

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

REQUEST FOR PROPOSALS

FOR

**OWNER'S PROJECT MANAGER SERVICES
RELATED TO THE
SELECTION AND IMPLEMENTATION OF AGENCY
ENTERPRISE RESOURCES PLANNING SYSTEM**

JULY 5, 2021

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. Currently, MassDevelopment utilizes multiple software solutions to capture, process and report on financial results and various metrics. Please refer to Attachment 3 for a listing of current applications. The Agency would like to centralize all of the Agency’s financial programs into one Enterprise Resource Planning “ERP” system that will provide an integrated suite of business applications for all financial data and automated approvals. Based on initial assessment, Munis ERP by Tyler Technologies, Inc. appears to be a viable solution. MassDevelopment is seeking an Owner’s Project Manager (“OPM”) with expertise in Munis ERP by Tyler Technologies, Inc. to provide guidance and recommendations to the Agency in evaluating if and how Munis ERP could meet the Agency’s needs.

2. PROJECT DESCRIPTION

MassDevelopment is seeking the services of a vendor to provide Owner’s Project Manager Services for the implementation of an ERP system, which will provide an integrated suite of business applications for all financial data and automated approvals. Assessment of existing Agency applications and guidance to the extent to which we should integrate additional programs into an ERP is required. The Agency has begun initial assessments and is seeking an advisor with specific expertise using the Munis ERP system by Tyler Technologies, Inc. to determine if and how Munis can meet the Agency’s optimal needs. The Agency is seeking guidance on best practices to ensure a smooth transition to a new system, while incorporating workflow and business efficiencies.

MassDevelopment will enter into a contract with one responsive, responsible respondent based on qualifications and best overall value. The contract will have a base term of one year with an option to extend for an additional year 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:	July 5, 2021
Deadline for Questions:	July 13, 2021 by 5:00 pm
Response to Questions Issued:	July 16, 2021 by 5:00 pm
Proposal Submission Deadline:	July 20, 2021 by 5:00 pm
Interviews (If needed):	July 23-27, 2021
Selection:	July 30, 2021

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

All inquiries concerning this Request for Proposals (“RFP”) must be submitted to:

Karen Carvalho
Director, Special Projects
MassDevelopment
33 Andrews Parkway
Devens, MA 01434
617-981-0505
kcarvalho@massdevelopment.com

This RFP has been distributed electronically using Mass Development’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 should be submitted in writing on or before **July 13, 2021 by 5:00 PM**. [Email is preferred.] 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 listed above.

Respondents to this RFP must submit their responses via email (pdf format ONLY, preferably searchable) to kcarvalho@massdevelopment.com with the subject line: “RFP – OPM ERP.”¹ Responses must be received no later than **July 20, 2021 by 5:00 PM**. line “

Any proposal received after the time specified will be considered a late proposal. A late proposal shall not be considered for award. Delays in mail deliveries or any other means of transmittal, including couriers, 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)”), 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

¹ Please note that MassDevelopment cannot receive e-mail 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).

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 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 is seeking the services of a vendor to provide Owner's Project Manager Services to provide guidance and feasibility of modules to integrate as well as oversee the implementation of an ERP system. The ERP system will provide an integrated suite of business applications for all financial data and automated approvals. Integration of additional programs will be based on the assessment and recommendations on the extent to which we should integrate additional programs into an ERP. Services include but are not limited to:

- Assessment of current Agency applications and recommended solutions within the Munis ERP system by Tyler Technologies, Inc.
- Provide guidance on best practices for implementation and transition to ERP System
- Provide detailed timeline of project recommendations, which may require a multi-phased approach
- Provide guidance/recommendations on General Ledger and Account modifications and various business practices to ensure most desirable outcome
 - All financial related approvals in one program
 - Dashboard/full oversight on one page
 - Full integration of all receivable processes
 - Full integration of budgeting module
 - Eliminate/significantly reduce paper invoices, paper checks and AP file storage
 - Streamline workflows by automatically processing procurement and invoices while simplifying approvals
 - Ability to track status
 - Time vendor payments and more accurately forecast and manage cash flow
 - Full integration of all employee related processes (payroll, time allocation, benefits)
 - Integrated repository for all procurement related data including but not limited to MOAs, LOAs, Purchase Orders and Contracts
 - Provide reporting and insight for more complete view of spending
 - Generate reports and dashboards that provide more visibility across the entire AR/AP Process

6. ELEMENTS OF PROPOSAL

All proposals shall provide information relating to the elements listed below in sufficient detail to allow MassDevelopment to conduct an informed and fair selection process. A submission must, at a minimum, include the following elements:

- Qualifications of the respondent
- Statements/Disclosures on respondent's financial condition

- Experience and dedication of the service team
- Project Leadership/Staffing
- Firm Background
- Relevant Project Experience including Munis ERP by Tyler Technologies, Inc.
- Qualifications and Key Personnel
- Standard hours of operation
- Expected response time when MassDevelopment is requesting assistance
- Approach to Scope
- Fee Proposal
- Names and contact information of at least 3 references for whom you provide consulting service
- Diverse Business Enterprise (DBE) Participation Schedule and Narrative (See Attachment 2).
- Insurance. Please provide a certificate of insurance setting forth the respondent's current liability insurance coverage including limits, deductibles, and a statement declaring the respondent'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.
 - a. 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;
 - b. Auto liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1 million per occurrence combined single limit;
 - c. 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;
 - d. Professional liability (errors & omissions) with per claim limits of not less than \$1 million.

MassDevelopment must be listed as additional insured on (a) and (b) above.

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 respondent 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, 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 3 – Summary of Applications currently in use

[Attachment 1 – Form Contract]



AGREEMENT FOR CONSULTING SERVICES

This Agreement for Consulting Services (the "Agreement") is made and entered into as of the _____ day of _____, 20____ (the "Effective Date"), by and between the MASSACHUSETTS DEVELOPMENT FINANCE AGENCY, (the "Agency" or "MassDevelopment"), a Massachusetts body politic and corporate established by M. G. L. Chapter 23G, as may be amended from time to time, having a principal place of business at 99 High Street, 11th Floor, Boston, Massachusetts 02110, and _____, a Massachusetts _____, having a principal place of business at _____ (the "Consultant").

WHEREAS, the Agency desires to retain the Consultant to provide Owner's Project Manager services for the implementation of an ERP system for the Agency; and

WHEREAS, the Consultant is qualified and desires to perform 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 shall perform services (the "Services") as further described on Exhibit A attached hereto and incorporated herein by reference.

2. FEES. The Agency agrees to pay the Consultant fees, upon the completion of the Services, in the amounts set forth in Exhibit A. Total fees hereunder shall not exceed _____ through the date of completion of the Agreement, as defined in Article 9 hereto. 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.

3. PAYMENT. 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.

4. CHANGES AND ADDITIONAL SERVICES. The Agency may request changes or additions to the Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's fees, which are mutually agreed upon between the Agency and the Consultant shall be incorporated in written amendments to the Agreement.

5. INDEPENDENT CONTRACTOR.

(a) It is understood and agreed that the Consultant is an independent contractor and that the Consultant shall perform the Services as defined by the parties 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.

(b) 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.

(c) 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. INSURANCE. The Consultant shall effect and maintain insurance in amounts as set forth below and with companies licensed to transact 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 and \$2,000,000 general/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.

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, which certificates shall name "Massachusetts Development Finance Agency, its successors and/or assigns, as their interests may appear" as an Additional Insured and 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.

7. INDEMNITY. Consultant shall indemnify, defend and hold harmless the Agency and its successors and assigns, and all of its officers, managers, members, 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.

8. TIME. Upon notification to proceed by the Agency, the Consultant shall perform the Services with due diligence and in accordance with the schedules agreed to herein. The Agency may authorize costs to be incurred prior to such written notice to proceed. Time is of the essence under the Agreement.

9. DURATION OF CONTRACT. The date of completion for the performance of Services by the Consultant under the Agreement shall be _____. The Agency, at its sole discretion, shall have the option to extend the term of this Agreement for one (1) additional year. 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.

10. TERMINATION. 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.

11. SUCCESSORS AND ASSIGNS. Consultant shall not assign, sublet, 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.

12. 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.

13. NOTIFICATION. 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 therefor, 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.

14. 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.

15. APPLICABLE LAW. The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

16. 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, pandemics, 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 Section, 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 16 shall derogate from or affect the Agency's rights to terminate this Agreement pursuant to Article 10 above.

17. 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.

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

19. 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.

20. 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.

21. 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 terms, 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 or 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 or any contract with the Agency; (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(s).

Any breach of the foregoing requirements shall constitute a material breach of this Agreement subjecting the Consultant 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 the Agency.

22. DIVERSE BUSINESS ENTERPRISE 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. 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 Enterprise 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 B, to the Agency. The Diverse Business Enterprise Participation Schedule is incorporated by reference into the Agreement.

23. 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.

23. COMPLIANCE WITH APPLICABLE LAW. Consultant shall comply with and be solely responsible for any violation of all federal, state and local laws, ordinances, rules, regulations or orders including, but not limited to, emergency orders relating to the COVID-19 pandemic, which are applicable to the Services being provided hereunder and in the performance of the Agreement.

24. 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.

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.

IN WITNESS WHEREOF, the 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:
Title:

Approved as to Form:

Agency Counsel

CONSULTANT

By: _____
Name:
Title:

Federal ID Number

Contract Number:
Contract Amount:

*[Signature page of Agreement for Consulting Services
between Massachusetts Development Finance Agency and
CONSULTANT]*

EXHIBITS:

- Exhibit A – Scope of Services
- Exhibit B – 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 RFQ, 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/sub consultant 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/sub consultants and suppliers, how the respondent will interface with MassDevelopment for outreach, pre-solicitation review of subcontracting/sub consulting, and compliance monitoring and reporting. It will also consider how the respondent will address resolving disputes with Diverse Business Enterprise subcontractors/sub consultants, 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) Participation Schedule

THIS SCHEDULE AND A NARRATIVE MUST BE RETURNED WITH RESPONDENT’S PROPOSAL

PART 1: CONSULTANT INFORMATION

Business Name and

Address: _____

Contact Name and Phone Number: _____

Email Address: _____

Is Consultant Supplier Diversity Office certified as a DBE:

- Yes (**attach** any SDO Certification Letters) No

Consultant is a 1) Minority Business Enterprise; 2) Women Business Enterprise; 3) Veteran Business Enterprise; or 4) Service-Disabled Veteran-Owned Business Enterprise (**check the appropriate category(ies) below**):

- MBE WBE VBE SDVBE

PART 2: NARRATIVE

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, (4) procedures for the replacement of DBEs if termination is required, and (5) explain efforts to diversify your own staff and leadership and make your business a more equitable and inclusive work place.

PART 3: CONSULTANT’S DBE SUBCONTRACTORS/SUBCONSULTANTS

Have you sought out DBE Participation at the subcontract/sub consultant 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/ Sub consultants</u>	<u>Circle Appropriate Certification</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: _____

[Attachment 3 – MassDevelopment’s Current List of Applications]

Microsoft Dynamics Great Plains – General Ledger System
SAGE Software – Fixed Asset Tracking
Bi-360 – Financial Reporting & Budgeting
Tyler Systems – Assessor Software
Vadar Program – AR/RE Tax Billing
Dude Solutions – DPW Work Order/Inventory
My Rec – Recreation Management-Reservations & Payments
CUSI – Devens Utility Software
SimplyBookMe – UAV Testing – Reservations & Billing
SAP Concur Solutions- Employee Expense Management
ePRF – Procurement Routing/Tracking Contracts & Purchases orders
Open CheckBook – Monthly Compliance Reporting for Commonwealth of MA
Square Report – Credit Card Payment Tracking/Reporting
ADP – Payroll & HR Management
LeaseQuery – GASB87 Compliance
Tyler Systems – Assessors software
Vadar Program – Accounts Receivable

Additional Programs used in other capacities includes loan management and CRM functionality.

The Agency does not currently have an integrated solution for invoice approval and routing.