

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

REQUEST FOR PROPOSALS

FOR

**MANAGED SECURITY SERVICES
FOR
NETWORK INFRASTRUCTURE**

OCTOBER 5, 2020

1. BACKGROUND

The Massachusetts Development Finance Agency (“MassDevelopment” or “Agency”) is a body politic and corporate created by the Commonwealth of Massachusetts to help foster economic development across the Commonwealth. The Agency is governed by an 11-member Board of Directors. MassDevelopment prides itself on a team-oriented, solutions-based approach to economic development. The Agency provides its clients with entrepreneurial solutions to complex real estate projects and financing options that create economic opportunities in Massachusetts. Our staff is located in offices throughout the Commonwealth.

2. PROJECT DESCRIPTION

Through this Request for Proposals (“RFP”), MassDevelopment is seeking the services of a vendor to provide managed security services for its existing Fortinet based perimeter network infrastructure, wireless infrastructure, and assistance when needed with network design and implementation.

MassDevelopment will enter into contracts with one or more responsive, responsible respondents based on qualifications and best value. The contracts will have a base term of three (3) years with two (2) options to extend for one (1) additional year each at the Agency’s sole discretion.

MassDevelopment reserves the right to waive any informalities or to reject any or all proposals. Award of a contract for the work contemplated by this RFP may be subject to the approval of MassDevelopment’s Board of Directors.

3. SELECTION SCHEDULE/TIME AND PLACE OF SUBMISSION OF PROPOSALS

The selection schedule is as follows:

RFP Available:	10/5/2020
Deadline for Questions:	10/19/2020 by 5:00 PM
Response to Questions Issued:	10/21/2020 by 9:00 AM
Proposal Submission Deadline:	10/26/2020 by 5:00 PM
Interviews (If needed):	11/2/2020 – 11/6/2020
Selection of Firm:	11/9/2020

MassDevelopment reserves the right to revise the timeline as it deems necessary.

All inquiries concerning this RFP must be submitted to:

Rick Pass
CIO
MassDevelopment
99 High Street, 11th Floor, Boston, MA 02110
617-330-2000
rpass@massdevelopment.com

This RFP has been distributed electronically using email and on MassDevelopment’s website at (<https://www.massdevelopment.com/rfp-rfq/>). It is the responsibility of respondents to check the website for any addenda or modifications to this RFP.

All questions must be submitted in writing by email and received on or before **October 19, 2020 by 5:00 PM**. Prospective respondents should note that all clarifications and exceptions including those relating to the terms and conditions of the contract must be submitted prior to the deadline for questions. Answers to all questions of a substantive nature will be posted on MassDevelopment’s website at (<https://www.massdevelopment.com/rfp-rfq/>). It is the responsibility of respondents to ensure that they receive all information pertaining to this RFP by visiting the website link.

Respondents to this RFP **must submit their responses via email** (pdf format ONLY, preferably searchable) to rpass@massdevelopment.com with the subject line “RFP – Managed Security Services for Network Infrastructure.”¹ Responses must be received no later than **October 26, 2020 by 5:00 PM**.

Any proposal received after the time specified will be considered a late proposal. A late proposal shall not be considered for award. Delays in email deliveries shall not excuse late proposal submissions

4. DIVERSE BUSINESS ENTERPRISES

MassDevelopment strongly encourages the use of Minority Owned Business Enterprises (“MBEs”), Women Owned Business Enterprises (“WBEs”), Veteran-Owned Business Enterprises (“VBEs”), and Service Disabled Veteran Business Enterprises (“SDVBEs”, and collectively with the MBEs, WBEs, and VBEs hereinafter referred to as “Diverse Business Enterprise(s)”), each as certified by or recognized as certified by the Commonwealth of Massachusetts Operational Services Division’s Supplier Diversity Office (“SDO”) pursuant to 425 CMR 2.00, as consultants, contractors, subconsultants, subcontractors, and suppliers in the procurement of its direct design, engineering, construction and all professional services.

Accordingly, MassDevelopment has developed a Diverse Business Participation Program (the “DBE Program”) which establishes criteria to encourage and measure participation by Diverse Business Enterprises in the provision of such services. The DBE Program addresses

¹ Please note that MassDevelopment cannot receive-email attachments larger than 25 megabytes (an attachment larger than 25 megabytes will cause your email to be rejected entirely). If your proposal exceeds that limit, please upload your proposal to your own storage service and provide MassDevelopment with a link to the file(s).

MassDevelopment's commitment and the commitment of respondents to this RFP/Q, to seek opportunities for Diverse Business Enterprise participation in this contract.

Please see Attachment 2 for MassDevelopment's DBE Program guidelines and forms which must be submitted with respondent's proposal.

5. SCOPE OF SERVICES

MassDevelopment seeks a vendor to provide managed network services for its existing perimeter network infrastructure, wireless infrastructure, and assistance when needed with network design and implementation. The aspects included within this project are:

- 24x7 network monitoring of 9 regional offices and 2 datacenters with a 2 hour response time SLA for critical events
- Automated notification of network performance issues
- Routing, Redundancy and Failover management between:
 - Two data centers
 - Regional offices and data centers
- Device upgrades and patch management
- Device provisioning and deployment
- Configuration change management
- Managing network-wide UTM
- 2-factor authentication for all perimeter network infrastructure
- QoS as needed for data/voice/video requirements
- Support and management of wireless access points across all of MassDevelopment's offices
- Leaked credential monitoring
- Network design and assistance as needed

6. ELEMENTS OF PROPOSAL

All responses shall provide information relating to the criteria listed in sufficient detail to allow MassDevelopment to conduct an informal and fair selection process. A submission must, at a minimum, including the following elements:

1. Qualifications of the respondent.
2. Statements/disclosures on respondent's financial condition.
3. Experience and dedication of the service team.
4. Qualification of the respondent's technical support.
5. Standard hours of operation.
6. Expected response time when MassDevelopment is requesting assistance.
7. Explicit statement of all charges, including proposed method of setting pricing for upgrade projects, respondent hourly wages of key staff for such projects should be provided and preference will be given to respondents that will offer a maximum price for such upgrade projects.

8. Names and contact information of at least 3 references for whom you provide consulting services.
9. Diverse Business Enterprise (DBE) Participation Schedule and Narrative (See Attachment 2).
10. Insurance: Please provide a certificate of liability insurance setting forth the firm's current liability insurance coverage including limits, deductibles, and a statement declaring the firm's agreement, if awarded this contract, to purchase and maintain the liability insurance set forth below as evidenced by a certificate of insurance from an insurance company having an A.M. Best rating of "A-, VII" and licensed to transact business in the Commonwealth of Massachusetts.
 - i. Commercial General Liability Requirements, including personal injury and if applicable, product liability/completed operations coverage in the minimum amount of \$1 million personal injury, \$1 million per occurrence, and \$2 million general/product/completed operations aggregate. Policy must be written on a per project basis;
 - ii. Auto liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1 million per occurrence combined single limit;
 - iii. Workers' Compensation for all its employees, as required by statute, with employer's liability of \$500,000 or more include \$500,000 accident and \$500,000 disease;
 - iv. Professional liability (errors & omissions) with per claim limits of not less than \$1 million;
 - v. Cyber Liability - \$2 million per occurrence; \$2 million general aggregate.

Massachusetts Development Finance Agency, 99 High Street, Boston, MA 02110 shall be an additional insured under the General Liability and Auto Liability policies.

7. EVALUATION CRITERIA

MassDevelopment's selection committee will evaluate and compare each submitted proposal using the following evaluation criteria. The criteria are not listed in any order of importance:

- Qualifications of the respondent
- Experience and dedication of the service team
- Qualification of the respondent's technical support
- Expected response time when MassDevelopment is requesting assistance
- Respondent's financial stability
- Responses from references
- Whether the respondent is a diverse business enterprise as defined in Section 4

Determination of the successful respondent(s) will be made using a best value determination with the goal of making an award to the respondent who is responsible, possesses the management, financial and technical capabilities necessary to fulfill the requirements of the contract, whose proposal conforms to the RFP's requirements stated herein, and who is judged by an integrated

assessment of the general considerations and specific criteria defined in the evaluation criteria set forth herein to be most advantageous to MassDevelopment, with the proposed price and other factors considered.

MassDevelopment has determined that it is in the public interest, for purposes of this procurement, that evaluation factors relating to the respondent's proposal are more important than the proposed price. Therefore, MassDevelopment may select a respondent who offers a price higher than the lowest price among the responsible, eligible and qualified respondents if it is determined that the additional technical merit offered is worth the additional price in relation to the other proposals received. For evaluation purposes, if the proposals received are determined to be technically comparable, then the proposed price becomes more important.

8. SELECTION PROCESS

Only responses containing the Elements of Proposal (Section 6) and meeting the minimum requirements set forth in the Evaluation Criteria (Section 7) may be considered for further evaluation.

There will be no public opening of proposals submitted under this RFP. An internal selection committee will be convened to review the submitted proposals, and this committee may or may not contact respondents for further clarification or interviews and may also contact references. The committee reserves the right to identify a "short list" of qualified respondents for follow-up interviews or to make recommendations based on the information contained in the proposals. Instructions for interviews, if required, will be provided to the short-listed firms.

MassDevelopment reserves the right to waive any of the formal requirements of this RFP, to request additional information from any respondent, to award without negotiations or discussions, to negotiate with any respondent, to reject any or all proposals or parts of proposals, to solicit new proposals, and to award contracts to one or more respondents or to reject any or all respondents as it deems in its best interest.

The firm or firms selected will begin to perform services, as needed by MassDevelopment subject to execution of a contract substantially in the form attached as **Attachment 1** hereto. MassDevelopment reserves the right to negotiate the final terms of the contract and compensation. Should MassDevelopment be unable to negotiate a satisfactory fee with the selected finalists, then the next highest ranked finalists will be selected and the negotiation process repeated.

9. GENERAL PROVISIONS

- a. MassDevelopment reserves the right to reject any or all responses or parts of responses, to solicit new responses, and to award contracts as it deems to be in its best interest.
- b. By submitting a proposal to MassDevelopment, the respondent is certifying that its offer is in all respects bona fide, fair, and made without collusion or fraud with any person. As

used in this section, “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

- c. Respondents are encouraged to utilize qualified Diverse Business Enterprises (as defined above). MassDevelopment hereby notifies all respondents that Diverse Business Enterprises will be afforded full opportunity to submit offers and/or proposals in response to this RFP and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.
- d. Potential respondents are hereby notified that issuance of this RFP and receipt of proposals does not assure that a respondent will be selected.
- e. MassDevelopment is not liable for any costs incurred by a respondent in the preparation and production of a proposal or for any work performed prior to contract execution.
- f. MassDevelopment reserves the right to waive any informalities, minor deviations, insignificant mistakes, and matters of form rather than substance and to seek clarification of the proposals, which can be waived or corrected without prejudice to other respondents, potential respondents, or MassDevelopment. No officer or agent of MassDevelopment is authorized to waive this reservation.
- g. A proposal may be modified or withdrawn by a respondent prior to ten (10) business days after the proposal submission deadline by delivering a written notice to the location designated as the place where proposals are to be received.
- h. Any proposal submitted in response to this RFP that is not modified or withdrawn as specified in Section 9 (g) above, shall be considered a firm offer and shall remain effective unconditionally for ninety (90) days.
- i. No respondent shall hold any press conference, issue news releases, or make announcements concerning its selection or non-selection for a contract prior to MassDevelopment’s public release of this information; thereafter any such press conference, release, or announcement shall be made only after obtaining the written approval of MassDevelopment.
- j. MassDevelopment provides respondents with an opportunity to administratively resolve disputes, complaints, or inquiries related to MassDevelopment proposal solicitations or contract awards. MassDevelopment encourages respondents to seek resolution of disputes through consultation with MassDevelopment staff. All such matters will be accorded impartial and timely consideration. If consultation with MassDevelopment staff does not lead to a resolution of the dispute, respondents must file a written dispute with the MassDevelopment Office of General Counsel.
- k. During the evaluation process, the content of each proposal will be held in confidence and details of any proposal will not be revealed (except as required under law).

- l. Unless otherwise specified in the response to the RFP/Q, the quoted price includes all overhead, insurance, taxes, fees, and licenses applicable to the delivery or services set forth in the proposal.
- m. Respondents are further advised that upon signing a contract, the selected respondent must certify that it has complied with any and all laws of the Commonwealth relating to the payment of taxes, reporting of employees and contractors, and withholding and remitting of child support as required by M.G.L. c.62C, §49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts; and must certify that it is a “Qualified Employer” or an “Exempt Employer” as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 *et. seq.* as provided in the contract. A respondent’s failure to certify compliance with said laws would be cause for MassDevelopment not to enter into a contract. MassDevelopment further reserves the right to investigate, at any time prior to MassDevelopment’s execution of a contract or during the term of a contract, any information indicating that there has been a failure to comply with said laws. If MassDevelopment determines that any selected respondent has not complied with said laws, it shall decline to enter into a contract, may terminate any contract entered into, and further may decline to extend the contract.
- n. This procurement is subject to M.G.L. c. 7 §§ 22C - 22F which provides that a state agency, state authority, the house of representatives or the senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland, who fails to certify that:
 - i. he/she does not discriminate in employment, compensation, or terms, conditions and privileges of employment on account of religious or political belief; and
 - ii. he/she promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and
 - iii. he/she is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

Mass. Gen. Laws c. 7, §§22C – 22F shall not apply if (i) the procurement is essential, as determined by MassDevelopment, and compliance would eliminate the only proposal or offer or would result in inadequate competition; or (ii) there is not comparable proposal or offer (i.e. within 10%) by a certifying firm; or (iii) the firm does not employ ten or more employees in an office or other facility located in Northern Ireland.

- o. MassDevelopment is subject to the requirements concerning the disclosure of public records under the Massachusetts Public Records law, M.G.L. c. 66, and thus documents and other materials made or received by MassDevelopment are subject to public disclosure.

- p. All respondents must be registered to do business and be in good standing with the Massachusetts Secretary of State's Office in order to transact business in Massachusetts. MassDevelopment may request evidence of good standing prior to entering into any contract.
- q. A respondent will not be selected if it appears on any list of debarred or suspended contractors maintained by the Commonwealth or the Federal government.
- r. See the attached contract form for other certifications and other provisions with which the selected respondents must comply. MassDevelopment reserves the right to modify this contract and certifications to the extent it deems necessary.

Attachments

Attachment 1—Form Contract

Attachment 2 – MassDevelopment's Diverse Business Participation Program Guidelines

[Attachment 1 – Form Contract]

AGREEMENT FOR SERVICES

This Agreement for Services (the "Agreement") is made and entered into as of _____, 2020 (the "Effective Date") by and between MASSACHUSETTS DEVELOPMENT FINANCE AGENCY a body politic and corporate created and established under Chapter 23G of the Massachusetts General Laws, having a principal place of business at 99 High Street, 11th Floor, Boston, Massachusetts 02110 ("MassDevelopment" or the "Agency"), and _____, a Massachusetts _____, having a principal place of business at _____ (the "Consultant").

WITNESSETH THAT

WHEREAS, the Agency desires to retain a Consultant to provide network management and monitoring services for the Agency's wide area network, as more fully described herein (the "Services"); and

WHEREAS, the Consultant is qualified and desires to perform the Services for the Agency to meet these needs.

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

1. Scope of Services. The Consultant agrees to perform, at the Consultant's own expense, all the work and furnish all the vehicles, material, equipment and labor necessary and proper to perform the Services during the term of this Agreement, all in accordance with the terms and provisions of this Agreement, and in accordance with the additional requirements set forth in Exhibit A, and in a proper, thorough and workmanlike manner and to the satisfaction of the Agency. The Scope of Services under this Agreement is attached hereto as Exhibit A.

The Agency may request changes, additions or deletions to the Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, shall be mutually agreed upon in writing and incorporated in written amendments to the Agreement.

2. Fees/Payment. The Agency agrees to pay the Consultant a monthly fee of _____ (\$_____) OR the fees upon the completion of the Services, in the amounts and rates set forth in the Scope of Services set forth on Exhibit A. Total fees hereunder shall not exceed _____ Dollars (\$_____). The "total fees" shall include all direct costs and reasonable expenses, which costs and expenses shall be approved in writing by the Agency in its sole discretion. There are no allowable price escalators during the Term of this Agreement. Invoices for services rendered and costs incurred shall be prepared by the Consultant on the Consultant's standard form, as approved by the Agency, and submitted to the

Agency. An invoice in proper form shall be paid by the Agency to the Consultant within thirty (30) days of presentation to the Agency.

3. No Assignment. Consultant shall not assign, subcontract, sell, transfer or otherwise dispose of any interest in the Agreement without prior written approval of the Agency. Notwithstanding any such assignment, sublease, sale, transfer or other disposition permitted by the Agency, the Consultant will continue to remain fully and directly liable on all its obligations hereunder as though no such assignment, sublease, sale, transfer or other disposition had occurred. Upon making any such disposition, the Consultant shall furnish the Agency promptly with an executed copy of the disposing instrument, executed by assignee, sublessee, buyer or transferee, in which such party thereto assumes and agrees to observe and perform all of the Consultant's obligations hereunder. Any such disposition shall expressly be made subject to all defenses, set-offs, claims or counterclaims which would have been available to the Agency in the absence of such disposition. The Agreement shall otherwise be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

4. Agency's Liability. The Agency's liability under this Agreement shall be limited to the payments due hereunder. In no event shall the Agency be liable for any additional amounts, including without limitation, any indirect, special or consequential damages.

5. Independent Contractor. It is understood and agreed that the Consultant is an independent contractor and that the Consultant shall perform the Services, as defined herein and on Exhibit A. The Consultant shall determine, in the Consultant's sole discretion, the manner and means by which the Services are accomplished, subject to the express condition that the Consultant shall at all times comply with applicable law. The Consultant shall perform the Services in a professional and competent manner. It is expressly understood and agreed that neither the Consultant nor the Consultant's employees and agents, if any, shall be considered agents or employees of the Agency, and they shall have no authority whatsoever to bind the Agency by contract or otherwise.

The Consultant represents that it has, or will secure, at its own expense, all personnel required in performing the Services under the Agreement. The Consultant shall assign such personnel, subject to the approval of the Agency, and such personnel shall not be employees of nor have any contractual relationship with the Agency. The Consultant further agrees that its personnel will not hold themselves out as, nor claim to be, officers or employees of the Agency by reason of the Agreement.

The Consultant acknowledges and agrees that it shall be the obligation of the Consultant to report to the proper

authorities all fees received by the Consultant pursuant to the Agreement, and the Consultant agrees to indemnify, defend and hold harmless the Agency to the extent of any obligation imposed by law on the Agency to pay any withholding taxes, social security, unemployment or worker's compensation insurance or similar items in connection with any payments made to the Consultant by the Agency pursuant to the Agreement on account of the Services of the Consultant or the Consultant's employees or agents, if any.

6. Indemnity. The Consultant shall indemnify, defend and hold harmless the Agency and its successors and assigns, and all of its officers, directors, lenders, shareholders, beneficial owners, trustees, partners, affiliates, agents and employees (collectively "Agency Indemnitees") from and against any and all claims, suits, actions, judgments, demands, losses, costs, attorney's fees, expenses, damages and liability to the extent caused by, resulting from, or arising out of the intentional acts, negligent acts, errors, omissions, or allegations thereof, of the Consultant, its employees, agents or representatives in the performance of the Services under the Agreement.

7. Equal Employment Opportunity. In connection with the execution of the Agreement, the Consultant shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age (as defined by law), sex, sexual orientation, religion or physical or mental handicap. The Consultant agrees to comply with all applicable federal and state statutes prohibiting discrimination in employment including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Section 504 of the Rehabilitation Act of 1973, and Massachusetts General Laws Chapter 151B, section 4 (1). If a complaint or claim alleging violation by the Consultant of such statutes regarding the execution of the Agreement is presented to the Massachusetts Commission Against Discrimination ("MCAD"), the Consultant agrees to cooperate with MCAD in the investigation and disposition of such complaint or claim and to assume all legal fees in connection with the defense of such claim. In the event of the Consultant's noncompliance with the provisions of this Article, the Agency shall impose such sanctions as it deems appropriate, including, but not limited to: (i) withholding of payments due the Consultant under the Agreement until the Consultant complies; or (ii) termination or suspension of the Agreement.

8. Compliance with Applicable Law. The Consultant shall comply with and be solely responsible for any violation of all federal, state and local laws, ordinances, rules, regulations or orders which are applicable to the Services being provided hereunder and in the performance of the Agreement.

9. Certifications. By signing the Agreement, the Consultant certifies, under the pains and penalties of perjury, that it is in compliance with, and shall remain in compliance with, all legal requirements governing performance of this Agreement and the Consultant's authority to transact business in Massachusetts, and that the

Consultant:

(1) is in compliance with all Massachusetts laws relating to the payment of taxes, reporting of employees and contractors, and withholding and remitting of child support, as required by M.G.L. c. 62C, § 49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts;

(2) is a "Qualified Employer" or an "Exempt Employer" as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 *et seq.*;

(3) is in compliance with all federal and state laws and regulations prohibiting discrimination, including without limitation Executive Order 11246;

(4) is not currently debarred or suspended from doing business with any governmental entity by the Commonwealth of Massachusetts, or any of its entities or subdivisions under any Commonwealth law or regulation, including without limitation M.G.L. c. 29, § 29F and M.G.L. c. 152, § 25C, and that it is not currently debarred or suspended from doing business with any governmental entity by the Federal government under any federal law or regulation;

(5) is in compliance with federal anti-lobbying requirements of 31 U.S.C. § 1352;

(6) is in compliance with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions pursuant to M.G.L. c. 151A, § 19A(b), or has notified MassDevelopment in writing that M.G.L. c. 151A does not apply to Consultant because Consultant does not have any individuals performing services for it within the Commonwealth of Massachusetts to the extent that Consultant would be required to make any such contributions or payments to the Commonwealth;

(7) is not employing ten or more employees in an office or other facility located in Northern Ireland, and is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland; or if applicable, is employing ten or more employees in an office or other facility located in Northern Ireland and (i) does not discriminate in employment, compensation, or term, conditions and privileges of employment on account of religious or political belief; (ii) promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and (iii) is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland; and

(8) (i) shall not knowingly use undocumented workers in connection with the performance of the Agreement; (ii) shall verify, pursuant to federal requirements, the immigration status of all workers assigned to perform Services under this Agreement without engaging in unlawful discrimination; and (iii) shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

Any breach of the foregoing requirements shall constitute a material breach of this Agreement subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, and/or suspension or termination of this Agreement or any other contract with MassDevelopment.

10. Responsible Contractor. Consultant certifies that it (i) will check the debarment lists maintained by the Commonwealth of Massachusetts' Division of Capital Asset Management and Maintenance, the Department of Transportation, the Department of Industrial Accidents, the Office of the Attorney General and the Federal Government (the "Debarment Lists") before directly engaging a subcontractor or other contractor and (ii) has not and will not contract directly with a subcontractor or other contractor listed on a Debarment List. The Consultant understands and acknowledges that noncompliance may result in debarment from future MassDevelopment funded projects for a period of one year from the date of written notification of noncompliance.

The Commonwealth's Executive Office of Administration and Finance has a webpage with a link to the lists, <http://www.mass.gov/anf/property-mgmt-and-construction/design-and-construction-of-public-bldgs/Contractor-debarment.html>

11. Conflict of Interest. The Consultant understands that any person providing services under the Agreement will be a "special state employee," for purposes of M.G.L. Chapter 268A, but shall otherwise be an independent contractor and not an employee of the Agency. The Consultant further agrees to comply with said Chapter 268A, as "special state employee," and to promptly disclose to the Agency any activity under the Agreement by the Consultant or an employee thereof that is or may result in a violation thereof. The Agency acknowledges that the Consultant can perform services for other clients during the duration of this Agreement, provided such clients do not conflict with the services required under this Agreement and subject to applicable law.

12. Diverse Business Enterprises Preference. It is the policy of the Commonwealth and the Agency to promote equity of opportunity in state contracting; and, to that end, to encourage full participation of Diverse Business Enterprises (as defined below) in all areas of state contracting pursuant to Executive Orders 565, 523, and 526. For purposes of this section, "Diverse Business Enterprise(s)" shall mean a minority business enterprise, women business enterprise, veteran business enterprise, or service-disabled veteran-owned business enterprise, each

as certified by or recognized as certified (as of the Effective Date) by the Commonwealth of Massachusetts Operational Services Division's Supplier Diversity Office (SDO) pursuant to 425 CMR 2.00. It is the Agency's intention to create a level playing field on which Diverse Business Enterprises can compete fairly for contracts.

In addition to all other equal opportunity employment requirements of this Agreement, the Agency strongly encourages the use of Diverse Business Enterprises as consultants, contractors, subconsultants, subcontractors, and suppliers. Lists of Diverse Business Enterprises certified or verified by the SDO are located at www.mass.gov/sdo.

Consultant shall cooperate with the Agency and exercise good-faith efforts to seek opportunities for Diverse Business Enterprise participation. At the time this Agreement is executed, Consultant shall submit a certified Diverse Business Enterprise Participation Schedule, in the form attached hereto as Exhibit C, to the Agency. The Diverse Business Enterprise Participation Schedule is incorporated by reference into the Agreement.

13. Insurance. The Consultant shall effect and maintain insurance in amounts as set forth below with companies licensed to do business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of "A-, VII" and otherwise satisfactory to the Agency, at its own cost and expense to protect itself from claims under any Worker's Compensation Act; from claims for damages because of bodily injury including sickness, disease or death; from claims for damages because of injury to or destruction of tangible property; and from claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which it is legally liable.

(i) Commercial General Liability, including personal injury and if applicable, product liability/completed operations coverage in the minimum amount of \$1,000,000 personal injury, \$1,000,000 per occurrence, \$1,000,000 general aggregate, and \$2,000,000 product/completed operations aggregate;

(ii) Automobile Liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1,000,000 per occurrence combined single limit;

(iii) Workers' Compensation for all its employees, as required by statute, with employers' liability of \$500,000.00 or more including \$500,000 accident and \$500,000 disease;

(iv) Professional Liability (Errors & Omissions) in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 aggregate written on a claims made basis; and

(v) Cyber Liability insurance with limits of not less than \$2,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to the Agency and for claims involving any

professional services for which Consultant is engaged with the Agency for such length of time as necessary to cover any and all claims.

The Consultant shall furnish the Agency with certificates of insurance showing that the Consultant has complied with this Article prior to entering into the Agreement and naming "Massachusetts Development Finance Agency, its successors and/or assigns, as their interests may appear" as an additional insured which certificates shall provide that written notification of cancellation of the insurance policies required hereunder shall be given to the Agency thirty (30) days prior to such cancellation.

14. Term/Termination. The Term of this Agreement shall be three (3) years from the Effective Date of this Agreement. The Agency, at its sole discretion, shall have the option to extend the term of this Agreement for two (2) additional periods of one (1) year each ("Extension Term") upon the same compensation schedule set forth in Exhibit B. The Agency shall exercise such extension prior to the termination of the Initial Term. Notwithstanding the foregoing, those provisions of this Agreement where equity would require survival shall be deemed to survive and remain binding upon the parties following the termination of the Agreement.

The Agreement may be terminated by the Agency with written notice to the Consultant in the event of substantial failure by the Consultant to perform in accordance with the terms of the Agreement through no fault of the Agency unless said failure is rectified within said period. The Agreement may also be terminated by the Agency for its convenience but only upon seven (7) days written notice to the Consultant. In the event of termination not the fault of the Consultant, the Consultant shall be paid for all the Services performed and costs incurred up to the effective date of termination for which the Consultant has not been previously paid by the Agency. Upon receipt of notice of termination from the Agency, the Consultant shall discontinue its services hereunder unless otherwise directed and shall deliver to the Agency all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in the performance of the Agreement, whether completed or in process. Notwithstanding the above, in the event of termination, the Consultant shall not be relieved of liability to the Agency for injury or damages sustained by the Agency by virtue of the Agreement, and the Agency may withhold any payments to the Consultant for the purposes of set-off until such time as the exact amount of damages due to the Agency is determined.

16. Forum and Applicable Law. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. Any actions arising out of this Agreement shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof.

17. Notices. All notices required or permitted under the Agreement shall be in writing and shall be deemed

sufficiently served when delivered by hand if a receipt is obtained therefore, or when actually received if delivered by mail, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed to the parties at the addresses listed in the first paragraph of this Agreement. Each party authorizes the other to rely in connection with their respective rights and obligations under the Agreement upon approval by a duly authorized officer(s) of each party, the execution by such offices being conclusive evidence of such authority.

18. Non-Waiver. No failure or waiver of successive failures or waivers on the part of either party hereto, their successors or permitted assigns, in the enforcement of any condition, covenant or section of the Agreement, shall operate as a discharge of any such condition, covenant or section, nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns

19. Force Majeure. Neither party shall be liable to the other or be deemed to be in breach of the Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this Article, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. Nothing contained in this Article shall derogate from or affect the Agency's rights to terminate this Agreement pursuant to Article 15 above.

20. Severability. If any provision of the Agreement is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall remain enforceable to the fullest extent permitted by law.

21. Headings. The headings used herein are for reference and convenience only and shall not enter into the interpretation of the Agreement.

22. Amendments. No amendment to the Agreement shall be effective unless it is signed by authorized representatives of both parties and accepted for filing at the offices of the Agency.

23. Signatory Authority. Each party to this Agreement represents that the individual executing this Agreement on its behalf is duly authorized to bind such party to this Agreement according to its terms.

24. Extent of Agreement. The Agreement represents the entire and integrated agreement between the Agency and the Consultant and supersedes and replaces all terms and

conditions of any prior agreements, arrangements, negotiations or representations, written or oral, with respect to the subject matter hereof.

25. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

[Remainder of page left blank; signature(s) on next page]

IN WITNESS WHEREOF, this Agreement has been executed by the Agency and the Consultant and is effective as of the date first written above.

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

By: _____
Name: Simon R. Gerlin
Title: Executive Vice President and CFO

Approved as to Form
Agency Counsel

CONSULTANT

By: _____
Name:
Title:

Federal ID Number

[Signature page of [Legal Document Title]]

EXHIBITS TO FORM OF CONTRACT:
EXHIBIT A – SCOPE OF SERVICES
EXHIBIT B – FEE SCHEDULE
EXHIBIT C – DBE PARTICIPATION SCHEDULE

**[Attachment 2 – MassDevelopment’s Diverse Business Participation
Program Guidelines]**

MassDevelopment strongly encourages the use of Diverse Business Enterprises (as defined in Section 4 of the RFP) as consultants, contractors, sub-consultants, subcontractors, and suppliers in the procurement of its direct design, engineering, construction and all professional services. Accordingly, MassDevelopment has developed a Diverse Business Participation Program (the “DBE Program”) which establishes criteria to encourage and measure participation by Diverse Business Enterprises in the provision of such services.

The DBE Program addresses MassDevelopment’s commitment, and the commitment of respondents to this RFP, to seek opportunities for Diverse Business Enterprise participation. The DBE Program requires MassDevelopment to reach out to Diverse Business Enterprises in its contracting opportunities and to track the percentage of Diverse Business Enterprises which participate in Agency contracting at the direct contracting level. The participation levels of Diverse Business Enterprises in MassDevelopment’s direct contracting will be reported to MassDevelopment’s Board of Directors annually.

In addition, the DBE Program requires examination of respondent’s anticipated utilization of Diverse Business Enterprises at the subcontractor/subconsultant level, including the percentage of the total proposed price to be supplied by Diverse Business Enterprises and the identity of the work to be performed by Diverse Business Enterprises. The DBE Program also considers the strategies and good faith efforts each respondent will use to obtain qualified Diverse Business Enterprise subcontractors/subconsultants and suppliers, how the respondent will interface with MassDevelopment for outreach, pre-solicitation review of subcontracting/subconsulting, and compliance monitoring and reporting. It will also consider how the respondent will address resolving disputes with Diverse Business Enterprise subcontractors/subconsultants, including proposed termination and alternative plans for the substitution and replacement of Diverse Business Enterprise firms that have been terminated. Finally, it will consider what technical assistance initiatives and supportive service strategies the respondent will employ to promote full participation by Diverse Business Enterprises and to support the efforts by such firms to build capacity.

Respondent Submission Requirements

As part of respondent’s proposal submission, the Participation Schedule (attached hereto as **Exhibit A**) must be submitted. It is anticipated that contracts may meet the eligibility criteria of Part 2. Accordingly, the proposal submission should include a narrative with a summary of the below information.

1. Explain how the respondent intends to ensure overall compliance with MassDevelopment’s policy of promoting equity and opportunity for Diverse Business Enterprises, including the strategies the respondent used to obtain certified MBE, WBE, VBE or SDVBE subcontractors and suppliers to perform work or provide supplies for the project.

2. Explain the good faith efforts the respondent has already made to obtain Diverse Business Enterprise participation, including:
 - The strategies the respondent has used to obtain certified MBE, WBE, VBE or SDVBE subcontractors and suppliers,
 - Documented communication with MassDevelopment about Diverse Business Enterprise outreach,
 - How the respondent used information concerning Diverse Business Enterprise subcontracting opportunities provided by MassDevelopment during the pre-proposal conference, if any, and/or through other means,
 - Solicitations placed by the respondent in general circulation media, trade association publications, minority-focused media and other reasonable and available means to obtain Diverse Business Enterprise involvement,
 - Written notifications sent by the respondent to Diverse Business Enterprises encouraging participation in the proposed contract,
 - Efforts the respondent made to identify specific portions of the work that might be performed by Diverse Business Enterprises,
 - A list of names, addresses, and telephone numbers of Diverse Business Enterprises that were contacted,
 - A description of the information provided to targeted Diverse Business Enterprises regarding the particular project, and
 - Efforts made by the respondent to assist Diverse Business Enterprises in obtaining bonding or insurance required by the Bidder/proposer or by MassDevelopment.

3. Submit a narrative explaining how during performance of the contract the respondent will maintain continued efforts to preserve and enhance Diverse Business Enterprise participation, including the respondent's:
 - Description of how the respondent will interface with the MassDevelopment project manager and contract manager for outreach and assistance generally and with respect to the specific issues below,
 - Description as to how the respondent will abide by the monitoring and reporting requirements of the contract,
 - Description of the dispute resolution procedures the respondent will institute under its subcontracts with Diverse Business Enterprises to encourage amicable resolution of disputes and continued performance by the Diverse Business Enterprises, and
 - Description of the procedures and guidelines for the termination of Diverse Business Enterprises as well as for the identification and selection of substitutes.

Exhibit A
MassDevelopment's Diverse Business Enterprise (DBE)² Participation Schedule

PART 1: CONSULTANT INFORMATION

Business Name and Address: _____
 Contact Name and Phone Number: _____
 Email Address: _____

Consultant **is/is not** Supplier Diversity Office certified as a DBE:

Yes No, not a certified DBE

If yes, check appropriate category(ies) below (**attach** any SDO Certification Letters):

MBE WBE VBE SDVBE

PART 2: NARRATIVE (if applicable)

For contracts with values \$50,000.00 or more, consultant **must attach** to this schedule a narrative containing: (1) communications regarding DBE outreach, (2) identification of the work that may be completed by any DBEs, (3) a dispute resolution process with DBEs, and (4) procedures for the replacement of DBEs if termination is required.

PART 3: CONSULTANT'S DBE SUBCONTRACTORS/SUBCONSULTANTS

Have you sought out DBE Participation at the subcontract/subconsultant level: Yes No

N/A If yes, which methods did you use:

Solicitation placed in trade publications Written notification
 Assist DBEs in obtaining required bonding or insurance COMMBUYS

Other: _____

If yes, complete the below list:

<u>Name and Address of Planned Diverse Business Enterprise Subcontractors/ Subconsultants</u>	<u>Circle Appropriate Certification and attach Certification Letter from SDO</u>	<u>Dollar Amount of Participation on a Massachusetts fiscal year (July 1 – June 30) basis</u>
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	

PART 4: CERTIFICATION (REQUIRED)

Under the pains and penalties of perjury, I certify that the information provided on this form and all attachments is accurate.

Signature: _____

Written Name: _____

² For purposes of this schedule, DBE shall collectively refer to enterprises certified or verified by the Supplier Diversity Office (SDO) as Minority, Women, Service Disabled Veteran Owned Business Enterprises and Veteran Owned Business Enterprises (each respectively a MBE, WBE, SDVBE, and VBE). The SDO certifications are located at www.mass.gov/sdo