

**UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY**



**REQUEST FOR PROPOSALS  
FOR OWNER'S PROJECT MANAGER SERVICES  
FOR  
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY  
  
WORCESTER DINING COMMONS RENOVATION  
FOR UNIVERSITY OF MASSACHUSETTS – AMHERST  
UMBA PROJECT NO. 17-A1**

**March 1, 2017**

**Pre-Proposal Briefing  
March 9, 2017 at 10:00am  
University of Massachusetts – Amherst  
Worcester Dining Commons  
669 North Pleasant Street, Amherst, MA 01003  
Meeting location: North side of building, western entry doors**

**Proposals Due: March 22, 2017 at 2:00pm**



University of Massachusetts Building Authority  
UMass Amherst – Worcester Dining Commons Renovation  
RFP for Owner’s Project Manager Services

**REQUEST FOR PROPOSALS  
FOR  
FOR OWNER’S PROJECT MANAGER SERVICES  
  
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY  
  
WORCESTER DINING COMMONS RENOVATION  
UNIVERSITY OF MASSACHUSETTS - AMHERST**

**I. NOTICE OF REQUEST FOR PROPOSALS**

The University of Massachusetts Building Authority (the “Authority”) requests proposals from qualified firms to provide Owner’s Project Manager (“OPM”) services for the Authority’s Worcester Dining Commons Renovation project for the University of Massachusetts - Amherst (sometimes “UMass Amherst” or the “University”).

Proposals shall be submitted to the University of Massachusetts Building Authority, in care of Patricia Filippone, Executive Director, One Beacon Street, 31st Floor, Boston, MA 02108, so that they are received by **2:00pm on March 22, 2017**. Each Respondent shall submit in a sealed package six (6) hard copies of its proposal and two (2) electronic copies in PDF format. The package shall be clearly marked on the outside, “Owner’s Project Manager Services for Worcester Dining Commons Renovation for UMass Amherst, UMBA Project No. 17-A1,” and shall clearly identify the Respondent’s name and business address, and the name and telephone number for the contact person.

A pre-proposal briefing will be held at 10:00am on **March 9, 2017**, at the Worcester Dining Commons, 669 North Pleasant Street, Amherst, MA 01003. **Meeting location: North side of building, western entry doors.** Parking is available at the Lincoln Campus Center Parking Garage, which can be accessed from Campus Center Way.

The Authority reserves the right to reject any or all proposals submitted in response to this Request for Proposals (“RFP”) and to take any other action, as the Authority may deem to be in its best interest.

**II. EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

The Authority is committed to equal employment opportunity and non-discrimination in contracting for goods and services necessary to perform its business. Respondents are advised that the UMBA will take affirmative action to ensure equal employment opportunity and to eliminate discriminatory barriers. The Authority strongly encourages minority and women business owned (MBE/WBE) firms to respond to the RFP. The Authority will strongly consider



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the Respondents’ commitment to equal employment opportunity and affirmative action in selecting the individuals or firms for Owner’s Project Manager Services and Respondents are encouraged to propose a team that reflects such diversity. As set forth in Section X(13) of this RFP, Respondents are required to submit copies of their employment and affirmative action policies demonstrating their commitment to equal opportunity, non-discrimination and diversity. Respondents are encouraged to propose a team reflecting its commitment to diversity. The Authority encourages interested OPM firms to partner and/or subcontract with minority and women owned businesses in order to reflect this commitment.

In addition, the Project will have the following participation goals for minority business enterprises (“MBE”) and women business enterprises (“WBE”) and for workforce utilization:

- Design: Combined MBE/WBE participation goal 17.9%
- Construction: Combined MBE/WBE participation goal 10.4%
- Construction workforce: Minorities: 15.3%; Women: 6.9%

The selected OPM shall be responsible for monitoring compliance with these goals.

### **III. THE AUTHORITY**

The Authority is an independent body politic and corporate and an authority of the Commonwealth of Massachusetts created by and existing under Chapter 773 of the Acts of 1960, as amended (the “Authority’s Enabling Act”). The Authority is separate and independent from the University of Massachusetts (the University), but provides dormitories, dining commons and other buildings and structures for the use of the University, its students, staff and their dependents and certain approved organizations. The mission of the Authority is to aid and contribute to the performance of the educational and other purposes of the University by providing high quality buildings and infrastructure that make a difference to the University community and that meet and exceed the University’s needs. New facilities constructed by the Authority as a part of any of its projects are owned by the Authority, but operated and maintained by the University.

### **IV. PROJECT DESCRIPTION AND OVERVIEW**

#### **OVERVIEW**

- A. Introduction: UMass Amherst worked with Miller Dyer Spears, Inc. back in 2011 on a planning study to assess the existing conditions and operations at Worcester Dining Commons. The results of those study efforts identified a serious and critical need for extensive renovations to the existing facility in order to be able to continue delivering the quality of dining experience that the Campus has become known for. The Campus is now ready to take the next steps in the form of a detailed programming and schematic design study, which will provide the foundation for the full design and construction project.



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- B. **Project Vision:** UMass Amherst would like to create a one of a kind dining experience for their guests. In line with the University’s mission to be the “destination of choice” the Worcester Dining Commons shall be a learning commons – a place for the campus community to gather, learn, and share experiences to help further exemplify UMass Amherst’s rich culture and commitment to local, healthy, and sustainable menu items while building a community around food, for many years to come.
- C. **Background:** Worcester Dining Commons was originally designed by Maloney and Tessier as a 41,000 square foot primary dining facility for the northeast portion of Campus back in 1953 under the Van Meter Building Program. Later in 1961, an addition was constructed bringing the total square footage of Worcester DC to 68,000 square feet. The building has a structural system that is a combination of masonry bearing wall and concrete frame construction. To date, there have been at least a couple of repair projects aimed to stabilize some structural concerns, the latest included a shoring system installation under a section of the kitchen where steam kettle had been housed. Worcester’s is currently continuing to be served by the majority of its original mechanical systems, which are well beyond their useful life and the facility is not air-conditioned. Over the last several years, the University has undertaken projects to equip the building with temporary air-conditioning systems to allow the Dining Commons to serve the New Student Orientation Program groups that operate out of the Northeast Residential Area. Additionally, the building also has major accessibility challenges including no public elevator.

## **PROJECT DESCRIPTION**

- A. The Worcester Dining Commons project may include renovation of the existing structure, renovation with addition or new structure. The concepts and major goals for the Worcester Dining Commons are as follows:
1. 1,000 Seat Dining Commons
    - a) Peak Demand exceeds current seating capacity of 850.
    - b) Seating is currently broken up into 3 straight line dining rooms, which make for inefficient flow thru serving lines.
    - c) Goal to build off the Hampshire Dining Commons oval design concept to help improve flow and create better lines of sight.
      - 1) State of the art design – engaging guests to participate in the food culture.
      - 2) Video and message boards to be located throughout the dining commons.
      - 3) Audio-visual system connecting the entire building as well.
  2. One Level Cooking with Open Kitchen
    - a) Worcester’s existing kitchen is located in the center of the building and the main and Oak room kitchens work independently, lacking synergy.
    - b) A section of failing floor slab have also further reduced capability and capacity of the kitchen, after some equipment needed to be removed from Room 109 during



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the summer of 2015 to lighten the floor load and continues to be supported by a shoring assembly.

- c) Goal is to build on a cooking “on-display” model where food is prepared to order, minimizing waste and maximizing flavor.
3. Market with Grab and Go
  - a) Currently, the food is perceived as being “held hostage” in Worcester Dining Commons.
  - b) Also the traditional Dining Commons model runs counter to the mobile, on-demand student lifestyle.
    - 1) Dining Commons does a great job of creating Savoring Eating Occasions – “Live to Eat”, when food is truly enjoyed, often socially with friends.
    - 2) However, students need more services satisfying Instrumental Eating Occasions – “Eat to Live”, designed for on-the-go, often alone, eating.
    - 3) While the cultural expectation of a sit-down breakfast, lunch, and dinner is an ideal for many reasons, it is an ideal rather than the norm today, going against the cultural shifts eroding ritual eating and giving way to snacking rather than eating meals and eating alone rather than together.
    - 4) At the Dining Commons, especially at peak demand times due to long lines, students feel overly rushed to get their food and eat it there, especially during lunch periods.
  - c) Goal is for new Worcester Dining Commons to feature a Grab and Go model after the concepts used at Whole Foods and Wegmans.
    - 1) This goal will provide more options for the student’s snacking needs, since 50% of all eating occasions are snacks.
4. Bakeshop
  - a) The UMass Bakeshop currently produces over 30,000 baked goods daily, with its high quality products increasing student satisfaction while saving Dining Services money.
  - b) Currently, the UMass Bakeshop is housed in the Hampden Dining Commons, but similar to Worcester that space also has several structural and mechanical concerns including a leaking roof, failing mechanical/HVAC equipment, and aging (beyond life expectancy) baking equipment.
  - c) Goal is to relocate the UMass Bakeshop to the basement of the newly renovated Worcester Dining Commons.
5. Sustainability – Including LEED Gold
  - a) Current building conditions:
    - 1) Worcester’s exterior walls are un-insulated.
    - 2) Mechanical equipment is outdated and in-efficient and does not meet current energy code provisions.
    - 3) The large building is very costly to heat and operate during winter months.
    - 4) During the last several summers, temporary portable air-conditioning systems have been installed to allow the building to serve the Summer New Student Orientation program.
  - b) Proposed goals:



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- 1) Renovated facility to achieve LEED Gold Certification.
  - 2) Consider passive heating and cooling systems.
  - 3) Use of natural light through additional windows.
  - 4) Incorporate compost and waste management systems.
6. Permaculture Garden
- a) Merger of the words “*permanent*” and “*culture*”.
  - b) UMass currently grows more than 3,000 pounds of its own healthy organic food in their gardens each year.
  - c) Garden serves as a design tool for creating regenerative systems that meet human needs while increasing ecosystem health.
    - 1) Ecological and edible landscapes.
    - 2) Low-impact buildings.
    - 3) Sustainable communities and economies.
7. 12-Month Business Model
- a) Year-round operation to serve the summer conference business.
  - b) Fees for services in consulting and management contracts.
  - c) Tuition from use as cooking school and training institute.
  - d) Major corporate sponsorships and philanthropic grants.
  - e) Strong and sustained renovations and refurbishment capability.
  - f) UMass Fresh – bringing the best UMass Dining to your home.
8. Health and Wellness
- a) UMass Dining is currently engaged in several co-curricular initiatives and the renovated Worcester Dining Commons would help enhance those efforts.
    - 1) Nutrition Department study investigating how a strong on-campus dining program could influence student dietary intake, lifestyle habits, and academic performance.
    - 2) Isenberg School of Management use as part of the Lean Enterprise Institute.
    - 3) Food Science Department mushroom study.
    - 4) Anthropology Department food culture study of modern ad hoc eating and the de-ritualization of meals.
9. Learning Commons – Living Laboratory
- a) New Worcester Dining Commons would serve as a learning commons promoting collaboration with faculty, staff, and students.
10. Administration
- a) Building needs to continue to house the main administrative offices for UMass Auxiliary Services and Dining Services staff.
11. Meeting Rooms
- a) Building needs to provide multi-function meeting space for use by administrative staff and as well as for potential outside groups.
- B. Architectural and Building Systems Upgrades and Improvements
1. Renovations to the building and all its systems are expected and to support the goals outlined above.



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The Architectural Design for this project will incorporate and be consistent with the University’s Design Standards and Guidelines.

The University is anticipating a construction budget of approximately \$33 million and a total project cost of \$45 million for the project.

In performing the Scope of Services for the Project, the Architect will be required to consider energy efficiency and sustainable design practices, using the U. S. Green Building Council’s LEED<sup>®</sup> Rating System, and shall advise the Authority of any financial impact which may result. It is intended that Project will be an energy efficient and environmentally sustainable facility that will meet the requirements of **LEED<sup>®</sup> Gold Certification**.

The Project will be constructed using the Construction Manager at Risk procurement method in accordance with Mass. Gen. Laws c. 149A, §§ 1-13, and the Authority’s related procedures.

## **V. OVERVIEW OF OPM SERVICES**

The OPM services will include all activities necessary or appropriate to efficiently manage the design, construction, commissioning and closeout of the Project. The firm engaged by the Authority pursuant to this RFP will be responsible to and will provide services to the Authority. As the Authority’s OPM, the OPM will work with the Authority, and with any University representatives designated by the Authority, in performing services in connection with the Project.

The OPM will manage all aspects of the Project from the selection of the design team through the close out and warranty period of the Project. It is anticipated that construction services for the Project will be procured using Construction Manager at Risk (“CM at Risk”) procurement in accordance with Mass. Gen. Laws c.149A, §§ 1-11 and the Authority’s Procedures for the Procurement of Construction Management at Risk Services pursuant to M.G.L. c. 149A, §§ 1-11 (the “Authority’s CM at Risk Procedures”). A copy of the Authority’s CM at Risk Procedures is attached hereto as **Attachment 1**.

## **VI. SCOPE OF OPM SERVICES**

The Owner’s Project Manager shall provide advice and counsel relating to the Authority’s management, administration and fiscal oversight of all phases of the Project including, but not limited to, the planning, design, construction and commissioning of the facilities, which are the subject of the Project.

The services of the Owner’s Project Manager consist of all Owner’s Project Management services necessary or appropriate to complete the Project (the “Scope of Services”). Such services are outlined below, and specifically include: (a) all services described in the Agreement



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for Professional Services between the Owner and Owner’s Project Manager, which is attached hereto (the “Agreement”) and marked **Attachment 2**, including, but not limited to, design review of architectural, structural, MEP, and fire protection disciplines as provided for in Section 4.3 of the Agreement, (b) all services required by Mass. Gen. Laws c. 149, sec. 44A 1/2, and (c) all services customarily performed as part of owner’s project management for projects of similar type, scope and complexity in order to appropriately manage and complete the Project in a timely and cost effective manner, while constructing a facility of the highest possible standard.

In general, the Owner’s Project Manager (“OPM”) will oversee, monitor, analyze and report on all aspects of the work in all phases, including, but not limited to, preparation and issuance of all Requests for Qualifications, Requests for Proposals, and other similar documents, the schedule for work, cost control, budget tracking, preparation of interim and final Guaranteed Maximum Prices, as required, quality assurance, environmental compliance, safety compliance, site logistics planning, coordination with campus design and construction requirements, and coordination of communications with and among all team members.

The OPM will provide regular and timely written reports as required by the Authority, including but not limited to, monthly updates on project schedule and budget in feasibility study, programming, design and construction. In the buyout for the construction of the Project pursuant to a CM at Risk procurement, the OPM will participate and track the open book procurement process and results, which will include but not be limited to reports on the participation of women-owned and minority-owned firms, workforce utilization, and the level of union and open shop participation on the Project.

In managing projects, it is critically important to avoid interruption of or interference with campus operations. In addition, given that multiple projects are often simultaneously undertaken on any given campus by the Authority, the University and/or the Massachusetts Division of Capital Asset Management, it is critically important to avoid all conflicts in site logistics. The OPM will coordinate construction schedules and construction site logistics planning to ensure that campus needs are met.

The OPM will be responsible for managing an interactive and integrated process for the coordination of all programming, design, construction and commissioning information, which includes the use of the University’s Design Standards and Guidelines in the design process and construction.

## **VII. SCHEDULE**

Work will commence upon issuance of a Notice to Proceed by the Authority. The Authority anticipates completion of the Project by July 2020 in time for full use and occupancy by the campus in preparation of the Fall 2020 Semester. The OPM shall work with the Designer, University and the Authority to develop an overall project schedule during the study phase and shall review the schedule’s potential impacts to the Worcester Dining Commons operations.

## **VIII. FEE**



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Firms responding to this RFP shall include in their proposals a brief description of the methodology they propose be used in determining the fees for services. However, no specific fee proposal should be included or will be accepted at this time. Those firms that are selected for interviews will be asked to submit fee proposals at that time.

### **VIII. FORM OF CONTRACT**

The selected project manager firm shall execute a contract with the Authority, which shall be in the form of the Agreement for Professional Services between Owner and Owner’s Project Manager (the “Agreement”), which is attached hereto as **Attachment 2**. At the Authority’s sole discretion, the Authority may make minor non-material changes to the form of the Agreement.

**Please note that the submission of a proposal in response to this RFP shall be deemed an acceptance of all terms and conditions of the Agreement and an agreement to execute same without revision or modification.**

### **IX. MINIMUM QUALIFICATIONS**

- In accordance with M.G.L. c. 149, a. 44A½, the Owner's Project Management firm must be independent of the designer, construction manager and subcontractors on the Project having no prime or sub-contractual relationships with such parties or their subcontractors or consultants on the Project.
- In accordance with M.G.L. c. 149, §44A½, the lead member of the firm who will serve as the designated Owner's Project Manager shall: (i) be registered in the Commonwealth of Massachusetts as an architect or professional engineer, and have a minimum of five (5) years of experience in the construction and supervision of the construction of buildings; or (ii) if not a registered architect or professional engineer, have a minimum of seven (7) years of relevant experience in the construction and supervision of construction of buildings.
- The lead member of the firm who will serve as the designated Owner’s Project Manager shall be certified in the Massachusetts Certified Public Purchasing Officer (“MCPPO”) Program as administered by the Inspector General of the Commonwealth of Massachusetts.
- Thorough knowledge of Massachusetts public design and construction laws, including, but not limited to M.G.L. Chapters 149, 149A and 30.
- Thorough knowledge of the requirements of the Massachusetts State Building Code, the Americans with Disabilities Act, and the regulations of the Massachusetts Architectural Access Board.



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- Demonstrated experience with the unique aspects of the Construction Manager at Risk process including, but not limited to, Guaranteed Maximum Price (GMP) negotiations and "open book" cost review, coordination of work of designers and construction managers during the design process, and identification of and preparation for early construction packages.
- Prior experience providing construction management or supervision of the construction of buildings to public agencies in the Commonwealth of Massachusetts for the construction of similar projects, including specific experience on at least three (3) projects, each of which is of similar size, scope and complexity to the Project, and was successfully completed.
- Documentation of financial stability, including but not limited to submission of annual financial statements for the prior three (3) fiscal years.
- Documentation of insurance including: (i) professional liability insurance of not less than \$2,000,000; (ii) commercial general liability insurance (CGL) of not less than \$1,000,000 per occurrence, with a \$2 million general aggregate; (iii) automobile liability insurance with a minimum limit of \$1,000,000 covering owned, hired, and non-owned vehicles. (iv) employer's liability insurance of not less than \$1,000,000 (v) umbrella or excess liability insurance of not less than \$5,000,000 covering over the COL, automobile liability and employer's liability coverages (vi) statutory workers' compensation insurance coverage and all of such coverages to be provided on the terms set forth in the Agreement.

## **X. SUBMISSION REQUIREMENTS**

Each proposal shall contain all of the information and documentation described below. The entire proposal shall be double sided; Minimum font size is to be 12pt. Document size shall be no greater than 8 ½" x 11".

In order to facilitate the Authority's review of submissions, applicants are encouraged to organize their submission into tabbed sections corresponding to the following list of topics:

1. Description of the firm's background.
2. Description of the firm's experience, with particular attention to identifying and describing projects in which similar services, BIM, lean construction concepts and integrated project delivery techniques were utilized.
3. A synopsis of the firm's approach to project management services, including how teams are organized to meet the needs of projects in general.
4. Identification of the Project management team, which must include the name of the Principal-In-Charge and the Project Manager who will have overall responsibility for the delivery of services and completion of the Project, and the specific responsibilities of



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each member of the Project team. It shall also include a description of individual and Project team experience, including experience with projects designed for energy efficiency and sustainability, LEED certified buildings, and use of the LEED Rating System and other similar guidelines, including at least one active member with a minimum of LEED Green Associate accreditation.

5. A Project team organization chart listing all team members, whether employed by the project management firm or by a sub-consultant, proposed to provide services on the Project. **Please note that the Authority requires that the key team members identified in the proposal be the individuals who render services under the Agreement, and such individuals must be fully available to devote the time and attention necessary to ensure timely and complete delivery of required services.** The Authority strongly encourages interested OPM firms to propose a team that reflects diversity, including MBE/WBE sub-consultants.
6. A resume and references for each Project team member. The resume shall outline the individual’s academic and professional achievements including the number of years of experience working on projects similar to the Project which is the subject of this RFP, and tenure with the firm. Provide a cross-reference for each team member to any project listed in Item No. 11 below.
7. A thoughtful, coherent proposed management plan for the Project, which describes in detail the firm’s proposed approach to meeting Project goals – including schedule management, budget management, quality management, and coordination goals.
8. A thoughtful analysis of how integrated project delivery principles and the use of tools like building information modeling can be used effectively on the Project.
9. Identification of any firms or individuals not part of the responding firm that will be collaborating on the Project. For each such firm, provide a detailed description of its role in the Project, and a complete resume and description of the length and substance of its experience as it relates to the Project.
10. Indicate and provide qualifications if submitting firm will be provide the services representing the disciplines below or provide background data on all consulting firm(s) and other consultants considered appropriate, who will play a role in the project, including an identification of any such firm that is an MBA or WBE:
  - Cost Estimating
  - Technical Design Submission Reviews
11. List of projects to demonstrate OPM services in general of comparable size, scope and complexity that the responding firm has substantially completed within the past five (5) years. For each project, provide a complete description, including estimated and actual project costs, total amount and percentage of change orders, estimated and actual project schedule, and the names, current telephone numbers and other contact information for reference person(s). If the Respondent is a joint venture, describe all projects on which



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the joint venture partners have previously worked together identifying the duties and responsibilities of each firm on each of such projects.

12. Evidence of the firm’s stability by providing detailed financial information that can be used to evaluate and ascertain the firm’s ability to provide the required services for the duration of the Agreement.
13. Completed and executed copy of the Employment Opportunity and Affirmative Action Survey in the form attached as **Attachment 3**.
14. Three (3) references of persons who are familiar with the work of the responding firm. In addition, provide three (3) references of persons who are familiar with the work and professional skills of the proposed Principal-in-Charge and Project Manager. By submitting a proposal, a responding firm expressly authorizes the Authority and its representatives to contact all named references regarding the past performance of the firm and any of the proposed team members identified in the proposal.
15. Executed copies of each of the following documents in the form attached as **Attachments 4 through 8**: (a) Conflict of Interest Statement (**Attachment 4**), (b) Certificate of Non-Collusion (**Attachment 5**), (c) Certificate of State Tax Compliance (**Attachment 6**), (d) Certification regarding Undocumented Workers (**Attachment 7**), and (e) Certification regarding Equal Employment Opportunity, Non-Discrimination and Affirmative Action (**Attachment 8**).

## **XI. SELECTION PROCEDURES**

Each proposal will be reviewed by the Authority to determine if it is complete prior to actual evaluation. The Authority reserves the right, but shall have no obligation, to eliminate from further consideration any proposal deemed to be substantially or materially non-responsive to the RFP. The Authority will review all proposals and may select one or more responding firms who best meet the qualifications set forth in this RFP for personal interviews. Additional information may be issued to those firms selected for interviews. The selection of the finalists will be based on the following criteria, as applied by the Authority in its sole and absolute discretion:

- (A) Prior experience and performance on projects of similar type, scope of services, and complexity, including the quality, depth and relevance of the respondent's prior experience and expertise in providing similar services to public agencies. Prior similar experience, including work on projects with dining/food service program with preference for experience on renovation projects of at least twenty-five million dollars (\$25M).
- (B) Quality, clarity, and completeness of Respondent's approach to project management and the Authority's judgment as to the compatibility of such approach with the Authority.



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- (C) Organization, project staffing (Key Personnel) and capacity, including: the effectiveness of the Respondent's proposed team organizational structure, the qualification of Respondent's key personnel and staff who would be responsible for providing services to the Authority, and the qualifications of the key persons and consultants who will work on the Project.
- (D) Prior experience of specific staff members proposed, including their availability, their capacity to manage architect and construction management teams, and performing quality of work on projects with specific budget and schedule limits.
- (E) Financial stability of the firm.
- (F) Identity and qualifications of consultants that will work with the Respondent.
- (G) Understanding of the Authority's priorities and operations, and the Project.
- (H) Current total workload with private clients and public agencies and the ability of the firm to meet the Authority's project schedule and demands.
- (I) Experience managing projects utilizing Building Information Modeling (BIM), “Lean” construction processes, and Integrated Project Delivery (IPD) tools.
- (J) Experience with managing projects designed for sustainability and energy efficiency, using the LEED rating system.
- (K) Overall commitment to equal employment opportunity and affirmative action.

**XII. ADDITIONAL INFORMATION**

Prospective respondents shall not communicate with the Authority, UMass Amherst or any of their representatives, at any time during the RFP process except through written questions submitted prior to the deadline set forth herein. All questions must be submitted in writing and sent by email to:

Charles A. Paradie Jr.  
Director of Project Planning  
University of Massachusetts Building Authority  
cparadie@umassp.edu

The deadline for receipt of written questions is **5:00pm on March 10, 2017**. The Authority will respond to all written questions which in the Authority’s sole judgment may have a material effect on the RFP by posting written responses on its website, [www.umassba.net](http://www.umassba.net), not later than **noon on March 15, 2017**.



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### **XIII. OTHER PROVISIONS**

The Authority reserves the right to modify this RFP, in whole or in part, prior to the date fixed for submission of the Proposals, by issuance of an addendum or addenda, which shall be posted on the Authority’s website. The Authority may extend the deadline for submission of Proposals if, in the Authority’s judgment, such extension is necessary for any reason. It is the responsibility of each responding firm desiring to submit a proposal to obtain the Request for Proposals and any and all addenda that may be issued in connection with this RFP.

All expenses and costs, including but not limited to legal costs, associated with developing or submitting a proposal in response to this RFP, or associated with oral or written clarification thereof, including all presentation materials and related costs and travel expenses, shall be borne solely by the responding firm, and under no circumstances shall the Authority be responsible for any such cost or expense incurred by any responding firm. The Authority assumes no responsibility for these costs and expenses.

Responding firms may withdraw their proposals, by written request only, received by the Authority prior to, but not after, the time set for proposal submission. Thereafter, proposals shall be irrevocable for a period of not less than forty five (45) days, and may not be withdrawn or modified.

Any proposal which is not received by the Authority by the date and time and at the location for submission of proposals set forth herein will be determined to be late and shall not be considered.

The Authority may cancel or modify this RFP, in whole or in part, or reject all Proposals submitted in response to this RFP if such action is determined to be in the best interest of the Authority. The Authority also reserves the right to waive any irregularities or requirements; and to negotiate with all respondents, in any manner necessary, in its sole judgment and discretion, to serve the best interest of the Authority. Proposals that are incomplete, conditioned, or are otherwise not in conformance with this RFP may be rejected at the sole discretion of the Authority.

A proposal may be considered non-responsive if it includes extraneous information not specifically requested in this RFP. Clarity and conciseness of proposals will be valued over sheer volume.

The Authority reserves the right to request clarification of any aspect of any submitted proposal or to request additional information that might be required to evaluate a proposal.

By submission of a proposal, each Respondent acknowledges and agrees that all documentation and/or materials submitted with its proposal shall become and remain the property of the Authority. The Authority shall have the right to use all or any portions of any proposal, as it considers necessary or desirable, in connection with the Project. By the submission of a



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proposal, the Respondent thereby grants to the Authority an unrestricted royalty-free license to use the proposal and all materials submitted therewith in connection with the Project.

Respondents are advised that, once an award has been made, proposals submitted to the Authority in response to this RFP are considered public records as defined by Massachusetts General Laws, Chapter 4, §7, clause 26.

**XIV. ATTACHMENTS**

- Attachment 1: Procedures of the University of Massachusetts Building Authority for the Procurement of Construction Management at Risk Services pursuant to M.G.L. c. 149A, §§ 1-13 (dated February 17, 2010)
- Attachment 2: Form of Agreement for Professional Services Between Owner and Owner’s Project Manager
- Attachment 3: Equal Employment Opportunity and Affirmative Action Survey
- Attachment 4: Conflict of Interest Statement
- Attachment 5: Certificate of Non-Collusion
- Attachment 6: Certificate of State Tax Compliance
- Attachment 7: Certification regarding Undocumented Workers
- Attachment 8: Certification regarding Equal Employment Opportunity, Non-Discrimination and Affirmative Action

# **ATTACHMENT 1**

Procedures for the Procurement of Construction

Management at Risk Services Pursuant to M.G.L. c.149A, §§ 1-13



## University of Massachusetts Building Authority

### *Procedures for the Procurement of Construction Management at Risk Services Pursuant to M.G.L. c.149A, §§ 1-13*

#### **1.0 Introduction**

The following constitutes the procedures of the University of Massachusetts Building Authority (the “Authority”) relating to the procurement of construction management at risk (“CM at Risk”) services pursuant to the Massachusetts General Laws, Chapter 149A, sections 1 thru 13 inclusive (“Chapter 149A”). The procedures outlined below (the “Procedures”) will be used for Authority projects involving the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost not less than \$5,000,000 to be procured using the CM at Risk delivery method under authority of Chapter 149A and any regulations promulgated thereunder.

The Authority will seek CM at Risk services from contractors and other entities, including joint ventures, that have the appropriate DCAM Certification of Eligibility in the category of General Building Construction. The Authority has established a two (2) phase sealed competitive process for the selection of a CM at Risk firm, hereinafter referred to as the “CM” or the “CM Firm,” with which the Authority may enter into a contract to provide construction management at risk services for a particular project. During the first phase, the Authority will “pre-qualify” entities through dissemination of a publicly-advertised Request for Qualifications (“RFQ”). During the second phase, the Authority will solicit proposals to provide CM at Risk services from the pre-qualified firms, through a Request for Proposals (“RFP”) issued by the Authority. At the conclusion of the RFP phase, the Authority will award a contract to the highest ranked proposer, with whom it is able to successfully negotiate.

#### **2.0 Overview of Selection Process**

2.1 *Prequalification Committee (Phase One).* The Authority will appoint a prequalification committee to review and evaluate all of the firms that respond to the RFQ issued by the Authority with respect to the project. The prequalification committee will be comprised of one (1) representative of the designer, the Authority’s project manager, and at least two (2) other representatives of the Authority (the “Prequalification Committee”).

2.2 *Request For Qualifications (Phase One).* After the appointment of the Prequalification Committee, the Authority will solicit CM Firms by inviting interested firms to respond to a publicly-advertised RFQ. CM Firms will be requested to submit their qualifications only, following the format that may be identified in the RFQ. The RFQ shall comply with the requirements of Chapter 149A, including matters of content and public advertising. The



Prequalification Committee will evaluate the qualifications of all CM Firms and select qualified firms to participate in the RFP Phase (Phase Two) of the selection process.

2.3 *Selection Committee (Phase Two)*. In Phase Two, the Authority will appoint a selection committee, which selection committee may be the same as the Prequalification Committee appointed by the Authority in Phase One. The selection committee will be comprised of one (1) representative of the designer, the Authority's project manager, and at least two (2) other representatives of the Authority (the "Selection Committee"). The Selection Committee will evaluate and rank the proposals submitted in response to the RFP issued by the Authority.

2.4 *Request for Proposals (Phase Two)*. After the appointment of the Selection Committee, the Authority will solicit proposals from CM Firms that are pre-qualified in Phase One. The RFP shall comply with the requirements of Chapter 149A, including matters of content and public advertising. The CM at Risk contract shall be awarded to the CM Firm that submits the highest ranked proposal with which the Authority is able to successfully negotiate.

### **3.0 Request For Qualifications (Phase One)**

3.1. *Purpose*. The Authority shall utilize a Request for Qualifications in order to pre-qualify CM Firms to participate in the Request For Proposal stage (Phase Two) of the selection process.

3.2 *Prequalification Committee*. Prior to issuing a RFQ, the Authority shall establish a Prequalification Committee the role of which shall be to review and evaluate the Qualification Statements received in response to the RFQ. The Prequalification Committee shall be comprised of no fewer than four (4) persons and shall include the Authority's project manager, a representative of the designer, and at least two (2) other representatives of the Authority.

3.3 *Advertisement*. The Authority will publicly notice the RFQ at least two (2) weeks prior to the deadline for submitting responses to the RFQ. The public notice of the RFQ shall be: (a) published in a newspaper of general circulation in the area in which the project is located; (b) published in the Central Register; and (c) listed on the COMPASS system. The Authority will make copies of the RFQ available to all interested firms on an equal basis.

3.4 *Minimum Contents of the RFQ*. The Authority shall issue a RFQ, which shall include, at a minimum, the following information:

- (a) a general description of the project that may include, if available, preliminary concept designs and key factors important to the final selection;
- (b) identification of the owner, the designer, and the owner's project manager;



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- (c) a specific description of the scope of services that the CM Firm will be requested to provide during the design, pre-construction, and construction phases;
- (d) a general description of the anticipated project schedule and estimated construction cost for the project;
- (e) a description of the submission procedures including the time, date, and place for submission of responses to the RFQ, and information regarding the general time frame in which the Authority will respond to said responses;
- (f) a description of the format to which the responses to the RFQ shall conform, including the number of copies required to be submitted;
- (g) a general description of the qualifications evaluation procedure and criteria;
- (h) a description of the evaluation criteria that will be used in the CM Firm selection process;
- (i) a strict prohibition against any unauthorized communication or contact with the Authority or others involved with the project, outside of official pre-proposal meetings conducted by the Authority, if any; and
- (j) a statement indicating that the RFQ process is being used to pre-qualify CM Firms that may be invited to submit a proposal in response to a RFP pursuant to these Procedures.

The RFQ may also impose a limit on the size and number of pages to be included in the response to the RFQ.

3.5 Qualification Statements. The RFQ shall provide that interested CM Firms shall submit a Qualification Statement (the "Qualification Statement") in response to the RFQ, that every Qualification Statement must be signed under pains and penalties of perjury by a duly authorized representative of the submitting CM Firm, and that a Qualification Statement failing to conform to the foregoing requirement shall not be considered by the Prequalification Committee. The RFQ shall inform prospective responders that notarizing a document is not the same as signing a document under the pains and penalties of perjury and that notarizing the Qualification Statement alone does not satisfy this mandatory requirement.



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The RFQ shall provide that a Qualification Statement submitted in response to the RFQ shall include, at a minimum, the following:

- (a) a cover letter addressed to the Authority's Prequalification Committee for the project;
- (b) an executive summary detailing the response to each evaluation criteria, if any are set forth in the RFQ, as well as the key elements and factors that differentiate the submitting firm from other responders;
- (c) completion of an application, such as the AIA Document A305, 1986 edition, or an SF330 or other similar application form that may be identified in the RFQ, providing general business information and financial capacity of the submitting firm;
- (d) a list of lawsuits and arbitrations to which the firm is a party relating to construction contracts within the last three (3) years, including, if applicable, any convictions or fines for violations of state or federal law;
- (e) a project organization chart identifying key project personnel whom the submitting firm proposes will have primary responsibility over the specific project, including any key subconsultants identified in the RFQ for the project, and a description of the respective roles and responsibilities of each identified person;
- (f) an audited financial statement for the most recent fiscal year, which financial statement shall remain confidential and shall not be deemed a public record to the fullest extent permissible under the law;
- (g) a letter from a surety company confirming the CM Firm's ability to provide performance and payment bonds in the full amount of the estimated construction cost for the project;
- (h) detailed information on the firm's safety record including its workers' compensation experience modifier for the prior three (3) years;
- (i) evidence of the firm's compliance record with minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable;
- (j) information regarding the firm's experience on prior projects of similar scope, cost, and complexity including references from



owners and architects (and current contact information) of no fewer than three (3) such projects within a specified period of time;

- (k) information regarding the firm's experience on prior projects delivered using construction management at risk methods, including references from owners and architects of such projects (and current contact information for them);
- (l) a detailed list of any and all projects on which the firm was terminated, failed to complete the work, or paid liquidated damages to the owner within the past five (5) years, with an appropriate explanation of the circumstances surrounding each incident;
- (m) a summary of the firm's project management capabilities including specific examples of prior project management reports or other illustrations of the firm's operating philosophy, policies, and procedures;
- (n) a Certificate of Eligibility issued by the Massachusetts Division of Capital Asset Management and Maintenance (DCAM), pursuant to section 44D of G.L. c.149, showing a capacity rating sufficient for the project;
- (o) a current DCAM Update Statement; and
- (p) any other relevant information that the Authority determines to be desirable.

3.6 *Qualification Statement Evaluation Process.* The Prequalification Committee shall evaluate each Qualification Statement using the evaluation criteria provided in the RFQ. The Prequalification Committee in its discretion may elect to conduct an interview with any CM Firm that submitted a Qualification Statement if, in the opinion of the Authority, an interview is necessary to determine whether such CM Firm should be deemed qualified. Only CM Firms determined by the Prequalification Committee to be qualified pursuant to the qualifications evaluation and criteria described in the RFQ will be selected to participate in Phase Two of the selection process.

The Prequalification Committee shall pre-qualify a minimum of three (3) CM Firms. During Phase Two, the Authority shall not accept proposals submitted by firms not pre-qualified by the Prequalification Committee. The decision of the Prequalification Committee shall be final and binding and shall not be subject to appeal except on the grounds of fraud or collusion. If the Prequalification Committee is not able to pre-qualify a minimum of three (3) CM Firms, the Authority shall either: (i) re-advertise the project pursuant to G.L. c.149A; (ii) procure the project pursuant to the provisions of sections 44A to 44J, inclusive, of G.L. c.149; or (iii) procure the project pursuant to any other method of procurement authorized by law.



#### **4.0 Request For Proposals (Phase Two)**

4.1 *Purpose.* The Authority shall utilize a Request for Proposal process in order to evaluate CM Firms pre-qualified in Phase One and to make a final selection of a CM Firm with which to enter into contract negotiations for the project.

4.2 *Selection Committee.* Prior to issuing a RFP, the Authority shall establish a Selection Committee, the role of which shall be to review and evaluate proposals submitted by pre-qualified CM Firms. The Selection Committee shall be comprised of no fewer than four (4) persons including the Authority's project manager, a representative of the designer, and at least two (2) other representatives of the Authority. The Authority may appoint any or all of the same individuals who served on the Prequalification Committee to serve as members of the Selection Committee for the same project.

4.3 *Minimum Contents of the RFP.* The Authority shall issue a RFP to each pre-qualified CM Firm that incorporates the elements of the RFQ and which RFP also includes, but may not be limited to, the following additional information:

- (a) the date, time and place for submission of proposals;
- (b) a description of the submission requirements including separate price and technical components;
- (c) information concerning the project scope including any preliminary design information, geotechnical reports, existing condition surveys and specifications that may be available;
- (d) information on the project schedule including design deliverables, site availability, and occupancy expectations;
- (e) a detailed description of the scope of work and deliverables expected from the CM Firm during the preconstruction phase and the construction phase;
- (f) the minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals for the building project;
- (g) a description of the communication guidelines to be followed during the procurement process including any measures to assure that the selection process will be open and fair;
- (h) the form of contract between the Authority and the CM Firm, including general and supplemental conditions, and any incentive



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provisions allowable under Chapter 149A or any damages for delay provisions;

- (i) the budget for the project;
- (j) a schedule of cost items including fee items, cost of the work items, and cost of general conditions items;
- (k) specific information on the proposal evaluation criteria including any rating system that will be used to evaluate and rank proposals;
- (l) a timetable and process for establishing the guaranteed maximum price (“GMP”) for the CM at Risk contract, including, if known, the level of design that will serve as the basis for the GMP and limitations on the amount and use of contingency; and
- (m) a list of the trade contractor classes of work to be required in the trade contractor prequalification plan.

4.4 Price Proposal. The RFP shall require the submission of separate price and technical proposals. The price proposal shall be submitted separately from, but at the same time as, the technical proposal in a separately sealed envelope. All price information shall be submitted with appropriate back-up in sufficient detail as required by the RFP. The price proposal shall include the following information:

- (a) the preconstruction services fee, including appropriate detail, subject to the maximum preconstruction services fee as may be established by the Authority for the project;
- (b) the fee for construction services, including an explanation of the basis for the fee, subject to the maximum construction services fee as may be established by the Authority for the project;
- (c) the estimated general conditions costs with appropriate break-down thereof; and
- (d) the construction contingency, including an explanation of the proposed use thereof.

4.5 Technical Proposal. The RFP shall require the submission of a separate technical proposal which shall include:

- (a) a detailed project approach, including both preconstruction and construction phase services;



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- (b) supplemental relevant project references;
- (c) the project team members with position descriptions and relevant time commitments of those team members throughout the course of the project;
- (d) a specific construction management plan indicating CM Firm's approach to controlling costs, schedule, quality, documents and claims;
- (e) preliminary definition of trade contractor and subcontractor bid packages and scopes of work, and anticipated workers compensation payroll class codes involved in the trade contractor scope of work;
- (f) affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of G.L. c.149;
- (g) a commitment letter from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the building project in the full sum of the contract at 110 percent of the budget for the building project;
- (h) a technical challenges and potential solutions plan consisting of a detailed discussion of the project's technical challenges and potential alternative solutions;
- (i) any specific qualifications or exceptions to the terms of the form of contract, general conditions, or supplemental conditions as included in the RFP; and
- (j) any other information deemed necessary or desirable by the Authority.

4.6 Selection Process. Upon receipt of the proposals in response to the RFP, the Selection Committee shall evaluate and rank each proposal in accordance with the criteria set forth in the RFP, which criteria may include any component of the technical and price proposals. The Selection Committee may elect to interview all of the pre-qualified CM Firms who submitted proposals in response to the RFP. If interviews are conducted, the Selection Committee may, but shall not be required to, consider the interview when making its evaluation of the CM Firms. The decision of the Selection Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. The list and ranking of CM Firms shall be certified by the Authority and made available as a public record after such negotiations are complete and a contract has been executed with a CM Firm.

4.7 Contract Negotiations. The Authority shall establish a schedule and process for contract negotiations and execution of a contract between the Authority and the highest ranked CM Firm and shall commence non-fee negotiations with the highest ranked CM Firm pursuant to said schedule and process. At the conclusion of the negotiations, the Authority and the CM Firm



shall initially execute a contract for construction management at risk services, which contract may initially be limited to pre-construction services. The CM contract shall utilize a cost-plus not to exceed guaranteed maximum price form of contract, which contract shall be acceptable to the Authority in all respects. The CM contract shall stipulate that the Authority be entitled to monitor and audit all project costs as it deems necessary and prudent. If the Authority determines that negotiations with the highest ranked CM Firm will not result in a contract acceptable to the Authority, the Authority shall terminate negotiations with the highest ranked CM Firm and shall commence negotiations with the next highest ranked CM Firm. The process shall continue until the Authority has reached an acceptable contract with one of the pre-qualified CM Firms.

4.7.1 *GMP Negotiation Schedule and Process.* The Authority shall establish a schedule and process for determining the GMP and execution of the GMP Amendment to the selected CM Firm's contract, which shall comply with the following minimum requirements:

- (a) the GMP shall be established based on construction documents developed to a minimum of sixty (60) percent completion;
- (b) the GMP shall include a pricing structure that specifically identifies the following costs: (a) general conditions, (b) cost of the work, (c) construction contingency, and (d) fee (or profit). The GMP shall be the maximum price payable to the CM Firm for all project costs subject to modification only in accordance with the changes provisions of the CM contract. The GMP may include an Owner's Contingency if the Authority chooses to include such an item. The contract or the GMP Amendment shall allow the Authority to monitor and audit all costs associated with the GMP;
- (c) the GMP Amendment may allow for incentives related to various performance objectives so long as the total dollars available to the CM Firm from incentive provisions shall not exceed one percent (1%) of the estimated construction cost. However, the GMP Amendment shall not include any incentive provisions related to the sharing of savings between the final GMP and the final cost of construction services;
- (d) the GMP Amendment shall be executed before the commencement of any construction work; provided, however, the Authority may choose to authorize the commencement of construction work on so-called early construction packages prior to the execution of the GMP Amendment. If, in the opinion of the Authority, the project requires the implementation of one or more early construction packages, the Authority and the CM Firm shall execute a separate CM contract Amendment setting forth the scope of work and price of each early construction package. The CM Firm shall be required to provide payment and performance bonds covering the full value of each early construction package. Each early construction package



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Amendment shall specify the cost of the work, the general conditions cost, and the CM fee, if any;

- (e) if an early construction package is authorized by the Authority, the early construction package scope of work shall be subject to the trade contractor selection process for the stated scope of work only;
- (f) in the event that a GMP cannot be successfully negotiated between the Authority and the CM Firm within the schedule established by the Authority or on terms acceptable to the Authority, any existing trade contractor or subcontractor agreements between the CM Firm and a trade contractor or subcontractor for work associated with an early construction package shall be assigned to the Authority or to another CM Firm designated by the Authority in writing without the assent of the trade contractor or subcontractor. The Authority, the CM Firm, the trade contractors, and the subcontractors shall be bound by the terms of their respective trade contractor and subcontractor agreement;
- (g) the GMP Amendment to the CM Firm's contract shall include the following information:
  - (i) a detailed schedule of values including a line item breakdown by trade of all costs associated with construction services including any costs for early construction packages that are to be included in the GMP;
  - (ii) dollar amounts of the CM Firm's contingency;
  - (iii) dollar amounts for the general conditions costs;
  - (iv) dollar amount of the CM Firm's fee, including any fee associated with an early construction package;
  - (v) a detailed list of all drawings, specifications, and other information on which the GMP is based;
  - (vi) a list of allowances and a statement of their basis;
  - (vii) a list of any technical assumptions or clarifications on which the GMP is based;
  - (viii) the dates for substantial and final completion on which the GMP is based; and
  - (ix) a schedule of applicable alternates and unit prices;



- (h) within five (5) business days after the execution of the GMP Amendment, the CM Firm shall provide all required performance and payment bonds in the amount of the GMP.

4.7.2 *Failure to Reach Agreement.* In the event that the Authority is unable to negotiate a GMP with the CM Firm in accordance with the schedule and procedure established by the Authority, the Authority may commence non-fee contract and GMP negotiations with the next highest ranked CM Firm in accordance with a revised schedule and procedure established by the Authority. In the event that a contract and GMP Amendment cannot be successfully negotiated between the Authority and the next highest ranked CM Firm within the schedule established by the Authority and on terms acceptable to the Authority, the Authority shall terminate the Chapter 149A process and shall instead procure the project in accordance with sections 44A to 44J, inclusive, of G.L. c.149. Following such termination, the Authority may not use the Chapter 149A CM at Risk delivery method for the same building project unless the building project has been materially changed in form or function.

## **5.0 Trade Contractors and Subcontractors**

5.1 *Definitions.* The term “trade contractor” shall be defined as those firms performing any sub-bid classification of work listed in section 44F of G.L. c.149, or any other sub-bid class of work specifically identified by the Authority for the project, provided that the sub-bid work meets or exceeds the threshold sum identified in subsection (1) of section 44F of G.L. c.149. The term “subcontractor” shall refer to those subcontractors who are not trade contractors.

5.2 *Applicability.* The Authority shall establish separate processes with respect to the prequalification of trade contractors. If the actual cost of trade contractor work falls below the threshold sum identified in subsection (1) of section 44F of G.L. c.149, the CM Firm may award such contracts using any reasonable and fair selection method, so long as such selection method documented in writing by the CM and approved by the Authority in writing prior to implementation.

5.3 *Self-Performed Work.* The CM Firm may submit its qualifications to bid on trade contract or subcontract work in accordance with this Section provided that: (a) the CM Firm customarily performs the work for which it submits qualifications; (b) the CM Firm performs such work with employees on its own payroll; (c) the CM Firm meets all requirements of the trade contractor or subcontractor selection process; and (d) the CM Firm does not participate as a member of any prequalification or selection committee relative to a trade for which it seeks to submit qualifications and/or bids. In such cases, the Authority shall appoint a person to carry out the prequalification and selection committee responsibilities of the CM Firm.

### 5.4 *Trade Contractor Selection Process.*

5.4.1 *Trade Contractor Prequalification.* The Authority shall issue a Trade RFQ in order to solicit Qualification Statements from all interested trade contractors, and to pre-qualify



trade contractors to participate in the project. The Authority shall develop a Trade RFQ for each category of trade contractor work. Any entity performing trade contractor work on the project shall be pre-qualified in accordance with the trade prequalification process described in this Section.

5.4.2 Trade Prequalification Committee. Before issuing a request for qualifications for trade contractor work, hereinafter referred to as a Trade RFQ, the Authority shall establish a Trade Prequalification Committee for the purpose of reviewing and evaluating Qualification Statements received from trade contractors in response to a Trade RFQ. The Trade Prequalification Committee shall be comprised of one (1) representative of the designer, one (1) representative of the CM Firm, and two (2) representatives appointed by the Authority (the “Trade Prequalification Committee”).

5.4.3 Advertisement of Trade RFQ. Each Trade RFQ shall be advertised at least two (2) weeks prior to the deadline for submitting responses to the Trade RFQ. The advertisement shall be (i) published in a newspaper of general circulation in the area in which the project is located, (ii) published in the Central Register, and (iii) listed on the COMPASS system. The public notice and advertisement shall appear at least 2 weeks prior to the deadline for submitting responses to the Trade RFQ, and shall contain the following information, at a minimum:

- (a) the date, time and place for submission of Qualification Statements;
- (b) relevant information about the project and the bidding process;
- (c) specific criteria for trade contractor prequalification and selection;
- (d) a statement indicating that the RFQ will be used to pre-qualify trade contractors that will be invited to submit a bid; and
- (e) a statement that the procurement process does not include a public opening of Qualification Statements received from trade contractors, but indicating that responders’ names will be posted.

The CM Firm shall provide detailed information describing the scope of work required for each category of trade work, which description shall serve as the basis for the Trade RFQ. The Trade RFQ shall require only the information set forth below in this paragraph, and shall identify the specific point allocation for each category of information. The Authority will use its discretion in allocating points among the subcategories, consistent with the total points for the category as indicated below.

- (A) Management Experience (50 points total with a minimum requirement of 25 points necessary to be pre-qualified):
  - (i) Ownership – including name, title, years with firm of each of the owners of the business;



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- (ii) Personnel – including names, titles, years with the firm, education, construction experience, and a list of projects completed by each person identified;
  - (iii) Similar Project Experience – detailed information on similar projects completed within that period of time specified in the Trade RFQ. Such information shall include the project name and general description, description of the scope, original trade contract sum, final trade contract sum with a detailed explanation of any differences, and the original completion date and final completion date with a detailed explanation of any differences;
  - (iv) Terminations – a list of any projects on which the trade contractor was terminated or failed to complete the work.
  - (v) Lawsuits – a list of lawsuits commenced within the last three years in which the trade contractor is a defendant or defendant-in-counterclaim. Such list does not have to include lawsuits involving primarily personal injury or workers' compensation claims, or where the sole cause of action involves the trade contractor's exercise of its rights for direct payment under section 39F of G.L. c.30.
  - (vi) Safety Record – a three (3) year history of the trade contractor's workers' compensation experience modifier.
- (B) References (30 points with a minimum requirement of 15 points necessary to be pre-qualified):
- (i) Clients – a list of references for all projects listed in A(iii) above including the project name, client's name, address, telephone and fax number, and contact person. The trade contractor should ensure that such contact information is current and usable.
  - (ii) Credit – a list of a minimum of 5 credit references, including telephone and fax number of contact person from key suppliers, vendors and banks. The trade contractor should ensure that such contact information is current and usable.
  - (iii) Public Project Record – a list of all completed public building construction projects as defined in section 44A of G.L. c.149 during past three (3) years with client's name, address, telephone and fax number and contact person. The trade contractor should ensure that such contact information is current and usable.



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- (C) Capacity to Complete Projects (20 points with a minimum requirement of 10 points necessary to be pre-qualified):
  - (i) Annual revenue for prior three (3) fiscal years. There shall be no requirement for submission of financial statements.
  - (ii) Revenue under contract for the next three (3) fiscal years.
- (D) Mandatory Requirements (for which no points are assigned):
  - (i) Commitment Letter for payment and performance bonds at 110 percent of the estimated trade contract value from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570.
  - (ii) a Certificate of Eligibility issued by DCAM pursuant to section 44F of G.L. c.149 for each category of trade work for which the trade contractor seeks to be pre-qualified.
  - (iii) a current DCAM Update Statement.

5.4.4 Trade Contractor Qualification Statements. Each Trade RFQ shall provide that every Qualification Statement submitted in response to a Trade RFQ must be signed under pains and penalties of perjury by a duly authorized representative of the submitting CM Firm, and that a Qualification Statement failing to conform to the foregoing mandatory requirement or any other mandatory requirement set forth in the RFQ shall not be considered by the Trade Prequalification Committee. The RFQ shall also inform trade contractors that notarizing a document is not the same as signing it under the pains and penalties of perjury and therefore that notarizing the Qualification Statement alone does not satisfy this mandatory requirement.

5.4.5 Trade Contractor Evaluation. Qualification Statements submitted by trade contractors shall be reviewed and scored by the Trade Prequalification Committee. The Authority may provide an additional 5 points to the total score of each DBE, MBE or WBE trade contractor who is certified by SOMWBA and participates in the Trade Prequalification Process. All trade contractors who achieve a score of 70 points or greater shall be pre-qualified and entitled to submit a bid. The Authority shall notify the pre-qualified trade contractors of their approval to submit a bid in that trade as well as the schedule and timing for the issuance of the Request for Bids, if known. The decision of the Trade Prequalification Committee shall be final and binding and not subject to appeal except on the grounds of fraud or collusion.

An individual trade contractor's score shall be made available to the trade contractor upon request, but shall not be a public record as defined in section 7 of chapter 4 and shall not be open to public inspection to the fullest extent possible under the law. In addition, financial information provided by a trade contractor in response to the Trade RFQ shall remain



confidential and shall not become a public record as defined in section 7 of chapter 4 and shall not be open to public inspection to the fullest extent possible under the law.

5.4.6 *Trade Contractor Bidding Process*. Pre-qualified trade contractors shall be invited to submit a bid within their trade pursuant to a Request for Bids. The Request for Bids shall include, but may not be limited to, the following information:

- (a) the date, time and place for submission of bids,
- (b) fully detailed drawings and specifications for a particular trade in order to provide for full competition of each item of material to be furnished under the trade contract in accordance with G.L. c.30 and c.149;
- (c) a description of the trade contractor's scope of work, including alternates and allowances, if any;
- (d) a project schedule indicating the planned sequence and duration of the trade contractor's work;
- (e) a list of all pre-qualified trade contractors for a particular scope of work;
- (f) a bid form that shall require, without limitation, a listing of price, addenda, alternates and allowances, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on its own payroll, except for work customarily performed by sub-trade subcontractors within the trade; the names of all sub-trade contractors to be used if awarded the trade contract with the contract sum for each sub-trade contractor, and anticipated workers compensation payroll class codes involved in the trade contractor scope of work;
- (g) an affidavit that all sub-trade contractors named on the bid form have been pre-qualified by the trade contractor using criteria similar to the criteria used in the trade prequalification process;
- (h) an affidavit of tax compliance;
- (i) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of G.L. c.149;
- (j) a non-collusion affidavit;



- (k) a requirement for the trade contractor to post a five (5) percent bid bond from a surety company licensed to do business in the commonwealth and whose name appears on U.S. Treasury Department Circular 570; but, the bid bond shall be returned to the bidder if the bidder is not selected as the trade contractor;
- (l) the budget for the entire project, as well as the budget for the trade contractor scope of work as provided in the GMP, if available, or as provided in the most recent budget for the project; and
- (m) a trade contractor agreement form including all exhibits.

Bids shall be opened publicly by the Authority and a contract shall be awarded to the lowest prequalified bidder. Any bid which does not include the bid bond or affidavits required or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the request for bids shall be rejected. If the Authority receives fewer than three (3) responsive bids for any trade and the lowest bid exceeds the estimated cost of the work for which the bids are requested, the CM Firm shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the CM Firm shall terminate negotiations with the lowest prequalified bidder and shall initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the CM Firm is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the CM Firm, on behalf of and with the consent of the Authority, may solicit additional bids, utilizing the Subcontractor Selection Process established by the Authority for those subcontractors not interested in providing sub-bid work.

**5.4.7**        Trade Contractor Agreements. Trade contractors selected by the CM Firm shall return an executed trade contract, consistent with the form specified in subsection (k) of Section 8 of Chapter 149A, including the required performance and payment bonds, insurance certificate, and any other form or exhibit that may be required by the Authority in the Request for Bids to the CM Firm within ten (10) business days of receipt of the trade contract from the CM Firm. The CM Firm shall execute a trade contract with each trade contractor.

**5.5**        Subcontractor Selection Process. For subcontractors who are not trade contractors as defined herein and whose work has an estimated cost at or exceeding the threshold sum identified in subsection (1) of Section 44F of G.L. c.149, the CM Firm shall provide the Authority with a detailed written description of the qualifications that a subcontractor must have in order to perform the work successfully as well as a list of three (3) subcontractors that the CM Firm believes meet such qualifications. The Authority may, without the approval of the CM Firm, eliminate subcontractors proposed by the CM Firm and may consider additional subcontractors as long as such additional subcontractors are reasonably acceptable to the CM Firm.



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*CM at Risk Procedures under M.G.L. c.149A*

Once all of the approved subcontractors are identified, the CM Firm shall prepare a list of approved subcontractors for each specific scope of subcontractor work. The CM Firm shall develop detailed bidding information and provide such information to each subcontractor on the list of approved subcontractors and invite each approved subcontractor to submit a written bid for the work. The CM Firm shall indicate the bidders who are selected to be awarded a subcontract and shall provide to the Authority a written explanation as to the reason for the award of a subcontract.

If the CM Firm submits a bid to self-perform subcontract work, all bids shall be transmitted to the Authority's project manager. The project manager shall present a list of the bids submitted by approved subcontractors to the Authority and shall indicate the bidders who are selected to be awarded a subcontract.

If the cost of the subcontract work falls below the threshold sum identified in subsection (1) of section 44F of G.L. c.149, the CM Firm may award contracts using any reasonable and fair selection method, so long as such selection method is approved by the Authority.

5.5.1 Subcontractor Agreements. The CM Firm may utilize the statutory form of trade contract, or a different form of subcontract acceptable to the Authority.

5.6 Application of Other Laws. Sections 26, 27, 27A, 27B, 27C, 27D, 29, 29C, and 34A of chapter 149, and sections 39F, 39J, 39K, 39N, 39O, 39P and 39R of chapter 30 shall apply to all building projects using the construction management at risk delivery method set forth in Chapter 149A.

*End of  
Document*

# **ATTACHMENT 2**

Agreement for Professional Services  
Between Owner and Owner's Project Manager

# UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY



## **AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND OWNER'S PROJECT MANAGER**

AGREEMENT made and entered into as of the [REDACTED] day of [REDACTED], 2017 by and between the Owner and the Owner's Project Manager in connection with the Project, all as defined below.

**Owner:** **UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY**, an entity established by Chapter 773 of the Acts of 1960, as amended, having its usual place of business at One Beacon Street, 31<sup>th</sup> Floor, Boston, Massachusetts 02108

**Owner's Project Manager (OPM):** [REDACTED], having a principal place of business at [REDACTED].

**Project:** Owner's Project Manager Services for University of Massachusetts Amherst – Worcester Dining Commons Renovation (the "Project")

**UMBA Project No. 17-A1**

**Exhibit A:** List of OPM Project Staff and Consultants

**Exhibit B:** Project Schedule and Milestones

**Exhibit C:** Hourly Rates of OPM and its Consultant



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The Owner and the OPM enter into this Agreement for Professional Services (the “Agreement”) on the terms and conditions hereinafter set forth and specifically incorporate into this Agreement the Attachments referenced above, copies of which are attached hereto.

**ARTICLE 1**  
**GENERAL**

**§ 1.1 Overview.** The OPM will be responsible for providing to the Owner all project manager services necessary in connection with the planning, design, construction and commissioning of the Project described in Section 1.2 hereof, as the same may be modified during the term of this Agreement.

**§ 1.2 Project Description.** The Worcester Dining Commons project may include renovation of the existing structure, renovation with addition or new structure. The results of previous study efforts identified a serious and critical need for extensive renovations to the existing facility in order to be able to continue delivering the quality of dining experience that the Campus has become known for. The completed project shall create a one of a kind dining experience for their guests. In line with the University’s mission to be the “destination of choice” the Worcester Dining Commons shall be a learning commons – a place for the campus community to gather, learn, and share experiences to help further exemplify UMass Amherst’s rich culture and commitment to local, healthy, and sustainable menu items while building a community around food, for many years to come.

**ARTICLE 2**  
**RESPONSIBILITIES OF OWNER’S PROJECT MANAGER**

**§ 2.1 Overview.** The OPM will be responsible for providing to the Owner all project manager services necessary in connection with the planning, design, construction and commissioning of the Project, as such services may be modified during the term of this Agreement.

**§ 2.2 Performance of Services.** In the performance of its obligations hereunder, the OPM accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The OPM covenants with the Owner to furnish its best professional skill, judgment and attention consistent with the applicable professional standard of care to further and protect the interests of the Owner with regard to the Project. The OPM agrees to furnish efficient business administration and superintendence when rendering its services under this Agreement and to use its best efforts to ensure that the Project is completed in the most expeditious and economical manner possible consistent with the interests of the Owner.

**§ 2.3 OPM Staffing.** The OPM shall render all required services for the Project for the full duration of the Project with the staff, and consultants if any, set forth in **Exhibit A**, which is attached hereto, incorporated herein by reference and made a part of this Agreement. All services shall be performed by qualified, experienced, and duly licensed employees of the OPM, or the OPM’s consultants, provided, however, that the employment by the OPM of consultants other than those identified in **Exhibit A** for any portion of the Scope of Services shall be subject



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to the prior written approval of the Owner. The Owner shall have the right to require the OPM to remove any employee or consultant from the Project for reasonable cause.

**ARTICLE 3**  
**RELATIONSHIP OF THE PARTIES**

**§ 3.1 Independent Contractor.** The OPM shall act as an independent contractor of the Owner in providing the services required under this Agreement.

**§ 3.2 Authority of the OPM.** The OPM shall report to the Owner’s project representative identified in Article 5 hereof. The OPM shall act as agent for the Owner only to the extent specifically authorized by this Agreement. The OPM shall not have authority to bind the Owner or to enter into any agreements on behalf of the Owner except to the extent that it is specifically authorized to do so by the terms of this Agreement, or as the Owner may otherwise expressly authorize in writing.

**§ 3.3 Qualifications.** The OPM warrants and represents to the Owner that it has fully, completely and truthfully represented the qualifications and skills of the OPM, its consultants, agents, servants and employees in the proposal submitted to the Owner by the OPM, and in all other communications with the Owner relative to this Agreement and the services to be performed hereunder, and that it shall continue to do so throughout the term of this Agreement.

**§ 3.4 Responsibility for Performance of Design and Construction.** The OPM shall coordinate the work of the designers, contractors, independent engineers and commissioning agents and other consultants engaged by the Owner in connection with the Project. Nothing in this Agreement shall be construed as an assumption by the OPM of the responsibilities or duties of the designer, contractor, independent engineer, commissioning agent or such other consultant for the Project. The OPM’s services for the Project shall be rendered compatibly and in coordination with the services provided by the contractor and designer. It is not intended that the services of the OPM and designer be competitive or duplicative, but rather complementary. The OPM shall be entitled to rely upon the designer and contractor for the proper performance of their obligations pursuant to their respective contracts with the Owner. As used in this Agreement, the word “contractor” shall include the construction manager as appropriate to the Project.

**ARTICLE 4**  
**SCOPE OF SERVICES**

**§ 4.1 General.** The OPM shall be responsible for and shall provide the services hereinafter described in connection with the Project (the “Scope of Services”). The OPM shall provide advice and counsel with respect to planning, utilization of building information modeling, lean construction concepts and integrated project delivery techniques for the Project, and consistent with the mode of procurement selected for the Project, advice and counsel with respect to design, value engineering, scope of the work, cost estimating, pre-qualification of designers, general contractors, construction managers, independent engineers and commissioning agents, trade



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contractors and subcontractors and any other consultants engaged by the Owner for the Project, and the selection, negotiation with and oversight of designers, general contractors and construction managers, trade contractors and subcontractors as appropriate to the procurement method utilized by the Owner, independent engineers and commissioning agents and any other consultants engaged by the Owner for the Project, scheduling, ensuring the preparation of construction schedules which shall serve as control standards for monitoring performance of the Project, and assisting in Project evaluation including, but not limited to, written evaluations of the performance of the design professionals, contractors, and subcontractors;

**§ 4.2 All Phases.** Throughout all phases of the Project, the OPM shall provide the following services:

**§ 4.2.1 Project Meetings.** The OPM shall develop a comprehensive Project meeting schedule, review agendas for the meetings and facilitate distribution of the agendas, attend all meetings, and review and facilitate distribution of meeting minutes to all participants.

**§ 4.2.2 Project Schedule.** The OPM shall prepare for the Owner a Project schedule which shall serve as the control standard for monitoring performance on the Project, and shall maintain and monitor such Project schedule incorporating the pre-design, design, preconstruction, construction, commissioning, and close-out/turnover activities of the Project; incorporate schedules prepared by the designer and the contractor into the Project schedule as they become available; with input from the designer and the contractor, provide narratives to the Owner describing the status of the Project schedule, deviations from the baseline schedule, and other material schedule information; review the contractor’s schedule for logic, sequence and duration, and report to the Owner on same; and make recommendations to the Owner and designer to accept or reject the contractor’s schedules.

**§ 4.2.3 Project Budget.** The OPM shall develop and monitor the Project budget; coordinate the preparation of Owner’s independent estimates, if any, and insure that cost estimates prepared by the designer and the contractor are fully reconciled with each other and with estimates prepared by the Owner; prepare estimates of all Project soft costs and track all costs throughout the duration of the Project; with input from the designer and the contractor, provide narratives to the Owner describing the status of the Project budget, deviations from the baseline budget, and other material budget information, including expenditure of the construction contingency; and track the projected draw schedule of the contractor against the actual monthly requisitions. The OPM shall immediately report to the Owner any variances in the Project budget, including a detailed explanation as to the source of such variances and proposed reconciliation of the same.

**§ 4.2.4 Monitoring of Compliance with MBE/WBE and related Goals.** The OPM shall monitor compliance with the Project’s MBE/WBE and workforce participation goals.



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**§ 4.2.5 Monthly Progress Reports.** The OPM shall submit monthly progress reports to the Owner and others as determined by the Owner. Such reports shall include, but not be limited to: progress photographs; current budget and schedule status including any variances to the Project budget or schedule with recommendations for reconciliation of the same; a review of quality of the work; a description of any encountered or anticipated problems at the site; a detailed listing of proposed and pending change orders along with recommendations regarding approval of the same; a detailed listing of potential and actual claims and disputes along with recommendations and strategies for resolution of the same; current and cumulative Project data regarding the tracking and participation of women and minorities and women-owned and minority-owned firms, and the level of participation of union and open shop companies in the Project. The OPM shall also submit monthly reports tracking its actual monthly and cumulative man hours and fee with comparison to its projected man hours and fee. Such monthly reports shall be submitted by the OPM within five (5) business days of the end of the prior month, unless otherwise approved by the Owner.

**§ 4.2.6 Daily Log.** During construction, the OPM shall maintain a daily log showing work accomplished, number of workers present, weather conditions, visitors to the site, oral instructions and interpretations given, problems encountered and issues raised, and other pertinent information; and distribute copies to the Owner, designer, and contractor.

**§ 4.2.7 Claims and Disputes.** The OPM shall advise and assist the Owner with respect to the avoidance and resolution of field problems, claims, and disputes.

**§ 4.2.8 Project Records.** The OPM shall maintain comprehensive Project records throughout the course of the Project, including all correspondence, contracts, drawings, specifications and other Contract Documents, addenda, change orders and other contract modifications, written interpretations, an inventory of ASIs, shop drawings, product data, samples, submittals, and maintenance and operating manuals. Such records shall be available to the Owner, and the OPM shall ensure that such records are delivered to the Owner or its designee for each specific type of record at the completion of the Project. The OPM shall be expected to maintain Project records in hard-copy or electronic form, as appropriate.

**§ 4.2.9 Clerk of the Works.** Unless the Owner shall otherwise specify in writing, the OPM shall provide a clerk of the works (“Clerk of the Works”) to be stationed on the Project site for the duration of the Project on a full-time basis.

**§ 4.2.10 Campus Coordination.** The OPM shall coordinate logistical design and construction issues with University personnel, abutters, government agencies and other affected parties. The OPM shall attend all meetings with the University regarding the Project and shall facilitate the exchange of all required information and documentation between the Owner and the University.



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**§ 4.2.11 Contractor Operations.** The OPM shall work with the contractor to ensure that all construction work is performed in conformance with campus rules and regulations.

**§ 4.2.12 Commissioning.** The OPM shall work with the commissioning agent to ensure that all commissioning work is performed in conformance with campus rules and regulations and so as not to interfere with campus operations.

**§ 4.3 Design & Construction Support Services.**

**§ 4.3.1 Design Review.** The OPM shall review design drawings and specifications at every stage of completion in coordination with the Owner, campus, designer, and contractor; conduct constructability analyses and evaluations of construction technology and methodology; and coordinate design review efforts between the designer and the contractor. OPM’s design review shall be performed by individuals qualified to perform review of architectural, structural, mechanical-electrical-plumbing (“MEP”), and fire protection disciplines. Such design review shall include OPM’s provision of written comments regarding constructability, coordination, and compliance with applicable laws, including any requirements of M.G.L. c 149 and 149A, particularly as they pertain to filed sub-bids and “Trade” bids, as applicable.

**§ 4.3.2 Permitting.** The OPM shall assist the Owner and designer by providing coordination of Project permits and other governmental approvals; prepare and regularly update and circulate a schedule of permits and approvals; establish and assign responsibility of designer and contractor and their consultants for each component of permit and approval procedures, and monitor progress; work with the other Project team members to prepare presentations to permitting authorities; and coordinate and attend meetings and hearings with permitting agencies, and make or participate in presentations as requested by the Owner.

**§ 4.3.3 Preliminary Investigations.** The OPM shall assist the Owner in determining the need for and the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects. The determination that any additional services or testing need to be performed shall rest with the Owner.

**§ 4.3.4 Design Contract Oversight.** The OPM shall monitor the status of the designer contract including monitoring the schedule of the designer, provide review and comment of designer’s work product and make recommendations to the Owner when, in the opinion of the OPM, requirements of the designer’s contract with the Owner are not being fulfilled.

**§ 4.3.5 Value Engineering.** The OPM shall coordinate and manage the value engineering process including providing value engineering alternatives for any part of the



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OPM’s scope of services; track value engineering items through disposition, including incorporation into the Contract Documents by the designer; and provide recommendations to the Owner on value engineering alternatives.

**§ 4.3.6 Insurance.** The OPM shall monitor all insurance coverage requirements for Project participants; and obtain and log all necessary certificates of insurance and advise Owner of any discrepancies.

**§ 4.3.7 Prevailing Wage.** The OPM shall maintain and monitor records of compliance with the Massachusetts Prevailing Wage Law; including obtaining an annual update of the wage schedule on the anniversary date of the project. The anniversary date is the earlier of: (1) the GMP Amendment execution date, or (2) the execution date of the first amendment to the CM at Risk firm contract.

**§ 4.3.8 Quality of the Work.** The OPM shall continuously monitor construction work so as to assist the designer in determining, in general, that the work is being performed in accordance with the requirements of the Contract Documents; endeavor to guard the Owner against defects and deficiencies in the work; and, as appropriate, make recommendations to the Owner and the designer regarding special inspections or testing.

**§ 4.3.9 Safety.** The OPM shall review safety programs developed by the contractor for the Project; and notify the Owner and contractor of any observed deviations from the safety program or special conditions requiring additional attention.

**§ 4.3.10 Changes and Claims.** The OPM shall work with the designer to review all proposed change orders and pending or potential claims and make recommendations to the Owner regarding same. All changes and resolution of claims shall be subject to the final written approval by the Owner. The OPM shall prepare and process all documentation relating to change orders and resolution of claims for Owner’s written approval and shall coordinate with the designer in connection with any required modifications to the Contract Documents. The OPM shall maintain a document control system for logging and tracking change orders, claims, and disputes to resolution.

**§ 4.3.11 Applications for Payment.** In coordination with the Owner and the designer, the OPM shall develop, implement, and coordinate a procedure for the processing of contractor’s applications for payment. The OPM shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the designer, contractor, equipment vendors, and all other prime contractors and suppliers and make recommendations to the Owner relative to amounts due.

**§ 4.3.12 Submittals.** The OPM shall monitor the designer’s review of shop drawings, samples and other submittals, coordinate and expedite approval process where necessary, and ensure that the designer properly maintains appropriate logs of all submittals.



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**§ 4.3.13 Inspection of Construction.** The requirements to monitor construction work and/or to review safety programs developed by others and to observe safety program deviations as well as any notification obligations as set forth in Paragraphs 4.3.8 and 4.3.9, above, shall not constitute an obligation or responsibility of the OPM to supervise, direct, or have control over the means and methods used to furnish the construction work, or warrant the quality of the work and or the safety of its performance, which authority the OPM shall not have, nor will it give rise to any obligation of the OPM to the contractor, trade contractors, subcontractors or their employees, or the public, with respect to the proper implementation of Project safety practices, precautions and programs by the contractor, trade contractors, or subcontractors on the Project.

**§ 4.3.14 Close-Out.** The OPM shall assist the designer in inspections and development of punch list items, monitor punch list completion, and completion of commissioning activities; review all Project close-out documentation, including as-built drawings, required for Project close-out to insure compliance with the contract requirements; with the designer and the University’s maintenance personnel, observe the contractor’s checkout of utilities, operational systems and equipment for readiness and assist in their initial start-up and testing; schedule and observe training programs on all building equipment and systems; and oversee transfer to the Owner of guarantees, warranties, as-built drawings, keys, manuals, etc. and other close-out requirements.

**§ 4.3.15 Project Completion.** The OPM shall monitor the activities and responsibilities of the designer and the contractor in the close-out and commissioning of the Project; and assist in securing and reviewing and recommending approval of all Project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, certificate of substantial completion, certificate of final completion, occupancy permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents and the Authority.

#### **§ 4.4 Procurement Support Services.**

**§ 4.4.1 General.** The OPM shall assist the Owner with all activities required to procure construction services for the Project in accordance with the Authority’s enabling act, c. 773 of the Acts of 1960, as amended, whether such services are procured pursuant to M.G.L. c. 149 §§ 44A through 44H; M.G.L. c. 149A, §§ 1-13; M.G.L. c. 30; or such other methods as may be authorized by law, and the services of all designers, independent engineers, commissioning agents, and any other consultants to be engaged directly by the Owner, including but not limited to the services identified in this Section 4.4.

**§ 4.4.2 Procurement Strategy.** The OPM shall develop a strategy, for review and approval of the Owner, with respect to the procurement of all designers, general contractors, construction managers, trade contractors and subcontractors, independent



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engineers and commissioning agents and any other consultants engaged directly by the Owner, long-lead time materials and owner purchased materials.

**§ 4.4.3 Long Lead Items.** The OPM shall coordinate the identification of long lead time items and early purchase and delivery of equipment.

**§ 4.4.4 Procurement Materials.** The OPM shall assist in the preparation of and coordinate the issuance and distribution of all bidding and procurement materials.

**§ 4.4.5 Pre-Bid Meetings and Activities.** The OPM shall conduct all pre-bid meetings, assist the Owner with responses to questions from prospective bidders and coordinate and issuance of clarifications and addenda, such work to be done in coordination with the designer once selected.

**§ 4.4.6 Trade Contractors.** As appropriate to the procurement method selected, the OPM shall identify potential trade contractors, assist in trade contractor pre-qualification, advise as to the acceptability of trade contractors, including their capability, work load, management, scheduling techniques, manpower and project commitment. The selection of Trade Contractors shall be subject to the approval of the Owner.

**§ 4.4.7 Bid Review and Analysis.** In cooperation with the designer, the OPM shall review all bids with respect to responsiveness, bidder eligibility, completeness, accuracy and analyze bid prices, including preparation of bid comparison sheets, and advise the Owner as to trade jurisdictions and trade contractor bidding.

**§ 4.4.8 Bidder Evaluation.** As required by the type of procurement used for the Project, the OPM shall assist in the evaluation of bidders.

**§ 4.4.9 Bid Analysis.** In cooperation with the designer, the OPM shall analyze bids received from trade contractors, including preparation of bid comparison sheets, and advise the Owner as to trade jurisdictions and trade contractor bidding.

**§ 4.4.10 Contracts.** The OPM shall assist the Owner and Owner’s legal counsel in the negotiation, award and execution of all design, independent engineering, commissioning agent and other consultant contracts, and the construction contract, including any early work and GMP amendments, as applicable.

**§ 4.4.11 Owner Purchased Materials.** The OPM shall coordinate with the contractor and approve arrangements for delivery and storage, protection and security for any Owner-purchased materials, furniture and equipment, until such items are incorporated into the Project.

**§ 4.5 Customary Services.** The OPM shall provide all services customarily performed as part of project management for projects of similar type, scope and complexity in order to



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appropriately manage and complete, in a timely and cost effective manner, a high quality capital project.

**§ 4.6 Other Duties.** The OPM shall provide any other duties and responsibilities as may from time to time be requested by the Owner.

**§ 4.7 Limitations of Authority.** Notwithstanding the foregoing, the OPM shall not have authority to and shall not:

- (a) Authorize deviations from the requirements of the Contract Documents;
- (b) Approve substitute materials or equipment not otherwise permitted by the Contract Documents;
- (c) Authorize use of proprietary specifications in connection with the Project;
- (d) Sign change orders without the express written approval of the Owner;
- (e) Personally conduct or participate in tests or third party inspections, except as authorized in writing by the Owner;
- (f) Assume any of the responsibilities of the designer, contractor, trade contractors, or subcontractors in connection with the Project, or bind the Owner except as specifically authorized in this Agreement;
- (g) Issue any Certificate for Payment or Certificate of Substantial or Final Completion;
- (h) Order the contractor to stop the work or any portion thereof, except in an emergency or as otherwise authorized by the Owner; or
- (i) Otherwise act outside the scope of its authority under this Agreement.

**ARTICLE 5**  
**TIME OF PERFORMANCE**

**§ 5.1 Project Schedule.** The OPM shall commence performance of the Scope of Services for the Project upon the issuance of a written notice to proceed from the Owner and shall perform its services in accordance with the Project Schedule set forth in **Exhibit B**, which is attached hereto, incorporated herein by reference and made a part of this Agreement, which Project Schedule may be amended by the Owner at any time and for any reason. The Project Schedule shall incorporate all of the Project milestones and in the event that the Project milestone is not met, the OPM shall propose a recovery schedule to mitigate cost and schedule impacts to the Project and the Project Schedule. All services performed by the OPM prior to the date of execution of this Agreement in connection with the Project shall be subject to and deemed to have been performed pursuant to the terms and conditions of this Agreement. The OPM shall perform its services expeditiously and continuously from commencement through completion of construction, closeout and commissioning of all aspects of the Project.

**§ 5.2 Time is of the Essence.** Time is of the essence of this Agreement and the Project including each of the Project milestones. Without limitation of the OPM’s general obligations under this Agreement, the OPM agrees to adhere to the Project Schedule set forth in **Exhibit B** as it may be amended by the Owner from time to time.



## **ARTICLE 6**

### **OWNER’S RESPONSIBILITIES**

**§ 6.1 Owner’s Information.** The Owner shall provide information to the OPM regarding requirements for the Project, including a program, to the extent available, which shall set forth the Owner’s objectives, schedule, constraints and criteria, which objectives, schedule, constraints and criteria are subject to modification by the Owner at any time. The Owner shall also furnish to the OPM, to the extent available, existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs and utility information. The OPM shall thoroughly review all documents and information provided by the Owner and promptly advise the Owner in writing of any inadequacies in the information supplied.

**§ 6.2 Oversight and Monitoring.** The Owner shall endeavor to oversee and monitor generally the performance of the OPM to ensure that the OPM performs its obligations in a satisfactory manner in conformance with the terms and conditions of this Agreement.

**§ 6.3 Payment.** The Owner shall compensate the OPM for satisfactory performance of the Scope of Services required hereunder pursuant to the terms and conditions set forth in this Agreement. If the services rendered by OPM are unsatisfactory to the Owner, the OPM shall, at the sole discretion of the Owner and at no cost to the Owner, render the unsatisfactory services again until satisfactory to the Owner or the Owner may withhold payment, or offset other monies due to the OPM, for said unsatisfactory services.

**§ 6.4 Compliance with Other Contracts.** The Owner shall be responsible for requiring the designer, the contractor, the independent engineer and commissioning agent and any other consultant engaged directly by the Owner for the Project to comply with their respective contractual obligations to the Owner and to cooperate and coordinate their services with the OPM. The OPM shall be the Owner’s primary point of contact with the designer, contractor, the independent engineer and commissioning agent and any other consultant engaged directly by the Owner for the Project.

**§ 6.5 Owner’s Representative.** The Owner hereby designates each of its Director of Capital Projects, Joseph Naughton, and its Director of Pre-Construction Planning, Charlie Paradie, as its sole authorized representatives for the purposes of this Agreement. The Owner’s authorized representative shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the OPM’s services.

## **ARTICLE 7**

### **COMPENSATION AND PAYMENT**

**§ 7.1 Compensation for Scope of Services.** FOR SCOPE OF SERVICES, as described in Article 4, the OPM shall be compensated for the Project on the basis of the hourly rates set forth in **Exhibit C**, which is attached hereto, incorporated herein by reference and made a part of this Agreement, for the services duly performed in accordance with this Agreement, and payment of





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complete and accurate invoice. In no event shall the Owner be liable for interest, penalties, expenses or attorneys fees. No payment made hereunder shall constitute or be construed as final acceptance or approval of any part of the services to which such payment relates or relieve the OPM of any of its obligations under this Agreement with respect thereto.

**§ 7.5 Entitlement to Additional Compensation.** The OPM acknowledges and agrees that it shall not be entitled to any additional compensation for its work on the Project based solely upon either: (1) any increases in the construction cost of the Project without any corresponding increase in the Scope of Services requested or required of the OPM, which increase must be documented in an amendment to this Agreement executed by both parties hereto; or (2) any increases in the OPM’s personnel, office, or general business expenses.

**§ 7.6 Compensation for Additional Services of the OPM.** For additional services performed by the OPM, which are agreed upon in advance in writing by the parties, compensation shall be computed on the basis of the billing rates set forth in **Exhibit C**, subject to the provisions of Section 7.8 hereof.

**§ 7.7 Compensation for Additional Services of Consultants.** For additional services performed by the OPM’s consultants with respect to the Project, which are agreed upon in advance in writing by the parties, the Owner shall compensate the OPM a multiple of One and One-Tenth (1.10) times the amount billed to and paid by the OPM for such consultant’s services.

**§ 7.8 Hourly Billing Rates.** The OPM’s hourly billing rates set forth in **Exhibit C**, and those of its consultants, shall be fixed for the entirety of the Project.

**ARTICLE 8**  
**REIMBURSABLE EXPENSES**

**§ 8.1 Reimbursable Expenses.** In addition to the fees for basic and additional services, the Owner will reimburse certain project-related expenses incurred by the OPM and the OPM’s employees and consultants in the connection with the Project. Such reimbursement shall be limited to the expenditures described in this Section, which are documented by appropriate invoices and supporting receipts submitted no later than forty-five (45) days after they are incurred (hereinafter “Reimbursable Expenses”):

**§ 8.1.1** Parking fees only for travel directly related to the Project between the OPM company office and the office of the Owner;

**§ 8.1.2** Expenses for travel outside of Massachusetts directly related to the Project and specifically authorized in advance and in writing by the Owner, including transportation (or mileage charges at the discretion of the Owner), hotel and subsistence, to visit fabrication or manufacturing locations to identify completed, identified, and stored materials or equipment specifically designated for the Project;



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§ 8.1.3 Reproduction of drawings, specifications, and other documents necessary to procure the services of the designer, and if requested by the Owner, the construction manager or general contractor and others, and related postage and handling charges in connection therewith; and

§ 8.1.4 Cost of additional insurance coverage or limits subsequently required by the Owner in excess of that required in Article 10 hereof.

Under no circumstances shall the OPM be paid as a Reimbursable Expense for any costs of travel by the OPM or any of its employees or representatives between the OPM company office and the Project site, between the homes of such employees or representatives and the Project site, or between the OPM company office and the Owner’s office.

§ 8.2 **Mark-up on Some Reimbursable Expenses.** For Reimbursable Expenses, as described in Paragraph 8.1.2, the Owner shall pay a multiple of One and One-Tenth (1.10) times the expenditures actually incurred by the OPM, the OPM’s employees and consultants in the interest of the Project. For Reimbursable Expenses, as described in Paragraph 8.1.1, 8.1.3 and 8.1.4, and any other items to which the parties shall agree in advance in writing shall be paid as Reimbursable Expenses, the Owner shall pay only the amount of the expenditures actually incurred by the OPM, the OPM’s employees and consultants in the interest of a Project.

**ARTICLE 9**  
**INSTRUMENTS OF SERVICE**

§ 9.1 **Grant of License.** The OPM hereby grants to the Owner an irrevocable royalty-free license to use for any purpose the following items developed or made part of the services performed under this Agreement by the OPM and its consultants: all drawings, designs, specifications, photographs, images, notes, reports, analyses, studies, models, materials and other work and ideas of the OPM and its consultants related to the performance of this Agreement which are or may be covered by copyright, patent, or other intellectual property laws or as to which the OPM and its consultants may assert any rights or establish any claim under any applicable law. The OPM agrees on behalf of itself and its consultants that the Owner shall have unlimited royalty-free rights, for the benefit of the Owner and any public entity, including, but not limited to, the University, to which the Owner may grant the right to share such rights, in any and all drawings, designs, specifications, photographs, images, notes, reports, analyses, studies, models, materials and other work and ideas developed in the performance of this Agreement, including the right to use the same on any other project. The OPM shall incorporate this provision by reference into all contracts with its consultants on the Project including, but not limited to, architects, engineers, estimators, designers, surveyors, planners, and photographers. The OPM and its consultants shall not be responsible for changes made in the documents without the OPM’s authorization, nor for the Owner’s use of the documents on building projects other than the Project, unless this is a contract for services intended to serve as the basis for a follow-on contract. The Owner assumes the risk resulting from any such changes made in the documents without the OPM’s authorization, and for the Owner’s use of the documents on



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building projects other than the Project for which they were created if the OPM is not retained for such other projects.

**ARTICLE 10**  
**INSURANCE**

**§ 10.1 Insurance.** The OPM shall purchase and maintain insurance of the type and limits listed in Section 10.3 and 10.4 hereof with respect to the services to be performed under this Agreement. Notwithstanding the provisions of Sections 10.3 and 10.4, the Owner reserves the right to require the OPM to provide higher limits of insurance, including but not limited to professional liability, commercial general liability, and umbrella or excess liability insurance, as it shall determine to be appropriate in connection with the Project. Except as otherwise specifically provided in this Agreement, such insurance shall be provided at the OPM’s sole cost and expense and shall be in force and effect for the full term of the Agreement or for such longer period as this Article may require. With respect to each such required insurance coverage and policy, the following shall apply:

**§ 10.2 General Insurance Requirements.**

**§ 10.2.1 Certificates of Insurance.** Simultaneously with its execution of the Agreement, the OPM shall deliver to the Owner three (3) original copies of a properly endorsed Certificate or Certificates of Insurance acceptable to the Owner as evidence that each of the required insurance coverages (with no less than the required limits) as hereinafter set forth have been purchased for the Project and are in full force and effect. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. Throughout the period that the OPM is required to maintain any policies of insurance hereunder, the OPM shall submit updated certificates prior to the expiration of each of the policies referenced in the Certificates so that the Owner shall at all times possess Certificates indicating current coverage. Failure by the OPM to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for termination of OPM’s services under this Agreement. The Owner reserves the right to request, and upon request, the OPM agrees to furnish, a copy of each insurance policy and all endorsements thereto.

**§ 10.2.2 Additional Status.** The Owner, the University, and the Commonwealth of Massachusetts will be named as additional insureds on all policies, with the exception of the Workers’ Compensation and Professional Liability Policies. Additional Insured status with respect to the comprehensive general liability (CGL), automobile liability, and umbrella or excess liability policies shall be provided for the Owner, the University of Massachusetts, and the Commonwealth with the CGL coverage under endorsements no less broad than CG 2026 (7/04 version) and CG 2037 (7/04 version), and such status shall continue through the 6-year extended reporting period described



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in Section 10.3. Copies of such endorsements shall be provided to the Owner with each required Certificate of Insurance.

**§ 10.2.3 Financial Capacity.** All required insurance coverages shall be placed with a company or companies licensed and qualified to do business in the Commonwealth of Massachusetts (unless agreed upon in advance in writing by the Owner) and certified by an agent licensed and qualified to do business in the Commonwealth of Massachusetts. Each insurer shall have a financial strength rating of A, VIII or better by A.M. Best, or an equivalent rating assigned by a similar rating agency acceptable to the Owner, or otherwise acceptable to the Owner.

**§ 10.2.4 Limitations on Modifications of Coverage.** Cancellation, non-renewal or material modification of any insurance required by the Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice. Each Certificate of Insurance shall state that the insurer will provide to the Owner at least thirty (30) days prior written notice of cancellation, non-renewal or material modification of the policy.

**§ 10.2.5 Primary and Non-Contributory.** All insurance policies maintained by the OPM pursuant to the requirements of this Agreement other than professional liability insurance shall provide that the insurance, as it applies to the Owner, shall be primary, and any insurance maintained by the Owner shall be non-contributing.

**§ 10.2.6 Deductibles.** The OPM shall be responsible for the payment of any and all deductibles under all of the insurance required herein, and the Owner shall not be responsible for the payment of any deductibles, self-insured retentions or any portion thereof.

**§ 10.2.7 No Limitation of Liability.** Insufficient insurance shall not release the OPM from any liability for breach of its obligations under this Agreement. Without limitation, the OPM shall bear the risk of any loss not covered by the insurance policies that it maintains.

**§ 10.3 Professional Liability Insurance.** The OPM shall purchase and maintain at its sole cost and expense during the term of this Agreement and the extended reporting period as hereinafter provided professional liability insurance in the minimum amount of Two Million Dollars (\$2,000,000.00), covering errors and omissions and negligent acts of the OPM, and of any person or entity for whose performance the OPM is legally liable, arising out of the performance of this Agreement. Unless the OPM is specifically required to provide project specific insurance in the documents incorporated by reference into this Agreement, the policy may be in a “claims made” format. If the policy is a “claims made” policy, it shall include a retroactive date that is no later than the effective date of this Agreement, and an extended reporting period of at least six (6) years after the earlier of: (1) the date of official acceptance of the completed Project by



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the Owner; (2) the date of the opening of the Project to public use; (3) the date of acceptance by the Construction Manager of final payment under the Construction Contract; or (4) the date of final completion of the Project and the taking of possession of the Project for occupancy by the Owner. Throughout the term of this Agreement and the entire extended reporting period, the OPM shall provide renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

**§ 10.4 Liability Insurance.** The OPM shall purchase and maintain at its sole cost and expense during the term of this Agreement the following insurance:

- (a) Workers’ Compensation Insurance as required under the Massachusetts Workers’ Compensation Reform Act (M.G.L. Chapter 152), as amended, with Employers’ Liability limits of One Million Dollars (\$1,000,000.00) each accident/each employee/policy limit. Such policy shall be endorsed with a waiver of subrogation in favor of the Owner, the University, and the Commonwealth of Massachusetts. The OPM’s employees, servants and agents shall be deemed not to be the Owner’s employees for either worker’s compensation or unemployment insurance purposes.
- (b) Commercial General Liability Insurance, with a minimum limit of \$1,000,000 each occurrence, and minimum General Aggregate Limit on a per project basis of \$2,000,000. The CGL insurance shall include coverage for death, bodily injury, property damage and personal injury, including coverage for contractual liability on an occurrence basis. Copies of such endorsements shall be provided to the Owner with each required Certificate of Insurance. The following exclusionary endorsements may be attached to the standard CGL form: Asbestos, Nuclear Hazard, War, Employment Practices Liability, and Fungus. No other exclusionary endorsements shall be attached without the prior written consent of the Owner, which consent the Owner shall have no obligation to provide.
- (c) Notwithstanding the foregoing provision regarding permitted exclusionary endorsements for the OPM’s CGL coverage, any consultant engaged by the OPM to undertake work for the Project with respect to hazardous materials shall be required to maintain insurance commercial general liability insurance and umbrella or excess liability insurance of the same type and the same limits as the OPM, and the CGL coverage for any such consultant **may not** include any exclusion for asbestos, fungus, pollution, or any other hazardous condition, and in any event, the Owner shall determine on an individual basis which exclusions are acceptable for each such consultant.
- (d) Automobile Liability Insurance commercial automobile insurance for owned, non-owned, leased hired and rented vehicles with a combined single limit and aggregate of \$1,000,000 per accident for bodily injury and property damage.



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- (e) Umbrella or Excess Liability Insurance covering over the CGL, the Automobile Liability, and the Employers’ Liability coverages in an amount not less than Five Million Dollars (\$5,000,000).
- (f) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Agreement in the event of loss or destruction while in the custody of the OPM until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems and building information models (BIM) maintained by the OPM.

**ARTICLE 11**  
**INDEMNIFICATION**

**§ 11.1 Indemnification by OPM.** The OPM shall indemnify and hold harmless the Owner, the University, and the Commonwealth, and all of their members, trustees, officers, employees, agents and representatives, from and against any and all claims, demands, losses, damages, injuries, liabilities, actions, causes of actions, costs and expenses (including reasonable attorneys’ fees) to the extent caused by the OPM’s breach of this Agreement or the negligence, omission or neglect of the OPM or any of the OPM’s agents, consultants, or employees. In addition, to the fullest extent permitted by law, the OPM shall indemnify and hold harmless the Owner, the University, and the Commonwealth and all of their members, trustees, officers, employees, agents and representatives from and against all suits, claims of liability for or on account of any injuries to persons or damage to property to the extent that the same are the result of the negligence or fault of the OPM in the performance of services covered by this Agreement and/or failure to comply with the terms and conditions of this Agreement, whether by the OPM or the OPM’s employees, agents, or consultants.

**ARTICLE 12**  
**DISPUTE RESOLUTION**

**§ 12.1 Governing Law and Venue.** All claims and disputes between the parties to this Agreement arising out of or relating to this Agreement or the Project, whether in contract, tort, or otherwise, shall be submitted for resolution to a court of competent jurisdiction in Suffolk County, Massachusetts, unless otherwise agreed by the parties, and shall be governed by the laws of the Commonwealth of Massachusetts.

**§ 12.2 Limitation on Commencement of Legal Actions.** No litigation shall be brought, however, until the completion of all services required to be rendered by the OPM under this Agreement or the earlier termination of this Agreement pursuant to its terms, unless the continued deferral of filing such action would result in such claim, dispute, or other matter in question being barred by applicable statutes of limitations or repose. In no event shall the OPM



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suspend or delay the performance of its services, including its consultants’ services, under this Agreement due to the existence of pending claims or disputes between the Owner and the OPM.

**§ 12.3 Mediation.** Prior to the commencement of litigation of any claim, dispute, or any other matter arising out of this Agreement or the Project, the Owner and the OPM shall, at the Owner’s option, mediate any such claim, dispute, or other controversy as a condition precedent to litigation. A request for mediation shall be made in writing and delivered to the other party no less than sixty (60) days before the commencement of litigation. Should either party fail or refuse to participate in mediation in good faith within a reasonable time after the other party’s request for mediation, the participating party shall not be barred from proceeding with litigation. The parties shall share equally the mediator’s fees and filing fees, if any. The mediation shall be held in Boston, Massachusetts unless the parties mutually agree in writing to another location . Any settlement agreements reached in mediation shall be enforceable in any court having jurisdiction thereof.

**ARTICLE 13**  
**TERMINATION, SUSPENSION OR ABANDONMENT**

**§ 13.1 Termination by Either Party.** This Agreement may be terminated by either party upon not less than fourteen (14) days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Failure of the Owner to make payments to the OPM in accordance with the terms of this Agreement shall be considered substantial nonperformance and cause for termination.

**§ 13.2 Suspension by Owner.** If the Project is suspended by the Owner for more than ninety (90) consecutive days, the OPM shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the OPM’s compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the OPM’s services, and any estimate of Construction Cost established prior to such suspension shall be adjusted to reflect changes in the general level of prices in the construction industry, if any, during the period of such suspension.

**§ 13.3 Termination by Owner For Cause.** If this Agreement is terminated due to the failure of the OPM to fulfill its contractual obligations, the Owner may assume the work and replace the OPM and/or prosecute the Project to completion by contract with a replacement OPM or otherwise. In such case, the OPM shall be liable to the Owner for any damages incurred by the Owner thereby (including but not limited to attorneys’ fees and costs) to the extent resulting from OPM’s breach. These rights and remedies of the Owner are in addition to any other rights and remedies provided by law or under this Agreement. In the event of termination for cause by the Owner, no compensation shall be paid to the OPM until the completion of the Project. Upon completion, any monies remaining due to the OPM shall be promptly paid by the Owner less the sum of Owner’s damages incurred as a result of OPM’s breach.



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**§ 13.4 Termination by Owner For Convenience.** This Agreement may also be terminated by the Owner upon seven (7) days written notice, without regard to any fault or failure to perform by any party, and solely for the Owner’s convenience. In the event of such termination, the OPM shall be compensated for services performed in accordance with the terms and conditions of the Agreement prior to termination including any Reimbursable Expenses then due and the Owner shall have no further liability for compensation, expenses, or fees to the OPM hereunder, except as set forth under Section 13.5.

**§ 13.5 OPM’s Duties Upon Termination.** In the event of any termination under this Article 13, the OPM consents to the Owner’s selection of another OPM of the Owner’s choice to assist the Owner in any way in completing the Project. The OPM further agrees to cooperate and provide any information and documents, regardless of physical form, requested by the Owner in connection with the completion of the Project and consents to and authorizes the making of any changes to any documents provided to the Owner by the OPM, which the Owner may desire; and the Owner agrees that, in such circumstances, the OPM shall not be responsible to it for any claims, suits, or damages of any nature arising from such changes. Any services provided by the OPM which are requested by the Owner after termination shall be compensated by the Owner as if such services were additional services and shall be compensated in accordance with Section 7.7.

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

**§ 14.1 Severability.** If any provision of this Agreement is adjudged by any court of competent jurisdiction to be invalid or unenforceable, then such provision shall be modified only to the extent necessary to preserve the original intentions of the parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**§ 14.2 Assignment.** The Owner and the OPM, respectively, bind themselves, their agents, partners, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the OPM shall assign this Agreement without the prior written consent of the other, except that the Owner may assign this Agreement, or any portion thereof, to the University as the Owner may deem appropriate at its sole discretion.

**§ 14.3 Construction of Agreement.** The section headings, captions, or other titles contained within this Agreement are for reference and convenience only, and are not to be construed in any way as a part of this Agreement in the event of any suits and actions with respect to this Agreement and enforcement of its terms.

**§ 14.4 No Intended Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the OPM.

**§ 14.5 Owner’s Information Confidential.** The OPM shall keep the information of the Owner and the University relating to the Project strictly confidential and shall not disclose it to any third



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party except to: (1) its employees working on the Project, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of the Owner’s information. The OPM shall not make any disclosure to any third party of the information of the Owner or the University relating to the Project unless the OPM is compelled to do so by order of a court of competent jurisdiction.

**§ 14.6 Applicable Laws.** The OPM shall perform the services required under this Agreement in conformity with all Applicable Laws in effect at the time of the completion of the Construction Documents for the Project. The cost of such compliance shall be included in the OPM’s Basic Compensation.

**§ 14.7 Public Construction.** The OPM shall thoroughly acquaint its employees and consultants with all provisions of the Massachusetts General Laws governing the conduct of public construction projects, including, but not limited to, M.G.L. c. 30, 149, and 149A, including, without limitation, M.G.L. c. 30, § 39M, which sets forth requirements for the description of material specifications and proprietary items in construction bid documents.

**§ 14.8 Waiver of Claims.** The Owner’s review, approval, acceptance of, or payment for, any of the services furnished by the OPM shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Owner’s approval shall not in any way relieve the OPM from its responsibility for the professional and technical accuracy and coordination of all data, designs, drawings, specifications, cost estimates and other work or materials furnished by the OPM or its consultants.

**§ 14.9 No Gifts or Other Inducements.** By execution of this Agreement, the OPM hereby certifies under the penalties of perjury that the OPM has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this contract; no consultant to or subcontractor for the OPM has given, offered or agreed to give any gift, contribution or offer of employment to the OPM, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the OPM; and no person, corporation or other entity, other than a bona fide full-time employee of the OPM has been retained or hired by the OPM to solicit for or in any way assist the OPM in obtaining this contract for services upon a contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this contract to the OPM.

**§ 14.10 Corrections by Owner.** The OPM shall furnish appropriate competent professional services for each of the phases of the Project to the point where detail checking or reviewing by the Owner is not necessary. Any changes, corrections, additions, or deletions made by the Owner shall be incorporated into the Project by the OPM unless specific written objections thereto are made by the OPM. The decision of the Owner shall be final in matters pertaining to this Section, but the OPM shall not be responsible for any such decision by the Owner that is



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inconsistent with generally accepted standards of care provided that the OPM advised the Owner in writing of the inconsistency at the time the decision was made.

**§ 14.11 Financial Interest in Construction Work.** In connection with the Scope of Services of the OPM under this Agreement, the OPM shall not employ for any purpose any person or firm that expects to be a bidder, contractor, subcontractor, or supplier for the design or construction of any Authority project or any part thereof. The OPM shall obtain from every consultant a written representation that such consultant is aware that it is prohibited from serving as a bidder, contractor, subcontractor, or supplier for the design and construction of any Authority project or any part thereof.

**§ 14.12 Entire and Integrated Agreement.** This Agreement represents the entire and integrated agreement between the Owner and the OPM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the OPM.

**§ 14.13 Certification of Tax Compliance.** The OPM hereby certifies under penalties of perjury that the OPM has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, as set forth in M.G.L. c. 62C, §49A (b).

**ARTICLE 15**  
**INTERNAL ACCOUNTING CONTROLS**

**§ 15.1 Audited Financial Statements.** The OPM hereby certifies that it has internal accounting controls which conform to the requirements of subsection (c) of M.G.L. c. 30, §39R and that, to the extent required by law, the OPM has filed and will continue to file an audited financial statement as referred to in subsection (d) of said §39R.

**§ 15.2 Financial Books and Records.** The OPM shall maintain all books, records and accounts related to the Project in compliance with M.G.L. c. 30, §39R, as set forth in this Section 15.2, and all terms used herein shall have the same meaning as those in the statute:

**§ 15.2.1** The OPM make, and keep for at least six (6) years after final payment, books, records and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the OPM.

**§ 15.2.2** Until the expiration of six (6) years after final payment, the Owner shall have the right to examine any books, documents, papers or records of the OPM and of its consultants and subcontractors that directly pertain to, and involve transactions relating to, the OPM or its consultants or subcontractors.

**§ 15.2.3** The OPM shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Owner, including in the OPM’s description the date of the change and reasons therefor, and



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shall accompany said description with a letter from the OPM’s independent certified public accountant approving or otherwise commenting on the changes.

§ 15.2.4 The OPM has filed a statement of management on internal accounting controls as set forth in Section 15.2.6 below prior to the execution of this Agreement.

§ 15.2.5 The OPM has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 15.2.8 below.

§ 15.2.6 The OPM shall file with the Owner a statement of management as to whether the system of internal accounting controls of the OPM and its subsidiaries reasonably assures that:

- (a) transactions are executed in accordance with management’s general and specific authorization;
- (b) transactions are recorded as necessary:
  - i. to permit preparation of financial statements in conformity with generally accepted accounting principles, and
  - ii. to maintain accountability for assets;
- (c) access to assets is permitted only in accordance with management’s general or specific authorization; and
- (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.

§ 15.2.7 The OPM shall also file annually with the Owner a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (a) whether the representations of management in response to this Section and Sections 15.2.1 through 15.2.5 above are consistent with the result of management’s evaluation of the system of internal accounting controls; and
- (e) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the OPM’s financial statements.

§ 15.2.8 The OPM shall annually file with the Owner during the term of this - Agreement a year-end financial statement prepared by an independent certified public



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accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant’s report. Such statements shall be made available to the Owner upon request.

**§ 15.2.9** Records and statements required to be made, kept or filed in compliance with the provisions of Section 15.2 shall not be public records (as that term is defined in M.G.L. c. 4, §7) and shall not be open to public inspection, except as provided in Section 15.2.2.

This Agreement is entered into as a sealed instrument as of the day and year first written above.

OWNER:

OWNER’S PROJECT MANAGER:

UNIVERSITY OF MASSACHUSETTS  
 BUILDING AUTHORITY

**OPM**

By: \_\_\_\_\_  
 Patricia A. Filippone  
 Its Executive Director  
 Hereunto Duly Authorized

By: \_\_\_\_\_  
 Its \_\_\_\_\_  
 Hereunto Duly Authorized

#1716211

**EXHIBIT A**

**OPM PROJECT STAFF**

<b>Name</b>	<b>Title</b>
<b>X</b>	<b>X</b>

**OPM PROJECT CONSULTANTS**

	<b>Name of Entity and Authorized Representative</b>	<b>Business Address</b>	<b>Contact Information</b>
<b>Consultants Performing Basic Services (Included in Basic Compensation Amount)</b>			
<b>Type of Consultant</b>			Main Office Phone: Office Phone (AR): Email (AR):

**EXHIBIT B**

**PROJECT SCHEDULE AND MILESTONES**

<b>Designer Procurement &amp; Study Phase</b>	<b>Month/Yr – Month/Yr</b>
<b>Design Phase</b>	<b>Month/Yr – Month/Yr</b>
<b>Bidding Phase</b>	<b>Month/Yr – Month/Yr</b>
<b>Construction Phase</b>	<b>Month/Yr – Month/Yr</b>
<b>Close-Out Phase</b>	<b>Month/Yr – Month/Yr</b>

**EXHIBIT C**

**HOURLY RATES OF OPM AND ITS CONSULTANTS FOR THE PROJECT**

<b>Team Member</b>	<b>Role</b>	<b>Rate/Hr.</b>
X	X	\$XX.XX

**OPM PROJECT CONSULTANTS**

	<b>Name of Entity</b>	<b>Not to Exceed Allowance</b>	<b>Contact Information</b>
<b>Consultants Performing Services Not included Basic Compensation Amount)</b>			
<b>Type of Consultant</b>			Main Office Phone: Office Phone (AR): Email (AR):

# **ATTACHMENT 3**

Equal Employment Opportunity and Affirmative  
Action Questionnaire



**EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION  
 QUESTIONNAIRE**

Firm Name: \_\_\_\_\_

Person responsible for EEO/Affirmative Action compliance:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Tel: \_\_\_\_\_ E-Mail: \_\_\_\_\_

1. Is the Firm a MBE?     \_\_\_ Yes     \_\_\_ No
2. Is this Firm a WBE?   \_\_\_ Yes     \_\_\_ No
3. Firm Diversity:

<b>Type of Employee</b>	<b>Total No. of Employees</b>	<b>No. of Women Employees</b>	<b>No. of Minority Employees*</b>
Senior Management			
Project Management			
Other Preconstruction and Construction Staff			
Field Supervisors			
Other Field Staff			
Administrative Staff			
Office Staff			
Other			

\*For purposes of this questionnaire, minority means a person who meets one or more of the following definitions:

American Indian or Native American: all persons having origins in any of the original peoples of North America and who are recognized as Indian by a tribe or tribal organization.

Asian: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to, China, Japan, Korea, Samoa, India, and the Philippine Islands.

Black: All persons having origins in any of the Black racial groups of Africa, including, but not limited to African Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.

Eskimo or Aleut: All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska and Eastern Siberia.

Hispanic: All persons having their origins in any of the Spanish – speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.



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4. Does the firm have an affirmative action plan? \_\_\_\_\_Yes \_\_\_\_\_No  
 If yes, include a copy.
  
5. Outline below what affirmative action steps the firm uses in its hiring process.
  - (a) Is there an equal employment opportunity statement in all the job descriptions that the firm issues: \_\_\_\_\_ Yes \_\_\_\_\_ No
  - (b) Is there an equal employment opportunity statement in the job applications that the firm uses: \_\_\_\_\_ Yes \_\_\_\_\_ No
  - (c) Describe other affirmative action steps in hiring: \_\_\_\_\_  
 \_\_\_\_\_
  
6. On a separate sheet, identify all projects the firm completed within the last five (5) years which had MBE, WBE or other affirmative action goals. For each such project, provide the following information:
  - (a) Identify the specific MBE, WBE or other affirmative action goals for the project.
  - (b) Describe the actions that the firm took to endeavor to meet those goals.
  - (c) State whether the firm was successful in achieving all of the goals.
  - (d) If the firm was not able to achieve any of the goals, explain why it was not able to reach each goal that was not met.

\_\_\_\_\_  
 Firm (Typed or printed)

\_\_\_\_\_  
 Name of Authorized Principal (Typed or printed)

\_\_\_\_\_  
 Signature of Authorized Principal

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

# **ATTACHMENT 4**

Conflict of Interest Statement



University of Massachusetts Building Authority  
UMass Amherst – Worcester Dining Commons Renovation  
RFP for Owner’s Project Manager Services

**UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY  
CONFLICT OF INTEREST STATEMENT**

The respondent hereby certifies, under the penalties of perjury, that:

- 1) The respondent has not given, offered, or agreed to give any person (as that term is defined below), or received, accepted, or agreed to accept from any person, any gift, contribution, offer of employment, or financial incentive of any kind as an inducement for, or in connection with, the award of the contract for services for which the respondent is applying.
- 2) No consultant to or subcontractor for the respondent has given, offered, or agreed to give any gift, contribution, offer of employment or financial incentive of any kind to the respondent or to any other person as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the respondent.
- 3) No person, other than a bona fide full-time employee of the respondent has been retained or hired by the respondent to solicit for or in any way assist the respondent in obtaining the contract for services for which the respondent is applying, upon an agreement or understanding that such person be paid a fee or other consideration contingent upon the award of the contract to the respondent.
- 4) Throughout the duration of the contract, if awarded the contract, the respondent will not have any financial relationship in connection with the performance of the contract with any materials or system manufacturer, distributor or vendor.

As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals. These provisions shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten percent of the outstanding stock entitled to vote at the annual meeting of such corporation.

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**The respondent further hereby certifies, under the penalties of perjury, that all information provided in this proposal to provide services is true and correct.**

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Name of Authorized Principal (Typed or printed)

\_\_\_\_\_  
Signature of Authorized Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **ATTACHMENT 5**

Certificate of Non-Collusion



University of Massachusetts Building Authority  
UMass Amherst – Worcester Dining Commons Renovation  
RFP for Owner's Project Manager Services

## UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

### CERTIFICATE OF NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

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Firm

---

Name of Authorized Principal (Typed or printed)

---

Signature of Authorized Principal

---

Title

---

Date

# **ATTACHMENT 6**

Certificate of State Tax Compliance



University of Massachusetts Building Authority  
UMass Amherst – Worcester Dining Commons Renovation  
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**UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY**

**CERTIFICATE OF STATE TAX COMPLIANCE**

Mass. Gen. Laws, Chapter 62C, Section 49A(b)

I, in my capacity as principal of \_\_\_\_\_,  
(Firm Name)

hereby certify that the above-named organization has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, as set forth in Mass. Gen. Laws, c. 62C, § 49A(b).

Signed under the pains and penalties of perjury

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Name of Authorized Principal (Typed or printed)

\_\_\_\_\_  
Signature of Authorized Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# **ATTACHMENT 7**

Certification regarding Undocumented Workers



University of Massachusetts Building Authority  
UMass Amherst – Worcester Dining Commons Renovation  
RFP for Owner's Project Manager Services

**UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY**

**CERTIFICATION REGARDING UNDOCUMENTED WORKERS**

**NAME OF FIRM:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As evidenced by the signature of the Firm's Authorized Principal below, the Firm certifies under the pains and penalties of perjury that the Firm shall not knowingly use undocumented workers in connection with the performance of any contract with the University of Massachusetts Building Authority; that pursuant to federal requirements, the Firm shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Firm shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Firm understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Firm to sanctions, including, but not limited to, monetary penalties, withholding of payments, contract suspension or termination.

\_\_\_\_\_  
Signature of Authorized Principal

Date: \_\_\_\_\_

\_\_\_\_\_  
Name of Authorized Principal (Typed or Printed)

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email: \_\_\_\_\_

Fax No.: \_\_\_\_\_

# **ATTACHMENT 8**

Equal Employment Opportunity, Non-Discrimination and  
Affirmative Action Certification



University of Massachusetts Building Authority  
UMass - Amherst – Worcester Dining Commons Renovation  
RFP for Owner’s Project Manager Services

**UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY**  
**EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND**  
**AFFIRMATIVE ACTION CERTIFICATION**

The undersigned Respondent hereby certifies, under the penalties of perjury, that:

1. The Respondent will not discriminate in its employment practices;
2. The respondent will make good faith efforts to ensure MBE,WBE and women and minority employee participation in reasonable proportion to their availability in the workforce;
3. The Respondent will communicate equal employment opportunity and affirmative action expectations to all consultants, sub-contractors, and unions involved in the Project;
4. The Respondent will provide oversight and will monitor compliance with applicable equal employment opportunity regulations and any affirmative action goals; and
5. The Respondent is in compliance with all applicable federal and state laws, rules and regulations governing fair labor and employment practices.

\_\_\_\_\_  
Respondent Firm (Typed or printed)

\_\_\_\_\_  
Name of Authorized Principal (Typed or printed)

\_\_\_\_\_  
Signature of Authorized Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date