

STANDARD CONTRACT FORM & INSTRUCTIONS FOR NEW AND AMENDED NEGOTIATED RATE AND COST REIMBURSEMENT CONTRACTS

Clarification of the Standard Contract Form

Revised Version Issued March 21, 2014

(Includes the Cover Page and following 4 pages.)

NOTE: ONLY THE COVER PAGE IS REQUIRED TO BE SUBMITTED WITH THE CONTRACT PACKAGE; HOWEVER, THE PROVIDER IS RESPONSIBLE FOR COMPLYING WITH ALL THE REQUIREMENTS CITED IN THE ACCOMPANYING PAGES. p. 3

Standard Contract Form (including all boilerplate language) p. 3-8

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SPECIAL INSTRUCTIONS FOR A CHANGE OF ADDRESS

www.mass.gov/osd

Go to “Key Resources”, click on “OSD Forms” (Instructions for Form) Guidelines on Material Changes in a Contractor’s Identity

DDS is in the process of transitioning rate contracts and maximum obligation contracts to regulated rates approved by EOHHS under chapter 257. However, there will remain a limited number of contracts that will still require individually negotiated unit rates or cost reimbursement line items. Instructions for these contracts are in this section of the Manual.

Also, there remain a handful of rate contracts and maximum obligation contracts that were awarded services under RFR's prior to the approval of regulated rates under chapter 257.

1. This form is jointly issued and published by the [Executive Office for Administration and Finance \(ANF\)](#), the [Office of the Comptroller \(CTR\)](#) and the [Operational Services Division \(OSD\)](#) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under [Guidance For Vendors - Forms](#) or www.mass.gov/osd under [OSD Forms](#).

CONTRACTOR LEGAL NAME: (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: MMARS Department Code:	
Legal Address: (W-9, W-4,T&C):		Business Mailing Address:	
Contract Manager:		Billing Address (if different):	
E-Mail:		Contract Manager:	
Phone:	Fax:	E-Mail:	
Contractor Vendor Code:		Phone:	Fax:
Vendor Code Address ID (e.g. "AD001"): AD ____ (Note: The Address Id Must be set up for EFT payments.)		MMARS Doc ID(s):	
		RFR/Procurement or Other ID Number:	
NEW CONTRACT		CONTRACT AMENDMENT	
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form , scope, budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)		Enter Current Contract End Date Prior to Amendment: ____, 20 ____. Enter Amendment Amount: \$ _____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)	
The following COMMONWEALTH TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract. <input type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00. <input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or <i>new</i> Total if Contract is being amended). \$ _____.			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __% PPD; Payment issued within 20 days __% PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: __agree to standard 45 day cycle __ statutory/legal or Ready Payments (G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy .)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date . <input type="checkbox"/> 2. may be incurred as of ____, 20 __, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date . <input type="checkbox"/> 3. were incurred as of ____, 20 __, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of ____, 20 __, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions , this Standard Contract Form including the Instructions and Contractor Certifications , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR:		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:	
X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)		X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)	
Print Name: _____		Print Name: _____	
Print Title: _____		Print Title: _____	

INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

CONTRACTOR LEGAL NAME (AND D/B/A): Enter the Full Legal Name of the Contractor's business as it appears on the Contractor's [W-9](#) or [W-4 Form](#) (Contract Employees only) and the applicable [Commonwealth Terms and Conditions](#). If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

Contractor Legal Address: Enter the Legal Address of the Contractor as it appears on the Contractor's [W-9](#) or [W-4 Form](#) (Contract Employees only) and the applicable [Commonwealth Terms and Conditions](#), which must match the legal address on the 10991 table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

Contractor Contract Manager: Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. **The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on COMMBUYS, the name of the Contract Manager must be included in the Contract on COMMBUYS.**

Contractor E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

Contractor Vendor Code: The Department must enter the [MMARS Vendor Code](#) assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the [Vendor File and W-9s Policy](#) for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

Vendor Code Address ID: (e.g., "AD001") The Department must enter the MMARS Vendor Code Address Id identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the [Bill Paying](#) and [Vendor File and W-9](#) policies.

COMMONWEALTH DEPARTMENT NAME: Enter the full Department name with the authority to obligate funds encumbered for the Contract.

Commonwealth MMARS Alpha Department Code: Enter the [three \(3\) letter MMARS Code](#) assigned to this Commonwealth Department in the state accounting system.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

Department Billing Address: Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

Department E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

MMARS Document ID(s): Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same

for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

RFR/Procurement or Other ID Number or Name: Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

NEW CONTRACTS (left side of Form):

Complete this section ONLY if this Contract is brand new. (Complete the CONTRACT AMENDMENT section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

PROCUREMENT OR EXCEPTION TYPE: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See [State Finance Law and General Requirements](#), [Acquisition Policy and Fixed Assets](#), the [Commodities and Services Policy](#) and the [Procurement Information Center \(Department Contract Guidance\)](#) for details.

Statewide Contract (OSD or an OSD-designated Department). Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

Collective Purchase approved by OSD. Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

Department Contract Procurement. Check this option for a Department procurement including state grants and federal sub-grants under [815 CMR 2.00](#) and [State Grants and Federal Subgrants Policy](#), Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

Emergency Contract. Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

Contract Employee. Check this option when the Department requires the performance of an [Individual Contractor](#), and when the planned Contract performance with an Individual has been classified using the [Employment Status Form](#) (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See [Amendments, Suspensions, and Termination Policy](#).)

Enter Current Contract End Date: Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

Enter Amendment Amount: Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

AMENDMENT TYPE: Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget.** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the

process outlined in [801 CMR 21.07](#), incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

Interim Contracts. Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

Contract Employee. Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly posted.

COMMONWEALTH TERMS AND CONDITIONS

Identify which [Commonwealth Terms and Conditions](#) the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See [Vendor File and W-9s](#) Policy.

COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as [available and encumbered](#) prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth [Bill Paying Policy](#) for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under [G.L. c. 29, s. 23A](#)). See [Prompt Pay Discounts Policy](#). PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments ([G.L. c. 29, § 23A](#)); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for *all* payments under a Contract. Initial grant or contract payments may be accelerated for the *first* invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the [Expenditure Classification Handbook](#)) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the [Effective Date](#) (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default [Effective Date](#) (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the [Settlement and Release Form](#) when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the [Effective Date](#) for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the [Effective Date](#) under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to [G.L. c.4, § 9](#).

CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. **If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here.** A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to [G.L. c.4, § 9](#).

CERTIFICATIONS AND EXECUTION

See [Department Head Signature Authorization Policy](#) and the [Contractor Authorized Signatory Listing](#) for policies on Contractor and Department signatures.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Contract Start Date](#)". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization on a [Contractor Authorized Signatory Listing](#) may be required by the Department if not already on file.

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the [Contractor Authorized Signatory Listing](#).

Authorizing Signature For Commonwealth/Date: The [Authorized Department Signatory](#) must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Start Date](#)". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See [Department Head Signature Authorization](#). The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an [approved Interdepartmental Service Agreement \(ISA\)](#). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and

agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

Commonwealth and Contractor Ownership Rights. The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the [Secretary of State's website](#) as licensed to do business in Massachusetts, as required by law.

Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

Collusion. The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Public Records and Access The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under [Executive Order 195](#) and [G.L. c. 11, s.12](#) seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under [950 C.M.R. 32.00](#).

Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, [Executive Order 1417](#); [G.L. c. 29, s. 29F](#); [G.L. c.30, § 39R](#); [G.L. c.149, § 27C](#); [G.L. c.149, § 44C](#); [G.L. c.149, § 148B](#) and [G.L. c. 152, s. 25C](#).

Applicable Laws. The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable [Massachusetts General Laws](#); the Official [Code of Massachusetts Regulations](#); [Code of Massachusetts Regulations](#) (unofficial); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services); [AICPA Standards](#); confidentiality of Department records under [G.L. c. 66A](#); and the [Massachusetts Constitution Article XVIII](#) if applicable.

Invoices. The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth [Bill Paying Policy](#). Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15th for performance made and received (goods delivered, services completed) prior to June 30th, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15th or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

Payments Subject To Appropriation. Pursuant to [G.L. c. 29 § 26, § 27](#) and [§ 29](#), Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by [G.L. c. 29, § 9C](#). A Department cannot authorize or accept performance in

excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

Intercept. Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to [G.L. c. 7A, s. 3](#) and [815 CMR 9.00](#). Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

Tax Law Compliance. The Contractor certifies under the pains and penalties of perjury tax compliance with [Federal tax laws](#); [state tax laws](#) including but not limited to [G.L. c. 62C](#), [G.L. c. 62C, s. 49A](#); compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under [G.L. c. 62E](#), withholding and remitting [child support](#) including [G.L. c. 119A, s. 12](#); [TIR 05-11: New Independent Contractor Provisions](#) and applicable [TIRs](#).

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts. The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least **45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Federal Anti-Lobbying and Other Federal Requirements. If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including [31 USC 1352](#); [other federal requirements](#); [Executive Order 11246](#); [Air Pollution Act](#); [Federal Water Pollution Control Act](#) and [Federal Employment Laws](#).

Protection of Personal Data and Information. The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under [G.L. c. 93H](#) and [c. 66A](#) and [Executive Order 504](#). The Contractor is required to comply with [G.L. c. 93I](#) for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) [Information Technology Division \(ITD\) Protection of Sensitive Information](#), provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the [Payment Card Industry Council Standards](#) and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to [G.L. c. 214, s. 3B](#).

Corporate and Business Filings and Reports. The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of the Commonwealth](#), the [Office of the Attorney General](#) or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

Employer Requirements. Contractors that are employers certify compliance with applicable state and [federal employment laws](#) or regulations, including but

not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments; unemployment insurance](#) and contributions; [workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00 \(Minimum Fair Wages\); G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c.153](#) (Liability for Injuries); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#).

Federal And State Laws And Regulations Prohibiting Discrimination including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#); [42 U.S.C. Sec. 12,101, et seq.](#), the [Rehabilitation Act](#), [29 USC c. 16 s. 794](#); [29 USC c. 16, s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and 98A, [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, sc. II, Part II, s. 255](#) (Telecommunication Act; Chapter 149, [Section 105D](#), [G.L. c. 151C](#), [G.L. c. 272, Section 92A, Section 98](#) and [Section 98A](#), and [G.L. c. 111, Section 199A](#), and [Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities](#), and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also [MCAD](#) and [MCAD links and Resources](#).

Small Business Purchasing Program (SBPP). A Contractor may be eligible to participate in the SBPP, created pursuant to [Executive Order 523](#), if qualified through the SBPP COMMBUYS subscription process at: [www.commbuys.com](#) and with acceptance of the terms of the SBPP participation agreement.

Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized). The [Information Technology Mandatory Specifications](#) and the [IT Acquisition Accessibility Contract Language](#) are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the [Expenditure Classification Handbook](#) or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

Northern Ireland Certification. Pursuant to [G.L. c. 7 s. 22C](#) for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Pandemic, Disaster or Emergency Performance. In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

Consultant Contractor Certifications (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to [G.L. Chapter 29, s. 29A](#)). Contractors must make required disclosures as part of the RFR Response or using the [Consultant Contractor Mandatory Submission Form](#).

Attorneys. Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to [G.L. c. 30, s. 65](#), and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

Subcontractor Performance. The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors. .

EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable [Executive Orders](#) (see also [Massachusetts Executive Orders](#)), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts. For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

Executive Order 130. Anti-Boycott. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See [IRC § 999\(b\)\(3\)-\(4\)](#), and [IRS Audit Guidelines Boycotts](#)) or engages in conduct declared to be unlawful by [G.L. c. 151E, s. 2](#). A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order 346. Hiring of State Employees By State Contractors Contractor certifies compliance with both the conflict of interest law [G.L. c. 268A specifically s. 5 \(f\)](#) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

Executive Order 444. Disclosure of Family Relationships With Other State Employees. Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

Executive Order 504. Regarding the Security and Confidentiality of Personal Information. For all Contracts involving the Contractor's access to personal information, as defined in [G.L. c. 93H](#), and personal data, as defined in [G.L. c. 66A](#), owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts

Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth [Information Technology Division's Security Policies](#). Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "[Security Policies](#)"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the [Commonwealth's Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

[Executive Orders 523, 524 and 526](#). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes [Executive Order 478](#)); [Executive Order 524](#) (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390); [Executive Order 523](#) (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to

purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

II. INSTRUCTIONS FOR COMPLETING THE STANDARD CONTRACT FORM

Contractor Legal Name: Self explanatory

Legal Address: Enter the legal address of the organization. Do not enter a program address unless it coincides with the legal address

Contract Manager: Enter the name of the person to be contacted on any matters concerning the contract

E-Mail: Enter the contact person's e-mail address

Phone: Enter the contact person's telephone number

Contractor Vendor Code: Enter the vendor code number assigned to the contractor by the Office of the State Comptroller

Vendor Code Address: Enter the address associated with the vendor code for this contract

Commonwealth Department Name

MMARS Department Code: Enter "DMR". Do NOT ENTER "DDS"

Business Mailing Address: Enter the address of the DDS Regional Office applicable to this contract

Business Address (if different): Enter only if applicable

Contract Manager: Enter the name of the DDS staff member who manages the contract

e-Mail: Enter the e-Mail address of the DDS staff member who manages the contract

Phone: Enter the telephone number of the DDS staff member who manages the contract

MMARS Doc (ID(s)): Enter the 20 digit alphanumeric designation assigned to the contract by DDS

NEW CONTRACT Section (for new contracts only. Leave blank for amendments)

PROCUREMENT OR EXCEPTION: Check the applicable option:

For contracts awarded under a DDS RFR check "Department Procurement". For contracts awarded under other conditions check with DDS for instructions on completing this field.

CONTRACT AMENDMENT Section (for amendments only. Leave blank for new contracts)

Enter the **Contract End Date** prior to the amendment

Enter the **amendment amount** change (either positive or negative), or "no change" if the amendment does not result in a change to the previous reimbursable amount.

Check the applicable **AMENDMENT TYPE:**

Check **Amendment to Scope or Budget** when there is a change in program description and/or funding change. For other changes check with DDS for instructions on completing this field.

COMMONWEALTH TERMS AND CONDITIONS

Check Commonwealth Terms and Conditions for Human and Social Services

COMPENSATION

Check **Rate Contract** for a unit rate contract that has no maximum obligation stated in the budget. Rate Contracts are reimbursed up to an amount determined by the number of units delivered at the approved unit rate.

Check **Maximum Obligation Contracts** for a contract that states a maximum obligation amount in the budget. Enter the amount of the maximum obligation for the original contract or, if applicable, the revised maximum obligation as a result of the most recent amendment.

PROMPT PAYMENT DISCOUNTS

Check “statutory/legal or Ready Payments (G.L. c. 29, & 23A)”

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT

Enter a brief description of the program. For amendments enter a description of the change in addition to the program description. For an amendment: entering “No Change” as the total amendment description is unacceptable. In a situation where the amendment does not contain a program description change the most recent program description must be entered.

ANTICIPATED START DATE

Check Option 1 when the amendment is effective upon the latest signature date and services haven’t been provided nor any costs incurred prior to the effective date of the amendment. (Used when services are anticipated to begin on the latest signature date.)

Special Situation for Option 1: If an amendment includes a one-time “lump sum” adjustment for reimbursement of services that fall **within the original scope of the contract** and such services were provided **prior to** the effective date of the amendment the correct Option to be checked on the Standard Contract Form is **Option 1**. While this exception appears counter-intuitive to the language on the Standard Contract Form in Option 3 it is approved by the Comptroller’s Office. So, while lump sum adjustments remain rare please note that if you should have the need for this type of amendment the correct option is Option 1.

Check Option 2 when a future effective date not determined by the signature dates is desired and services haven’t been delivered nor costs incurred prior to the effective date of the amendment. (This line is best used for most DDS contracts/amendments.)

Check Option 3 when services and obligations have been incurred **prior** to the latest signature date on the contract or amendment and such services and obligations **fall outside of the original scope of the contract**. Use of this option constitutes a Settlement of Payments. **THIS OPTION CANNOT BE USED UNLESS PRIOR AGREEMENT WITH THE DDS CONTRACT OFFICE HAS BEEN REACHED.** It is intended to be used rarely and only under special circumstances. If approved for use by DDS the provider must clearly spell out in the brief description section of the Standard Contract Form or in an attachment, the time period of the settlement, amount of the settlement, and what the monies were spent on.

CONTRACT END DATE

Enter the termination date of the contract or amendment

CERTIFICATION

AUTHORIZED SIGNATURE FOR CONTRACTOR

Enter the name of the individual legally authorized to enter into a contract with the Commonwealth

AUTHORIZED SIGNATURE FOR COMMONWEALTH

The signature of the DDS representative legally empowered to enter into contracts with provider agencies

III. REQUIRED LEGAL DOCUMENTS FOR NEW CONTRACTS

- Attachment C
- Attachment C – Special Provisions (formerly Attachment C page 2)
- Critical Services Procurement (Residential Services Only)
- Contractor Authorized Signatory Listing (CASL)

STATEMENT OF APPLICABLE STATUTES, REGULATIONS, MANUALS, POLICIES AND PROCEDURES

I. STATUTES

A. STATE STATUTES

1. Massachusetts General Laws. Chapter 19B and Chapter 123B : **The Department of Developmental Services .**
2. Massachusetts General Laws. Chapter 19C. **The Disabled Persons Protection Commission.**
3. **General Appropriation Act** for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth.

B. FEDERAL STATUTES

1. 31 U.S.C. § § 7505-7507. **Requirements for Single Audits.**
2. 42 U.S.C § § 301-1397f. **Social Security Act.**

II. STATE REGULATIONS

- A. Department of Developmental Services:** 115 CMR 1.00-10.00.
- B. Executive Office of Health and Human Services:** 101 CMR 2.00 and 8.00.
- C. Executive Office for Administration and Finance:** 801 CMR 21.00
- D. Division of Purchased Services:** 808 CMR 1.00
- E. Office of the Comptroller:** 815 CMR 2.00 and 3.00

III. MANUALS

- A. Commonwealth of Mass.** Procurement Policies and Procedures Handbook and any amendments which may be issued.
- B. Department of Developmental Services: DDS Purchase of Service Manual as amended from time to time.**
Inventory as amended from time to time.
- C. Office of the Comptroller:** MMARS Manual and any corresponding MMARS Memoranda issued by the Office of the Comptroller as they relate to the delivery of social and rehabilitative services under the MM subsidiary.

IV. FISCAL, ADMINISTRATIVE AND PROGRAMMATIC REPORTS

Monthly program utilization reports, using applicable vouchering service delivery reports (service recipient reports for cost reimbursement contracts; client calendar for unit contracts).

V. POLICIES

The Provider shall comply with the EOHHS Standardized Policy on Criminal Background Checks for Providers and State Agencies and all applicable DDS policies and Procedures, including but not limited to, DDS Policy 99-8: HIV & AIDS Policy and Procedures; DDS Policy 99-4: Reporting Policy; DDS Policy 89-10: Family/Citizen Monitoring Process, and such others as may, from time to time, be issued by the Commissioner of the Department of Developmental Services.

VI. PROCEDURES

- A. DDS Provider Non-Retaliation:** The Provider shall insure that no person, including, but not limited to, any client, family member or employee of DDS or provider shall be subject to retaliation by reason of the persons acting to protect the rights of a client, including, but not limited to filing a complaint pursuant to 115 CMR 9.00, or filing a report with or providing information to DPPC pursuant to G. L. c. 19C. Failure of any Provider to comply may result in cancellation of this contract, refusal to enter into subsequent contracts or other action deemed appropriate by the Commissioner of DDS.
- B. DDS Quality Assurance:** The provider shall comply with DDS's procedures regarding the monitoring of the quality and effectiveness of the community-based services. These procedures shall provide for, but not be limited to, licensing or accreditation determinations, Independent Professional Review (IPR), Individual Support Plan (ISP) monitoring, family/citizen monitoring, and program evaluations.
- C. Hepatitis B Screening:** DDS Procedures for Hepatitis B Screening and Immunization of Community Staff and Clients.
- D. Mid Year Termination:** In the event that this contract is terminated by either party prior to the end of a fiscal year and the provider has operated the contracted program at or above the contract's utilization factor, the provider shall be entitled to the pro-rated portion of that year's maximum obligation corresponding to the portion of the year that the contract was in effect.
- E. Indemnification:** No provider shall require an individual or his/her parent or guardian to sign any form that would indemnify and hold harmless the provider and its employees against any and all injury, loss, claim, action, damage, or liability arising out of any act, failure to act, or negligence as a condition to receiving services funded under this or any other DDS contract for the purchase of services.
- F. HIPAA:** The provider who is a covered entity under HIPAA regulations shall comply with all HIPAA requirements.
- G. Major Level Incidents Reporting**

DDS providers must report all incidents in accordance with applicable HCSIS standards involving individuals who are served in a DDS licensed program. For any individual whose services at the program are not funded by the Massachusetts Department of Developmental Disabilities, the provider is required to file a report only on "major" incidents, as the term is defined in HCSIS. In those instances, the provider shall submit a written report on the major incident to the DDS Regional Office associated with the geographic location of the licensed program and send a copy to the funding agency or payer of the individual's services at the licensed program. Providers are responsible for assuring that follow-up has occurred with the funding agency or payer.

VII. SPECIAL INFORMATION REQUESTS

Such other single reports as may from time to time to be reasonably requested on limited occasions by the DDS pursuant to its obligation to monitor and evaluate services.

B. ATTACHMENT C -- Special Provisions

Per an Interagency Service Agreement between the Department of Developmental Services (DDS) and the Executive Office of Health and Human Services (EOHHS) relative to the provision of PCA services, the contractor will:

1. Not seek PCA services for any consumer funded through this contract who receives 24 hour per day direct support. An increased need should be addressed through the DDS process.
2. Not seek PCA services for a consumer funded through this contract without written prior approval from the DDS Area or Regional Director for any consumer who receives fewer than 24 hours per day of direct support through this contract.
3. Provide the necessary supports to meet the needs relative to the Activities of Daily Living (ADL) and the Instrumental Activities of Daily Living (IADL) as set forth in 130 CMR 422, 410 for any consumer for whom PCA services are being sought commensurate with the resources made available by the Department at the onset of less than 24 hour residential services provided through this contract.
4. Cooperate with the staff of DDS, EOHHS, or their designees in order to access the appropriateness of PCA supports for any consumer for whom such supports are being sought.

CRITICAL SERVICES PROCUREMENT (Applies to Residential Services Programs)

In order to ensure continuity of care to Commonwealth clients where a Service Contract for a residential program has been terminated because of a provider Contractor's breach, the Executive Office of Health and Human Services ("EOHHS") has promulgated the following standard Secretariat Condition applicable to all residential services for which EOHHS Purchasing Agencies purchase at least 50% of the capacity of the residential program. Service contracts to which this provision applies shall be deemed Critical Services Contracts. Where more than one EOHHS Purchasing Agency purchases the program, the Principal Purchasing Agency, or other Purchasing Agency designated by EOHHS ("EOHHS Purchasing Agency") shall be responsible for coordinating or otherwise negotiating on behalf of the Commonwealth as described below.

In the event of termination under Section 4 of the Commonwealth Terms and Conditions for Human and Social Services ("T/C-HSS") for the provider Contractor's breach, default or emergency of a Critical Service Contract, the following additional provision shall apply:

Upon the request of the EOHHS Purchasing Agency, the provider Contractor shall participate in good faith negotiations with the EOHHS Purchasing Agency, the Successor Provider and, where appropriate, the building owner and financial institution, over the temporary use and occupancy of the building by the Successor Provider. The scope of negotiations shall include, but not be limited to, the duration and other terms of the temporary use and occupancy. While nothing in this Condition shall require any party to the negotiations to reach an agreement, the parties shall make their best efforts to ensure the continuity of residential client care while the EOHHS Purchasing Agency is identifying alternative residential locations.

This provision shall remain in effect until the enactment of legislation authorizing the court appointment of a receiver in emergency situations in which clients of a provider Contractor are in imminent danger of harm.

Attachment I **EOHHS Purchasing Agency Purchase-of-Service Contract** **Provision for Use of Virtual Gateway Business Services**

Virtual Gateway Business Services. The Executive Office of Health and Human Services (EOHHS) operates a number of online business services through the Virtual Gateway. These include but are not limited to, Provider Data Management (PDM), Common Intake (IE&R), Enterprise Invoice / Service Management (EIM/ESM), Home and Community Service Information System (HCSIS), Senior Information Management System (SIMS) Service and Transition Planning System (STARS).

Enterprise Invoice / Service Management (EIM/ESM): If EOHHS or DDS directs contractor during the term of this amended contract to access the EIM/ESM service through the Virtual Gateway for the purpose of conducting business with either EOHHS or DDS contractor agrees to use such services as directed and execute all required Use or Service Agreements required by the Virtual Gateway and to comply with all applicable Virtual Gateway, DDS and EOHHS policies and procedures related to such services, including policies pertaining to data security and protection of confidential information. Contractor further agrees to submit all information as directed by EOHHS or DDS including, but not limited to, invoices, contract and/or other information to DDS through these web-based applications. Contractor further agrees to take all necessary steps to ensure that it, and its subcontractors or affiliates, complies with these requirements and has access to and utilize all required web-based services in the Virtual Gateway.

Provider Data Management (PDM): Pursuant to its obligation hereunder regarding the use of EOHHS Virtual Gateway Business Services, contractor agrees to complete and maintain an organizational profile in the Virtual Gateway's Provider Data Management (PDM) system. PDM is a web-based service managed by the Executive Office of Health and Human Services (EOHHS) that presents information about a provider's organizational structure, financial health, and state contracting activity. If your organization does not currently access and update PDM, you must contact the EOHHS Provider Data Management team at pos.pdm@massmail.state.ma.us or call the Virtual Gateway Helpdesk at 1-800-421-0938 for assistance.

Attachment II **EOHHS Purchasing Agency Purchase-of-Service Contract** **Provision for Implementation of Chapter 257 of the Acts of 2008**

Notice concerning rates of payment – implementation of Chapter 257 of the Acts of 2008

In August 2008, a new Massachusetts law, [Chapter 257 of the Acts of 2008](#), "An Act Relative to Rates for Human and Social Service Programs", was enacted that provides that the Secretary of Health and Human Services shall have the sole responsibility for establishing rates of payment for social service programs purchased by governmental units. This law does not apply to services purchased by the Medicaid program.

Attachment III

**EOHHS Purchasing Agency Purchase-of-Service Contract
Provision for the Management of Certain Federal, Capital, and/or Trust Accounts**

Management of Certain Federal, Capital, and/or Trust Accounts

Any federal, capital and/or trust fund monies designated in the budget that are unspent in any fiscal year will not be available for expenditure in the subsequent fiscal year without a formal contract amendment re-authorizing these funds. The total contract maximum obligation amount for the contract (sum of the funding for the full duration of the contract) will automatically be reduced by the amount of the unspent funds from a prior fiscal year and DMH may adjust the encumbrance in the accounting system to reflect the unspent funds for the prior fiscal year.

**C. COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING**



CONTRACTOR LEGAL NAME :
CONTRACTOR VENDOR/CUSTOMER CODE:

INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor’s behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor’s authorized signatory, and not by a representative, designee or other individual.)

NOTICE: *Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.*

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver’s licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

AUTHORIZED SIGNATORY NAME	TITLE

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor’s employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

Signature

Date:

Title: Telephone:

Fax: Email:

[Listing can not be accepted without all of this information completed.]

A copy of this listing must be attached to the “record copy” of a contract filed with the department.

**COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING**

Issued May
2004



CONTRACTOR LEGAL NAME :
CONTRACTOR VENDOR/CUSTOMER CODE:

PROOF OF AUTHENTICATION OF SIGNATURE

**This page is optional and is available for a department to authenticate contract signatures.
It is recommended that Departments obtain authentication of signature for the signatory
who submits the Contractor Authorized Listing.**

This Section MUST be completed by the Contractor Authorized Signatory in presence of notary.

Signatory's full legal name (print or type):

Title:

X _____
Signature as it will appear on contract or other document (**Complete only in presence of notary**):

AUTHENTICATED BY NOTARY OR CORPORATE CLERK (PICK ONLY ONE) AS FOLLOWS:

I, _____ (NOTARY) as a notary public certify that I witnessed
the signature of the aforementioned signatory above and I verified the individual's identity on this date:

_____, 20 ____.

My commission expires on:

AFFIX NOTARY SEAL

I, _____ (CORPORATE CLERK) certify that I witnessed the
signature of the aforementioned signatory above, that I verified the individual's identity and confirm the individual's
authority as an authorized signatory for the Contractor on this date:

_____, 20 ____.

AFFIX CORPORATE SEAL

IV. FORMS AND INSTRUCTIONS FOR COMPLETING POS BUDGET DOCUMENTS FOR CONTRACTS AND AMENDMENTS

Includes Instructions and Forms for:

1. Program Budgets (for Cost Reimbursement and Negotiated Unit Rate contracts)
2. DDS Service Summary Form (to be used with Rate Contract budgets)

Purchase of Service Budget Pages

Attachments 1, 3, 4 & 5

Detailed Line-by-Line Instructions for the Purchase of Service Budget Pages for:

- Attachment 1:Program Cover Page
- Attachment 3:Fiscal Year Program Budget
- Attachment 4:Rate Calculation/Maximum Obligation
- DDS Service Authorization Form
- Uniform Financial Report (UFR) Component and Title Description (for use in completing line items in both UR and CR budgets)

ATTACHMENT 1

FY _____ Amendment #, If Applicable: _____ If Federal Funds, CFDA #. _____
 For Internal DDS use with FY Amendment #: _____

A. PURCHASE OF SERVICE - ATTACHMENT 1: PROGRAM COVER PAGE

PROGRAM INFORMATION

Contractor Name:	Department Name:
Program Type:	Document ID #:
Program Name:	UFR Program #:
Program Address:	MMARS Program Code:
City/State/Zip:	Other Reference Information (Information Purposes Only):
Contact Person:	Contact Person:
Telephone:	Telephone:
RFR INFORMATION: <input type="checkbox"/> Attached <input type="checkbox"/> RFR Reference # _____ <input type="checkbox"/> legislative exemption <input type="checkbox"/> emergency <input type="checkbox"/> collective purchase <input type="checkbox"/> interim <input type="checkbox"/> amendment	
SCOPE OF SERVICES: <input type="checkbox"/> Bidders Response Attached <input type="checkbox"/> Description of Services Attached	
TOTAL ANTICIPATED CONTRACT DURATION: _____ to _____	
INITIAL DURATION: _____ to _____	
OPTIONS TO RENEW: _____ options to renew for _____ years each option	

FISCAL TERMS

	FUNDING SUMMARY					
	Prior Years		Current Year		Future Years	
	FY	Amount	FY	Amount	FY	Amount
PRICE IS ESTABLISHED THROUGH: (CHECK 1,2, OR 3) <input type="checkbox"/> OPTION 1: PRICE AGREEMENT (list price) \$ _____ rate regulation (if any) _____ <input type="checkbox"/> OPTION 2: SUMMARY BUDGET (T lines only) <input type="checkbox"/> unit rate <input type="checkbox"/> cost reimbursement <input type="checkbox"/> other _____ <input type="checkbox"/> OPTION 3: COMPLETE BUDGET <input type="checkbox"/> cost reimbursement <input type="checkbox"/> unit rate <input type="checkbox"/> other _____						
	Total: \$		Total: \$		Total: \$	
	Multi-Year Total:					\$

CURRENT MAX OBLIGATION

\$ _____ UNIT RATE: \$ _____ per _____ # BILLABLE UNITS: _____
 \$ _____ UNIT RATE: \$ _____ per _____ # BILLABLE UNITS: _____
 \$ _____ UNIT RATE: \$ _____ per _____ # BILLABLE UNITS: _____

ADDITIONAL PAYMENT OR PRICE SPECIFICATIONS:

_____ Regular Payment	_____ Semi-Monthly	_____ RP Ln 1 Amt
		_____ RP Ln 2 Amt
		_____ RP Ln 3 Amt
_____ Ready Payment	_____	_____ RP Ln 4 Amt

COMMERCIAL FEE, if applicable (FYI; not to be included in the price paid by the Commonwealth) N/A for Cost Reimbursement | ____%| \$_____

**A.\$_____ Subtotal of offsets which are for non-reimbursable costs.

** Non-reimbursable costs must be shown in detail on Attachment 5 when the program is subject to the provisions of Federal OMB Circular A-122 and/or 808 CMR 1.00.*** Contractor's Board approved capitalization level relative to any negotiated expense costs in lines 208, 215, 390 or 410 is \$_____

**C. ATTACHMENT 4: RATE CALCULATION/MAXIMUM OBLIGATION CALCULATION
PAGE FOR CONTRACTS AND AMENDMENTS**

FY____ Contractor Name:_____ Amendment #, If Appl.:____ If Federal Funds, CFDA #:____

Modified Attachment 4: to be used with all Dept. of Developmental Services contracts

Program Name:	Document ID#:	MMARS Code:	Program Type	UFR Prog. #
----------------------	----------------------	--------------------	---------------------	--------------------

UNIT RATE CALCULATION

1. Program Total Costs \$_____

2. Program Offsets:

	<u>Source</u>	<u>Previous</u>	<u>Amended</u>	<u>New</u>
2a(1). Applied to occupancy and meals:	_____	\$_____	\$_____	\$_____
2a(2): Not applied to non-occupancy and meal items	_____	\$_____	\$_____	\$_____
2b. Offsets for Non-Reimbursable Costs:	_____	\$_____	\$_____	\$_____

Note: Total non-reimbursable costs listed in line 2b must be detailed on Attachment 5.

2. Subtotal Offsets (Line 2a(1) + Line 2a(2) + Line 2b) (\$_____)

3. Net Adjusted Program Costs (LINE 1 minus LINE 2) \$_____

3a. Amounts previously billed: Units: _____ Rate: _____ \$_____

3a1. Dates of Service _____ to _____

3a. Amounts previously billed: Units: _____ Rate: _____ \$_____

3a1. Dates of Service _____ to _____

3a2. Lump Sum Adjustment: Reimbursement: \$_____

3b. Remaining Maximum Obligation: \$_____

4. Total Program Capacity _____ (# of units) _____ (Type of unit)

5. Share of Total Capacity Purchased by Contract _____ (# of units) _____ % (% of line 4)

6. Negotiated Utilization Factor, if any _____ %

7. Adjusted Capacity Used to Establish Price (LINE 4 x LINE 6) _____ (# of units)

7a. Units Previously Billed: _____

7b. Remaining Units: _____

8. Unit Rate (LINE 3 DIVIDED BY LINE 7) \$_____

For amendment only: 3b divided by 7b

Effective Dates of Rate: _____ to _____

FOR RATE CONTRACT BUDGETS – DO NOT COMPLETE LINES 9, 10, 11, 13, 14, and 15. Complete line 12 only if there is an Invoice Offset.

9. Maximum # of Billable Units (LINE 5 x LINE 6) _____

OTHER PRICE CALCULATION METHOD

10. Enter relevant information: _____

10a. Billed under previous rates: (line 3a) \$_____

10a1. Lump Sum Adjustment:Reimbursement: \$_____

10b. Remaining billing for amendment (7b X 8) \$_____

MAXIMUM OBLIGATION CALCULATION

11. For Amendment: Line 10a + Line 10b: \$_____

 For Cost Reimbursement: Enter Reimbursable Cost Total From Program Budget \$_____

12. Invoice Offset

	<u>SOURCE</u>	<u>AMOUNT</u>
	<u>Unit Rate Rounding Adjustment</u>	_____
	_____	_____

12. Subtotal Offsets: (\$_____)

13. Maximum Obligation for the Program(LINE 11 minus LINE 12) \$_____

14. Capital Budget (from Attachment 6:Capital Budget Form), if applicable \$_____

15. **Total Maximum Obligation for Program (LINE 13 + LINE 14)** \$_____

FOR INFORMATION ONLY: Other Revenue Sources (Only if % in LINE 5 is less than 100%)

SOURCE	AMOUNT		MMARS
Commodity	\$		
Reconciliation:	Total Prog. Costs	Offsets	Max. Oblig.
this			
Previous:	\$	\$	\$
Amended:	\$	\$	\$
New:	\$	\$	\$
			Lines (for budget)

D. ATTACHMENT 5: NON-REIMBURSEABLE COST PROGRAM OFFSET SCHEDULE

FY _____ Contractor Name: _____ Amendment #, If Appl.: _____ If Federal Funds, CFDA #: _____

Program Name:	Document ID#:	MMARS Program Code:	Program Type	UFR Prog. #
---------------	---------------	---------------------	--------------	-------------

Program Component	State and/or Federal Reg.	Non-Reimbursable Cost	Source of Fund for Offset	Related Party (yes/no)	Name of Related Party
1. <u>Direct Care/Program Support Staff</u>		\$			
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
2. <u>Other Direct Care</u>		\$			
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
3. <u>Occupancy</u>		\$			
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
4. <u>Direct Administrative</u>		\$			
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
1. <u>Agency Admin. Allocation</u>		\$			
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
_____	_____	\$	_____	_____	_____
SUBTOTAL		\$			
_____	_____	\$	_____	_____	_____

Note: Subtotal must reconcile to line 2b on the Rate Calculation Page for Unit Rate & Accommodations Purchase budgets; or, to LINE A on the bottom of the budget page for Cost Reimbursement budgets.
01/17/01

E. INSTRUCTIONS FOR COMPLETING BUDGET PAGES 1, 3, 4

DIFFERENCES BETWEEN UNIT RATE MAXIMUM OBLIGATION CONTRACTS, REGULATED RATE CONTRACTS, RATE CONTRACTS, ACCOMMODATION RATE CONTRACTS AND CAPITAL BUDGET CONTRACTS:

A Unit Rate Maximum Obligation contract program budgets contain a line item specific budget (Attachment 3: Fiscal Year Program Budget) negotiated by the provider and DDS staff as well as unit rate calculation budget (Attachment 4) that shows both a unit rate and a maximum obligation calculated as a result of the number of units purchased by DDS multiplied by the unit rate. In this type of program budget the maximum obligation, the number of units, and the unit rate are specified and become fixed at the start of the contract, requiring an amendment to change the maximum obligation, the number of units, and/or the unit rate, if a change is later necessary.

A Regulated Rate program budget contains a unit rate that is NOT negotiated between the provider and DDS staff. The unit rate is set by the Executive Office of Health and Human Services (EOHHS). Therefore, the line item specific budget (Attachment 3: Fiscal Year Program Budget) is not applicable in this case.

A Rate Contract program budget shows the calculation of the unit rate in the same manner as a Unit Rate Maximum Obligation program budget but does NOT specify a maximum obligation nor specify a maximum number of units available to the provider during the life of the contract. The unit rate is fixed at the start of the program, requiring an amendment to change it if a change is later necessary. However, both the maximum obligation and the number of units remain “variable” during the life of the program.

An Accommodation Rate program budget is defined by the Operational Services Division (OSD) as follows: “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.”

For use in DDS program budgets Accommodation Rate budgets are designed to reimburse the provider for being open and available to provide essential services at all times during the period of the contract regardless of actual usage by consumers. Examples of such services are Emergency Stabilization Services and Family Support Centers. Reimbursement for Accommodation Rate contracts generally occurs on a monthly basis with a payment of 1/12 the contract maximum obligation for a full year contract.

Depending on the service attendance, reporting may be required even though payment is not based on the delivery of a set number of units of service.

DETAILED LINE-BY-LINE INSTRUCTIONS FOR COMPLETING THE ATTACHMENT 1: PROGRAM COVER PAGE

(See the special instructions for completing the Attachment 1 for a contract amendment that extends a contract past the end date of the awarding RFR and is subject to Chapter 257.)

DDS Contracting Principles: DDS awards contracts to providers for a period of years based upon program models and other factors. These awarding periods are stated in the RFR. DDS issues contracts on a multi-year basis.

FY:

Enter current fiscal year (4 digits)

If Federal Funds, CFDA #:

This is a code number used when federal funds are involved. The DDS staff will enter this number, if applicable.

Contractor Name:

Enter the full legal name of the provider as it appears on the provider’s W-9 form (Reasonable abbreviation is allowed in order to fit name in space provided.)

Program Type:

Enter the type of program (e.g., residential, day, employment, individual support, family support, etc.)

Program Name:

Enter the program name as it is known to the provider (e.g., “The Main Street House”).

Program Address:

Enter the address of the program. This is **NOT** the corporate legal address unless the program is delivered at the corporate address. The term “various” may be used if multiple sites are involved.

City/State/Zip:

Self explanatory

Contact Person:

Enter the name of the provider staff person who may be contacted about any provisions of the program.

Telephone:

Enter the telephone number of the provider contact person.

Department:

Enter “Department of Developmental Services”

Document ID:

Enter the new fiscal year contract ID # assigned by the Regional Contract Office

UFR Program #:

Enter the number assigned by the provider to this program for reporting on the Uniform Financial Report (UFR) filed each year. Each program must be assigned a unique ID number and must be able to be cross-referenced to the UFR. *Providers are obligated to use the same UFR # that appears here on their UFR when it is filed after the close the fiscal year. The Commonwealth makes extensive use of this link to associate the contract and the UFR. If after the contract is signed the UFR# changes, the provider must inform DDS of that change. A formal contract amendment is not necessary. A letter to the Regional Office is sufficient.*

MMARS Program (Activity) Code:

Every DDS activity type has a unique code that is used in the MMARS computer system. DDS staff will inform the provider of the correct activity code for each program budget.

Other Reference Information:

Optional

Contact Person:

Enter the name of the DDS staff member who may be contacted about any provisions of this program.

Telephone:

Enter the telephone number of the DDS staff member.

RFR Information: (See the Special Instructions at the end of this section for procedures for completing this section or in the NEW FOR 2017 unit of this manual in cases where a contract is being extended beyond the end date of the RFR under which it was awarded and is subject to Chapter 257.)

1. If the program is part of a new award based upon an RFR and is included within a Standard Contract:
 - Check “Attached”
 - Check “RFR Reference #”
 - Enter the RFR Reference #
2. If the program is part of a new award **NOT** based upon an RFR and is included within a Standard Contract:
 - Check whichever box DDS instructs you to check

Scope of Services:

1. If the program is part of a new award based upon an RFR:
 - Check “Bidders Response Attached” and either attach a copy of the RFR and provider proposal to the contract or attach a screen print of the “closed solicitation” page that shows the awarded contract on COMMBUYS.
2. If the program is part of a new award **NOT** based upon an RFR:
 - Check “Description of Services Attached” and attach a detailed description of the program to the contract.

Total Anticipated Contract Duration:

IMPORTANT: THIS SECTION IS OFTEN INCORRECTLY COMPLETED

This section refers to the length of time the contract has been awarded to the provider under the terms of the RFR or other awarding procedures. Therefore, it frequently covers several years. The start date is the date the contract **was initially approved**. The termination date is the date the award of the contract ends. It is important to note that these dates are **NOT** the effective dates of the actual Standard Contract or Renewal Amendment for the current fiscal year. The purpose of this

section is to identify the period of time during which the program may be continued prior to the issuance of a new RFR or other awarding procedure.

NEW RFR'S ISSUED FOR FY2017

UPCOMING RFR's

A. NEW RFR'S TO BE ISSUED FOR FY2017

During FY2017 DDS is scheduled to issue several new RFR's for the following services:

1. Activity Code 3170 – Clinical Team
2. Activity Code 3274 – Corporate Rep Payee
3. Activity Code 3202 – Medical Services
4. Activity Code 7100 – Autism Coaching

Activity Code 7100 RFR was issued on 4/1/2016. The issuance dates of the other new RFR's have not yet been determined.

B. RFR's OPEN FOR INITIAL QUALIFICATION OR ADDING SERVICES

1. EMP-DAY-09 (Employment and Day Supports Qualification)
All employment and day services except CIES (activity code 3180)
CIES: EOHHS normally reopens once per year to identify new providers
2. ALTR-14 (Adult Long Term Residential Services)
3. PS-15 (placement Services)
Shared Living
Incentive/Startup Funding
4. ANSS-15 (As-Needed Support Services)
Temporary support for individuals or programs (LUSA)
5. DESE/DDS (Qualifying List for Self-Directed Services Options)
6. SSQUAL-10 (Support Services Qualifying List)
Updated to incorporate changes as a result of COMMBUYS, Chapter 257, forms, etc.
Various individuals and family supports
7. IHS-16 (In Home Supports)
Supports for individuals in home, family home or in the community
Start date of new contracts: April 1, 2016

Initial Duration:

IMPORTANT: THIS SECTION IS OFTEN INCORRECTLY COMPLETED

Currently, most DDS services/activity codes are contracted for multiple years. Where that is not the case, the current DDS practice states the Standard Contract is limited to a term within the fiscal year in which it is issued. In other words, the Standard Contract (i.e., the initial agreement) cannot cross fiscal years. Such contracts terminate on June 30 at which time a Renewal Amendment is completed if the award period is still within the RFR limits. Therefore, the "Initial Duration" of a contract starts with the date the Standard Contract begins in a given fiscal year and ends no later than June 30 of the same fiscal year. **IMPORTANT:** The Initial Duration dates must be the same dates that appear on the Standard Contract, Renewal Amendments or Standard Amendments that may follow in the future.

Options to Renew:

Enter the total number of fiscal years that the contract may be extended by Renewal Amendments. **NOTE:** This number of renewal options is fixed in the RFR. Once established in the Standard Contract, the same number of "Options to Renew" must be entered in any and all subsequent amendment budgets. The number of "Options to Renew" **does not** decrease with each new Renewal Amendment.

Price Establishment:

- **Option 1:** Check if the program is based upon a unit rate and a governmental authority issues the unit rate (e.g., CHIA, EOHHS, Operational Services Division, or out-of-state rating agency.) Enter the rate regulation, if known, upon which the unit rate is granted.
- **Option 2:** NOT AVAILABLE FOR DDS PROGRAMS
- **Option 3:** Check either “Cost Reimbursement” or “Unit Rate”. This section is completed when a complete budget document is included for the purpose of displaying individual budget line items and/or calculating a unit rate.

Funding Summary:

- ❖ “Prior Years” column – Complete this column only where this program has been approved in a prior fiscal year(s). Do **not** complete this column for a budget included in a new Standard Contract based upon a new award. Enter the fiscal year and the final maximum obligation for this program for any prior fiscal year(s), where applicable. **For unit rate maximum obligation budgets that are converting to Rate Contracts enter only prior fiscal year data.**
- ❖ “Current Year” column – Complete this column with the contract maximum obligation for a Standard Contract, a Renewal Amendment, or a Standard Amendment. **N.B. Office of Comptroller instructions require an entry of the encumbrance amount for Rate Contract budgets.**
- ❖ Instructions for completing “Current Year” for a Standard Contract – Enter the current fiscal year and the maximum obligation of the program budget in the first row. Leave other rows blank. **Do not enter a current year value for a Rate Contract budget.**
- ❖ Instructions for completing “Current Year” in a Renewal Amendment – same as above.
- ❖ Instructions for completing “Current Year” in a Standard Amendment – Enter the **amended** total in the first row (i.e., the previous total as adjusted by the amendment), **OR** enter the first row with the original total and use the following rows to show the amount of each amendment in succession, within the current fiscal year, thus creating an amendment history. **Do not enter a current year value for a Rate Contract budget.**
- ❖ “Future Years” column – CURRENTLY NOT AVAILABLE FOR DDS PROGRAMS
- ❖ “Totals” column – Sum the entries in the columns [NOTE: The “Tot” value for the “Current Year” column represents the updated (as amended) total of the current fiscal year program.]
- ❖ “Multi-Year Total” column – Sum the entries from the “Tot” columns. This figure represents the total of the program over its entire life, including any previous fiscal year and/or amendment values. This figure **does not** represent the total of the current fiscal year program.
- ❖

Current Max Obligation:

Enter the updated (as amended, if applicable) maximum obligation of the program. (This figure should be the same figure that appears in the “Current Year Tot” field.) **Enter “VARIABLE” for Rate Contract budgets.**

Unit Rate:

If the program is based upon a unit rate enter the unit rate as calculated on the “Attachment 4: Rate Calculation/Maximum Obligation Calculation Page”. Be sure to enter the type of unit (e.g., “days”, “hour”, “mnth”). If the program is based upon a cost reimbursement model leave this field blank.

Billable Units:

If the program is based upon a unit rate enter the number of billable units as calculated on line 9 of the Attachment 4: Rate Calculation/Maximum Obligation Calculation page. **Enter “VARIABLE” for Rate Contract budgets.** If the program is based upon a cost reimbursement model leave this field blank.

Additional Payment or Price Specifications: Check either “Regular Payment” or “Ready Payment.” (See Section XII of this manual for a discussion of payment reimbursement options.) Enter the values in the “RP Ln __ Amt” fields as directed by DDS staff. These values must correspond to the entries placed by DDS staff on the MMARS computer system.

F. SPECIAL INSTRUCTIONS FOR RENEWALS AND NEW CONTRACTS THAT EXCEED THE TERMINATION OF THE ORIGINAL RFR AND ARE AWAITING THE IMPLEMENTATION OF Ch. 257 STANDARD RATES

A. Standard Contract Form

To renew new contracts that have exceeded the termination date of the original RFR under which they were awarded and are subject to Ch. 257 rate development:

Under the section “New Contract” or “Contract Amendment” (whichever applies) check off “Legislative/Legal Exemption or Other.”

B. Attachment 1 Budget Page

1. Under the section “RFR Information”, enter the following phrase “Per Chapter 257 Alignment Plan” and check the box “Amendment.”
- 2 Under the section “Total Anticipated Contract Duration” enter the start date of the original contract and the end date as shown on the list below of termination dates.*
3. Under the section “Initial Duration”, enter the dates as they appeared on the original contract.
4. Under the section “Options to Renew” enter N/A

PURCHASE OF SERVICE - ATTACHMENT 1: PROGRAM COVER PAGE (for converting a contract with a negotiated unit rate to a contract with a standard rate)

PROGRAM INFORMATION

Contractor Name:	Department Name:
Program Type:	Document ID #:
Program Name:	UFR Program #:
Program Address:	MMARS Activity Code:
City/State/Zip:	Other Reference Information (Information Purposes Only):
Contact Person:	Contact Person:
Telephone:	Telephone:
RFR INFORMATION: <input type="checkbox"/> Attached <input type="checkbox"/> RFR Reference # _____ <input type="checkbox"/> legislative exemption <input type="checkbox"/> emergency <input type="checkbox"/> collective purchase <input type="checkbox"/> interim <input checked="" type="checkbox"/> amendment Per Chapter 257 Alignment Plan	
SCOPE OF SERVICES: <input type="checkbox"/> Bidder's Response Attached <input checked="" type="checkbox"/> Description of Services Attached	
TOTAL ANTICIPATED CONTRACT DURATION: <u>Initial Historic Start Date</u> to <u>Target Effective Date for rates per alignment plan</u> INITIAL DURATION: <u>per original RFR</u> to <u>per original RFR</u>	
OPTIONS TO RENEW: <u>N/A</u> options to renew for _____ years each option	

G. DETAILED LINE-BY-LINE INSTRUCTIONS FOR COMPLETING THE ATTACHMENT 3: FISCAL YEAR PROGRAM BUDGET

Use Attachment 3 dated 12/19/2003

(The Attachment 3 dated 12/19/2003 removed Commercial Fee from the calculated budget lines and placed this field in an off budget line.)

Program Name: Enter the program name as it is known to the provider (e.g., “The Main Street House”).

Document ID:

Enter the new FY contract ID # assigned by the Regional Contract Office.

MMARS (Activity) Code:

Every DDS program type has a unique code that is used in the MMARS computer system. DDS staff will inform the provider of the correct activity code for each program budget.

Program Type:

Enter the type of program (e.g., residential, day, employment, etc.)

UFR Program #:

Enter the number assigned by the provider to this program for reporting on the Uniform Financial Report (UFR) filed each year. Each program must be assigned a unique ID number and must be able to be cross-referenced to the UFR. *Providers are obligated to use the same UFR # that appears here on their UFR when it is filed after the close the fiscal year. The Commonwealth makes extensive use of this link to associate the contract and the UFR. If after the contract is signed the UFR# changes, the provider must inform DDS of that change. A formal contract amendment is not necessary. A letter to the Regional Office is sufficient.*

INSTRUCTIONS FOR A STANDARD CONTRACT BUDGET

UFR Title #:

Enter the “UFR Title #’s” found in this Appendix that correspond to the staff position titles applicable to the program (please refer to UFR Program Component and Title Descriptions 808 CMR 1.00)

N.B.-Section 8 Housing subsidy funds, if any, must be included as part of the total occupancy cost in the line “UFR Title #301” and /or “UFR Title #390”. Such funds will be removed later as offsets.

Direct Care/Program Support Staff/Overtime/Shift Differential & Relief:

Enter the staff position titles found in this Appendix applicable to the program.

UNIT RATE BUDGETS INSTRUCTIONS FOR A STANDARD CONTRACT

Column Headings:

“Current”, “Amend Change”, “New” - Complete line items in columns labeled “Current FTE” and “Current Amount” only. Line item components must be consistent with UFR Program Component Titles.

Column “Current FTE”:

Enter the FTE number associated with each staff position entry. **IMPORTANT:** The FTE entered must be an ANNUAL FTE. Be careful to correct for part time positions as well as partial year positions. Example: A direct care worker works half time for 6 months. The correct FTE is 0.5 (work schedule) **times** 50% (length of employment as a percent of a total fiscal year). Result: The correct FTE for this worker is **0.25**.

Illustration: The listed salary on the contract is \$5,000. The FTE is incorrectly listed as **0.5** The annualized cost of this position then computes to \$10,000. (e.g. \$5,000 divided by 0.5). However, the correct FTE is **0.25** that computes to an annualized salary of \$20,000. Assuming the actual annualized cost of this position is actually \$20,000, the incorrect FTE entry results in an incorrect annualization.

Column “Current Amount”:

Enter the amount of money assigned to each line item from all payment sources. Do **NOT** enter just the DDS portion of the funding.

IMPORTANT CHECK: Divide the entry for each position in “Current Amount” by the entry in “Current FTE.” The result must yield an annual salary reasonable for the position on an annual basis. **If the result of this division appears unreasonably high or low there has likely been an error in the FTE entry.** N.B.: The DDS Excel budget template performs this calculation. Results should be reviewed to determine whether the calculated average salary is appropriate for the budget.

Columns “Amend Change FTE” and “Amend Change Amount”:

For New Contract: Leave blank

For Amendment: Enter the amount of the change

Column “New FTE” and “New Amount”:

For New Contract: Leave blank

For Amendment: Enter the new total after applying the amount of the amendment to the “Current” amount.

Columns under “Cost Reimbursement Only”:

Leave Blank

COST REIMBURSEMENT BUDGET INSTRUCTIONS WITHIN A STANDARD CONTRACT

Column Headings:

“Current”, “Amend Change”, “New”, “Cost Reimbursement Only” for Cost Reimbursement contracts - Complete line items in columns labeled “Current FTE”, “Current Amount”, “Cost Reimbursement Only Offset” (to indicate the amount of income used to offset the cost to DDS), “Cost Reimbursement Only Source”, and “Cost Reimbursement Only Reimbursable Cost” (the amount reimbursable by DDS). Line item components must be consistent with UFR Program Component Titles

Complete all columns as instructed above for UNIT RATE budgets. In addition, complete:

Column “Cost Reimbursement Only Offset”:

Enter any amount of funding used to offset the cost of each line item. This offset is used to indicate funds that are derived from sources other than sources that purchase the program, i.e., **do not** enter any funds received from any other contracts with state or other governmental agencies. Offsets must only include funds that are **not** derived from reimbursements for services rendered. (Examples of proper offsets include: grants, fund raising campaigns, voluntary contributions, Section 8 Housing subsidy.) **IMPORTANT:** Be sure to include the source of the offset in the column labeled “Source” especially if a Section 8 Housing subsidy is being used to offset occupancy costs. The “Offset” column can also be used to adjust the total value for each line item when the program is operating for less than a full fiscal year.

Offsets that are applied against each monthly reimbursement on an agreed upon payback schedule should be entered on line 12 on the Attachment: 4 Rate Calculation/Maximum Obligation Calculation Page.

Column “Cost Reimbursement Only Source”:

Enter the source of the offset as indicated above.

Column “Cost Reimbursement Only Reimbursable Cost”:

Enter the results of subtracting the “Offset” fields from the “Current Amount” fields. These values represent the DDS reimbursable portion of the total value of the line items.

H. DETAILED LINE-BY-LINE INSTRUCTIONS FOR COMPLETING THE ATTACHMENT 4: RATE CALCULATION/MAXIMUM OBLIGATION PAGE

Program Name:

Enter the program name as it is known to the provider (e.g., “The Main Street House”).

Document ID:

Enter the new fiscal year contract ID # assigned by the Regional Contract Office.

MMARS (Activity) Code:

Every DDS program type has a unique code that is used in the MMARS computer system. DDS staff will inform the provider of the correct activity code for each program budget.

Program Type:

Enter the type of program (e.g., residential, day, employment, individual support, family support, etc.)

UFR Program #:

Enter the number assigned by the provider to this program for reporting on the Uniform Financial Report (UFR) filed each year. Each program must be assigned a unique ID number and must be able to be cross-referenced to the UFR.

UNIT RATE BUDGET INSTRUCTIONS

Numbers below refer to line numbers on the Attachment 4.

1. **Program Total Costs:** Enter the value from the field “Program Total – New Amount” on Attachment 3. **Note:** DDS requires the use of a special version of Attachment 4 that breaks down the Offsets into 2 categories. *It is essential that only the DDS version of this form be used with DDS contracts since the distinction in Offsets effects rates that are used by DDS to bill the Federal government to receive substantial reimbursement for services.*

2.a.1. Program offsets applied to occupancy and meals: Enter the sum of all offsets that apply only to the occupancy and meals line items on Attachment 3. **N.B.** – **Include amount of any Section 8 Housing subsidy in this category and label the offset “Section 8” under the “Source” line.**

2.a.2 Program offsets applied to non-occupancy and meals items: Enter the sum of all offsets to the remaining line items, i.e., excluding any offsets applied to the occupancy and meals line items.

Offsets are used to indicate funds that are derived from sources other than sources that purchase the program, i.e., **do not** enter any funds received from any other contracts with state or other governmental agencies. Offsets must only include funds that are **not** derived from reimbursements for services rendered. (Examples of proper offsets include: grants, fund raising campaigns, voluntary contributions.) The “Offset” column can also be used to adjust the total value for each line item when the program is operating for less than a full fiscal year. Offsets entered in these fields, 2a (1) and 2a (2), are offsets that affect **ALL** line items equally and will adjust the unit rate so that the unit rate represents the rate the provider offers to purchasing agencies. Offsets that are applied against each monthly reimbursement on an agreed upon payback schedule should be entered on line 12 below.

2.b. Offsets for Non-Reimbursable Costs: Enter the sum of any line items values which are non-reimbursable by EOHHS purchasing agencies under EOAF regulations, e.g., bad debt.

2. Subtotal Offsets: Enter the sum of all offsets. (Important: Offsets listed in this section represent amounts removed from the program total and will result in a reduction in the calculated unit rate. Enter values here when the offsets can be reasonably determined to apply equally over the term of the contract. For offsets, which are irregular and/or highly variable, please enter as “Invoice Offsets” (See below)

Note: If the amount of Offsets changes during the operation of the program the fields “Previous”, “Amended”, and “New” must be completed.

3. Net Adjusted Program Cost: Enter the total cost minus the sum of all the offsets.

For Amendments

3.a. Amounts previously billed: enter the number of units and the rate for those units that were billed or will be billed by the effective date of the amendment. Enter the total of the rates times units.

3.a.1 Dates of Service: enter the effective dates for the services previously billed.

3.a.2 Lump Sum Adjustment Enter the amount representing costs incurred prior to amendment date as a Lump Sum Adjustment

3.b. Remaining Maximum Obligation: Subtract the amounts previously billed (3.a) from the Net Adjusted Program Costs (3.).

4. Total Program Capacity: Enter the number of units that are made available for purchase in the **total program**, not just the number of units being purchased by DDS. (Reminder: The budget created in Attachment 3:Fiscal Year Program Budget is based upon total program costs from all sources, not just DDS. Therefore, this field must show the total number of units for the entire program. It is important that you enter the **UNIT TYPE** e.g. DAYS, HOUR, MNTH in this section.

5. Share of Total Capacity Purchased by Contract: If DDS is purchasing all the available units in the program enter “100%”. If DDS is purchasing only a portion of the available units in the program enter the percent of the units that DDS is purchasing e.g., the total program has 2,920 units available (i.e., 8 individuals for 365 days each per year) and DDS is purchasing units for 4 individuals for 365 days per year (i.e., 1,460 units). The DDS share is 50%. **Note:** There are two common errors to avoid when completing this field.

- a) If the program is being purchased by more than one region or more than one purchasing agency every contract that is purchasing a portion of the program must contain the same values on Attachment 3, and not show on Attachment 4 only those values associated with the partial purchase. Prorating the costs on Attachment 3 and entering 100% in the STC field is incorrect. The proper percent purchase and costs associated with the specific budget at hand are calculated by completing the share of Total Capacity with the percent of the entire program being purchased by this program budget.
- b) If Attachment 3 is properly completed with the total costs of the program, it is incorrect to list as Offsets the cost of any other DDS or other purchasing agency contracts and then enter 100% in the STC field on Attachment 4. The correction for other agency purchases occurs by entering the correct DDS percent purchase in the STC field.

6. Negotiated Utilization Factor: If the Utilization Factor is being used enter the negotiated utilization factor here (not to be lower than 85%). If the Utilization Factor is not in use enter “100%” here. (See Subdivision VII.C.1.d. for a discussion of the Utilization Factor.)

7. Adjusted Capacity: Enter the result of line 4 times line 6.

For Amendments

7a. Units previously billed: Enter the number of units shown on line 3a.

7b. Remaining units: Subtract Units previously billed (7a) from Adjusted Capacity (7)

8. Unit Rate: Divide line 3 by line 7. This unit rate is established for the entire program. It is not a unit rate that applies only to the DDS purchase. Therefore, this unit rate must be the unit rate made available for all purchasers of this program (including any various DDS regions and/or other state purchasing agencies.)

For Amendments

Divide line 3b by 7b and fill in the effective dates for the new rate. The effective dates should represent the portion of the year remaining after the period referenced in 3a1.

IMPORTANT: FOR RATE CONTRACT AMENDMENTS DO NOT COMPLETE LINES 9, 10, 11, 13, 14 and 15. Complete line 12 only when an Invoice Offset is negotiated.

9. Maximum Billable Units: Multiply line 5 by line 6. This number is the actual number of units being purchased by DDS by means of this program budget.

Note that for Rate Contracts, this field should not reflect actual values, but should indicated “TBD” or “Variable on Approval”. Except in cases where an Invoice Offset applies (see the discussion of “Invoice Offsets” in #12 below) the remainder of the form should not be completed as the remaining lines apply only to contracts with Maximum Obligations.

10. Other Calculation Method:

For Amendments

This line is used to reconcile the totals of billed services and yet to be billed services with the Net Adjusted program costs in line 3.

10a. Enter the amount previously billed from line 3a.

10a1. Enter the amount representing costs incurred prior to amendment date as a Lump Sum Adjustment

10b. Enter the amount remaining to be billed by computing line 7b times line 8.

11. Maximum Obligation: Enter the total of Line 8 X Line 9

For Amendments

Enter the sum of line 10a and 10b.

12. Invoice Offset: This section may be used in either of two ways:

- a) As a mechanism to reduce the maximum obligation of the program without affecting the unit rate:
Enter the sum of any offsets that are applied on an irregular basis as a payback that should not be entered in lines 2a (1) and 2a (2). Invoice Offsets **do not** reduce the unit rate of the program.

OR

- b) As a method to adjust the maximum obligation Total on Attachment 3 to the calculation of rate X units on Attachment 4:
Enter the sum of any offsets that are applied on an irregular basis as a payback that should not be entered in lines 2a (1) and 2a (2). Invoice Offsets **do not** reduce the unit rate of the program. Invoice Offset amounts will be reduced on a monthly basis or a subtraction to the monthly reimbursable value.

A unit rate rounding adjustment will help reconcile the variance between the maximum obligation (line 11) and the net adjusted program costs (line 3). The calculations in lines 8 and 9 may result in rounding errors that cannot be corrected by formula. In this case, the excess of the rate times unit computation over the Net adjusted program costs should be reflected as a negative adjustment on line 12.

13. Maximum Obligation for the Program: Subtract line 12 from line 11.

14. Capital Budget: Enter any total from Attachment 6:Capital Budget. (NOT APPLICABLE IN RATE CONTRACTS)

15. Total Maximum Obligation for Program: Enter the sum of lines 13 and lines 14.

Special Instructions for Attachment 1 Form When Unit Rate Changes

Current Max Obligation --

Enter the maximum obligation, number of units, and associated unit rate for every unit rate that has previously been approved for this budget. In addition, enter the same data for the current amendment as calculated on the attached Attachment 4.

Line Item Amendment Process: A “Line Item Amendment” is an amendment to an Attachment 3: Fiscal Year Program Budget that changes the amount of line items within that budget that results in NO CHANGE to the maximum obligation shown on the “Program Total” line. Line item amendments fall into one of two distinct categories: MATERIAL or MINOR.

(N.B. Material and Minor amendments are possible in both maximum obligation/unit rate change amendments as well as in line item amendments.)

A “Material” amendment (in the case of line item amendments) is an amendment to line items that materially changes the performance of a program.

A “Minor” amendment is an amendment that does not materially change the performance of a program;

N.B. The decision on whether an amendment is defined as “minor” or “material” lies with the Regional Office.

IMPORTANT: Line item amendments may be either “minor” or “material” in a Unit Rate Maximum Obligation program budget, a Rate Agreement program budget, or a Cost Reimbursement budget. **In order for the submission of “minor” line item amendments to be permitted the provider and DDS staff must agree to language in the original contract that such amendments will be allowed for a given program.**

UNIT RATE PROGRAM BUDGETS

1. “Minor” Line Item Amendments in a Unit Rate Maximum obligation program budget or a Rate Agreement program budget are defined as the restructuring of line item amounts with no significant change to the service being delivered and no change in either the maximum obligation or the unit rate.

Minor changes to line item entries in a unit rate contract are considered to be an informal amendment. The guidelines for creating and submitting an informal amendment are as follows:

- a) Any changes to line items that occur WITHIN a budget category (i.e. Direct Care/Program Staff, Occupancy, Other Direct Care/Program Staff, Direct Administrative Expenses, Agency Administrative Support) that change the total of that category to an amount of 10% or less of its current amount should be reported to the relevant DDS office on an informal basis.
- b) Any changes that occur to amount of 10% or less BETWEEN budget categories should be reported to the relevant DDS office on an informal basis. **Such amendments may require approval at the discretion of the Regional Office.**

2. Material Line Item Amendments in a unit rate maximum obligation program budget or a Rate Agreement program budget are defined as amendments that significantly changes the service being delivered. Such amendments require a formal amendment complete with a revised Attachment 3: Fiscal Year Program Budget.

COST REIMBURSEMENT PROGRAM BUDGETS

1. “Minor” changes (i.e. changes that do not significantly change the service being delivered) to line item entries in a cost reimbursement program budget are considered to be an informal amendment. The guidelines for creating and submitting an informal amendment are as follows:

- a) Any changes to line items that occur WITHIN a budget category (i.e. Direct Care/Program Staff, Occupancy, Other Direct Care/Program Staff, Direct Administrative Expenses, Agency Administrative Support) that change the total

of that category to an amount of 10% or less of its current amount should be reported to the relevant DDS office on an informal basis.

- b) Any changes that occur to amount of 10% or less BETWEEN budget categories should be reported to the relevant DDS office on an informal basis. **Such amendments may require approval at the discretion of the Regional Office.**

- c) **NOTE: “Informal” line item amendments for cost reimbursement contracts terminating on June 30 or earlier in a given fiscal year must be submitted to the Regional Contract office no later than August 1 after the close of the fiscal year.**

2. “Material” changes (i.e. changes that DO significantly change the service being delivered) to line item entries in a cost reimbursement program budget are considered to be a formal amendment complete requiring a revised Attachment 3: Fiscal Year Program Budget. Any changes to line items that occur WITHIN a budget category (i.e. Direct Care/Program Staff, Occupancy, Other Direct Care/Program Staff, Direct Administrative Expenses, Agency Administrative Support) that change the total of that category to an amount GREATER THAN 10% of the currently approved amount OR any changes that occur to amount GREATER THAN 10% BETWEEN budget categories shall be considered material amendments and will require a formal amendment.

I. PURCHASE OF SERVICE ATTACHMENT 6: CAPITAL BUDGET

The Capital Budget Form can be downloaded from:

<http://www.mass.gov/anf/docs/osd/forms/attachmts/pos6.doc>

FY _____ Contractor Name: _____ * If Federal Funds, CFDA #: _____

**PURCHASE OF SERVICE ATTACHMENT 6: CAPITAL BUDGET:
For Purchase of Capital Assets with Commonwealth Funds**

Program Name:	Document ID#:	MMARS Program Code:	Program Type	UFR Prog. #	
Item to Be Purchased	Need For Item		Quantity	Estimated Unit Cost	Estimated Total Cost

DEPARTMENT USE ONLY: Check the appropriate box: **Total Cost:** _____

Capital items purchased by the Contractor:

Capital items purchased by the Commonwealth (object code M11):

Only capital items, as defined in 808 CMR 1.02, may be procured through a capital budget with Commonwealth funds. The following are not eligible to be procured through this capital budget: capital items defined under 808 CMR 1.02 which includes capital items that are not moveable, an asset or group of assets that are below the Contractor’s capitalization level, or items not approved by the Department. Title to all capital items purchased by the Contractor through this capital budget shall vest with the Contractor (with certain restrictions). Title to all capital items purchased by the Commonwealth through this capital budget and the M11 object code shall vest with the Commonwealth.

* Pursuant to the provisions of OMB Circular A-122 a capital budget that utilizes federal grant funds to acquire capital items for use in programs receiving any federal grant funds may not be used unless the Department receives prior written approval from the Federal awarding agency(ies). Capital items of furnishings and equipment purchased with Commonwealth funds that are to be owned by the Contractor and used in programs receiving federal grant funds may only be acquired using a capital budget if the revenue and expense associated with the capital items are budgeted and disclosed in the UFR as a separate revenue and cost category of the program.

Use of assets acquired with Commonwealth funds should be clearly disclosed in the financial statements. The asset(s) should be disclosed on the UFR Balance Sheet in the plant fund if the Contractor holds title or in the Custodian fund if the Commonwealth holds title. The revenue derived from the capital budget when the asset is purchased should be disclosed in program services on the UFR Statement of Activities and in the appropriate program(s) on the Supplemental Revenue Schedule A. Capital assets, whether owned by the Contractor or the Commonwealth, should be depreciated and disclosed in Supplemental Expense Schedule B and Schedule B-1 as a non-reimbursable cost when incurred, using the schedule of service lives issued by the Operational Services Division. See also 808 CMR 1.05(2)(d).

The assets furnished through a capital budget must be labeled and kept on file in the Contractor's written inventory, which notes the number and description of assets, source of funding, acquisition cost and location of the assets, pursuant to 808 CMR 1.04(5). In addition, the Contractor must follow disposition standards in 808 CMR 1.04(5).

I, _____, an authorized signatory for _____ (the Contractor), hereby certify that the Contractor’s capitalization level established for financial statement purposes by the board of directors is: an asset or group of assets of non-expendable personal property having a useful life of more than one year and an acquisition cost of \$ _____

_____ (Signature)

_____ (Title)

_____ (Date)

Schedule of Asset Service Lives/Depreciation

There are capitalization and depreciation requirements for human and social services contractors. The financial statements and unaudited schedules of the UFR and the contractor's records must segregate, capitalize and depreciate those assets in Commonwealth-funded programs which are material, have a useful life of more than one year, and a cost exceeding the capitalization level established by the contractor for financial statement purposes.

An asset should be capitalized if it is expected that it will be useful for more than the current period (typically a one year period). For non-profit organizations, the Financial Accounting Standards Board (FASB) Concepts Statement No. 6 indicates that capital assets are assets used for the operating purposes of the organization over long periods of time in order to produce scarce goods or services that have the capacity to satisfy human wants and needs. For a commercial organization, this statement defines capital assets as assets purchased by a for-profit company for production of services or goods rather than resale. However, for some items subject to loss or excessive usage or having relatively low value in relation to other assets of the organization, e.g., portable tools, the decision to capitalize may be less obvious. In these instances, a contractor should set up rules to define capitalization criteria.

One expedient guideline for many companies is the amount of the expenditure. For instance, for some organizations assets costing less than \$500 for each item (or in aggregate), while for others assets costing less than \$800 may be considered immaterial and may be expensed. Those items with an acquisition cost greater than \$500 (or \$800) may be capitalized. Assets that are capitalized then need to be depreciated in accordance with generally accepted accounting principles.

The American Institute of Certified Public Accountants (AICPA) defines depreciation as a system of accounting which aims to distribute the cost or other basic value of tangible capital assets (less salvage, if any) over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation. Depreciation for the year is the portion of the total charge under such a system that is allocated to the year.

The OSD Schedule of Asset Service Lives utilizes either the useful life contained in the Modified Accelerated Cost Recovery System (MACRS) of the Internal Revenue Service or a shorter useful life. The MACRS depreciation periods have been designed for depreciating assets used in offices, manufacturing, nonresidential real property, residential rental property and low-income housing. The MACRS depreciation periods are recognized by members of academia, federal income tax guides and tax services, publications by prominent members of the AICPA and higher education accounting text books as having lower depreciation recovery periods (i.e., shorter) than actual useful lives. In addition, MACRS depreciation tables are frequently used to estimate useful lives when computing depreciation disclosed in GAAP financial statements.

Pursuant to 808 CMR 1.00, OSD has issued the following Schedule of Asset Service Lives to specify the depreciable life that is used to determine the amount of allowable depreciation expense for the asset categories listed. This listing is not exhaustive. The service lives of assets not properly includable within any of the following categories shall be determined in accordance with OSD guidelines. Please contact the OSD Audit Bureau in these circumstances.

Note: Capital items purchased via a capital budget (either by the department or by the contractor) for use by a human and social services contractor are capitalized and depreciated by the contractor but are non-reimbursable. However, the contractor must record the free use of or benefit received from the asset in its UFR and must maintain the appropriate inventory records (see 808 CMR 1.04 (5)). Please see the Purchase of Service Capital Items Procurement Policy.

Expanded Capital Asset Purchasing Guidance

February 3, 2012

The following information is intended to provide expanded guidance to DDS staff and provider organizations regarding the proper methods of acquiring and reimbursing providers for capital assets. This guidance document is based on OSD's Purchase of Service (POS) Capital Items Procurement Policy, dated August 3, 2007 and attached to this expanded guidance document. OSD's policy:

...recognizes that the Commonwealth typically should not own capital items and then lend them to human and social service contractors, but rather, when necessary, these contractors should receive funding from the Commonwealth to procure necessary capital items of furnishings and equipment to serve the Commonwealth's clients.

OSD's policy presents the relevant regulatory provisions and contract forms, followed by the three options available to departments when procuring capital items. **All DDS and provider staff involved in the contracting process should become very familiar with the attached OSD capital assets policy and related forms and guidance materials. Questions regarding how this policy should be applied may be directed to the DDS Contracts Office or directly to OSD.**

Definition of Capital Asset

OSD regulations establish a two-part definition of "capital asset" under 801 CMR 1.02. See below:

A Capital Item is:

- a) an asset or group of assets of nonexpendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the capitalization level established and certified by the Contractor in accordance with generally accepted accounting principles for financial statement purposes; or
- b) a repair, betterment or improvement or a group of repairs, betterments or improvements of non-movable assets which costs more than \$500 in aggregate and which adds to the permanent value of an asset or prolongs its useful life for more than one year.

Key Elements of Capital Asset Definition

The definition above contains a number of basic concepts that all parties should be familiar with.

Asset or Group of Assets

The regulatory definition includes not just single-item capital assets but also is intended to govern situations in which a group of like or related assets are being purchased. A simple and useful example to use for a group of like or related assets is the case of a dining room set (i.e. a table and a matching set of chairs). In this case, each item of the set is not considered separately for purposes of determining whether the purchase is a capital purchase. Rather, the items are taken together as a group of related assets for this purpose. Naturally, there may be situations that present a less clear case for whether the assets should be considered to be a group or single items. In these cases, guidance should be sought from the DDS Contract Office or directly from OSD.

Useful Life of More than One Year

Capital items are intended by definition to have a useful life of more than one year. As such, they are not “expendable” items, like supplies and certain items of equipment.

Provider Capitalization Level

Each provider must have a formally approved “capitalization level,” which is the dollar amount equal to or above which items with a useful life of over one year are considered to be capital assets. Providers are required to include this capitalization level on all Capital Budget forms.

There is an upper limit for provider capitalization levels. It is \$5,000 which may be found in OSD Update 08-03 RE: POS Capital Items Procurement Policy. This amount ties into the Federal amount contained in OMB Circular A-122.

Repairs, Betterments, Improvements over \$500

An important part of the OSD regulations is the provision that states that repairs, betterments or improvements costing more than \$500 and that add to the permanent value of an asset or prolong its useful life for more than one year are considered to be capital assets and are subject to the same requirements for procurement and reimbursement as assets over the provider’s capitalization level. In general, this limitation on the dollar amount essentially precludes the Department from reimbursing a provider directly for improvements to their program buildings under a Capital Budget. Instead, such activities must be depreciated in subsequent years according to the OSD schedule of asset lives.

Moveable Assets

The Capital Budget form and related process may only be used in cases where moveable capital assets are needed to support a provider’s program operations. The Capital Budget agreement should describe the asset in sufficient detail to identify the key characteristics of the item to be purchased. As in the case of “like items,” there may be situations that present a less-clear case for whether an asset should be considered to be a “moveable” item. In these cases, guidance should be sought from the DDS Contract Office or directly from OSD.

Non-Moveable Assets

These assets, which include large fixtures or mechanical units with a useful life of one year or greater and a value over the provider's capitalization level, as well as major improvements and building renovations over the \$500 OSD limit, may **only** be acquired directly by the provider agency. A cost allowance for depreciation and interest relating to the financing of such assets may be included in DDS contract budgets, in accordance with OSDs regulations and guidance materials.

Requirements for Capital Asset Acquisitions

Open and Free Procurement

OSD regulations state that capital assets must be acquired through the solicitation of bids and proposals consistent with generally accepted accounting practices. This generally involves getting three or more bids for a particular item. Competition should be, as much as is practicable, open and free, and providers should maintain a written record of the solicitation. DDS staffs involved in authorizing the purchase of capital items may, as a good business practice, request a copy, a summary, or a provider certification regarding the solicitation details from providers for internal DDS records.

Inventory Requirement

All capital purchases must, under OSD regulations, be labeled and included in the provider's written inventory system. Inventory records must contain, at a minimum, the number and description of the capital assets, the source of funding, the acquisition cost, and the detailed location of each item.

Disposition Requirements

In cases in which the provider contractor holds title to a capital asset under OSD policy, there are two relevant provisions regarding the disposition of capital items. First, if the item is fully depreciated under the OSD schedule of useful lives (attached), the contractor may retain the property. In cases where the item is not fully depreciated, the item and its title may be returned to DDS, transferred to an alternate provider, or retained by the provider and sold with the remaining undepreciated value or proceeds from the sale paid back to the Commonwealth or applied toward programs or purchases directly benefiting the Department's clients, all as directed by the purchasing department, in this case, DDS.

Options for Acquiring Capital Assets

OSD guidance provides three options that may be used by departments to acquire capital assets for program purposes.

Option 1: Reimbursement

Under this option, a provider purchases a capital item and retains title to it. Over the course of the asset's useful life, DDS may reimburse the provider for depreciation and interest (if any) expenses relating to the purchase of the particular asset. Depreciation and interest amounts associated with capital assets are commonly included in DDS negotiated program budgets.

Option 2: Commonwealth Purchase

Under this option, the Commonwealth purchases the asset in question and makes it available to a provider through a free use agreement. This approach is generally not employed by DDS and will not be covered in this guidance document.

Option 3: Contractor Purchase

Option 3 refers to situations in which DDS authorizes the acquisition of a particular capital asset, the provider, in turn, purchases the authorized assets, and DDS reimburses the provider for the cost of the acquired item, after receiving adequate documentation to support the conclusion that the authorized item was properly procured and received by the provider. In general, these purchases are done in cases in which the contract supporting the program has three or more years remaining, although OSD allows capital purchases for providers with contracts with less than three years remaining, subject to the **prior written approval** of the Commissioner or the Chief Financial Officer.

Capital Budget Requirement

All capital assets procured under Option 3, above, must be authorized via the completion by the provider of an Attachment 6: Capital Budget document. This document sets forth the proposed assets to be purchased, the need for the item(s), the limitations, conditions, inventory and reporting requirements relating to the use and disposition of the assets, and specifies the provider's capitalization level. It must be signed by an authorized signatory of the provider organization.

Note Regarding Use of MA/LUSAs for Capital Purchases

MA/LUSAs are, by definition, unit rate agreements constructed for the purpose of providing *services* and not capital assets. Existing rules pertaining to the use of Capital Budgets to reimburse providers for capital asset purchases also require that such purchases be made via cost reimbursement contracting arrangements, which are not compatible with the MA/LUSA unit rate restriction. For these reasons, **MA/LUSAs may not be used as a mechanism to reimburse providers for capital assets.**

Capital Asset Purchasing Process

Below we have set forth a process for DDS purchasing offices to employ when purchasing capital assets. This process should be incorporated into relevant Policy and Procedure and Internal Control documents at the local level.

1. Provider submits request to DDS Area Office to purchase an item or array of items.
2. DDS Area Office reviews request to make sure that: requested items are necessary for operation of program; they are correctly characterized as allowable Capital purchase (i.e. moveable items); and cost of the items (or combined cost of related group of assets) is in excess of provider's stated capital purchase limit.
 - a. Non-moveable assets (such as a bathroom renovation) may not be purchased except by provider having the work completed and including allowable interest (if any) and depreciation expense in program service budget.

- b. Items costing less than a provider's capitalization level must be added to the program service budget and not processed via a capital budget.
3. Throughout this capital asset request process, the provider and relevant DDS staff will need to communicate in order to determine level of funding commitment prior to Department formally authorizing a particular purchase.
4. Department authorizes spending commitment by signing a Standard Contract Form with the Capital Budget Form as supporting documentation. The Capital Budget form will include the provider's applicable capitalization level. In addition, the provider should also complete a copy of the OSD Capital Asset Agreement—Addendum. This document should reflect the same items contained on the Capital Budget form. It should also be signed by an authorized signatory of the provider organization.
 - a. Contract should be coded under 3191
 - b. Non-MA Open Order may not be used
 - c. Contract must be executed prior to purchase of approved capital items.
5. Once the purchase is authorized by the Department, the Provider should obtain no fewer than three bids on each item to be purchased. In rare cases in which this is not possible, due to the nature of the item proposed for purchase, a detailed statement from the provider as to why it was not feasible to obtain three bids may be provided. Please note: There may be cases in which providers complete the competitive procurement process prior to the authorization of the purchase and the completion of required contract documentation. This is also acceptable.
6. Provider purchases asset in a manner consistent with the Capital Budget.
7. Provider submits invoice for payment
 - a. Goods must be delivered within fiscal year of contract duration
 - b. Invoices must document items purchased including the following information per OSD Capital Asset Purchasing policy:
 - i. VIN # for vehicles purchased under this process,
 - ii. Serial #, Model # to identify other equipment,
 - iii. Service contractor's inventory identification label # and location of asset,
 - iv. Amount paid, documented by a copy of the invoice from the seller to the provider (bill of sale).
 - v. Documentation shall also include a completed copy of the OSD Capital Asset Agreement—Addendum, which relates to the need for providers to reimburse the Commonwealth for the trade-in or scrap value of certain assets upon their retirement or disposal. This document should reflect the same items contained on the original Capital Budget form. It should also be signed by an authorized signatory of the provider organization.
8. The Department may review bid information to ensure that a competitive procurement was conducted and that best value is being provided (a copy of bids may be kept with contract file)
9. Documentation of capital purchase must be maintained with the contract that supported the request.

Ongoing Review of Capital Budgets

The Central Office Contracts Unit will be reviewing capital budget documents and capital purchases on an ad hoc basis.

As noted above, this guidance should be reviewed carefully and by all involved in DDS contracting activities. If questions or concerns arise regarding this information, please feel free to call the DDS Contracts Office or OSD for additional consultation.

OSD Update

The Operational Services Division
One Ashburton Place, Room 1017
Boston, MA 02108

08-03

TO: Chief Fiscal Officers, Department Heads, General Counsels, MMARS Liaisons and Procurement Management Team Members, Purchase of Service Contract Officers
FROM: Ellen Bickelman, State Purchasing Agent
DATE: August 3, 2007
RE: ☞ *For POS Only:* Purchase of Service (POS) Capital Items Procurement Policy

Summary

This OSD Update presents the *Purchase-of-Service (POS) Capital Items Procurement Policy*, which was effective September 1, 1998. This policy has been refreshed as of the above date and completely replaces OSD Update 99-17, issued October 6, 1998. There are no major changes to this policy. The policy was refreshed in order to update regulatory provisions, policy references and contract forms. The policy was developed to provide flexibility in assuring Purchase of Service (POS), i.e., human and social service, contractors can acquire needed capital items of furnishings and equipment, particularly for start-up programs. Questions regarding the *Purchase of Service (POS) Capital Items Procurement Policy* may be directed to the Operational Services Division, Bureau of Audit at (617) 720-3300.

This policy recognizes that the Commonwealth typically should not own capital items and then lend them to human and social service contractors, but rather, when necessary, these contractors should receive funding from the Commonwealth to procure necessary capital items of furnishings and equipment to serve the Commonwealth's clients. This policy presents the relevant regulatory provisions and contract forms, followed by the three options available to departments when procuring capital items.

Regulatory Provisions

The policy has been adopted in conjunction with regulation 808 CMR 1.00: *Compliance, Reporting and Auditing for Human and Social Services*. The relevant provisions are printed below.

808 CMR 1.02 Capital Item A Capital Item is:

- c) an asset or group of assets of nonexpendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the capitalization level established and certified by the Contractor in accordance with generally accepted accounting principles for financial statement purposes; or
- d) a repair, betterment or improvement or a group of repairs, betterments or improvements of non-movable assets which costs more than \$500 in aggregate and which adds to the permanent value of an asset or prolongs its useful life for more than one year.

808 CMR 1.03(8) Procurement of Contractor Furnishings, Equipment and Other Goods and Services All procurements of furnishings, equipment and other goods and services by or on behalf of a Contractor shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Capital items, as defined in 808 CMR 1.02, shall be acquired through solicitation of bids and proposals consistent with generally accepted accounting principles.

808 CMR 1.04(5) Inventory of Equipment and Furnishings and Other Goods Any Contractor in possession of capital items, as defined in 808 CMR 1.02 shall label, maintain and keep on file a written inventory of the property in accordance with generally accepted accounting principles. The Department may specify additional inventory requirements for Capital Items acquired with funds from the Commonwealth. Upon termination of the Contractor's contracts with the Department, Capital Items acquired with Commonwealth funds under a capital budget shall be subject to the following disposition standards:

- (a) if the Department holds title, the item shall be returned to the Department or transferred to another Contractor, as directed by the Department;
- (b) if the Contractor holds title and the item has been fully depreciated it shall be retained by the Contractor, or;
- (c) if the Contractor holds title and the item has not been fully depreciated, the item and its title shall be returned to the Department, or transferred to another contractor, or the item may be retained or sold by the Contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale, as determined by the Department.

808 CMR 1.05(2)(d) Certain Depreciation Depreciation on assets acquired under a capital budget approved by a Department and held in trust for the Commonwealth of Massachusetts or depreciation on assets acquired under a capital budget approved by a Department to which the Contractor holds title under the terms of the contract.

808 CMR 1.05(4) Current Expensing of Capital Items All costs attributable to the current expensing of a Capital Item.

Contract Forms

The following contract forms reflect the capital items procurement policy. In addition to these forms, the *Purchase of Service Attachment Instructions for Human and Social Service* document (<http://www.mass.gov/anf/docs/osd/pos/contract.doc>) contains detailed instructions for all of the attachments, including the two attachments below.

Purchase of Service – Attachment 3: Fiscal Year Program Budget
<http://www.mass.gov/anf/docs/osd/forms/attachmts/pos3.doc>

Purchase of Service - Attachment 6: Capital Budget <http://www.mass.gov/anf/docs/osd/forms/attachmts/pos6.doc>

Options

This policy consists of three options. A Commonwealth department may choose to use any one or all of the options, as it deems appropriate.

Option 1 - Reimbursement The department may reimburse the contractor for incurred depreciation and interest expense related to capital items owned by the contractor and used in the delivery of services to Commonwealth clients. Departments should ascertain the contractor's capitalization level when the contract is negotiated (see *Purchase of Service - Attachment 3: Fiscal Year Program Budget*). The contractor holds title to the capital items procured under Option 1.

Option 2 - Commonwealth Purchase The department may purchase, in accordance with 801 CMR 21.00, and retain title of furnishings and equipment using the M-11 object code. The furnishings and equipment are then made available to the contractor as free-use items in the delivery of services to Commonwealth clients. Option 2 must be carried out consistent with the provisions of the *Fixed Assets - Acquisition Policy*.

The following requirements apply:

- Contractors must maintain and inventory Commonwealth-owned, free-use equipment and furnishings in accordance with 808 CMR 1.04(5). Said inventory shall contain the number and description of assets, source of funding, acquisition cost and location of each item.
- Depreciation expense associated with capital items of furnishings and equipment provided under Option 2 is to be carried on the *Uniform Financial Statements and Independent Auditor's Report (UFR)* statements and schedules and in contract budgets as a non-reimbursable expense. Departments should also exclude such expenses when establishing a non-negotiated rate.
- Upon termination of the contractor's contracts with the department, any capital items of furnishings and equipment owned by the Commonwealth must be returned to the Commonwealth or transferred to another contractor, as directed by the department.
- Federal grant funds may be used by departments for Commonwealth purchases of capital items of furnishings and equipment only if the benefit received by the contractor from the use of the capital items (monetary value) is disclosed in the budget and the *UFR* as free-use items.

Option 3 - Contractor Purchase The department may provide the contractor with funds for the procurement of capital items of furnishings and equipment that have been identified in a capital budget page of a multiyear or renewable contract with a term of three or more years remaining. Under Option 3, furnishings and equipment are procured by the contractor in accordance with 808 CMR 1.03(8) and are owned by the contractor (with certain restrictions).

The following conditions apply:

- Capital items of furnishings and equipment that are contained and certified as capital items in the contractor's capital budget page must meet the definition of a capital item in 808 CMR 1.02. In addition, the contractor must inventory capital items in accordance with 808 CMR 1.04(5) and said inventory shall contain the number and description of assets, source of funding, acquisition cost and location of each item.
- Upon termination of the contractor's contracts with the department, any capital item procured under Option 3 that is not fully depreciated is subject to the following disposition options, as directed by the department: the item and its title may be returned to the department, or transferred to another contractor, or the item may be retained or sold by the contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale. The department should provide written authorization to the contractor of which option is to be used, based on financial and programmatic considerations that give best value to the Commonwealth.
- Depreciation expense associated with capital items of furnishings and equipment provided under Option 3 is to be carried on the *UFR* statements and schedules and in contract budgets as a non-reimbursable expense. Departments should also exclude such expenses when establishing a non-negotiated rate.
- Capital Purchase with Federal Funds: Pursuant to the provisions of OMB Circular A-122, a capital budget and federal grant funds may not be used to furnish federally defined capital items to be owned by the contractor for use in programs unless the department receives prior written approval from the federal awarding agency(ies). Federally defined capital items to be owned by the contractor not receiving prior written approval from the federal awarding agency(ies) may only be furnished and reimbursed through depreciation or a federally approved use allowance. The federal government defines capital items of equipment as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization (contractor) for the financial statement purposes, or (b) \$5000.
- Capital items of furnishings and equipment purchased with Commonwealth funds rather than federal funds, that are to be owned by the contractor and used in programs receiving federal grant funds may only be acquired using a capital budget if the revenue and expense associated with the capital items are budgeted and disclosed in the *UFR* as a separate revenue and cost category of the program. In addition, capital expenditures must be separately billed for by the contractor and the department must utilize a separate MMARS accounting line.

- In certain circumstances, a department may wish to permit procurement of capital items by the contractor for contracts or procurements with less than three years remaining. This may occur only with the prior written approval of the department head or chief financial officer.

Relevant Provisions of 808 CMR 1.00

808 CMR1.03(8) (New Provision)

(8) Procurement of Contractor Furnishings, Equipment and Other Goods. All procurement of furnishings, equipment and other goods by or on behalf of a Contractor shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Capital items as defined in 808 CMR 1.5(4)(a), shall be acquired through solicitation of bids and proposals consistent with generally accepted accounting principles.

808 CMR 1.04(5) (Revised)

(5) Inventory of Equipment and Furnishings and Other Goods. Any Contractor in possession of capital items, as defined in 808 CMR 1.05(4)(a) shall label, maintain and keep on file a written inventory of the property in accordance with generally accepted accounting principles. The Department may specify additional inventory requirements for capital items acquired with funds from the Commonwealth. Upon termination of the Contractor's contracts with the Department, capital items acquired with Commonwealth funds under a capital budget shall be subject to the following disposition standards:

- (a) If the Department holds title, the item shall be returned to the Department or transferred to another Contractor, as directed by the Department
- (b) If the Contractor holds title and the item has been fully depreciated it shall be retained by the Contractor, or;
- (c) If the Contractor holds title and the item has not been fully depreciated, the item and its title shall be returned to the Department, or transferred to another Contractor, or the item may be retained or sold by the Contractor after paying the Commonwealth for the remaining value of the item not fully depreciated or the proceeds of the sale, as determined by the Department.

808 CMR 1.05(2)(d) (Revised)

(2) Certain Depreciation

- (a) Depreciation on assets acquired under a capital budget approved by a Department and held in trust for the Commonwealth of Massachusetts or depreciation on assets acquired under a capital budget approved by a Department to which the Contractor holds title under the terms of the contract.

808 CMR 1.05(4)(a) (Revised)

(4) Current Expensing of Capital Items: All costs attributable to the current expensing of a capital item. A capital item is:

1. An asset or group of assets of non-expendable personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the capitalization level established and certified by the Contractor in accordance with generally accepted accounting principles for financial statement purposes.

The following is an extract from 808 CMR 1.00

J. UFR PROGRAM COMPONENT AND TITLE DESCRIPTIONS

Refresh Date: July 27, 2006

PROGRAM REQUIREMENTS

The terms of the contract program budget govern the selection of the proper program components and titles to be used in the UFR. For example, if the contract program budget indicates that the program is to employ a "Social Worker-LICSW," UFR Title number 124 in category number 1 Direct Care/Program Staff, this position must also be disclosed in the UFR using the same UFR component and title. The program specifications included in the proposal furnished in response to the Request for Proposal (RFP) that was negotiated and incorporated into the contract with the purchasing department must be consistent with the definitions and specifications contained in this document. The UFR title number for a LSW (UFR Title number 126) should be disclosed if a LSW is currently employed in the program rather than the LICSW that was included in the negotiated contract. In most cases it is expected that budgeted and negotiated position should be the same as those disclosed in the UFR.

CREDENTIALS

Direct care/program staff components are defined, in part, in terms of required credentials. It is not relevant to the proper classification of a position that a staff member who currently fills the position possesses a particular credential, unless the RFR or contract requires the credential for that position.

FUNCTION vs. TITLE

Direct care/program staff components are determined by their program function. For example, a licensed physician should be classified as a "Physician" only if the physician provides medical care as outlined in the component definition. If a physician performs the functions of a "Program Director", then that component should be used.

It is the functional definition, not the title, which governs the definition of a particular component and UFR Title. A program's "Residence Director", for example, may be classified as a Program Manager, Program Director, Assistant Program Director, or Supervisor, depending upon the actual functions performed and the scope of responsibility involved. Yet the fact that the titles used in this document coincide with titles customarily used by program staff does not settle the question of proper classification. Again, this document's definitions govern. A particular program position is classified as a "Case Worker/Manager", rather than as a "Counselor", if the required credentials and responsibilities coincide more closely with the definition of "Case Worker".

This document is formatted to establish a hierarchical schedule for the components, e.g. the Program Director would report to the Program Manager, and a Direct Care/ Program Staff I would report to a Direct Care/ Program Staff Supervisor. All direct care or program staff positions which are not specifically defined in this document, such as American Sign Language interpreter, phlebotomist, instructor, resource librarian, medical technician, health education specialist, work procurement specialist, certified occupational therapy assistant, etc., should be classified as "Direct Care/Program Staff I, II or III," as appropriate.

CATEGORY 1: DIRECT CARE / PROGRAM STAFF

Category 1 includes direct care staff/program staff required to provide direct care or deliver other primary program services. (Components 101-151)

PURCHASE OF SERVICE - UFR TITLES

Refresh Date: July 27, 2006

UFR Title #	UFR Titles (for a more complete title description, please refer to the UFR Audit & Preparation Manual)
101	Program Manager - An individual who has overall responsibility for the management, oversight and coordination of a programmatic functional area within or across programs as in the case of "Medical Director", "Residence Director", "Clinical Director", "Education Director", etc.
102	Program Director - An individual who has overall responsibility for the daily operation of one or more individual programs.
103	Assistant Program Director - An individual who reports directly to the Program Director, acts for the Program Director in his/her absence and functions as an adviser/assistant to the Program Director.
104	Supervising Professional - A credentialed professional (physician, psychiatrist, social worker, nurse, etc) whose primary responsibility is the supervision of fellow credentialed professionals in the daily performance of their programmatic functions.
105	Physician - A Board of Registration in Medicine-licensed or Board eligible physician (including all medical specialties, e.g. dentist, podiatrist except psychiatrist # 121) with either an MD or DO degree whose primary responsibility is delivery or supervision of health/medical care to program participants.
106	Physician's Assistant - An individual registered with the Department of Public Health and functioning in that capacity.
107	Registered Nurse-Master's, Nurse Psychiatric Mental Health Specialist, Nurse Practitioner- An individual who possesses a Master's degree in nursing and/or is registered with the Board of Registration in Nursing and is functioning in any of the above capacities.
108	Registered Nurse - An individual who is licensed as a registered nurse by the Board of Registration Nursing (both BSNs and others) and is engaged in nursing duties.
109	Licensed Practical Nurse - An individual licensed as a practical nurse by the Board of Registration in Nursing and is engaged in

	nursing duties.
110	Pharmacist - An individual licensed by the Board of Registration in Pharmacy and functioning as a pharmacist.
111	Occupational Therapist - An individual registered as an occupational therapist by the Board of Registration in Allied Health Professionals and who provides occupational therapy.
112	Physical Therapist - An individual registered as a physical therapist by the Board of Registration in Allied Health Professionals and who provides physical therapy.
113	Speech/Language Pathologist, Audiologist - An individual registered as a Speech/Language Pathologist or as an Audiologist by the Board of Registration in Speech/Language Pathology and Audiology and provides speech and hearing therapy.
114	Dietitian/Nutritionist - An individual registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association or an individual with a Bachelor's or Master's degree in nutrition, who provides nutritional counseling, education, supervision of meal/menu preparation.
115	Special Education Teacher - An individual certified in special education by the Massachusetts Department of Education and working in that capacity.
116	Teacher - an individual certified by the Massachusetts Department of Education, other than special education and working in that capacity.
117	Day Care Director - An individual certified by the Office for Children as a Day Care Director and functioning in that capacity.
118	Day Care Lead Teacher - An individual certified by the Office of Children as a Day Care Lead Teacher and functioning in that capacity.
119	Day Care Teacher - An individual certified by the Office of children as a Day Care Teacher and functioning in that capacity.
120	Day Care Assistant Teacher/Aide - An individual certified by the Office of Children as a Day Care Assistant Teacher/Aide and functioning in that capacity.
121	Psychiatrist - An individual licensed to practice medicine, certified or eligible for certification by the American Board of Psychiatry and primarily involved in rendering or direction psychiatric care.
122	Psychologist - Doctorate- An individual holding a doctoral degree in psychology (including behavioral psychologist and neuropsychologist) or a closely related field, registered by the Board of Registration of Psychologist and primarily engaged in providing diagnostic evaluations, psychological counseling/therapy or development and implementation of behavioral treatment plans.
123	Clinician (formerly Psychologist - Master's) - An individual holding a Master's degree in psychology (including behavioral psychologist) or a closely related field and primarily engaged in providing diagnostic evaluations, psychological counseling/therapy or development and implementation of behavioral treatment plans.
124	Social Worker -LICSW - An individual registered as a Licensed Independent Clinical Social Worker by the Board of Registration of Social Workers and primarily engaged in providing diagnostic evaluations, psychological counseling/therapy or development and implementation of behavioral treatment plans.
125	Social Worker-LCSW- An individual registered as a Licensed Certified Social Worker by the Board of Registration of Social Workers and providing social work services.
126	Social Worker - LSW- An individual registered as a Licensed Social Worker by the Board of Registration of Social Workers and providing social work services (including casework/counseling).
127	Licensed Counselor - An individual with at least a Master's degree in counseling or a related field who is licensed by the appropriate Board of Registration and provides counseling services.
128	Certified Vocational Rehabilitation Counselor - An individual certified by the Committee on Accreditation of Rehabilitation Facilities and provides vocational rehabilitation counseling.
129	Certified Alcoholism Counselor, Certified Drug Abuse Counselor, Certified Alcoholism/Drug Abuse Counselor- An individual registered as either an Alcoholism Counselor, Drug Abuse Counselor or both by the Massachusetts Board of Substance Abuse Counselor Certification and who provides counseling services for substance abusers.
130	Counselor - An individual who provides therapeutic or instructive counseling to program clients/service recipients.
131	Case Worker/Manager - Master's - An individual possessing at least a Master's degree in counseling, or a closely related discipline, providing casework/case management services including service eligibility determination, service plan development, service coordination, resource development advocacy, etc.
132	Case Worker/Manager - An individual , providing casework/case management services including service eligibility determination, service plan development service coordination, resource development advocacy, etc.
133	Direct Care/Program Staff Supervisor - A staff member whose primary responsibility is the supervision of nonprofessional or paraprofessional direct care/program staff in the performance of their programmatic functions or whose duties involve significant responsibility for program operations or logistics. A supervisor in this component may also perform direct client care.
134	Direct Care/Program Staff III - Staff, other than those described above, requiring a doctoral or Master's degree, specific credentials or licensure, significant experience, or specialized skills, who are responsible for the general daily care of program clients/service recipients or for primary program service delivery.
135	Direct Care/Program Staff II - Staff, other than those described above, requiring a Bachelor's degree, experience or specific skills who are responsible for the general daily care of program clients/service recipients or for primary program service delivery.
136	Direct Care/Program Staff I - Staff, other than those defined above, who are responsible for the general daily care of program clients/service recipients or for primary program service. This includes relief employees on payroll.
137	Program Secretarial, Clerical Staff - Individuals required to carry on direct program clerical activities such as program or client record keeping.
138	Program Support, Housekeeping, Maintenance, Janitorial, Groundskeeper, Drive, Cook - Individuals who carry our direct program activities for client health and safety.
150	Payroll Taxes - Employer's share of FICA, MUCIA, Worker's Compensation Insurance, FUTA (in the case of for-profit providers) and other payroll taxes paid by the employer on the direct care/program staff listed in category 1 on the budget.
151	Fringe Benefits - Life, health and medical insurance, pension and annuity plan contributions, day care, tuition benefits and all other non-salary/wage benefits received by direct care/program staff listed in category 1 on the budget.

**CATEGORY 2: OTHER DIRECT CARE/PROGRAM RESOURCES
(Components 201 - 216)**

Category 2 includes resources, other than direct care staff/program staff, required to carry out direct client care or support the delivery of other primary program services.

201 Direct Care Program Consultants

Individuals possessing specialized experience or expertise in matters of individual service plan design, program design, program management or operation and who are engaged to provide technical assistance on matters of appropriate client care, program design, etc.

202 Temporary Help

Individuals, in some cases, possessing specialized skills or expertise in client care and treatment, engaged on an "as needed", "on call", "standby" or "specialist" basis, to provide client care or treatment. This component includes contracted relief staff services furnished by individuals or organizations.

203 Provider Reimbursement/Stipends

Per diem reimbursement to independent individual care givers (not provider agency employees), such as family day care providers, specialized home care providers or foster families, to compensate them for their personal services and/or to defray all or a portion of the costs associated with client care in their homes.

(NOTE: For DDS programs: Provider Reimbursements for Shared Living /Placement Services are entered here.)

204 Staff Training

Formal instruction to meet professional continuing education requirements, to satisfy program licensure requirements or to enable direct care staff to acquire and maintain acceptable levels of knowledge, skill and proficiency for the routine performance of their assigned functions. (Note that the staff time devoted to training should be included in the calculation of required direct care staff FTEs. Staff tuition/educational benefits paid, as a condition of employment should be included in "Fringe Benefits" Component 151.)

205 Staff Mileage/Travel

Direct care staff travel within the normal scope of the staff members' assigned duties. This category includes use of a staff member's own vehicle, as well as public transportation.

206 Subcontracted Direct Care

Client care or other program services which are a primary and integral part of the total program but which are furnished to the program, under contract, by a separate program of another provider.

207 Meals

Food, cooking materials, and other resources (other than staff compensation) required for the planning, preparation and serving of meals and snacks to clients and, if programmatically necessary, to staff.

208 Client Transportation

The resources (other than staff compensation) associated with transportation of clients to, from or among program sites as a routine part of program participation. This component shall include Provider owned vehicles (depreciation and finance charges) or leased vehicles, all associated operating, maintenance, insurance and non-owned auto insurance costs, contracted transportation, etc.

209 Incidental Health/Medical Care

The resources (other than staff compensation) associated with providing health/medical care on an as needed or emergency basis (including ambulance services) to clients of a program, which is not primarily intended to address the on-going medical needs of program participants.

210 Medicine/Pharmacy

The resources (other than staff compensation) associated with on-site inventory and administration of medically necessary prescription pharmaceuticals, patent medicines and medical supplies.

211 Client Personal Allowances

Cash paid to program clients as an incentive to program participation, as part of instruction in money management, to give clients a measure of economic independence, to acquire personal items, or other program purpose. This category includes "indirect" client wages (i.e. "wages" which are not related to the economic value of the client's work product/productivity).

212 Provision of Material Goods, Services and Benefits

Resources, other than those defined above, associated with provision of material goods or services - such as prosthetic and adaptive devices, nutrition or day care vouchers - to (for DDS this includes "on behalf of") eligible program clients/recipients.

(NOTE: For DDS programs: Direct Payments to Individuals/Families are entered here.)

213 Data Processing

Resources (other than staff compensation) associated with the collection, analysis and reporting of data as a program and agency administrative support function, including owned (depreciation and finance charges only) or leased computer hardware and software. These resources should be included in the agency and program administrative support component 410.

214 Commercial Income Resources (This item has been moved to a new line and is no longer included in the program budget)

Resources, other than those defined above, such as consumer wages, benefits and taxes, raw materials, production equipment and consumables, freight and transportation, and marketing associated with the use of client labor in the production or assembly of a product or service as a part of the client's program of vocational training/rehabilitation or sheltered employment.

215 Program Supplies, Materials and Expendable Items of Equipment and Furnishings

Program residential, educational, vocational and recreational supplies and materials and expendable items of equipment and furnishings that are not required to be capitalized and are routinely needed for ongoing direct client care or program service delivery.

216 Program Support

This component is for direct administrative program support that is associated with a single program(s) and **NOT** allocated across programs as an indirect cost or identified in component title 410 as other professional fees, office equipment depreciation, professional insurance, and working capital interest or in title 390 as leased office equipment and office furnishing used in a program. This component **does not include personnel**; all program personnel must be included in components 101 - 138. Program support is for costs separately identified in a POS program contract budget of Attachment 3 on the line titled Program Support. These costs are intended to meet the specialized and/or non-recurring needs of the program, which may include maintenance, and accreditation fees. This component title may not include resources defined as Non-Reimbursable Costs by regulation 808 CMR 1.05 (Effective 2\1\97 808 CMR 1.05), e.g., certain consultant compensation, current expensing of capital budgets, fund-raising etc.

CATEGORY 3: OCCUPANCY

301 Program Facilities

Owned or leased program facilities and grounds (including rent or mortgage interest and building depreciation). This component may not include the costs of principal or amortizations, that are non-reimbursable costs under 808 CMR 1.00.

390 Facilities Operation, Maintenance, Equipment and Furnishing

This category includes all resources associated with occupancy; furnishing and maintenance of program facilities, including all utilities (other than telephone), contracted housekeeping, laundry, contracted grounds keeping, routine repair and maintenance, leased office equipment and office furnishings and equipment and routine replacement (depreciation and finance charges only) of capitalized program furnishings and equipment, property and general liability insurance, real estate taxes or payments in lieu of taxes, and all other such resources/expenses. This component does not include the cost of employees on the payroll (see 138 - Program Support Housekeeping, Maintenance, Groundskeeper, Janitorial, Driver, and Cook).

CATEGORY 4: ADMINISTRATIVE SUPPORT

410 Agency and Program Administration and Support

This component is for resources related to administration and support activities that are both directly related to a program (direct costs) and those that are related to the overall direction of the agency. Cost associated with the overall direction of the agency may cross all agency programs and are not directly associated with any one program or a combination of programs but provide indirect benefit to those programs (indirect administration).

Costs providing indirect benefit to programs include administrative costs, management and general costs and all resources reasonably necessary for the policy making, management, and administration related to the overall direction of the organization that are separately disclosed in the Statement of Functional Expenses Administration (MNGT. & GEN) column. Indirect administrative costs are also allocated to a program or programs as Admin (M&G) Reporting Center cost on 53E of the Admin (m&g) column of Organization Supplemental Information Schedule A to line 53E of the Program Supplemental Information Schedule B. These indirect Agency Administration costs indirectly benefiting a POS program are included in Attachment 3 of the POS contract budget on the line titled Agency Admin Support Allocation. In addition, this title includes administrative costs directly benefiting a program or programs that are charged to that program or programs as direct costs (ex. program other professional fees, program professional insurance, and program office equipment depreciation and working capital interest). Administrative costs that directly benefit programs are included in Attachment 3 of the POS contract budget on the line titled Other Direct Administrative Costs.

Leased office equipment and office furnishings that are used in a program are disclosed in title 390 Facilities Operation, Maintenance, Equipment and Furnishing and included in Attachment 3 of the POS contract budget on the line titled Other Direct Administrative Costs.

All other administrative costs that directly benefit a program and meet the specialized needs of the program are contained in title 216 Program Support. Title 216 Program Support costs are included in Attachment 3 of the POS contract budget on the line titled Program Support.

Administration and support costs include but are not limited to administrative, clerical and support personnel (use title 137 if clerical and support personnel are assigned to a program), office supplies and materials, leasing or routine replacement (depreciation and financing interest only) of office equipment, telephone, costs related to occupancy of administrative premises, advertising and recruitment, postage, printing and reproduction, administrative and support staff training and travel, officer/director/trustee compensation, parent organization costs, legal, auditing, management consultants and other professional fees, working capital interest, directors and officers insurance, and all other similar or related resources/expenses. The reimbursable price may not include resources defined as Non-Reimbursable Costs by regulation 808 CMR 1.05 (Effective 2\1\97 808 CMR 1.05), e.g., fund-raising or discriminatory benefits. See component title 216 Program Support for related activity.

K. DEPARTMENT OF DEVELOPMENTAL SERVICES
SERVICE SUMMARY FORM

Contract Number:		Master Agreement Number:				
Activity Code:		Program Budget Number:			Monthly Ready Pay Requested:	
Provider Information				Department Information		
Provider Name: Address: City, State, Zip Code: Contact Person: Telephone: Fax: Email: Vendor Code:				Region: Address: City, State, Zip Code: Contact Person: Telephone: Fax: Email:		
<p>Engagement of Services: This Service Summary Form acknowledges the level of services that have been negotiated between the provider and DDS. All funding levels are subject to appropriation. A new Service Summary Form must be completed and filed with all amendments that change any information contained on this form. The provider and DDS signatory must sign this form for the initial engagement of services and any subsequent amendment(s) to the services.</p>						
Version #	Brief Description	Dates of Service	Number of Units	Unit Rate	Unit Type	Budget Funding Level (\$)
Initial						
2						
3						
4						
5						
6						
7						
8						
9						
10						
Budget Total						
For the Provider Signature: _____ Printed Name: Date:				For the Department Signature: _____ Printed Name: Date:		

DETAILED INSTRUCTIONS FOR COMPLETING THE SERVICE SUMMARY FORM (SSE)

The DDS Service Summary Form is an informal document to be completed whenever a new standard rate contract budget or an amendment to an existing rate contract budget is created or amended. This document is not a formal attachment to the Standard Contract Form, but is intended as a document that states the current number of units, unit rate, and funding level agreed to by both DDS and the provider at the time of entering into the new budget or amended budget.

Master Agreement: N/A

Contract Number: The assigned 20 digit DDS contract ID #

Program Budget Number: Indicate the number that identifies the budget being amended in a multi-budget contract

Activity Code: Enter the Activity Code

Provider Information: As indicated

Department Information: As indicated

Version #: Sequentially numbered lines for each amendment in turn.

Brief Description: Enter the activity code title and, for amendments, the change to the prior entry, as a minimum. Also, enter "Amendment" when the Service Summary Form accompanies a formal amendment.

Dates of Service: Enter the dates of service for the original budget (or the amendment), as appropriate

Number of Units: Enter the number of units for the original budget (or the amendment), as appropriate

Unit Rate: Enter unit rate for the original budget (or the amendment), as appropriate

Unit Type: Enter the unit type (days, hour, month) for the original budget (or the amendment), as appropriate

Budget Funding Level: Enter the funding level agreed upon by the provider and the DDS authorizing authority for the original budget (or the amendment), as appropriate

Budget Total: Enter the total number of units to date, the dates of service to date, the current unit rate, and the current funding level

Provider Approval Signature and Date: Original

Department Approval Signature and Date: Original

COMMONWEALTH OF MASSACHUSETTS

V. CHANGE IN CONTRACTOR IDENTITY FORM

This Change in Contractor Identity Form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. **Any changes or electronic alterations, by either the Department or the Contractor, to the official printed language of this form as published by ANF, CTR and OSD shall be void.** Any transfer of Contract performance to a successor entity must be made consistent with the original procurement, executed contemporaneously with the Contractor change in identity and prior to the current scheduled termination date of the Contract.

Unless otherwise specified, the Department shall complete all information on this Form.

CURRENT CONTRACTOR NAME:	DEPARTMENT NAME:
Vendor Code:	
ADDRESS:	ADDRESS:
<u>INDICATE REASON FOR CONTRACTOR IDENTITY CHANGE</u>	
The Current Contractor is undergoing a structural change that will result in a change in its Tax Identification Number (TIN). Indicate structural change and resulting change in Contractor identity (e.g., merger, buyout, consolidation, etc.):	
<i>A justification statement explaining (a) the Contractor's Change in Identity; (b) that the transfer of contract performance to the successor entity is consistent with original procurement; (c) and is in the best interest of the Department MUST be included in the Procurement File.</i>	
<u>CURRENT CONTRACTOR INFORMATION:</u>	
_____ (Check here if multiple contracts are affected; leave this section blank and attach a completed "Contractor Change Schedule of Multiple Contracts" instead.)	
Current Doc. ID Number Of Contract Being Amended: _____	
Current Total Contract Dates (Includes Original Contract Start Date and Amendments): START _____ TERMINATION _____	
Current Total Maximum Obligation Of Contract: \$ _____ (Inclusive Of ALL Previous Amendments)	
<u>CURRENT CONTRACTOR AMENDED INFORMATION</u>	
_____ (Check here if multiple contracts are affected; leave this section blank and attach a completed "Contractor Change Schedule of Multiple Contracts" instead.)	
Amended Termination Date of Contract Performance for Current Contractor: TERMINATION DATE: _____	
Amended Estimated Maximum Obligation for Current Contractor: \$ _____ (Reflects total of any obligations to date and final payments to be made. Final payments are based upon actual performance and the Department may adjust this remaining Maximum Obligation with written notice to the Current Contractor without further formal amendment.)	
NEW CONTRACTOR (SUCCESSOR ENTITY) NAME:	ADDRESS:
TIN # or Vendor Code:	
<u>NEW CONTRACTOR INFORMATION:</u>	
_____ (Check here if multiple contracts are affected; leave this section blank and complete the attached "Contractor Change Schedule of Multiple Contracts".)	
Doc. ID for New Contractor: _____ (For remaining contract period with New Contractor)	
Contract Performance Dates for New Contractor: START: _____ TERMINATION: _____ (Start Date must comply with 801 CMR 21.00 or other applicable law.)	
Estimated Maximum Obligation for New Contractor \$ _____ (This amount does not include remaining amounts to be paid by the Department to the Current Contractor indicated above. The total maximum obligation, transactions and payments will be based upon actual performance and any final payments made to the Current Contractor and the Department may adjust the Maximum Obligation and transactions accordingly with written notice to the New Contractor without further amendment.)	

REQUIRED ADDITIONAL ATTACHMENTS FOR NEW CONTRACTOR

All applicable items below must be completed and executed by the New Contractor if not currently on file.

- _____ Commonwealth of Massachusetts Substitute W-9 Form, if not currently on file (mandatory)
- _____ Applicable Commonwealth Terms and Conditions (Standard) or (for Human and Social Services) is attached or has been filed with the Office of the Comptroller. (mandatory)
- _____ Contractor Signature Verification Authorization Form (if required under original RFR)
- _____ Affirmative Action Form or Plan Attached (Employers Only) (Large Procurements Only) (if required under original RFR)
- _____ SOMWBA MBE/WBE Certification/Participation Form (if required under original RFR)
- _____ Consultant Contract Mandatory Submission Form Attached (only if Consultant Contract - HH or N01-N14 Object codes)
- _____ Written Disclosure Of Current and Anticipated Related Parties Pursuant to 808 CMR 1.04 (if required under RFR)
- _____ Northern Ireland Notice & Certification Forms pursuant to M.G.L. C. 7 section 22C. (mandatory)

Additional Requirements or Information:

IN WITNESS WHEREOF: The Department certifies that this Contractor Change is necessary for the completion of essential Contract performance and is in the best interests of the Department and is consistent with the original Contract Procurement for this Contract. The Department, the Current Contractor and the New Contractor hereby agree to the terms of this Change in Contractor Identity Form and certify under the pains and penalties of perjury that this Change in Contractor Identity Form and any information contained herein, or attached hereto, is complete and accurate and complies with all applicable laws and regulations, as evidenced by the execution by their authorized signatories which shall be effective as of the last date executed by all the parties below. The New Contractor agrees to perform all of the remaining requirements of this Contract in accordance with the terms, requirements and certifications in the applicable Contract under the original procurement, and any amendments thereto, as filed under the "Current Doc. ID Number of Contract" above, and in accordance with any additional terms or requirements included as part of this Change in Contractor Identity Form.

CURRENT CONTRACTOR: _____ **DEPARTMENT:** _____

X: _____ **X:** _____
(Signature) (Signature)

NAME: _____

NAME:

TITLE: _____

TITLE:

DATE: _____

DATE: _____

NEW CONTRACTOR: _____

X: _____
(Signature)

NAME: _____

TITLE: _____

DATE: _____

The Department must file the original record copy of any Change in Contractor Identity Form with the original record copy of the Contract being amended. Record copies will be located at either OSC, OSD or the Department if the Department has been approved for Contract delegation authority.

COMMONWEALTH OF MASSACHUSETTS
CHANGE IN CONTRACTOR IDENTITY FORM
INSTRUCTIONS

This form should be used when a Contractor has a material change in identity due to a structural business change such as a merger, buyout, consolidation or other business arrangement, and the Department has chosen to transfer the remaining performance of the Contractor to the successor entity resulting from the identity change (referred to as the “New Contractor”). Please refer to the “Guidelines for Material Changes in Contractor Identity” in the *Procurement Policies and Procedures Handbook* for assistance in determining whether a transfer of Contract performance is appropriate.

This single form replaces the need for a Contract Amendment Form to terminate the current Contract and a Standard Contract Form executed by the New Contractor for the transfer of remaining Contract performance. This form also serves to document transaction and historical contract identification information to track both current and new Contracts as part of the Contract Procurement File. Both the Current and New Contractor (Successor Entity) execute this Form which is then approved by the Department’s execution of the Form.

If the Change in Identity affects “Multiple” Contracts, please complete information for EACH Contract using the “Contractor Change Schedule of Multiple Contracts.”

Current Contractor Information - As The Contract Appears Before The Contractor Identity Change

Current Contractor Name and Address: Enter the name and address of the Current Contractor as it appears on the Contract(s) with the Department before the Contractor Identity Change.

Indicate Reason For Contractor Identity Change: Identify the type of structural business change (such as a merger, buyout, consolidation, etc.) that will result in a change in the Current Contractor’s identity requiring a new Tax Identification Number. (If just the Legal Name of the Contractor is changing, without an underlying business change, this form **is not** needed. See “Handbook.”)

Current Doc. ID of Contract Being Amended: Enter the number which identifies the Current Contract as it appears before the Contractor Identity Change.

Current Total Contract Dates: Enter the effective start and termination dates as these appear on the Current Contract, including any amendments that have previously been made to these dates, **before** the Contractor Identity Change.

Current Total Maximum Obligation of Contract: Enter the current Maximum Obligation of the Contract (including any amendments that have been made to date) as it appears before the Contractor Identity Change. Enter “N/A” for a contract with no Maximum Obligation (i.e., rate contract, statewide contract or qualified list contract without a Maximum Obligation.)

Current Contractor Amended Information - Termination Date And Remaining Payments Under Current Contract

Amended Termination Date: Enter the date that the Current Contractor will terminate performance.

Amended Estimated Maximum Obligation for Current Contractor: Enter any amounts that are due or are anticipated to be due to the Current Contractor for completed performance up until the amended Termination Date. Payments are based upon actual performance and may be adjusted by the Department with written notice to the Current Contractor without a formal amendment. Enter “N/A” for a contract with no Maximum Obligation (i.e., rate contract, statewide contract or qualified list contract without a Maximum Obligation.)

New Contractor Information - Transfer Of Remaining Contract Performance To Successor Entity

New Contractor (Successor Entity) Name and Address: Enter the name of the successor entity or resulting entity after the structural business change to the Current Contractor. Enter the Tax Identification Number of the New Contractor, or the new Vendor Code Number if known.

Doc. ID for New Contractor: Enter a number which identifies the Contract for the transfer of remaining Contract performance to the New Contractor. There may be instances where the New Contractor is technically not “new” but rather is an existing Contractor with a contract for the same type of services that the department decides to amend to incorporate the transfer of remaining contract performance.

Contract Performance Dates for New Contractor: Enter effective start and termination dates for the transfer of remaining Contract performance to the New Contractor, which must comply with 801 CMR 21.00, other applicable law and the original procurement. Please note that for contracts subject to M.G.L. c.29 s.29A or s.29B, the original Secretariat authorization for services remains valid and no new Service Request (SR) is required.

Estimated Maximum Obligation for New Contractor: Enter the Maximum Obligation for the transfer of remaining Contract performance to the New Contractor. Enter “N/A” for a contract with no Maximum Obligation (i.e., rate contract, statewide contract or qualified list contract without a Maximum Obligation.) Payments are based upon actual performance and may be adjusted by the Department with written notice to the New Contractor without a formal amendment.

Attachments: New Contractor must complete all required attachments if not currently on file.

CHANGE IN CONTRACTOR IDENTITY FORM - CONTRACTOR CHANGE SCHEDULE OF MULTIPLE CONTRACTS

(Complete Information Under Each Section for Each Separate Contract. Attach as Many Additional Copies of this Form as Necessary.)

DEPARTMENT _____

Current Doc. ID of Contract	Current Contract Effective Start Date	Current Contract Termination Date	Current Maximum Obligation of Contract (if applicable)	Amended Termination Date of Current Contractor Performance	Amended Estimated Maximum Obligation For Current Contractor
			\$		\$
Doc. ID for New Contractor	New Contractor Effective Start Date of Performance	New Contractor Termination Date of Performance	Maximum Obligation for New Contractor (if applicable)	Additional Requirements or Information:	
			\$		
Current Doc. ID of Contract	Current Contract Effective Start Date	Current Contract Termination Date	Current Maximum Obligation of Contract (if applicable)	Amended Termination Date of Current Contractor Performance	Amended Estimated Maximum Obligation For Current Contractor
			\$		\$
Doc. ID for New Contractor	New Contractor Effective Start Date of Performance	New Contractor Termination Date of Performance	Maximum Obligation for New Contractor (if applicable)	Additional Requirements or Information:	
			\$		
Current Doc. ID of Contract	Current Contract Effective Start Date	Current Contract Termination Date	Current Maximum Obligation of Contract (if applicable)	Amended Termination Date of Current Contractor Performance	Amended Estimated Maximum Obligation For Current Contractor
			\$		\$
Doc. ID for New Contractor	New Contractor Effective Start Date of Performance	New Contractor Termination Date of Performance	Maximum Obligation for New Contractor (if applicable)	Additional Requirements or Information:	
			\$		

The total Maximum Obligation, transactions and payments will be based upon actual performance by the Current and New Contractor and the Department may adjust the Maximum Obligation and transactions accordingly with written notice to the Current and New Contractor (as applicable) without further amendment.

Guidelines on Material Changes in a Contractor's Identity

A change in contractor identity occurs whenever the legal name, organizational structure, Tax Identification Number (TIN), Vendor Code or other change occurs in a contractor from what was presented in the contractor's response to a procurement. However, certain changes, such as a legal name change, are insignificant to the underlying contract(s) and should merely be recorded to keep the procurement file up-to-date. Other changes are considered material and may affect not only the underlying contract(s) but also the integrity of the original procurement. This document outlines some of the most common material changes to a contractor's identity and provides basic guidance to departments. Departments are strongly encouraged to seek the advice of their legal counsel whenever these circumstances arise. In addition, a Change in Contractor Identity Form is available for documenting information in such circumstances. This form is also located in the appendix.

MATERIAL CHANGE IN CONTRACTOR IDENTITY: MERGER, BUYOUT OR CONSOLIDATION

A merger, buyout or consolidation is a **structural change** to a contractor in which the assets and liabilities of one or more organizations (one being the contractor) are combined into a single successor entity. Both mergers and consolidations are governed by state statutes, which require a formal filing with the Secretary of the Commonwealth and that certain conditions are met. One important provision to note, under M.G.L. c.156B, s.80 and c.180, s.10A, is that the new entity assumes all of the obligations and responsibilities of the prior entity. Other forms of a material change in the contractor (whether or not a new Taxpayer Identification Number, TIN, results) are described at the end of this document.

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

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

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

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

Contract Options

The applicable Commonwealth Terms and Conditions contain provisions on termination and contract assignment which assert the Commonwealth's control over whom it does business with. While a contractor may freely make whatever organizational or structural changes it wishes, if it involves a material change to its identity (as noted by a change in Taxpayer Identification Number) then its existing contracts may terminate. Further, a contractor may not unilaterally assign, or delegate its responsibilities or duties under a contract to another entity. The procuring department has the sole authority to determine what to do with the remaining contract performance in all such instances.

When faced with a material change in contractor identity, a department must determine what is in the best interests of the department, what actions are appropriate to prevent a lapse in any necessary services or a project, the most cost-effective actions given available resources and funding, and what actions will maintain the integrity of the original procurement A

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

Departments have the following options:

1. Continue the contract through assignment to the successor entity, upon review and justification as outlined further in this document;
 - Award a short-term interim contract to the intended successor entity on a competitive procurement exception basis (in order to permit adequate time for a review and/or re-procurement and potential transition to a new contractor);
 - Award the remaining contract performance as an interim contract to another contractor (the next best value bidder from the original procurement) on a procurement exception basis, if justified;
 - Consolidate the contract into another existing contract (if permitted under the original procurement);
 - Allow the contract to lapse or terminate the contract;
 - Suspend or terminate the current contract and re-procure the contract; or
 - Take any other permitted contracting or procurement action.

Contract Assignment

A contract assignment refers to an assignment of the remaining contract performance to a successor contractor or to another department. A department should approve the assignment of the remaining contract obligations, duties or responsibilities under a procurement to another entity only in certain circumstances. These are usually limited to circumstances in which a contractor's identity changes (through a merger, buyout, consolidation or other underlying business relationship) resulting in the formation of a new successor entity and the department has determined that the assignment of the remaining performance is essential. In addition, departments may freely assign a contract to another Commonwealth department.

When a contractor is planning a merger or other significant organizational transformation, it is important that the relevant state departments be informed as early as possible; at least 60 days advance notice of the potential change is desirable. If the contractor holds contracts with multiple procuring departments, each procuring department will then undertake a review and may grant approval of a contract assignment, including the establishment of conditions, if appropriate, or may take any other contract management action it deems advisable under the specific circumstances. A decision that one procuring department makes does not apply to any other procuring department who may hold contracts with the same contractor.

Evaluating the Impact of a Material Change in Contractor Identity

The primary responsibility of department staff is to protect the interests of the Commonwealth and of the interests of consumers being served under any contract. As with most 801 CMR 21.00 procurement decisions, department staff are free to use their judgment in determining the scope of review, the relative importance of various factors and how to gather necessary or desirable information, prior to making any contracting decisions. The department is responsible for maintaining documentation of its review process and all other relevant information in the procurement file.

In considering whether or not to permit a contract assignment when there is a material change in contractor identity, a department should conduct and document a thorough review of the potential impact. Factors to consider include:

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

For most commodity contracts, and many service contracts, where clients or a program are not involved, a requested contract assignment to a successor entity should be carefully scrutinized. Since the successor entity was not one of the original

bidders, this entity has no automatic right to the remaining contract performance, absent extreme or special circumstances that warrant a contract assignment. Instead, departments should consider an interim contract with bidders under the original procurement.

- **Original Procurement Requirements**

The successor entity must meet the same requirements as the contractor under the original procurement. Some of these requirements include basic qualifications under an RFR, years of experience, M/WBE status or subcontracts, consumer-controlled or non-profit organization status (which might affect its competitive ranking or eligibility for a contract award) and internal contract management capacity. Absent special circumstances, a resulting successor entity that does not meet or exceed the same material requirements as the contractor under the original procurement should not be awarded a contract performance assignment.

- **Qualifications of Successor Entity**

The assignment of the remaining contract performance under a procurement should not be made to a successor entity unless the level of quality of performance will be maintained or increased. Departments should consider the new entity's service delivery philosophy, financial stability, capacity to service the contract, new and existing staff resources and qualifications, program plan and other factors to ensure the successor entity offers the equivalent or a better value than the current contractor.

- An assignment is only appropriate if the new contractor's key personnel, financial stability, staff resources and qualifications are equal to or better than the current contractor. If the financial stability, capability to perform and the core individuals responsible for performance are the same, it is easier to argue that an assignment is appropriate. If not, the department must be able to defend that the assignment is more appropriate than the award of an interim contract to the next ranked best value bidder or a new procurement.

- **Price or Cost Implications**

In order to maintain the integrity of the original procurement, assignment of the remaining contract performance under a procurement should not be made unless the cost or price implications of the assignment do not materially increase or change. The successor entity should be assuming the contractual responsibilities outlined in the current contractor's RFR response at the same costs and prices as negotiated under the original contract. However, the department and the successor entity (new contractor) may negotiate any costs or prices as authorized under the original RFR and contract. Other factors to consider are economies of scale factors, blending rates, special costs, etc.

- **Non-Profit Status**

Additional considerations arise when the original contractor was a non-profit. If an organization's non-profit status is affected by a material change in contractor identity, there are legal, policy and administrative factors that departments should consider. Many federal funding sources used are limited to non-profit or governmental recipients; thus, departments should review any funding source restrictions (e.g., in the Catalog of Federal Domestic Assistance) in such circumstances. Often times there are public and community implications that departments should be aware of as well.

- **Assumption of Liabilities**

Will the successor entity assume all the obligations and liabilities of the prior contractor under prior year contracts within the current contract cycle of the contract to be assigned? While this is required in mergers and consolidations (see M.G.L. c.156B, s.80 and c.180, s.10A for relevant legal requirements in Massachusetts), in other situations, such as a contractual affiliation, the department should assure itself that all outstanding or potential obligations and liabilities will be covered.

+ *For POS Only:* The successor entity should be aware of Commonwealth audit and audit resolution policies and understand that it may be liable in future years for findings of audits to be conducted of prior year activities.

ADMINISTRATIVE PROCESS FOR A MATERIAL CHANGE IN CONTRACTOR IDENTITY

In cases involving a material change in contractor identity that may affect more than one department, the affected departments may identify a principal procuring department or another agreed upon state agency to assume responsibility for coordinating and facilitating communication among other affected departments. It is important to note, however, that the decision on whether or not to assign or terminate a contract may vary within and among departments, depending on the program specific elements of the contract review as well as other administrative factors.

Departments must also identify and plan the appropriate administrative steps necessary if the review indicates a contract assignment is desirable. Probably the most critical issue facing departments affected by material changes in contractor identity is the need to prevent any disruption of client services or service projects or programs that are in progress. To insure the timely authorization to assign performance, departments must coordinate the end date of performance and funding for the current contractor with the start date and remaining performance and funding for the successor or new contractor. Departments will need to allow sufficient time to gather and process information in order to determine the legal form of contractor change in identity and the corresponding administrative requirements, including tax status and board governance requirements.

Detailed discussions should be held with the current contractor as soon as possible to determine accurate and complete obligation levels for the contract(s) up to the date when contract performance will be assumed by the successor entity. These discussions must identify all services or service units which have been delivered and any outstanding or supplemental units expected to occur within the time frame determined. It is especially important to identify and review all payment invoices not yet submitted, or submitted and not yet paid and to identify and resolve any service delivery or reimbursement problems. As a special note, for all cost reimbursement contracts, the current contractor needs to assure that all incurred costs up to the planned transfer date have been identified and included in the final obligation amount. Once contract dates and funding levels for the current and successor contractors have been agreed upon, the department should prepare a Change in Contractor Identity Form, which serves to document the details associated with the change in contractor for the underlying contract.

Oversight departments do not usually play an active role in the review process, however, both the Operational Services Division (OSD), and the secretariats are available for consultation as needed. OSD can provide guidance on how a planned contractor change in identity might affect the underlying original procurement. In addition, OSD can issue regulatory interpretations. The secretariat may make policy determinations for cross-agency program/funding implications and determine principal procuring department or lead coordinator, if necessary.

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

Required Documentation

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

The successor contractor must complete and execute, as appropriate:

- request for verification of taxation reporting information (Massachusetts Substitute W-9 Format);
- the Commonwealth Terms and Conditions or Commonwealth Terms and Conditions for Human and Social Services for the successor entity (new contractor);
- a Contractor Change in Identity Form (in appendix) to document any remaining performance and payments to the current contractor and the balance of performance and anticipated amounts to be expended by the new contractor. The Contractor Change in Identity Form documents the new contractor’s commitment to assume all outstanding obligations and responsibilities under the current contract;
- any required attachments that were required under the original RFR (such as Contractor Authorized Signature Verification Form, Affirmative Action Plan Form, Mandatory Consultant Contractor Submission Form, Northern Ireland

Notice and Certification and any other attachments required by the department as part of the RFR) and, + *For POS Only*: Written Disclosure of Current and Anticipated Related Parties pursuant to 808 CMR 1.04.

The department completes a Vendor Update Form (VU form) and submits this plus the new W-9 and applicable Commonwealth Terms and Conditions to the Comptroller's Payee Unit to update the VEND table. The remaining contract documentation and MMARS transactions would be processed in accordance with standard contract processing and filing procedures.

OTHER TYPES OF CONTRACTOR CHANGE

For information purposes only, this summary describes common contractor business arrangements, from the least to the most integrated form of organizational combination/restructuring (except for merger and consolidation, which was described earlier). It is also important to note that people often use these terms informally to mean something different than the legal concepts underlying the terms as presented here, therefore departments should work closely with their legal departments when these situations present themselves.

These examples do not necessarily formally trigger the "assignment" clause, but may have an impact upon services which could justify a departmental review of the contract(s) anyway and follow up monitoring or other action as needed. If serious concerns arise, the contract may be terminated with an appropriate notice period in accordance with the applicable Commonwealth Terms and Conditions.

- **Management Agreement** - One party provides management services to another, as spelled out in a contractual agreement. The nature and scope of these agreements can vary greatly. This may or may not involve a delegation of some contract related responsibility which would be impacted by the assignment clause.

For POS Only: Also, reimbursement restrictions (see 808 CMR 1.00) and potential related party disclosure may apply.

- **Joint Venture** - A limited purpose undertaking by two or more parties. The venture may be set up through a contractual agreement (functioning as a partnership), or more formally by establishing a separate corporation, either for-profit or not-for-profit, to undertake the activity or to provide support. In a contractual joint venture, one contractor must act as the lead agency in terms of being a party to a Commonwealth contract (because the Commonwealth generally does not enter into multi-party contracts) and then subcontract with its venture partners. If a separate corporation is established and is intended to be the contractor, then it is treated like any other new vendor.
- **Contractual Affiliation** - Similar to a joint venture, but the undertaking is broader in scope in terms of services involved. The participating parties may jointly develop programs, combine resources or lend assistance. One example of a contractual affiliation is the formation of a network, through the establishment of a new organization in which each affiliating contractor is a member. In this case the new "network" corporation enters into service contracts on behalf of the network, and subcontracts with its member contractors.

+ *For POS Only*: Related party disclosure requirements will likely be triggered. From an accounting perspective the affiliated parties may be determined to be consolidated entities, which must then file audited financial statements accordingly. Should the department wish to permit a contract assignment to the network corporation, OSD recommends that the department condition its approval, and resulting contract, on all entities assuming responsibility for prior year obligations. In this way, should prior year audit or other issues arise, there will be access to resources to satisfy prior year obligations whether or not the prior entity continues to directly hold Commonwealth contracts.

- **Corporate Affiliation or Acquisition** - An action whereby one entity takes control of another (i.e., a parent/subsidiary relationship is established). In a not-for-profit this occurs through by-law changes so that the controlling organization appoints the directors of the subsidiary organization, which remains intact as a separate corporation.

+ *For POS Only*: In the above affiliation or acquisition, certain administrative requirements are triggered such as notification of changes to the Board of the acquired organization, and related party disclosures. The department may

wish to review the circumstances to determine whether the best interests of the Commonwealth and the consumers will still be served by the new arrangement.

Asset Purchase/Acquisition - A purchase of assets is a contractual arrangement where one organization purchases some or all of the assets, and possibly some or all of the liabilities, of another. The seller organization either ceases to exist or “dissolves” (a not-for-profit must petition the court for dissolution) or it is transformed into another kind of entity. In the latter case, the seller is no longer a service contractor - since it has nothing left to provide services with. In Massachusetts, if the seller is a public charity it must provide 30 days prior written notice to the Attorney General’s Public Charities Division before disposing of all or substantially all of its assets, if a material change in the nature of the activities conducted by the charity will result. The 801 CMR 21.00 contracts performed by the contractor (seller) are not “assets” that can be purchased by another organization. The department must determine how and by whom the services should now be delivered. Should a department determine that it is in the Commonwealth’s best interests to assign a contract in these circumstances, it should condition approval on the new entity assuming prior year obligations.

SPECIAL INSTRUCTIONS FOR A PROVIDER CHANGE OF ADDRESS

The provider

1. writes a short note to request the change of address, including the provider’s VC#, the old address, and the new address;
2. completes a Change in Contractor Identity form;
<http://www.mass.gov/anf/docs/osd/forms/assgtfrm.doc>
3. completes a new W-9 Form;
<http://www.mass.gov/osc/docs/forms/vendorcustomer/newmass-w9.doc>
4. completes a new Terms & Conditions for Health and Social Services;
<http://www.mass.gov/osc/docs/forms/contracts/termsconditions-hss.doc>
5. submits all four documents to relevant Regional Contract Office(s) for submission to the Central Office for filing with the Office of the State Comptroller