



THE COMMONWEALTH OF MASSACHUSETTS
 MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY
 253 SUMMER STREET, SUITE 300
 BOSTON, MA 02210

JAMES T. MORRIS
 CHAIRMAN

EDWARD H. ADELMAN
 EXECUTIVE DIRECTOR

September 30, 2011

TEL: (617) 542-1081
 FAX: (617) 542-2303
 www.mscca.org

PROCEDURES
PROCUREMENT OF
CONSTRUCTION MANAGEMENT AT RISK SERVICES
 (MGL Chapter 149A)

Table of Contents

1.0	Background.....	3
2.0	Authority to Utilize Construction Management at Risk	3
3.0	Procurement of the Owner’s Project Manager.....	4
4.0	Designer Selection	4
5.0	Construction Manager At Risk Selection Process	4
5.1	Phase I – Request for Qualifications.....	4
5.1.1	Prequalification Committee.....	4
5.1.2	RFQ Advertisement and Public Notice	5
5.1.3	Minimum Contents of the RFQ.....	5
5.1.4	Statements of Qualification	5
5.1.5	Prequalification Process	7
5.2	Phase II – Request for Proposals	7
5.2.1	Selection Committee	7
5.2.2	Minimum Contents of the RFP	8
5.2.3	Price Component	8
5.2.4	Technical Component.....	9
5.2.5	Selection Process.....	9
5.2.6	Contract Negotiations.....	10
5.2.7	Form of Agreement	10
5.2.8	GMP Negotiation Schedule and Process.....	10
5.2.9	Failure To Negotiate GMP	11
5.3	Trade Contractor Procurement.....	12
5.3.1	General Requirements	12
5.3.2	Self-Performed Work	12
5.3.3	Trade Contractor Prequalification and Selection	12
5.3.4	Prequalification Committee.....	12
5.3.5	Advertisement	13
5.3.6	Request For Qualifications.....	13
5.3.7	Trade Contractor Prequalification Process.....	15
5.3.8	Trade Contractor Bidding Process	15

5.3.9 Trade Bid Opening and Evaluation 16
5.3.10 Trade Contractor Agreements 17
5.4 Subcontractor Procurement..... 17
5.4.1 Low Value Subcontracts 17
5.4.2 Self-Performed Work 18
5.4.3 Subcontractor Agreements 18
6.0 Applicability of Other Laws 18
7.0 Attachments 18

1.0 Background

The Massachusetts State College Building Authority (the “Authority”) was established by Chapter 703 of the Acts of 1963. This statute, as amended, states that the general purposes of the Authority are:

“...aiding and contributing to the performance of the educational purposes of the state colleges by providing dormitories, dining commons, and other buildings, structures and facilities designed primarily for housing, feeding, medical care, parking, athletics and cultural and extracurricular and other student life activities and services...”.

The Commonwealth of Massachusetts provides neither an appropriation to the Authority, nor does it guarantee the bonds issued by the Authority for its building projects. All revenues to support facility design, construction, and operation are derived from the rents and fees paid by students for the use of these facilities and services. Given the nature of the revenue stream and the inflexibility of the academic calendar, it is critical for the Authority to complete its building projects on time, at or below budget, and with a high level of quality and workmanship.

Renovation and new construction projects must be ready for occupancy at the start of the academic year. Most major renovation and major capital repair work must be performed during summer and vacation periods. Representative Authority projects may include:

- construction of new buildings, structures, and facilities
- renovation of occupied facilities requiring multiple design and construction phases;
- major capital repair and replacement of building systems, finishes, and envelopes involving multiple facilities and/or campuses;
- site work such as parking lots, athletic fields, and campus infrastructure; and
- demolition of existing structures.

2.0 Authority to Utilize Construction Management at Risk

On July 19, 2004, Chapter 193 of the Acts of 2004 was signed into law (the “Act”). Section 27 of the Act provides for use of the Construction Management at Risk delivery method for building projects with an estimated construction value of five million dollars (\$5,000,000) or more. The Massachusetts State College Building Authority is designated as an “exempt agency” under the Act and may therefore utilize construction management at risk procurement subject to the annual approval of its construction management at risk procedures by the Office of the Inspector General. The provisions of this Act have been codified as M.G.L. c. 149A, sections 1-13. The following procedures have been developed to guide the implementation of this delivery method for applicable building construction, reconstruction, demolition, maintenance or repair projects of the Authority. Annual approval of these procedures by the Office of the Inspector General is required by the statute.

3.0 Procurement of the Owner's Project Manager

Before procuring the services of a designer for a building project in excess of \$1.5 million of estimated construction cost, the Authority shall procure or otherwise employ the services of a qualified owner's project manager, who shall be an employee of the Authority, an independent consultant, or an employee of a consultant firm which provides owners' representation services. The qualifications and selection of the owner's project manager shall be in accordance with the requirements of M.G.L. c. 149, section 44A½, namely, to utilize a qualifications-based selection process to identify qualified candidates (professional registration in architecture or engineering with five years of construction management experience, or for those who are not registered, at least seven years of experience). The owner's project manager may assist the Authority in the procurement of the designer and shall perform all other services required by Section 44A1/2 to be performed by the owner's project manager. The owner's project manager will be independent of the designer and the construction manager at risk firm.

4.0 Designer Selection

Before initiating the construction management at risk delivery method under these procedures, the Authority will procure the services of a designer for the building project. The Authority will procure design services in a manner consistent with the Authority's Designer Selection Procedures set forth as Attachment A to this document. The designer shall be independent of the owner's project manager and the construction management at risk firm.

5.0 Construction Manager At Risk Selection Process

The Authority will utilize a two-phase process for the selection of a construction management at risk firm, hereinafter referred to as the "CM" or "CM firm", with whom it may enter into a contract to provide construction management at risk services.

5.1 Phase I – Request for Qualifications

The Authority will issue a request for qualifications to solicit statements of qualifications ("SOQ") for the purpose of establishing a shortlist of prequalified firms capable of providing construction manager at risk services for a particular building project.

5.1.1 Prequalification Committee

Before issuing a request for qualifications ("RFQ"), the Authority shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted to the RFQ. The prequalification committee shall be comprised of a minimum of four (4) members: a representative of the designer; the owner's project manager; and at least two (2) representatives of the Authority (the "Prequalification Committee"). Additional individuals, including, but not limited to, representatives of the state college where the project is located, may be included on the committee, as appropriate, at the sole discretion of the Authority. The Authority's Director of Capital Projects, or designee on the Prequalification Committee, shall serve as the chairperson

of the Prequalification Committee.

5.1.2 RFQ Advertisement and Public Notice

The Authority will publicly advertise the RFQ in a newspaper of general circulation in the area in which the building project is located, in the *Central Register*, and within the COMPASS system. The Authority may augment these methods of public notification as it deems appropriate on a project-specific basis. The public notice and solicitation shall be given to allow not less than two weeks before the deadline for submitting responses to the RFQ. Phase one of the two-phase selection process will begin once the Authority gives public notice of the building project and solicits responses to an RFQ from construction management at risk firms.

5.1.3 Minimum Contents of the RFQ.

The Authority's RFQ shall include, at a minimum, the following information:

- (a) the time and date for receipt of responses to the RFQ, the number of copies to be submitted, the address of the office to which the responses are to be delivered, and the timeframe in which the Authority will respond to said responses;
- (b) a general description of the project including preliminary concept designs and key factors important to the final selection;
- (c) the evaluation procedure and criteria , including any rating system;
- (d) a specific description of the scope of services expected of the selected CM firm during the design, pre-construction, and construction phases of the project;
- (e) a general description of the anticipated schedule and estimated construction cost for the building project;
- (f) a listing of the project team including the Authority, the designer, and the owner's project manager;
- (g) the criteria for the selection of the CM firm, including minimum experience, requirements for presentations, and the schedule for the selection process;
- (h) a prohibition against any unauthorized communication or contact with the Authority or with representatives of the project campus, if applicable, outside of official pre-proposal meetings;
- (i) guidance on the size and number of pages and the required format of materials to be included in the response to the RFQ; and
- (j) a statement indicating that the RFQ process will be used to prequalify CM firms that will be invited to submit a proposal in response to a RFP issued pursuant to these procedures.

5.1.4 Statements of Qualification

The Authority will indicate that responses to the RFQ are required in order for interested CM firms to be considered for the building project. The Authority may impose a limit on the number of pages to be submitted in response to the RFQ and, further, may also require submission of Statements of Qualifications in electronic form to the extent deemed desirable by the Authority. The Authority may also require that every Statement of Qualifications must be signed under pains and penalties of perjury by a duly authorized representative of the submitting CM firm. The statement of qualifications shall include, at a minimum, the following:

- (a) a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders;
- (b) completion of a qualifications application similar in form to AIA Document A305, 1986 edition, listing general business information and financial capacity;
- (c) a list of lawsuits and arbitrations to which the firm is a party in regard to construction contracts within the last three (3) years, including a list of all convictions or fines for violations of state or federal law;
- (d) a project organization chart with specific information on key project personnel or consultants whom the submitting firm proposes will have primary responsibility over the firm's work on the project, including any key subconsultants identified in the RFQ, and a description of the respective roles and responsibilities of each identified person;
- (e) an audited financial statement for the most recent fiscal year;
- (f) a letter from the surety company of the CM firm confirming the ability to provide performance and payment bonds for the building project under consideration in the full amount of the estimated construction cost project;
- (g) information on the firm's safety record including its workers' compensation experience modifier for the prior three years;
- (h) information on and evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable;
- (i) information regarding the firm's experience on similar projects including references and current contact information for the owners and architects of the listed projects;
- (j) information on the experience of the firm on similar projects that used the construction management at risk delivery method, including references and current contact information for the owners and architects of such projects;
- (k) information on any projects where the firm was terminated, failed to complete the work, or paid liquidated damages with an appropriate narrative explaining the circumstances of each such incident;
- (l) a summary of the firm's project management capabilities including specific examples of project management reports or other illustrations of the company's operating philosophy, policies, and procedures;

- (m) a certificate of eligibility issued by the Massachusetts Division of Capital Asset Management and Maintenance (“DCAM”) pursuant to M.G.L. c. 149, section 44D, showing a capacity rating sufficient for the project, and a current DCAM update statement; and
- (n) any other relevant information that the Authority determines desirable.

Each response to the RFQ shall be signed under pains and penalties of perjury. Financial information provided in response to the RFQ shall remain confidential, shall not be a public record as defined in M.G.L. c. 4, section 7, and shall not be open to public inspection, to the fullest extent possible under the law.

5.1.5 Prequalification Process

Upon receipt of the statements of qualifications submitted by CM firms, the Prequalification Committee shall evaluate each statement of qualifications using the criteria as provided in the RFQ. Only CM firms achieving an acceptable rating, as defined by the evaluation procedure and criteria set forth in the RFQ, will be selected to proceed to the second phase of the two-phase selection process and receive a request for proposals as described below. The Prequalification Committee shall select a minimum of three (3) qualified CM firms to receive the request for proposals. If the Prequalification Committee is not able to identify a minimum of three qualified CM firms, the Authority will, at its discretion, either: (i) re-advertise the project using these procedures; (ii) procure the project pursuant to the provisions of sections 44A to 44J, inclusive, of M.G.L. chapter 149; or (iii) procure the project pursuant to any other lawful method of procurement, including, but not limited to, Section 30 of Chapter 193 of the Acts of 2004. The decision of the Prequalification Committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion.

5.2 Phase II – Request for Proposals

The Authority shall utilize a request for proposal (“RFP”) process in order to evaluate the prequalified CM firms selected by the Authority in Phase I and to make a final selection of a CM firm with which to enter into contract negotiations for the project.

5.2.1 Selection Committee

Before issuing a RFP, the Authority will establish a selection committee for the purpose of reviewing and evaluating proposals submitted to the Authority. The selection committee shall be comprised of a minimum of four (4) members: a representative of the designer; the owner's project manager; and at least two (2) representatives of the Authority, including the Authority's project manager and Director of Capital Projects (the “Selection Committee”). Additional members may be appointed to the Selection Committee at the discretion 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. The Authority's Director of Capital Projects, or designee of the Selection Committee, shall serve as the Chair of the Selection

Committee.

5.2.2 Minimum Contents of the RFP

The Authority will issue a copy of the RFP to each prequalified CM firm that has been selected to receive an RFP for the project. The RFP shall include, at a minimum, each of the following elements:

- (a) the date, time, and place for submission of proposals;
- (b) a clear description of the submission requirements including separate price and technical components;
- (c) detailed information concerning the project scope including any preliminary design information, geotechnical reports, existing condition surveys, and specifications;
- (d) specific 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 pre-construction phase;
- (f) the minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals for the building project;
- (g) a clear 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 and general and supplemental conditions including any incentive provisions allowable under this statute and any damages for delay provisions;
- (i) the budget for the project;
- (j) a schedule of cost items listing the Authority's determination of what will be considered fee, cost of the work, and general condition items;
- (k) specific information on the evaluation criteria including any point scale or measurement system that will be used to evaluate and rank proposals;
- (l) the timetable and process for establishing a guaranteed maximum price (GMP) including status of design that will serve as the basis of 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.

5.2.3 Price Component

The RFP shall require the submission of separate price and technical components in response to the RFP, both of which shall be submitted at the same time. The price component shall include:

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

5.2.4 Technical Component

The technical component of the proposal shall include:

- (a) a detailed project approach, including both preconstruction and construction services;
- (b) supplemental relevant project references with current contact information;
- (c) the project team members with position descriptions and relevant time commitments of said team members during the project;
- (d) the construction management plan indicating approach to control of cost, schedule, quality, documents, and claims;
- (e) preliminary definition of trade contractor and subcontractor bid packages and scopes of work;
- (f) affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, sections 26 and 27D;
- (g) 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 CM firm's ability to secure performance and payment bonds in the full sum of the contract at 110 per cent of the estimated building construction cost;
- (h) a discussion of technical challenges and potential solutions;
- (i) any specific qualifications or exceptions to the terms of the form of contract and general or supplemental conditions to the contract as included in the RFP; and
- (j) any other information requested by the Authority in the RFP.

5.2.5 Selection Process

Upon receipt of the proposals in response to the RFP, the Selection Committee shall evaluate all proposals in accordance with the criteria included in the RFP; but, if the Selection Committee elects to conduct an interview with a CM firm who submits a proposal in response to the RFP, then the Selection Committee shall conduct interviews with each CM firm that submits a proposal to said RFP. Based upon the evaluations of each proposal submitted by each CM firm,

the Selection Committee shall rank the proposals submitted by 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.

5.2.6 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. If the Authority determines that negotiations with the highest ranked CM firm will not result in a contract acceptable to the Authority within the schedule established by the Authority for contract negotiations, the Authority may terminate negotiations with the highest ranked CM firm and, in the event of such termination, shall commence negotiations with the next highest ranked CM firm. The process will continue until the Authority has reached an acceptable contract with one of the prequalified CM firms selected to submit a proposal. The list and ranking of proposed CM firms shall be certified by the Authority and made available as a public record after the such contract negotiations are complete and a contract has been executed between the Authority and a CM firm.

5.2.7 Form of Agreement

Each contract for a project procured pursuant to these procedures shall utilize a cost plus fee with a not-to-exceed guaranteed maximum price form of contract in which the Authority shall be entitled to monitor and audit all project costs. The form of contract shall be provided by the Authority. Each contract between the Authority and a CM firm shall be secured by a performance and payment bond in the full sum of the guaranteed maximum price by a surety company licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570. The CM firm shall not be entitled to share in any savings between the final guaranteed maximum price figure and the final cost of the work including the fee of the CM firm, except that the Authority may, at its sole discretion, include an incentive clause with the contract for various performance objectives set by the Authority. Any such incentive clause shall not include an incentive that exceeds one (1) per cent of the estimated construction cost.

5.2.8 GMP Negotiation Schedule and Process

The Authority shall establish a schedule and process for determining the GMP and execution of the GMP contract amendment to the construction management contract. The Authority and the CM firm shall comply with the following when establishing the GMP:

- (a) The guaranteed maximum price shall be based on design documents which are developed to a minimum of sixty percent (60%) complete construction documents;
- (b) The guaranteed maximum price shall be agreed to as an amendment to the contract between the Authority and the CM firm;

- (c) The GMP amendment shall stipulate that 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 construction management contract. The GMP may include an construction contingency if the Authority chooses to include such an item.
- (d) The guaranteed maximum price amendment shall be executed before the commencement of any construction work; except that the Authority, before the execution of the guaranteed maximum price amendment, may commence construction, so long as the Authority executes a separate contract amendment to the contract with the construction manager at risk detailing the scope of work selected to commence before execution of the guaranteed maximum price amendment. If the Authority requires the implementation of one or more early construction packages, the Authority and the CM firm shall execute a separate contract amendment setting forth the scope of work and price of each early construction package. Each separate contract amendment shall state the price for the scope of early work required by the contract amendment, which shall include the cost of the work, the general conditions and construction manager's fee. All early construction work shall be subject to the trade contractor selection process set forth in these procedures. In the event that a guaranteed maximum price cannot be successfully negotiated between the Authority and the CM firm, trade contractor agreements between the CM firm and any trade contractor performing early work shall, at the election of the Authority, be assigned to the Authority or to another CM firm designated by the Authority, without the assent of the trade contractor. The Authority's designated replacement CM firm and the trade contractor shall be bound by the terms of the original trade contractor agreement; and
- (e) The guaranteed maximum price amendment to the contract between the Authority and the CM firm shall include, as a minimum: (i) a detailed line item cost breakdown by trade, including any cost for early work selected to commence before the execution of the guaranteed maximum price amendment; (ii) dollar amounts for the CM firm's construction contingency; (iii) dollar amounts for the general conditions, including any general conditions costs for early work; (iv) dollar amounts for the construction manager's fee, including any fee for early work; (v) a list of all the drawings, specifications and other information on which the guaranteed maximum price is based; (vi) a list of allowances and statement of their basis; (vii) a list of any assumptions or clarifications on which the guaranteed maximum price is based; (viii) the dates for substantial and final completion on which the guaranteed maximum price is based; and (ix) a schedule of applicable alternates and unit prices; and
- (f) The CM firm shall provide all required performance and payment bonds in the amount of the guaranteed maximum price within five (5) business days after the execution of the guaranteed maximum price amendment.

5.2.9 Failure To Negotiate GMP

In the event that a guaranteed maximum price amendment cannot be successfully negotiated

between the Authority and the CM firm, the Authority may commence non-fee contract and GMP negotiations with the next highest ranked construction management at risk firm. In the event that a contract and guaranteed maximum price amendment cannot be successfully negotiated between the Authority and the next highest ranked CM firm, the Authority shall terminate the procurement process and shall instead procure the project in accordance with M.G.L. c. 149, sections 44A to 44J, inclusive. Upon the termination, the Authority may not use the construction management at risk delivery method for the same project unless the project has been materially changed in form or function.

5.3 Trade Contractor Procurement

5.3.1 General Requirements

The Authority will establish two processes with respect to the prequalification and selection of all subcontractors seeking to provide services in connection with the project. The first will be the Trade Contractor Selection Process, for all sub-bid classes of work listed in M.G.L. c. 149, section 44F and all other sub-bid classes of work selected by the Authority for the project, provided the sub-bid work has a contract value that meets or exceeds the threshold sum identified in paragraph (1) of section 44F of Chapter 149 (“Trade Contract Work”). The second will be the Subcontractor Selection Process, for work that is not defined as Trade Contractor work or for work that is estimated to have a contract value of less than the threshold sum identified in paragraph (1) of section 44F of Chapter 149 (“Subcontract Work”).

5.3.2 Self-Performed Work

The CM firm may submit its qualifications to bid on trade contract work in accordance with this Section 5.3 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 selection process; and (d) the CM firm does not participate as a member of the trade contractor prequalification 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 committee responsibilities of the CM firm.

5.3.3 Trade Contractor Prequalification and Selection

The Authority shall issue a Trade Contractor Request for Qualifications (“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 class of trade contractor work. Any entity performing trade contractor work on the project shall be prequalified in accordance with the trade contractor prequalification process described in these procedures.

5.3.4 Prequalification Committee

Before issuing a Request For Qualifications for any trade contract, the Authority will establish a

trade contractor prequalification committee for the project. The Prequalification Committee shall be comprised of a representative from the designer, a representative from the CM firm, and at least two representatives appointed by the Authority (the "Trade Prequalification Committee"). The Director of Capital Projects, or designee on the Trade Prequalification Committee, will serve as the Chairperson of the Prequalification Committee.

5.3.5 Advertisement

The public notice of trade contract work and solicitation of qualifications will be advertised in a newspaper of general circulation in the area in which the project is located, in the central register, and within the COMPASS system. The Authority may, at its discretion, augment this public notice as necessary to achieve appropriate participation from prospective trade contractors. The public notice and solicitation shall be given not less than two weeks before the deadline for submitting responses to the RFQ. The public notice and solicitation shall include at a minimum:

- (a) the date, time and place for submission Statements of Qualifications;
- (b) relevant information about the project and the bidding process;
- (c) the specific criteria for trade contractor prequalification and selection;
- (d) a requirement that the Statement of Qualifications submitted in response to the RFQ shall be signed under pains and penalties of perjury
- (e) a statement indicating that the RFQ will be used to prequalify trade contractors that will be invited to submit a bid; and
- (f) a statement that the responders' names will be posted, but that there shall be no public opening of Statements of Qualifications.

All interested Trade Contractors shall be eligible to respond to the RFQ and participate in the prequalification process. Financial information provided in responses to the RFQ shall remain confidential, shall not be a public record as defined in M.G.L. c. 4, section 7, and shall not be open to public inspection, to the fullest extent possible under the law.

5.3.6 Request For Qualifications

The CM firm shall provide to the Authority detailed information describing the work required for each trade contractor. This detailed information shall serve as the basis for an RFQ. The RFQ shall require the information described below, with the designated point allocation for each category of information. The Authority may, consistent with established minority business enterprise and women business enterprise inclusion goals, provide an additional five (5) points to the total score of each minority business enterprise and women business enterprise in the prequalification process. The Authority shall 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 possible; minimum of 25 required for prequalification):

(i) Business Ownership – The name, title, years with firm of each of the owner(s) of the business.

(ii) Management Personnel – The name, title, education, construction management experience, years with the firm, and list of projects completed by all management personnel.

(iii) Similar Project Experience – The project name(s), general description, description of scope, original and final trade contract sums with detailed explanation of differences, and dates of completed similar projects within the period of time specified in the Trade RFQ.

(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 commercial lawsuits commenced within the last three years in which the trade contractor is a defendant or defendant in-counterclaim. Such list need not include actions that primarily involve 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 M.G.L. c. 30, section 39F.

(vi) Safety Record – The trade contractor's workers' compensation experience modifier for the most-recent three year period.

(B) References (30 points possible; minimum of 15 required for prequalification):

References will be contacted; the respondent should verify that all contact information is current and usable prior to submission.

(i) Client References – References for all projects listed in clause A(iii), above, including the project name, client's name, address, telephone and fax number, and contact person.

(ii) Credit References – A minimum of five credit references, including telephone and fax number of contact person from key suppliers, vendors, and banks.

(iii) Public Project Record – A list of all completed public building construction projects during past three years with client's name, address, telephone and fax number, and contact person.

(C) Capacity to Complete Projects (20 points possible; minimum of 10 required for prequalification):

(i) Annual revenue for prior three fiscal years. Financial statements do not need to be submitted.

(ii) Revenue under contract for next three fiscal years.

(D) Mandatory Requirements (no points are assigned):

(i) Payment and Performance Bonds – A commitment letter stating the trade contractor’s ability to secure performance and payment bonds at 110 per cent 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 M.G.L. c. 149, section 44F for each category of trade work for which the trade contractor seeks to be pre-qualified; and

(iii) a current DCAM Update Statement.

5.3.7 Trade Contractor Prequalification Process

Statements of Qualifications submitted in response to the RFQs shall be reviewed and scored by the Trade Prequalification Committee. All trade contractors who achieve a score of 70 points or greater will be prequalified to submit a bid on the building project.

The Authority will notify the prequalified trade contractors of their approval to submit a bid on the project as well as the schedule and timing for the availability of the Request for Bids. The prequalification decisions of the Trade Prequalification Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. A trade contractor's score shall be made available to the trade contractor upon request, but shall not be a public record as defined in M.G.L. c. 4, section 7 and shall not be open to public inspection, to the fullest extent possible under the law.

In the event that fewer than three (3) Trade Contractors are pre-qualified for a particular class of trade contractor work, the Authority may elect to re-issue the Trade RFQ, as described above. If the second round of Trade Contractor prequalification does not result in a total of at least three (3) pre-qualified Trade Contractors (including those Trade Contractors pre-qualified in the first round) then the CM firm, on behalf of and with the consent of the Authority, shall utilize the procedures for selection of Subcontractors who are not Trade Contractors, which procedures are set forth below (Subcontractor Selection Process). In such event, the CM firm shall include all Trade Contractors, if any, that have been previously pre-qualified for a given trade in the subsequent bidding of the trade work.

5.3.8 Trade Contractor Bidding Process

Prequalified Trade Contractors shall be invited to submit a bid within the trade for which they are prequalified pursuant to a Request for Bids. The Request for Bids document shall include, without limitation, the following information:

- (a) the date, time, and place for submission of bids;
- (b) fully detailed drawings and specifications by class of work in accordance with paragraph (a) of subsection (1) of section 44F of Chapter 149 which shall provide for full competition for each item of material to be furnished under the contract as set forth under subsection (b) of section 39M of Chapter 30;
- (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 trade contractor's work;
- (e) a list of prequalified Trade Contractors within the trade;
- (f) a trade contractor 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; and the names of all sub-trade subcontractors to be used if awarded the trade contract and the contract amount for each sub-trade contractor;
- (g) an affidavit that all sub-trade subcontractors named on the bid form have been prequalified by the trade contractor using criteria similar to the criteria for the prequalification of Trade Contractors;
- (h) an affidavit of tax compliance;
- (i) an affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, sections 26 and 27D;
- (j) a non-collusion affidavit;
- (k) a requirement for the bidder to post a five percent (5%) bid bond from a surety company licensed to do business in the Commonwealth and whose name appears on U.S. Treasury Department Circular 570; the bid bond shall be returned to the bidder if the bidder is not selected as the trade contractor;
- (l) the budget for the building project, and the budget amount for the trade contract scope of work as provided in the project guaranteed maximum price if available, or as provided in the most recent budget for the project; and
- (m) a trade contractor agreement form as set forth in this section including all exhibits.

5.3.9 Trade Bid Opening and Evaluation

Trade Contractors submitting bids in response to a Request for Bids shall do so in accordance with the requirements contained in the Request for Bids package. Bids shall be opened publicly by the Authority and 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 package shall be rejected.

If the Authority receives fewer than three responsive bids on any trade contract and the lowest bid exceeds the estimated cost for the work for which the bids are requested, the construction manager at risk firm shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the construction manager at risk 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 construction manager is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the construction manager at risk firm, on behalf of and with the consent of the Authority, shall solicit additional bids, utilizing the procedures for selection of Subcontractors who are not Trade Contractors set out below.

5.3.10 Trade Contractor Agreements

Each Trade Contractor awarded a Trade Contract by the CM firm to perform work on the project shall return an executed trade contract including the required performance and payment bonds and insurance certificates to the construction manager at risk firm within ten (10) business days of receipt of the trade contract from the construction manager at risk firm. The trade contract shall in the form specified in subsection (k) of Section 8 of M.G.L. c. 149A.

All trade contracts entered into for the project will be secured by performance and payment bonds in the full amount of the trade contract amount from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570; provided that the bonds are subject to subsection (3) of section 44F of M.G.L. c. 149.

5.4 Subcontractor Procurement

The Authority will establish a Subcontractor selection process for subcontractors who are not Trade Contractors but for which the estimated cost of the scope of work of which they will be bidding exceeds the threshold sum identified in subsection (1) of section 44F of M.G.L. c. 149. The CM firm shall provide to the Authority, for review and approval, the proposed qualifications that a Subcontractor must have in order to successfully perform the work of the subcontract and a list of at least three (3) subcontract firms that the CM firm believes meet such qualifications. The Authority may add or eliminate firms from the list provided that any firms added to the list are reasonably acceptable to the CM firm. The CM firm shall invite each subcontractor approved by the Authority to submit a bid for the Subcontract Work. The bid shall be based on detailed bidding information developed by the CM firm. The CM firm shall present a list of the bids received to the Authority along with a recommendation . The CM firm shall indicate the bidders who are selected to be awarded a subcontract. The CM firm shall provide to the Authority a written explanation as to the reason for the award of a subcontract.

5.4.1 Low Value Subcontracts

Notwithstanding the foregoing, subcontracts with an award value that does not exceed the threshold sum as identified in subsection (1) of section 44F of Chapter 149, may be awarded by the CM firm using any selection method selected by the CM firm with the approval of the Authority.

5.4.2 Self-Performed Work

The CM firm may submit a bid to perform subcontract work in accordance with this Section 5.4 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 subcontractor selection process; and (d) the CM firm shall direct bidders to submit bids for the subcontract work on which the CM firm intends to submit a bid directly to the Authority.

5.4.3 Subcontractor Agreements

The CM firm shall execute a separate subcontract agreement with each Subcontractor. The subcontract agreement shall be in the form set forth in subsection (k) of Section 8 of G.L. c. 149A or an alternative form acceptable to the Authority. Complete and accurate copies of subcontract agreements shall be promptly provided to the Authority upon request.

6.0 Applicability of Other Laws

Sections 26, 27, 27A, 27B, 27C, 27D, 29, 29C, and 34A of M.G.L. c. 149, and sections 39F, 39J, 39K, 39N, 39O, 39P and 39R of M.G.L. c. 30 shall apply to all projects using the construction management at risk delivery method set forth in these procedures.

7.0 Attachments

Attachment A Designer Selection Procedures

End of Document

1629853



THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS STATE COLLEGE BUILDING AUTHORITY
253 SUMMER STREET, SUITE 300
BOSTON, MA 02210

JAMES T. MORRIS
CHAIRMAN

EDWARD H. ADELMAN
EXECUTIVE DIRECTOR

TEL: (617) 542-1081
FAX: (617) 542-2303
www.mscba.org

September 30, 2011

DESIGNER SELECTION PROCEDURES

Table of Contents

1.0	Background.....	2
2.0	Definitions.....	2
3.0	Designer Selection	2
3.1	Public Notice and Solicitation	2
3.2	Designer Selection Committee	3
3.3	Contents of the RFQ/P	3
3.4	Submission Requirements for the RFQ/P	4
3.4.1	Statements of Qualifications	4
3.4.2	Technical and Price Proposals	5
3.4.3	Evaluation of Statements of Qualifications	6
3.4.4	Proposal Evaluation	6
3.5	Contract Award.....	7

1.0 Background

On July 19, 2004, Chapter 193 of the Acts of 2004 was signed into law. Section 27 of the Act provides for the use of the Construction Management at Risk delivery method. The provisions of this Act have been codified as M.G.L. c. 149A, sections 1-13. This statute requires public agencies authorized to use construction management at risk to procure the services of a designer prior to soliciting a construction management at risk firm for qualified building projects.

2.0 Definitions

The term “Designer” shall have the same meaning as found in section 38A1/2 of M.G.L. c. 7, and shall refer to the professional consulting firm that furnishes the principal design services for the proposed project. The Designer shall be independent of the construction management at risk firm and owner’s project manager. For new construction or general building renovation projects, this will typically be an architectural firm. For other types of projects (athletic fields, site improvements, or installation or replacement of sub-components of buildings such as mechanical systems), the Designer may be a professional appropriately licensed in the specific discipline that is responsible for the principal scope of design work to be performed.

3.0 Designer Selection

The designer selection process will employ a single solicitation process consisting of the submission and evaluation of a designer’s qualifications and project proposal in response to a Request for Qualifications and Proposals issued by the Authority (RFQ/P). The RFQ/P will be available to any designer interested in providing the required design services for the project. The Authority will review qualifications submitted in response to the RFQ/P and, based on its evaluation of the qualifications, may select the most highly qualified firms for further consideration of proposals.

3.1 Public Notice and Solicitation

The Authority shall issue a RFQ/P in order to solicit firms to provide design services for each project utilizing the construction management at risk method of procurement under M.G.L. c. 149A or the traditional design-bid-build method under M.G.L. c. 149. Public notice of the availability of the RFQ/P shall be advertised in a newspaper of general circulation in the area in which the project is located, in the *Central Register*, and on the COMPASS system. The Authority shall endeavor to make the RFQ/P available at least three weeks prior to the deadline for submitting responses. The Authority may use other methods of advertisement if deemed desirable by the Authority for a given project.

The public notice shall include, at a minimum, the following information:

- (a) Date and time that the RFQ/P will be available to interested parties, including instructions as to how interested parties may obtain an RFQ/P;
- (b) Date and time for receipt of statements of qualifications and proposals, including the address of the office to which the statements of qualifications

and proposals are to be delivered;

- (c) Notice that the Authority reserves the right to evaluate only those statements of qualifications and proposals that are complete and conform to the requirements of the RFQ/P;
- (d) Notice that the Authority will enter into a standard contract for design services with the selected design firm, a copy of which contract shall be appended to the RFQ/P;
- (e) A description of the submission requirements regarding the submission of the statements of qualifications and proposals, including that proposals submitted shall be in the form of separate Statements of Qualifications and Technical and Price Components; and
- (f) A description of the project, including location, scope of work, estimated budget and schedule.

3.2 Designer Selection Committee

The Authority shall establish a Designer Selection Committee for the purpose of reviewing and evaluating submittals received in response to an RFQ/P. The Designer Selection Committee shall be comprised of a minimum of five people including, but not limited to, the Authority's Director of Capital Projects, the Owner's Project Manager, and at least three other representatives from the Authority. Others, including representatives of the State Colleges, may be included on the Committee if it is deemed appropriate by the Authority. The Director of Capital Projects, or designee on the Designer Selection Committee, shall serve as the chairperson of the Committee.

3.3 Contents of the RFQ/P

The RFQ/P may include, at a minimum, the following information:

- (a) A description of the project including locations of the facilities, available preliminary concept designs and/or design information, geotechnical reports, existing condition surveys and specifications;
- (b) A description of the specific designer services sought and the scope of services expected during the preconstruction and construction phases of the building project;
- (c) A general description of the anticipated schedule and estimated construction cost for the project, including site availability, the estimated time period within which the project is to be completed, and any schedule requirements to meet the student occupancy and use timelines;
- (d) 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;

- (e) The form of Designer's contract, including information on whether the designer fee has been set or will be negotiated; and, if the fee has been set, the amount of the fee, expressed as a fixed fee or as a percentage of the anticipated construction cost by phase if applicable;
- (f) The evaluation procedure, the criteria for the selection of the firm, and the rating system to be employed, if any;
- (g) A statement that Authority reserves the right to approve the Designer's proposed subconsultants for the Project;
- (h) Any additional information, as determined necessary by the Authority, that identifies the requirements and expectations of the Authority of the selected designer; and
- (i) A statement indicating that evaluation of the responses to the RFQ/P will involve two rounds. The first round will be used to evaluate the Statements of Qualifications to determine which firms achieve a rating of "Acceptable". Firms that achieve an acceptable rating will be pre-qualified. The Technical and Price proposals of only the pre-qualified teams will be opened and evaluated in the second round. The RFQ/P will state whether the Authority intends to conduct interviews with the pre-qualified teams.

3.4 Submission Requirements for the RFQ/P

Responses of the design firms to the RFQ/P will have two components: (a) the Statement of Qualifications and (b) the technical and price proposals. Both components must be submitted at the same time.

3.4.1 Statements of Qualifications

The statement of qualifications shall include, at a minimum, the following:

- (a) A cover letter identifying the contact individual for the firm and an executive summary detailing the key elements and factors that differentiate the Design firm from other respondents;
- (b) Completion of a qualifications application, similar in form to AIA Document A305-1993, Architect's Qualification Statement, listing general business information and financial capacity;
- (c) A list of lawsuits and arbitrations to which the firm is a party within the last five (5) years, including a list of all convictions or fines for violations of state or federal law;

- (d) An audited financial statement for the firm for the most recent fiscal year (to be submitted in a separate, sealed and labeled envelope);
- (e) Information on and evidence of the firm's performance with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable;
- (f) Information regarding the firm's experience on building projects of similar size, scope, and complexity, including references and current contact information from the owners and contractors of each such building projects;
- (g) Information on any projects where the firm was terminated or failed to complete the work for any reason;
- (h) Identification of the proposed project team members with resumes documenting experience and references, position descriptions, and relevant time commitments of said team members during the project, if applicable;
- (i) Any other relevant information that the Authority determines is necessary to make an informed decision regarding firm selection, including identification of key sub-consultants of the designer; and
- (j) Executed original copies of all certifications relating to conflicts of interest, non-collusion, tax compliance, employment practices, or similar matters included in the RFQ/P.

The statement of qualifications shall be signed by the duly authorized representatives of the design firm under pains and penalties of perjury.

3.4.2 Technical and Price Proposals

The RFQ/P, in addition to the statement of qualifications, shall require the submission of separate technical and price components as part of the overall proposal submitted to the Authority. The Technical Component shall include:

- (a) A detailed description of the project approach, including preconstruction services;
- (b) A project organization chart with specific information on key project personnel and/or consultants of the team;
- (c) Identification of any firms or individuals that will be collaborating on the Project as subconsultants to the responding design firm. Provide detailed information for each such firm including, but not limited to, a detailed description of their role in the Project, a complete resume and description of

the length and substance of their experience as it relates to the Project, and any other relevant information;

- (d) A technical challenges and solutions plan for the project; and
- (e) Any qualifications or exceptions to the terms of the contract included in the RFQ/P.

The Price Component shall include:

- (i) The fee for design services, including the fee for pre-design (feasibility) phase of the Project, if the Authority does not set the fee in the RFQ/P; and
- (ii) Detailed description of and amounts for the design firm's reimbursable expenses, which shall not be exceeded by the firm unless approved by the Authority pursuant to the contract.

3.4.3 Evaluation of Statements of Qualifications

Upon receipt of responses submitted by interested design firms, the Designer Selection Committee shall evaluate each Statement of Qualifications using the criteria published in the RFQ/P. The criteria will relate to each required response category listed in these procedures. If the Designer Selection Committee determines that additional information would be beneficial to the evaluation process or if a clarification of submitted information would be beneficial, the Authority may ask respondents, or any one of them, to supplement their submission.

Firms will be rated as to whether they are pre-qualified for the project. Only pre-qualified firms will have their Technical and Price Proposals reviewed by the Designer Selection Committee. The decision of the Design Selection Committee—with respect to either prequalification or final designer selection—shall be final and shall not be subject to appeal except on grounds of fraud or collusion.

3.4.4 Proposal Evaluation

The Designer Selection Committee shall evaluate Technical and Price Proposals in accordance with the Technical and Price Criteria published in the RFQ/P, utilizing the numerical system published in the RFQ/P (70% value for Technical Component and 30% value for Price Component). The Selection Committee shall produce a weighted total score that shall be the basis of ranking firms. The RFQ/P shall state the numerical system that will be used to evaluate the Technical and Price Components. The Authority shall allocate points among the subcategories of each component, which allocation shall apply consistently across all proposals. The Authority may, but shall not be required to, conduct interviews of pre-qualified firms.

Based upon the information received, the Designer Selection Committee shall rank the proposals submitted by the teams in order of “Most Advantageous” to “Least

Advantageous” to the Authority. The Designer Selection Committee shall make a recommendation to the Authority as to the highest ranked firm to render design services for the project. The decision of the Designer Selection Committee shall be final and not subject to appeal except on the grounds of fraud or collusion.

If the Designer Selection Committee is not able to identify a qualified firm with respect to the building project, then the Authority shall either re-advertise the solicitation using these same procedures or may choose to procure design services using any other lawful means.

3.5 Contract Award

Upon selection of the designer, and approval of the Members of the Authority, the Authority shall issue a notice of award to the selected designer. The Authority shall timely issue a contract that must be duly executed by the designer and returned to the Authority within ten (10) business days of receipt together with all other documents required to be provided by the RFQ/P and the terms of the contract. Should the designer fail to timely return the executed contract and other required documents to the Authority, the Authority may, at its sole discretion, notify the designer of its intention to revoke its award of the contract and procure design services from the next highest ranked designer.

End of Document