

Chapter 7

CONTRACT DOCUMENTS

7.0 CONTRACT DOCUMENTS

There are four (4) types of contract documents used in the procurement of commodities and contractual services. The four types are identified below, as 1) the Purchasing Card (Pcard), 2) the MFMP Purchase Order, 3) the MFMP Contract, and 4) the standard two-party written agreement. Each type of contract document shall incorporate and include as appropriate, a commodity description, specification or Scope of Services, the needed date for delivery of commodities or a Time Frame (start and end dates) for performance of services, payment and freight terms and/or Method of Compensation, and other legally required statements and/or provisions.

The selection of the type of contract document to use is a decision that should be based on the guidelines provided below. Each type of contract document is explained in greater detail in the numbered subsections that follow, and the type of contract document utilized should remain the same throughout the life of the contract, including any subsequent renewals, change orders, or modifications.

Category Two or less - procurement must be evidenced by a Purchasing Card transaction, an MFMP Purchase Order, MFMP Contract, or a Written Agreement. (Note: Pcard procurements must not exceed the cardholder's single transaction dollar limit).

Greater than Category Two - procurement must be evidenced by an MFMP Purchase Order, an MFMP Contract, or a Written Agreement with approved encumbrance. If for contractual services, the contract document must contain the provisions of **Section 287.058, F.S.**, and other provisions required by law, DMS, or DFS. Contractual service contracts greater than Category Three must have legal review.

7.1 PURCHASING CARD (PCARD)

Purchasing card (Pcard) transactions are used to procure commodities or services that are less than or equal to the dollar amount for Category Two. Pcards are intended to serve as a prompt and convenient means of contracting for commodities/services. Purchasing Card (Pcard) administration and Local Charge Accounts are addressed in

Procedure No. 350-030-010, Purchasing Card, however, the procurement requirements and considerations for use of the Pcard are addressed in this Manual.

7.1.1 The cost center should use the Pcard, in accordance with **Procedure No. 350-030-010, Purchasing Card**, to procure commodities not available from a Department warehouse or needed services when the total dollar amount does not exceed the Pcard single transaction limit, with the following exceptions:

7.1.1.1 Do not use the Pcard if additional contractual terms are needed to limit the Department's potential for risk and liability. An MFMP Purchase Order, MFMP Contract, or written agreement should be used in those cases.

7.1.1.2 Do not use the Pcard when committing the Department to an amount greater than Category Two for services and/or commodities (regardless of the time to complete the services, deliver the commodities, or the dollar amount of each single transaction). An MFMP Purchase Order, MFMP Contract, or written agreement with funds approval must be utilized as the contracting document. .

7.1.1.3 Do not use the Pcard as a method of payment for an MFMP contract document.

7.1.2 If the vendor does not accept the Pcard, then an MFMP Requisition must be completed for the cost center and submitted for processing.

7.2 MFMP PURCHASE ORDER (P.O.)

Purchase Orders (P.O.s) are generally used for commodity procurements and simple, clearly defined contractual services procurements. Contractual services Purchase Orders in excess of Category Two must have the provisions of **Section 287.058, F.S.**, and other legally required provisions included, referenced, or attached to the P.O., and must include legal review when greater than Category Three. (see section 7.2.7, below). In accordance with DMS State Purchasing Memorandum No. 01 (2013-2014), and effective October 1, 2013, any contract or Purchase Order that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract must include a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution.

P.O.s issued against DMS State Term Contracts must include a provision specifying a scope of work that clearly establishes all tasks that the Contract Vendor is required to perform and a provision dividing the work into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the Project Manager before payment. Each deliverable must be directly related to the scope of

work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

Currently, the Department's Purchase Orders are created in the MFMP system and encumbered in the P.O. module of the Contract Funds Management (CFM) system. **See Section 7.2.5 for "Creating a Requisition and Purchase Order in MFMP"**

7.2.1 An Unencumbered P.O. is a Department contract document that may be issued by the Requester or the Procurement Unit:

(a) For procurements with a total dollar amount of Category Two or less, the P.O. will be generated without waiting for the verification of funds encumbrance. The Requisition for an unencumbered P.O. must be completed in MFMP and submitted with the required documentation (quotes, approvals, etc.).

(b) For urgent unanticipated procurements that do not exceed \$2,500, following the purchase, the cost center must promptly create an unencumbered MFMP Requisition/order. The unencumbered Purchase Order that is created for these situations will be a confirming Purchase Order and a statement to that effect should be included, as a comment, on the MFMP Requisition. The box beside the statement "Do Not Send Purchase Order to Vendor?", in the header of the MFMP Requisition, should be checked.

7.2.2 An Encumbered P.O. is a Department contract document which may be used to:

(a) Contract for commodities and/or services at any dollar amount. If the P.O. is intended for contractual services in excess of the threshold dollar amount of Category Two, and the procurement is not from an existing contract, the provisions of **Section 287.058, F.S.**, and other required provisions shall be included, referenced or attached. For contractual services in excess of Category Three and when the procurement is not from an existing contract, the P.O. must have legal review and approval. For contractual services contracts less than or equal to Category Three, as well as complex commodity contracts of any dollar amount, legal review and approval should be obtained for contracts that have the potential for high risk and high liability for the Department.

(b) Authorize, encumber, and pay for commodities and/or service(s) under a Term Contract for an Indefinite Quantity. The Contract Number shall be referenced on the Purchase Order.

(c) P.O. contracts issued after July 1, 2011 for commodities and/or contractual services in excess of \$5 million must identify the specific **Appropriation Bill** number of the state funds that will be used to make payment under the contract in the first year of

the contract. It is recommended that the **Appropriation Bill** number be included as a comment on the MFMP Requisition.

(d) All contracts established after July 1, 2011, for commodities and /or contractual services in excess of \$1 million must include a contractual provision that allows for termination of the contract if the Contract Vendor is found to have been on the **Scrutinized Companies Lists**. It is recommended that the required provision be included as a comment on the MFMP Requisition or by including the **Purchase Order Terms and Conditions, Form 375-040-55**, as an attachment to the Requisition.

(e) Effective October 1, 2013, any contract or purchase order that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract must include a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution.

(f) When the P.O. exceeds the threshold amount of Category Two (currently \$35,000), **Form 375-030-91, Vendor Eligibility Check Prior to Contract Award**, should be completed by the Procurement Unit and attached to the Requisition in MFMP prior to contract execution.

7.2.3 Change Orders for Service and Commodity P.O.s: Change orders are revisions or modifications made to an existing P.O., as needed by the Requester or the Procurement Unit. In MFMP, change orders are denoted by sequential versions (V2, V3, etc.) added to the original Requisition and order number. Some revisions will necessitate that the Vendor receives notice of the changes by the MFMP system transmitting a “versioned” copy of the P.O., while others will not require the Vendor to be notified electronically. Those type of changes are usually transparent to the Contract Vendor, i.e., the Contract Vendor does not need to be advised of them, but are necessary for the Disbursement Operations Office or applicable District Financial Services Office to process payment. The Requester and/or Procurement Agent will determine if the revisions (change order) should be sent to the Vendor, or if revisions to the records in MFMP are only necessary for internal processes.

7.2.4 Confirming P.O.s: Occasionally a confirming P.O. may need to be issued for goods or services that have already been received or committed to, when the purchase is less than or equal to Category Two. While purchasing laws and rules do not prohibit this practice, in some circumstances, law and Department practices have certain restrictions that apply. **Section 339.135(6)(a), F.S.**, requires funds approval by the Department's Comptroller prior to making a commitment of funds. A blanket funds approval has been issued by the Department's Comptroller for purchases that do not exceed the threshold amount for Category Two.

The cost center should create a confirming, unencumbered MFMP Requisition/order using the quantities and prices from the invoice copy. It is very important for the MFMP Requisition/order to state in the item description that "this is a confirming Order for the commodities/services delivered on xx/xx/date - DO NOT DUPLICATE". The MFMP user/Requester will have the option of whether or not to send the order to the Vendor by checking or leaving blank the box on the first page of the Requisition that indicates "Do Not Send Purchase Order To Vendor?". For commodities, once the confirming MFMP Requisition has been submitted, approved, and is in "Ordered" status, the Requester must go into MFMP and record the receipt of that order to facilitate invoice processing.

7.2.4.1 Greater Than Category Two - Contract in Place

If commitments are made and/or commodities/services received in excess of Category Two prior to fund approval, but a contract has been established, a memorandum from the District or Assistant Secretary to the Department Comptroller requesting an after the fact funds approval is required. The memorandum should explain the circumstances, including the dollar amount, and the action to be taken to prevent recurrence. The memorandum should accompany the invoice when submitted for payment and be documented in the contract/P.O. file.

7.2.4.2 Greater Than Category Two - No Contract in Place

When commodities have been delivered or services rendered in excess of the threshold amount for Category Two without a contract in place, except in the case of a certified emergency, **DMS Form PUR 1010, Notice of Non-Compliance** must be completed and submitted to DMS State Purchasing in accordance with **Rule 60A-1.016, F.A.C.** A copy of the certified form must also be sent to DFS with the voucher authorizing payment.

Confirming contracts in excess of the threshold amount for Category Two will require a settlement agreement pursuant to the **Disbursement Handbook for Employees and Managers**, available at the following URL:

<http://cosharepoint.dot.state.fl.us/sites/OOC/DOO/HB/Shared%20Documents/Disbursement%20Handbook%20for%20Employees%20and%20Managers.pdf>

See the Contract Payment Grid in the Procurement Infonet site for further clarification.

<http://infonet.dot.state.fl.us/procurement/ccs/reference.htm>.

7.2.5 Creating a Requisition and P.O. in MFMP

Note: See **Chapter 8** of this Manual for information regarding attachments that must be attached to and submitted (if applicable) with the Requisition. See **Chapter 6** of this Manual for information about procurements that have Special Approval requirements.

7.2.5.1 Creating the Requisition

All Requisitions should be created in the State's electronic procurement system, MyFloridaMarketPlace (MFMP). New users must complete the required training and register for access to the MFMP system by completing **Form No. 375-040-51, MyFloridaMarketPlace User Registration/Update for E-Procurement**, and submitting to the Department's MFMP System Administrator in the Procurement Office.

7.2.5.1.1 MFMP training requirements and the web-based training lessons are available from a link on the Procurement Office website on the Department's Infonet. Contact the Procurement Office or District Procurement Unit in the event additional training is needed. The web-based training on the Procurement Office website is used for training new users, and is a reference resource for all users.

7.2.5.1.2 Additional guidelines, specific to the Department, are available in the "**MyFloridaMarketPlace Reference Guide**", also available on the Procurement Office Infonet website. MFMP users may find it beneficial to keep a printed copy of the **Reference Guide** at their desk for quick reference when working in the MFMP system. All Requisitions submitted by the Department should be created in accordance with this **Reference Guide** and the web-based training lessons. The Requisition title field should begin with the initials DOT and the cost center number.

7.2.5.2 Encumbering the Requisition

Procurements for commodities or contractual services in excess of the threshold amount for Category Two must have the funds encumbered through the P.O. module of the Department's Contract Funds Management (CFM) system, before the Requisition is submitted in the MFMP system. The MFMP user should create the Requisition in MFMP, but not "submit" it until the funds encumbrance has been approved in the CFM system. The Requisition should be "Saved" in MFMP while the CFM funds encumbrance approval is obtained. After receiving the approved encumbrance, the user returns to the 'saved' Requisition to input the encumbrance information in the "DOT Encumbrance Number" and "DOT Encumbrance Line Number" fields to complete and submit the Requisition in the MFMP system.

Purchase Orders that become effective July 1 may be submitted and approved prior to the actual funds encumbrance date when the encumbrance request has been "reviewed-approved" and the Purchase Order contains the following message: "Funds Approval is Contingent Upon Annual Appropriation by Legislature." This statement requires the requesting office to be responsible for verifying that funds were encumbered for the Purchase Order effective July 1.

However, for an unencumbered Purchase Order, the MFMP user may submit and the Procurement Unit may approve the Requisition without funds encumbrance (see **Section 7.2.1, Unencumbered P.O.s**).

7.2.5.3 Approving the Requisition

Requisitions in MFMP will follow the standard approval workflows established by the Department for “catalog” and “non-catalog” Requisitions. The approvals required by these workflows are determined by such factors as the dollar amount of the procurement, the commodity code used, and whether procurement is being made from a DMS State Term Contract (i.e., a “catalog” purchase) or from a non-DMS State Term Contract source (i.e., “non-catalog” purchase). Approvals in the system will move the Requisition along to the next Approver and ultimately generate the P.O. that is electronically transmitted to the Vendor.

7.2.5.3.1 Approvers should review the Requisition for the proper completion of basic information and all other special requirements or documentation before approving.

7.2.5.3.2 The Procurement Unit will determine if the information provided with the Requisition is sufficient. If not sufficient, it is recommended that the Requester is contacted for clarification and additional information or that the Requisition be denied, with a comment, and returned by the MFMP system to the Requester.

(a) The Procurement Unit will examine cost center authorization, cost distribution information, fiscal year funding, and the encumbrance information designated on the Requisition. The Procurement Unit will verify that an object code and a Batch number are provided.

(b) For commodities, the Procurement Unit will determine if the description and/or specifications are adequate and if the commodity is available with recycled content. The Procurement Unit will ensure the item description on the Requisition is clear and specific in order to procure the proper commodity.

(c) For services, the Procurement Unit will determine if the description/scope of services, the beginning and ending dates of performance and method of compensation are adequate to procure the needed service(s).

(d) The Procurement Unit will determine if all applicable attachments, comments, special approvals (see **Chapter 8**), etc., are included prior to approving the Requisition.

(e) The Procurement Unit will review and ensure that no confidential information is part of any MFMP attachment or comment. If confidential information is discovered, the Procurement Agent will redact the confidential information or reject the Requisition and

so indicate the correction(s) required of the requisitioner.

(f) The Procurement Unit will determine if the transaction is exempt from the MFMP Transaction Fee, in accordance with **Rule 60A-1.032, F.A.C.**, and if the reason for exemption is identified correctly on the Requisition.

7.2.5.4 Generate P.O. and send to Contract Vendor

When the final approval is given to an MFMP Requisition, the system will generate a P.O. number and transmit the order to the Contract Vendor in the manner specified by the Vendor (either Fax or E-mail) when they completed their Vendor registration in the MFMP system. The Requisition/order status changes at this time from “Submitted” to “Ordered”.

7.2.5.5 Archiving Requisitions

MFMP Requisitions that have been created and submitted but are no longer needed, should be archived and not deleted. This allows the history of that Requisition, which would reflect the work effort, individuals involved, problems, and time frames, to be retained for any future reference.

7.2.5.6 Deleting Requisitions

MFMP Requisitions that have not been submitted for approval may be deleted if the user no longer needs that information and the Requisition has never progressed beyond the “Composing” status. Once submitted, however, the history of the time, efforts, individuals, problems, etc., for each Requisition should be retained in the system by “Archiving” the Requisition, rather than “deleting”. All record of the efforts and history is removed from the system when the Requisition is deleted.

7.2.5.7 Receiving an Order for Commodities

When commodities ordered have been delivered or picked up, a “Receipt” for the commodities received must be recorded in the MFMP system to facilitate invoice processing and payment to the Vendor. A MFMP receipt should be completed as soon as the goods are physically received. An invoice cannot be paid without a completed receipt. Each MFMP Requester is responsible for recording the “Receipts” for their orders in the system. If a partial order is received, the actual quantities received should be recorded in the MFMP system as a partial receipt. See the MFMP website training lessons on the Procurement Office Infonet website, under **Exclusive MFMP Training Tours**, for more information.

7.2.5.7.1 Shipments delivered: Before signing the carrier's delivery receipt, the individual receiving the shipment/delivery (the "Receiver") must make sure the delivery address is correct, the number of cartons, etc., indicated on the receipt is correct, and that the cartons do not show any damage. If the shipment is incomplete or appears damaged, the Receiver must make a note to that effect on the delivery receipt, sign it, and ask the deliverer to sign. (see **Section 7.2.5.7.4** for details on noting damage.) A copy of the delivery receipt should be retained with the Receiving records.

7.2.5.7.2 Shipment inspection: After the deliverer has left, the Receiver should open the shipment and compare the items delivered to the items listed on the order and check for damages. (see **Section 7.2.5.7.4** of this procedure.)

7.2.5.7.3 Incorrect items received: If the wrong item is received the Receiver or someone from the requesting cost center should contact the Contract Vendor and inquire why the shipment is not as requested on the order. Then one of the following steps should be taken:

(a) If the item is different from that ordered, but is both similar and acceptable, the Requester should make note of the discrepancy and contact the Procurement Unit with information to make any necessary changes to the Purchase Order. Contact the Procurement Agent when the Purchase Order references a contract item. If the unit price difference is not in the Department's favor, then contact the Procurement Unit. If Mobile Equipment is not as specified on the Purchase Order, contact the Fleet Manager.

(b) If the item is different from that ordered and is UNACCEPTABLE, the Requester should immediately call the Contract Vendor to correct the problem. The problem and the call to the Contract Vendor should be documented and retained with the Receiving records. The item should not be used and the Receipt recorded in MFMP under item quantity "rejected". If the problem cannot be resolved, the Requester should immediately call the Procurement Agent.

7.2.5.7.4 Damaged shipments: In order to avoid confusion and unnecessary delays, the procedures listed below should be followed for all shipments received to detect damage. The individuals receiving shipments/deliveries should become familiar with the following procedures.

(a) Document any evidence of visible or concealed damage on all copies of the carrier's delivery receipt. Concealed damage can be noted as an unusual rattle within a carton or physical damage to the outside of the carton which might indicate concealed damage.

(b) Open the carton(s) and inspect the item(s) immediately after delivery, even if the items may not be used right away.

- (c) Report damages (visible or concealed) to the Contract Vendor immediately. The Purchase Order number, carrier name, copy of the carrier's delivery receipt, and a description of the extent of damage should be included in this report. Documentation of the damage and communications with the Contract Vendor should be retained with the receiving records.
- (d) Retain the item and its shipping container, including inner packing materials, until an inspection by the Contract Vendor has been performed.
- (e) Contact the Procurement Unit if assistance is needed.

7.2.5.8 Receiving Services with an Invoice Reconciliation (IR)

There is no "Receipt" recorded in the MFMP system for services. The satisfactory performance of services is acknowledged and recorded in MFMP after the invoice is received from the Contract Vendor. The Contract Vendor's invoice is routed through the MFMP system to the appropriate Requester via an **Invoice eForm** which generates an **Invoice Reconciliation (IR)**. The IR must be approved before payment is made to the Contract Vendor.

7.2.5.9 Invoicing

Contract Vendors should submit invoices directly to the Disbursement Operations Office in Tallahassee or to the District Financial Services Office, whichever is specified on the MFMP procurement document.

7.2.6 Blanket P.O.s are indefinite quantity term contracts that are used to authorize the procurement of specified commodities and/or services at specified pricing, for a specified time period, in estimated quantities as called for, not to exceed a specified total cost. This type of P.O. must accurately state the term (time period, i.e., beginning and ending dates) of the Purchase Order, the contract terms, a specific quantity (estimated) for each line item (commodity/service) described, the line item unit rate/price, and the maximum amount of money. Funds approval/encumbrance, for the maximum amount on the P.O., must be obtained in accordance with **Section 7.2.5.2** prior to submitting the Requisition in the MFMP system. It is recommended that the term of a **Blanket P.O.** be one (1) fiscal year and is stated so that it will expire at the end of a fiscal year. Funds for this type of Purchase Order may not be certified forward unless the goods/services have been received by June 30 of the fiscal year.

NOTE: This type of contract document (**Blanket P.O.**) must be managed at the line item level by increasing or decreasing the quantity for each line item, as needed, throughout the term of the P.O. In some situations, the use of a Supplier Level MFMP Contract as the contract document, with Releases (P.O.s) issued against that Contract

will be more efficient to manage because the Supplier Level MFMP Contract can be managed at the contract level rather than the line item level.

(a) **Blanket P.O.s** function like an open account. They are particularly useful for frequently needed items not available in a Department warehouse. When there is more than one line item or items with more than one price, separate line items must be included on the Requisition to create the P.O. so that the invoice and the procurement document will match and facilitate invoice processing.

(b) Establishing **Blanket P.O.s** minimizes paper work and expedites delivery time, since the user will have authority to telephone the Contract Vendor directly for Releases against the Purchase Order without going through the Procurement Unit. The Requester should maintain a record of all procurements made against each **Blanket P.O.** to ensure that the total procurements do not exceed the specified dollar amount or continue beyond the term specified.

7.2.7 Contractual Services P.O. Documents

MFMP contractual services P.O.s should not contain a signature of acceptance from the Vendor. When the contractual services contract contains a signature from the vendor to evidence or acknowledge acceptance, DFS considers it a two party written agreement and would require the contract to utilize an updated Contract Summary Form with every invoice and be put into FACTS.

7.2.7.1 Specific examples of contractual services agreements that work well on a P.O. in MFMP are provided on the Procurement Office website, under the Reference Guide entitled "**Guidelines for Contractual Services Contracts**", at the following address: http://infonet.dot.state.fl.us/procurement/files/ccs/MFMP_Guidelines_for_services_contracts.pdf

7.2.7.2 An MFMP P.O. for contractual services must include:

- a) a beginning and ending date for the period of services,
- b) a clear, detailed, and specific description of the scope of services to be performed for each line item created or scan in and attach a separate Exhibit "A", Scope of Services document to the Requisition,
- c) a Method of Compensation (MOC) statement on the Requisition or scan in and attach a separate MOC Exhibit "B" document to the Requisition.
- d) legal review when the contract dollar amount is greater than Category Three.
- e) users may scan and attach the "**Purchase Order Terms & Conditions**", (**Form 375-040-55**) if appropriate, for contracts that may have higher risk and liability considerations for the Department and when additional legal terms and provisions are needed to provide adequate protection.

- f) Funds encumbered in the CFM system to the Requisition (PR) number when the contract \$amount exceeds category two (currently \$35,000).
- g) when applicable, a check in the "Transaction Fee Exempt" box and the appropriate exemption code on the PR when the purchase is exempt in accordance with Rule 60A-1.032, F.A.C.
- h) a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution for any contract (including P.O.s) that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract.
- i) When the P.O. exceeds the threshold amount of Category Two (currently \$35,000), **Form 375-030-91, Vendor Eligibility Check Prior to Contract Award**, should be completed by the Procurement Unit and attached to the Requisition in MFMP prior to contract execution.

7.2.7.3 Contractual Services agreements that should not be put on a P.O. in MFMP include:

- a) encumbered agreements that use discounts or credits,
- b) agreements that use percentages (percent complete) anywhere in the contract,
- c) agreements that may require adjustments and/or 'true-ups',
- d) agreements that include liquidated damages or other financial consequences for non-performance,
- e) agreements that include both encumbered services and unencumbered services.
- f) agreements for utilities or that involve a grant for services.
- g) agreements that have more than 12 line item/services types that may be invoiced.
- h) agreements that include or allow mark-ups/multipliers, indirect costs, or retainage.
- i) agreements that use a journal transfer to a State agency.
- j) agreements that have a multiple year 08XXXX category encumbrance.

NOTES: The types of agreements listed in the section above must be processed with the appropriate standardized two-party written agreement form in accordance with Section 7.4 of this chapter, which will include two-party signatures, the Contract

Summary Form, and listing in the FACTS system.

Purchases that are exempt from the MFMP 1% transaction fee in accordance with **Rule 60A-1.032, Florida Administrative Code (F.A.C.)**, should be put in MFMP unless they are listed in **Section 7.2.7.3**, above.

7.2.8 Services P.O. Contracts and the Contract Summary Form

Contractual services P.O. contracts require written certification by the Project Manager prior to payment processing that contract deliverables have been received as specified in the contract. In accordance with Chief Financial Officer **Memorandum No. 01 (10-11), Form 350-060-02, "Summary of Contractual Services Agreement/Purchase Order"**, is required to be properly completed and submitted with all contractual services payment requests.

7.3 MFMP CONTRACT (FORMERLY CALLED MASTER AGREEMENT)

An MFMP Contract can be used as the contracting document to procure commodities and/or contractual services by creating a Contract Request (CR) in MFMP and including a commodity description or a Scope of Services, the need date for the commodities or a Time Frame with beginning and ending dates for the services, payment and freight terms and/or method of compensation, Unit rates/Price Sheet, all legally required contract terms, conditions, and provisions, as well as any other approval letters or procurement documentation that may be required to show compliance with law, rule, and procedure.

In accordance with DMS State Purchasing Memorandum No. 01 (2013-2014), and effective October 1, 2013, any contract (including Purchase Orders) that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract must include a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution.

7.3.1 Transmission to Vendor

Upon final approval of the CR, the MFMP system will generate the MFMP Contract with the same contract number as was used for the CR number but the system will not electronically transmit the Contract to the vendor. Therefore, a copy of the MFMP Contract document should be sent by the Procurement Unit to the Vendor with an acceptance letter, indicating the Department's acceptance of the Vendor's response and offer to provide the needed commodities and/or services.

7.3.2 MFMP Contracts Types

MFMP Contracts should generally be created at the Line Item level with a description for each of the commodities/services to be acquired from the Contract Vendor as a separate line item on the contract with the related unit rate/price. However, if Releases (aka, Requisitions/authorizations/orders) will be issued that will specify and describe the commodities/services being ordered/authorized with the related unit rates/prices, etc, the MFMP Contract could be created at the supplier level or commodity level. When there will be no Releases issued, the MFMP Contract must be created at the line item level and contain line item descriptions and associated unit rates/prices for all contract commodities/services the Contract Vendor will include on their invoice(s).

NOTE: MFMP Contracts do not require a quantity for each line item, which allows them to be managed at the contract level by total dollar amount (Maximum Commitment Amount), rather than at the line item level as is necessary for P.O. contracts.

7.3.2.1 Unencumbered MFMP Contract with Releases – Used for indefinite quantity term contracts that will be utilized by multiple cost centers with each Release/Requisition to be encumbered at the time issued. This type of MFMP Contract may, also, be created at the supplier level or commodity level for commodity and/or services contracts with many line items, if each Requisition (Release) issued will contain the line item descriptions and details to facilitate invoice processing.

7.3.2.2 Encumbered MFMP Contract with Releases - Used by one cost center to encumber a maximum commitment (budgetary ceiling) dollar amount but the performance of services or delivery of goods will be authorized when the Requester/Project Manager issues an unencumbered Release(s) (Requisition/Purchase Order) against the contract during the term of the agreement. This type of MFMP Contract may, also, be created at the supplier level or commodity level because each Requisition/authorization (Release) issued will contain the line item descriptions and details necessary to facilitate invoice processing.

7.3.2.3 Encumbered MFMP Contract with no Releases – Used by one cost center to encumber a maximum commitment (budgetary ceiling) dollar amount with no further Releases or authorizations needed. The amount of encumbered funds may be increased or decreased, and the maximum commitment amount changed accordingly, with a change order to the CR. It is the responsibility of the Requester/Project Manager to ensure that sufficient funds are encumbered prior to authorizing additional work in excess of the original amount of encumbered funds. This type of MFMP Contract must be created at the line item level to facilitate invoice processing and should only be used for contractual services.

7.3.2.4 Use an “Item Level” CR with Releases when:

a) the number or types of items/services is relatively few (recommend 12 or less) and each item/service can be well defined and has a fixed unit rate.

7.3.2.5 Use a "Supplier Level" CR with Releases when:

a) the types and quantities of services required during the term of the contract will vary from month to month and/or by written authorizations issued for services to be performed during a specified period of time.

b) the contract/agreement may be used by multiple cost centers.

7.3.3 MFMP Contract Provisions

All MFMP Contracts established after July 1, 2011, for commodities and/or contractual services in excess of \$1 million must include a contractual provision that allows for termination of the contract if the Vendor is found to have been on the **Scrutinized Companies Lists**. It is recommended that the required provision be included by including the **MFMP Contract Terms and Conditions, Form No. 375-040-44**, as an attachment to the CR in MFMP.

7.3.3.1 All MFMP Contracts created after July 1, 2011 for commodities and/or contractual services in excess of \$5 million must identify the specific **Appropriation Bill** number of the state funds that will be used to make payment under the contract in the first year of the contract. It is recommended that the **Appropriation Bill** number be included as a comment on the MFMP CR.

7.3.3.2 Effective October 1, 2013, any contract or purchase order that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract must include a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution.

7.3.3.3 When the MFMP Contract will exceed the threshold amount of Category Two (currently \$35,000), **Form 375-030-91, Vendor Eligibility Check Prior to Contract Award**, should be completed by the Procurement Unit and attached to the Contract Request in MFMP prior to contract execution.

7.3.4 MFMP Contracts for Services

MFMP Contracts should not contain a signature of acceptance from the Contract Vendor. When the contractual services contract contains a signature from the Contract Vendor to evidence or acknowledge acceptance, DFS considers it a two party written agreement and would require the contract to utilize an updated **Contract Summary Form** (Office of Comptroller) with every invoice and be put into FACTS.

7.3.4.1 Specific examples of contractual services agreements that work well as an MFMP Contract are provided on the Procurement Office website, under the Reference Guide entitled “**Guidelines for Contractual Services Contracts**”, at the following address:

http://infonet.dot.state.fl.us/procurement/files/ccs/MFMP_Guidelines_for_services_contracts.pdf

7.3.4.2 An MFMP Contract for contractual services must include:

- a) a beginning and an ending date for the period of services,
- b) a completed “**MFMP Contract Terms and Conditions**” (**Form 375-040-44**), to be scanned in and attached to the MFMP Contract Request (CR),
- c) an Exhibit "A", Scope of Services, to be scanned in and attached to the MFMP CR,
- d) an Exhibit "B" Method of Compensation, to be scanned in and attached to the MFMP CR, and
- e) if applicable, an Exhibit "C", Unit Rates, to be scanned in and attached to the MFMP CR.
- f) legal review when the contract dollar amount is greater than Category Three.
- g) written authorizations (previously done with LOAs or TWOS) are issued in MFMP by creating a “Release” (a Requisition/PO) against the MFMP Contract.
- h) that funds are encumbered in the CFM system for the entire Contract (use the CR number with an “MA” prefix) or will be encumbered by Releases (which are encumbered in the CFM system to the PR number).
- i) when applicable, a check in the “Transaction Fee Exempt” box and the appropriate exemption code on the CR when the contract is exempt in accordance with **Rule 60A-1.032, F.A.C.**
- j) a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution for any contract (including Purchase Orders that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract).

7.3.4.3 Contractual Services agreements that should not be put on an MFMP Contract include:

- a) encumbered agreements that use discounts or credits,
- b) agreements that use percentages (percent complete) anywhere in the contract,
- c) agreements that may require adjustments and/or ‘true-ups’,

- d) agreements that include liquidated damages or other financial consequences for non-performance,
- e) agreements that include both encumbered services and unencumbered services.
- f) agreements for utilities or that involve a grant for services.
- g) agreements that have more than 12 line item/services types that may be invoiced.
- h) agreements that include or allow mark-ups/multipliers, indirect costs, or retainage.
- i) agreements that use a journal transfer to a State agency.
- j) agreements that have a multiple year 08XXXX category encumbrance.

NOTES: The types of agreements listed in the section above must be processed with the appropriate standardized two-party written agreement form in accordance with Section 7.4 of this chapter, which will include two-party signatures, the Contract Summary Form, and listing in the FACTS system.

Purchases that are exempt from the MFMP 1% transaction fee in accordance with Rule 60A-1.032, Florida Administrative Code (F.A.C.), should be put in MFMP unless they are listed in section 7.3.4.3, above.

7.3.5 MFMP Contracts for Services and the Contract Summary Form

Contractual services contracts require written certification by the Project Manager prior to payment processing that contract deliverables have been received as specified in the contract. In accordance with Chief Financial Officer **Memorandum No. 01 (10-11), Form 350-060-02, "Summary of Contractual Services Agreement/Purchase Order"**, is required to be properly completed and submitted with all contractual services payment requests.

7.4 WRITTEN AGREEMENT

A written agreement is a Department contracting document which may be used to contract for services at any dollar amount and will include two-party signatures, the Contract Summary Form, and listing in the FACTS system.. If the threshold amount of Category Two is exceeded, the provisions of **Section 287.058, F.S.**, and other legally required provisions shall be included, referenced, or attached, as well as legal review when the contract is greater than Category Three (currently \$65,000). Written agreements are encumbered in the Contracts module of the CFM system.

In accordance with DMS State Purchasing Memorandum No. 01 (2013-2014), and effective October 1, 2013, any contract or purchase order that will result in anticipated expenditures of \$1 million dollars or more during the term of the contract must include a completed **Contract Attestation Checklist, Form 375-040-34** and an executed **Contract Attestation, Form 375-040-35** as an attachment to the contract document prior to contract execution.

7.4.1 Guidelines for Written Agreements

Written agreements are generally used for contractual services procurements that do not meet the guidelines for contracting in MFMP. Specific examples of contractual services agreements that should not be put in MFMP are provided on the Procurement Office website, under the Reference Guide entitled "**Guidelines for Contractual Services Contracts**", at the following address:

http://infonet.dot.state.fl.us/procurement/files/ccs/MFMP_Guidelines_for_services_contracts.pdf

The following types of contractual services agreements should be processed with the appropriate standardized two-party written agreement form in accordance with this Section:

- a) encumbered agreements that use discounts or credits,
- b) agreements that use percentages (percent complete) anywhere in the contract,
- c) agreements that may require adjustments and/or 'true-ups',
- d) agreements that include liquidated damages or other financial consequences for non-performance,
- e) agreements that include both encumbered services and unencumbered services.
- f) agreements for utilities or that involve a Grant for services.
- g) agreements that have more than 12 line item/services types that may be invoiced.
- h) agreements that include or allow mark-ups/multipliers, indirect costs, or retainage.
- i) agreements that use a journal transfer (JT) to a State agency.
- j) agreements that have a multiple year 08XXXX category encumbrance.

7.4.2 Standardized Written Agreement Forms

All of the standard contractual services agreements listed below contain the legally required provisions and have been approved following an established legal review process. The overall preparation of the written agreement, including the method of compensation and other applicable attachments, is the responsibility of the Procurement Unit. The development of the Scope of Services and other applicable technical attachments are the responsibility of the Requester/Project Manager.

STANDARD WRITTEN AGREEMENT – Form No. 375-040-19

A two-party written agreement document which embodies all provisions and conditions of the procurement of contractual services, including standard language with provisions required in **Section 287.058, F.S.**, and **Rule Chapter 60A-1, F.A.C.**, and other provisions to adequately protect the Department, and provide a scope of services and method of compensation. This is the recommended contract document for contracts established by an ITN. This standard agreement format may, at the option of the Project Manager, be necessary to use for Work Program contracts (using 08 category funds) that have special tracking and reporting requirements.

STATE OF FLORIDA GOVERNMENT AGENCIES - Form No. 375-040-17

A standard agreement for services provided by Florida governmental entities or in-state universities. This agreement does not contain ownership of works language. The Procurement Unit shall require Project Managers to consider and provide appropriate language in the scope of services/specification.

MASTER UNIVERSITY AGREEMENT – Form No. 375-040-64

A standard agreement for services, information and items to be provided by an in-state university as described in specific, separate Task Work Orders issued under the terms and conditions of the Agreement.

TIME EXTENSION LETTER – Form No. 375-040-12

A standard amendment letter which may be used when the extension involves only a time extension with no change in compensation or services. The **"Extension Letter"** is restricted to a period not to exceed six (6) months and shall be signed and dated by authorized signatories of the Department and Contract Vendor.

WRITTEN AGREEMENT MODIFICATION – Form No. 375-040-07

A standardized form used to modify a written agreement by:

- 1) Amendment - to raise or lower the budgetary ceiling.
- 2) Amendment – other, as may be applicable (modify a contract term or condition, time extension with no additional funding, clarify the scope of services, change names, addresses, or project identification data, etc.).

- 3) Supplement – Revising/adding to the scope of services.
- 4) Time extension - with additional funding.
- 5) Renewal.

EXPERT WITNESS CONTRACT – Form No. 225-065-02

A standard agreement used to contract for expert witness services.

OUTSIDE COUNSEL CONTRACT – Form No. 225-065-06

A standard agreement used to contract for outside legal counsel. The Attorney General's Office must approve the use of all outside legal counsel services for each fiscal year.

SUPPLEMENTAL AGREEMENT FOR EXPERT WITNESSES AND OUTSIDE COUNSEL – Form No. 225-065-03

A standard amendment used to modify Expert Witness or Outside Counsel contracts.

CERTIFICATE OF COMPLETION – Form No. 375-040-25

A standard agreement used to certify that services are complete and to document a final billing amount on maximum amount contracts. Used for contracts completed early and/or in an amount less than the maximum amount established in the contract. Once work has been satisfactorily completed, this agreement may be executed to document the completion of the contract and final contract amount prior to the release of the performance bond.

TERMINATION AGREEMENT – Form No. 375-040-13

A standard agreement used to terminate a contract and document a final billing amount for the completed services. A termination letter by the Project Manager should be provided to the Contract Vendor, indicating the stop date and requesting the Contract Vendor's final bill, prior to executing the ***Termination Agreement***. The Termination Agreement needs to be executed before payment of the final bill.

AGREEMENT OF ASSIGNMENT – Form No. 375-040-05

A standard agreement used to transfer a contractual obligation from an original contract vendor to another Contract Vendor.

CONTINUED SERVICES CONTRACT – Form No. 375-040-16

A standard agreement used to re-procure and re-contract for services when the original contract provides for additional years of service. The procurement unit will follow all applicable procurement laws and procedure requirements before this agreement is processed for execution.

APPENDICES: The following Appendices are attached to the above contracts, as applicable.

APPENDIX I Terms for Federal Aid Contract – Form No. 375-040-40

A standard appendix attached to the services contract document when Federal funding may be involved.

APPENDIX II Information Technology Resources – Form No. 375-040-29

A standard appendix attached to services contracts for the purchase or maintenance of computer hardware/software or licensed programs.

7.4.3 Negotiation of Contract Language and Coordination with Legal

Standard language in contracts that were procured by competitive bids or proposals will not be negotiated. For other procurement methods and upon the request of the Vendor and the Department's Project Manager, and when it is in the best interest of the state, the standard contract language may be negotiated with a Vendor. The negotiated language must be reviewed by the Office of the General Counsel.

7.4.4 Methods of Compensation

The method of compensation to be included in a written agreement should be developed by the Procurement Unit with input from the Project Manager. This will assure that consistent language is used in all methods of compensation developed by the Department and reviewed by DFS offices when processing payment to the Contract Vendors. Sample Methods of Compensation are provided on the Procurement Office Web site for use by the Procurement Units and Project Managers in the development of the method of compensation for their contract.

7.4.5 Encumbrance of Written Agreements

Written agreements are encumbered in the Contracts module of the CFM system. The CFM will assign a prefix to the contract number to facilitate tracking and reporting on the following specific program areas:

"B" - for contractual services under **Section 287.057, F.S.**

"D" - for Right of Way services.

"X" - for pre-event contracts for commodities and contractual services.

"H" - for emergency contracts executed under a Governor Declared Emergency.

7.4.6 Execution of Written Agreements

The Department's contract document review and approval process will be followed to comply with the required program, financial, and legal review and approval required by **Section 287.057(18), F.S.** The "Guidelines for Email Execution of Contracts & Modifications" (available as a "Reference Guide" on the Procurement Office website) should be followed.

(a) Contract Document Review and Execution Process

- 1) Legal Review - This step in the execution process provides for legal review of the contract document and is required for all contractual services contracts in excess of Category Three. For contractual services contracts less than or equal to Category Three, legal review and approval should be obtained for contracts that have the potential for high risk and high liability for the Department.
- 2) Vendor Execution - The contract document should be executed by the Vendor prior to Department execution. The contract must be executed by the appropriate officer of the Vendor, and if the appropriate officer is unable to execute the contract document, then a signatory authorized by the officer is acceptable. If the Vendor is a corporation, the appropriate officer is the President or Vice President; if the Vendor is an LLC, the appropriate officer is the Managing Member; if the Vendor is a general or limited partnership, the appropriate officer is the General Partner. If the appropriate officer is unable to execute the contract document, a written delegation by the officer must be provided to the Department. Should the Vendor make any changes to the contract the Vendor's signatory shall initial all changes. Any of these changes may have legal implications, and therefore, may require an additional Department legal review.
- 3) Procurement Unit Approval - The procurement unit will approve all contractual services contracts prior to execution of the contract by the Department. This signature indicates that:
 - a. The contract was procured in accordance with all applicable laws and rules.
 - b. Funds have been properly encumbered by the Department's Comptroller.
 - c. The contract has had proper legal review.
 - d. When required, the Vendor has presented proof of insurance with a company or companies authorized to do business in Florida.
 - e. If any changes were made to a previously approved contract, that the changes were reviewed and resolved with appropriate offices.
 - f. When the contract exceeds the threshold amount for Category Two (currently \$35,000), ***Form 375-030-91, Vendor Eligibility Check Prior to Contract Award***, has been completed by the Procurement Unit and included in the contract file.
- 4) The Department Secretary, or authorized designee, will sign the contract on behalf of the Department. Signature authority is delegated to Senior Management Level Directors and above, who may delegate signature authority to other office heads in writing.

If changes to the contract were made by the Vendor and accepted by the Department, such changes must be initialed by the Vendor and by the individual who signs the contract on behalf of the Department. The Procurement Unit will designate the date of execution on the contract in ink or type.

7.4.7 Written Agreements and the Contract Summary Form

Contractual services contracts (Purchase Order, MFMP Contract, and/or written agreement) require written certification by the Project Manager prior to payment processing that contract deliverables have been received as specified in the contract. In accordance with Chief Financial Officer **Memorandum No. 01 (10-11), Form 350-060-02, "Summary of Contractual Services Agreement/Purchase Order"** is required to be properly completed and submitted with all contractual services payment requests.

7.4.8 Distribution of Executed Written Agreement

The procurement unit should distribute the executed contract document in the following manner:

- * Send a scanned .pdf copy of the executed contract to the Contract Vendor, the FDOT Contract Payments section, and the Project Manager.
- * Retain the original contract document in the Procurement Unit contract file.
- * FACTS – Upload executed contract image into system.

7.4.9 Modifications to Written Agreements

A written agreement modification is a legally formatted document used to change or revise an existing written agreement. The **Written Agreement Modification, Form No. 375-040-07**, should be used to document changes or revisions to written agreements such as: (1) additional services to assure satisfactory completion of the project that are within the intent of the original agreement, (2) initiation of subsequent phased services in the original agreement, (3) contract renewal, (4) time extensions (up to six months), (5) scope clarifications, corrections of typos, etc., (6) address changes, (7) project identification changes, or (8) to increase or decrease a budgetary ceiling on a Term Contract for an Indefinite Quantity. Modification forms to a written agreement must be sequentially numbered for the life of the contract (not by fiscal year) and must be scanned and attached to the MFMP Contract. The MFMP Contract must be updated to reflect the modification(s) made.

The Requester/Project Manager will request modifications to written agreements in writing using **Form No. 375-040-28, Request for Procurement Action**. The request

shall include adequate explanation and justification for the modification requested (i.e., supplemental services, change in scope of services, change in time frames, single source justification, modified compensation and budget authority, as applicable). The Requester/Project Manager and/or Procurement Unit shall evaluate all cost factors with due consideration given to the original and/or previous modification rates and reconcile variances between the Department's and the Contract Vendor's agreement terms, scope of services, and estimate of work effort and fees. The negotiated fee shall be that which the Department determines is fair and reasonable considering the scope and complexity of the modified services.

The Procurement Unit is responsible for the preparation of all **Written Agreement** modifications and the resulting revisions to the MFMP **Contract Request (CR)**. The contract file attached to the CR must contain the request form. Modifications to federal-aid projects are subject to the same basic requirements as those imposed on the initial agreement.

Execution - The execution process for written agreement modifications is the same as for the original agreement. Modifications need not be executed by the same individuals who signed the original agreement, but need only be signed by individuals authorized to execute contracts.

Written agreement modifications must be executed prior to performing the work covered in the modification and prior to termination of the agreement.

Distribution - The distribution of executed written agreement modifications is the same as the original agreement. Modifications will be retained with the official agreement files.

FACTS – Upload executed contract modification image into system.

7.4.10 Letter of Authorization (LOA) and Task Work Order (TWO)

A Department term contract for services for an indefinite quantity is a contract whereby the Contract Vendor agrees to furnish contractual services during a prescribed period of time. Services are provided on an as-needed basis and are authorized in writing by an LOA or a TWO. The LOA or TWO is a written authorization issued by the Department's Procurement Unit or Project Manager, as applicable, to a Contract Vendor to perform services contracted for under a Department term contract. Each LOA or TWO must be consecutively numbered during the term of the contract. The written authorization (LOA or TWO) should contain a description of the services to be provided, the limiting and/or lump sum cost, and the time frame for completion of the authorized services. The scope of services and cost for each written authorization cannot exceed any of the limits of the Department term contract, and the timeframe authorized by the LOA or

TWO cannot extend beyond the ending date of the contract.

NOTE: When the funds are not encumbered prior to execution of the Department term contract, each LOA or TWO must be accompanied by an approved encumbrance.

7.5 RIGHT OF WAY INVOICE TRANSMITTAL

The use of Right of Way Invoice Transmittals for certain procurements may be authorized by the Department's Comptroller and/or the ***Right of Way Manual, Topic No. 575-000-000***.

7.6 CONTRACT MANAGEMENT

Contractual services contracts are to be managed in accordance with the provisions of Section ***287.057(14), F.S.***

7.6.1 Contract Manager Training

Each contract manager who is responsible for contracts in excess of the threshold amount for Category Two (currently \$35,000), must attend training as prescribed in ***Section 287.057(14)(a), F.S.***

7.6.2 Contract Manager Certification

Effective 12/01/14, contract managers responsible for agreements greater than \$100,000 annually must become a certified contract manager within 24 months after establishment of the training and certification requirements by the Department of Management Services (DMS) and the Department of Financial Services (DFS) in accordance with ***Section 287.057(14)(b), F.S.***

7.7 FACTS REPORTING REQUIREMENTS FOR CONTRACTS

All agencies are legislatively mandated (Section 215.985(14), F.S.) to report their contracts through the contract tracking system developed by the Department of Financial Services (DFS), known as the "Florida Accountability Contract Tracking System" (FACTS). FACTS is an integral part of the plan to provide greater transparency and accountability in state government spending. The public will be able to download reports from the website and search for contracts by agency, Vendor, or service type.

Information and guidance for using FACTS is available on the Procurement Office website at the following link: <http://infonet.dot.state.fl.us/procurement/>