is due, or will become due, to the contractor for commodities or services rendered to the Commonwealth, any political subdivision or public authority, during the period of the proposed contract.
- *Identification of financially interested parties (other than the bidder):* Pursuant to M.G.L. c. 29, s. 29A and M.G.L. c. 7A, s. 6, consultant contracts are required to provide a list of all other persons having a financial interest in this contract, including any person holding greater than one percent (1%) of the capital stock of the contractor.
- *Identification of Key Personnel:* Resumes or statements of qualifications of identified key personnel must be attached to the response.

Affirmative Market Program (AMP) Plan: The submission of an AMP Plan is a requirement for large procurements and statewide contracts. It is also strongly encouraged for small procurements. All large procurements over \$50,000 must include language that requires the submission of a completed *Affirmative Market Program (AMP) Plan*. Agencies must select at least one of the first three components for their AMP Plan that includes: subcontracting, growth and development and ancillary uses. Agencies have the flexibility to select any other component for inclusion in the required AMP Plan including past performance, or other additional creative initiatives. Agencies have the discretion to require at least two or more of the AMP components listed above in order for a bidder to be considered to receive all available AMP evaluation points.

Authorization for Electronic Funds Transfer: This online form is required for bidders (unless it would create an undue burden). The following are some of the benefits of using EFT:

- EFT payments significantly reduce payment delays and provide almost instantaneous payment.
- EFT payments save the Commonwealth a tremendous amount of processing time and money and are considerably more cost-effective than payments distributed by check.
- EFT payments are more environmentally friendly, as they eliminate the use of paper.
- EFT payments can increase contractor efficiency while reducing transaction costs.

## OPERATIONAL SERVICES DIVISION

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- Payment information is readily available on the Internet at the Office of the Comptroller's VendorWeb site: <https://massfinance.state.ma.us/VendorWeb/vendor.asp>.

Prompt Payment Discount Form: This form, with standardized prompt payment discount terms, requiring that bidders submit their discounts based on a 10 day, 15 day, 20 day and/or 30 day turn around for payment, is an optional attachment to the RFR. The *Commonwealth's Bill Paying Policy - and General Payment Policies*, available on the Comptroller's website, supports this practice. Departments are encouraged to solicit discounts from bidders in exchange for an expedited payment. An expedited payment may enable departments to save money. Departments have the option to require bidders to complete this form and offer a discount as part of their response or the prompt payment discount may be specified on the Standard Contract Form. See *OSD Policy Update 07-34 (Prompt Payment Discounts)* and the *Standard Contract Form* for additional guidance on Prompt Payment Discounts.

Additional Environmentally Preferable Product Information: In line with the Commonwealth's efforts to promote products and practices which reduce environmental impacts, departments are encouraged to use this attachment to solicit information from bidders regarding their use of environmentally preferable packaging, business practices, training, and independent environmental certifications. Bidders who demonstrate significant environmental efforts in any of the categories on this attachment may be eligible to receive extra points in the evaluation of the RFR.

Business Reference Form: A department may require bidders to provide business references. The references should be entities for which the bidder has provided commodities or performed similar services, or which otherwise demonstrate the bidder's capability to meet contract performance.

### **The RFR Challenge**

Once the RFR is drafted, departments should undertake a critical review and comparison of the document against the ten RFR sections required for all procurements conducted under 801 CMR 21.00 and the procurement policies contained in the Procurement Information Center. Sometimes referred to as an RFR challenge, the process provides the opportunity to ensure that all the necessary information appears somewhere in the document and is clear, well organized and comprehensive. Involving all members of the Procurement Management Team, including contract, fiscal, programmatic, legal and Affirmative Market Program staff, will help in identifying any omissions or areas of potential confusion to bidders that could impact the procurement process. A *Procurement/Contract Management Checklist* is available via a link at the end of this document to assist departments in adhering to the RFR requirements. *Note:* Do not load the RFR to Comm-PASS until all critical review and approvals have been received. While Comm-PASS does include an approval workflow component, this is intended to document the approval of solicitation publication only. The Comm-PASS approval workflow tool is not a drafting tool, and is not intended to support document sharing, commenting or change tracking.

### **Associated Regulations and Policy Guidance**

- [801 CMR 21.00 Procurement of Commodities or Services, Including Human and Social Services](#)
- [Acquisition Policy](#) (Issued jointly by the Operational Services Division and the Office of the Comptroller)
- [Supplier Diversity Office](#)
- [Contractor Authorized Signatory Listing](#) (Issued jointly by the Operational Services Division and the Office of the Comptroller)
- [Comm-PASS Policies](#)
- [Environmentally Preferable Products \(EPP\) General Information, Requirements and Guidance](#)
- [OSD Forms](#)

**OPERATIONAL SERVICES DIVISION**  
**HOW TO DRAFT A REQUEST FOR RESPONSE (RFR)**

- [OSD Policy Guidance 05-19 - Procurement and Contract Management Policy Changes](#)
- [OSD Policy Guidance 05-13, Protecting Security Sensitive Information During the Procurement Process](#)
- [Procurement/Contract Management Checklist](#)
- [Request for Response/Contract Duration](#)
- [Required Specifications Other Specifications Required Specifications for Information Technology](#)
- [Statewide Contract, Designated Contract, Single or Multiple Department Contract Guidance](#)
- [OSD Policy Update 07-34 \(Prompt Payment Discounts\)](#)

***☞ For POS Only:***

- [808 CMR 1.00 Compliance, Reporting and Auditing for Human and Social Services](#)
- [Discharge Planning Specifications for Certain Requests for Responses](#)
- [Employment and Training Specifications for Certain Requests for Responses](#)
- [General Audit and Compliance Requirements](#)
- [Multi-Year Contracting for Human and Social Services](#)
- [OSD Update 08-03, Purchase of Service \(POS\) Capital Items Procurement Policy](#)
- [Purchase of Service Attachment Instructions for Human and Social Services](#)