



PARTNERSHIP TO ADVANCE COLLABORATION AND EFFICIENCY (PACE)  
MA STATE COUNCILS OF PRESIDENTS

Request for Proposal

**FINANCIAL AUDITING SERVICES  
FY2016 (3 + 1 + 1)**

RFP: AUDITPACE001

RFP RELEASE DATE: January 19, 2016  
RFP DUE DATE: February 12, 2016, 2:00 PM

Submitted by: PACE on behalf of the MA State Councils of Presidents

RETURN TO:

**MA STATE COUNCILS OF PRESIDENTS  
85 DEVONSHIRE STREET, 7<sup>th</sup> Floor  
BOSTON, MA 02109  
ATTENTION: BETTY ANN LEARNED**

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## **BIDDER'S RFP INSTRUCTIONS & CHECKLIST**

### Critical Things to Keep in Mind When Responding to an RFP for PACE

1. \_\_\_\_\_ Read the entire document. Note critical items such as: mandatory requirements; supplies/services required; submittal dates; number of copies (4) plus electronic copy required for submittal; contract requirements
2. \_\_\_\_\_ Follow the format required in the RFP when preparing your response. Provide point-by-point responses to all sections in a clear and concise manner.
3. \_\_\_\_\_ Provide complete answers/descriptions. Read and answer all questions and requirements. Don't assume PACE or the evaluation committee will know what your company capabilities are or what items/services you can provide. The proposals are evaluated based solely on the information and materials provided in your response.
4. \_\_\_\_\_ Before submitting your response, check the PACE and MA COMMBUYS websites to see whether any addenda were issued for the RFP: AUDITPACE001 <http://www.masscc.org/partnerships-initiatives/pace-partnership-collaboration-efficiencies> and <https://www.commbuys.com/bsol/>.
5. \_\_\_\_\_ Review the RFP document again to ensure that you have addressed all requirements. The copies are provided to the evaluation committee members and will be used to score your response.
6. \_\_\_\_\_ General conditions, specifications and pricing proposals worksheet are included in this RFP and must be completed.
7. \_\_\_\_\_ The following materials **must** be completed and submitted as part of this RFP:
  - Appendix A - Letter of Intent to Submit Proposal (Submit no later than Jan. 25, 2016 via e-mail to [LearnedB@mcceo.mass.edu](mailto:LearnedB@mcceo.mass.edu)).
  - Appendix B - Statement of Qualifications.
  - Appendix C - Proposal Signature Sheet.
  - Appendix D - Pricing Proposal and Billing Rates Under Separate Cover.
  - Appendix F – Sample Massachusetts State Standard Contract Form & Terms and Conditions.
  - The Firm's CPA certification.
  - Firm's evidence of most recent peer review.
  - Acknowledgement of Standards for Audit of Governmental Organizations.
  - Client history with contact information.
  - Resume and curriculum vitae of engagement partner, audit manager and senior auditors to be assigned.

## GENERAL INFORMATION

**Note:** This RFP document, subsequent associated information and any changes will be posted on the following Internet Sites: <http://www.masscc.org/partnerships-initiatives/pace-partnership-collaboration-efficiencies> & <https://www.commbuys.com/bs/>.

### **1.1 Purpose and Overview:**

The Partnership to Advance Collaboration and Efficiency (PACE) is requesting proposals from firms for qualified, independent certified public accountants, licensed to practice in the Commonwealth of Massachusetts to submit proposals to conduct an annual audit of its financial statements and a compliance audit of federal awards in accordance with Uniform Guidance, formerly known as OMB Circular A-133.

### **1.2 Background:**

The 24 Massachusetts PACE member Colleges and Universities (only 23 members are participating in this RFP) have a shared belief that a systematic mode of cooperation among the 9 State Universities and the 15 Community Colleges carries with it tremendous benefits for each institution, its students, and the public at large. By working together, the campuses can bolster levels of efficiency, increase productivity, and improve the delivery of services to constituents. A collective commitment to collaboration and efficiency generates savings for every campus – savings that can be strategically redeployed as each institution deems appropriate in bolstering student success, improving the quality of academic programs, and making a College education both affordable and accessible.

While the policies, strategies and infrastructure necessary to realize these benefits are varied, it is both understood and respected by the 24 PACE campus presidents, that each institution has a unique history, overarching set of needs, and slate of existing and evolving relationships. As such, the Charter affirms that institutional participation in PACE and its initiatives is entirely voluntary and further recognizes that institutions need not participate in every collaborative effort to be a full partner in the greater effort.

The list of the 15 PACE member Community Colleges, whose mission is to offer open access to high quality, affordable academic programs with a commitment to excellence in teaching and learning and provide academic preparation to approximately 138,000 credit and 59,000 non-credit students for transfer or career preparation for entry into high demand occupational fields, developmental coursework, and lifelong learning opportunities, includes: Berkshire, Bristol, Bunker Hill, Cape Cod, Greenfield, Holyoke, Massasoit, Mass Bay, Middlesex, Mount Wachusett, Northern Essex, North Shore, Quinsigamond, Roxbury, and Springfield Technical.

The list of the 9 PACE member State Universities, whose mission is to integrate liberal arts and sciences programs with professional education with three specialty Colleges also focusing on academic areas identified in their names, seek to develop critical thinking, quantitative, technological, oral, and written communication skills and practical appreciation of the arts, sciences, and humanities as they affect good citizenship and an improved quality of life for approximately 72,000 students, includes: Bridgewater (not participating in this RFP), Fitchburg, Framingham, Massachusetts College of Art and Design, Massachusetts Maritime Academy, Massachusetts College of Liberal Arts, Salem, Westfield, and Worcester.

This joint Request for Proposal (RFP) represents the combined interests of Community Colleges and State Universities and are making the following representations and comments:

- The primary authors of this Request for Proposal are PACE, Northern Essex Community College and Salem State University. Participation by each individual Community College/State University is not guaranteed and use of the contract is left to the discretion of each respective institution.
- Due to the number of participants and their specific needs this RFP could be a multi-vendor award. Final Selection of an audit firm will be at the discretion of each Community College/State University and their governance board.
- No guarantee of volume will be made to the vendor(s).
- After review by the RFP Audit Review Committee, PACE will forward the information to all Community Colleges/State Universities and further contact to a particular firm will then be decided by a College/University.
- For your information, Community Colleges and State Universities have provided a brief summary of their most recent financial data.
- The successful bidders will be required to execute a Massachusetts State Standard Contract Form together with any appropriate certifications of compliance to each individual institution, including but not limited to Terms and Conditions of Contract (Appendix F).
- Individual awards may vary. Commencement of services under this RFP will be for all audit work associated with fiscal year ending June 30, 2016 and will continue through the completion of all audit work for fiscal years ending June 30, 2018 with two 1 year options. Specific start and end dates of services to be determined upon mutual agreement of each Community College/State University and their selected audit firm. Termination of contract by either party (vendor/College/University) must be completed in writing 60 business days prior to termination of service.
- The Community Colleges/State Universities also reserve the right to accept or reject any and all bids where it is determined to be in the best interest of each Community College/State University.
- The proposal must be signed in the name of the audit firm and must have a signature of the person or persons duly authorized to sign the proposal.
- The name, office address, and office telephone number of the primary relationship officer must be clearly identified.
- All proposals and attachments submitted for this RFP will become the sole property of the Community Colleges/State Universities.

The Community Colleges/State Universities will select the proposals that best meets the requirements of this RFP; this is not a "low bid" award, nor a public opening. The hard copy proposals will be opened in the presence of one or more witnesses at the time specified in this RFP but will not be a public opening. Include an electronic copy on a flash drive and four (4) hard copies. The contents of all proposals shall remain confidential and shall not be disclosed to competing bidders until after consideration, completion of evaluation and presentation of RFP information to each individual Community College/State University. Pursuant to M.G., Chapter 30B-Section, PACE is required to keep a register containing the number of proposals, proposer, proposer names, and modifications of each proposer and names of witnesses.

### **1.3 Goals and Guidelines for this Request for Proposal**

The purpose of this Request for Proposal (RFP) is to gather pricing and operational information from those Certified Public Accounting CPA firms (Firms) to perform annual financial Statement, internal control review, and other annual audit services for the 9 State Universities and the 15 Community Colleges (Institutions) organized under the Commonwealth's Department of Higher Education (DHE). Upon review and recommendations from the appointed RFP Audit Committee, information will be summarized and forwarded to each institution's Chief Financial Officer (CFO) to follow each institution's policy to retain such services and finalize any specific requirements that the individual institution may require as part of its engagement with the selected firm(s).

Some specific guidelines that should be considered as part of this RFP:

1. Each institution will follow their established policies and governance in terms of selection, appointment, retention and termination of audit services. Such actions are solely at the discretion of the specific institution. Participation in this review in no way should be considered a commitment from any institution to a specific firm. The intent of this RFP is to gather information from interested firms to serve as a guideline for the institutions in the selection of any firm.
2. The duration of proposals submitted in response to this RFP will be 5 years. Contracts resulting from this process will be for 3 years with options for succeeding renewal terms of 1 year each for 2 more years resulting in a potential total of 5 years (3 +1+1) if the institution wishes to engage for the full duration. (Recognizing that there are some institutions that are currently under contract with their own CPA firms, or wish to delay the start of a new contract, a provision for such institutions to take advantage of the pricing option should be available). Also, as under any contract provision, there will be an appropriate mechanism to terminate from any agreement as outlined in each institutions contract language.
3. The pricing for this RFP will be structured based upon the size of an institution and the participation rate of those institutions in each category: For purposes of this RFP, each institution's size will fall under one of three tiers (Tiers) based on the Total Operating Expenses (Operating) from the institution's Statement of Revenues, Expenses, and Changes in Net Assets from the prior year's Audited Financial Statements.

The Tiers for the institutions are based on total operating expenses and are as follows:

- Tier 1: Operating expenses greater than \$100 Million
- Tier 2: Operating expenses between \$50 through \$100 Million
- Tier 3: Operating expenses under \$50 Million.

Each firm will develop a base price (Base) for each Tier 1, 2, and 3 institution. Then each firm will reflect a quantity discount structure based on the number of institutions that fall within each tier. This discount structure will be based on the number of institutions engaged for example, 0-3 institutions; then 4-6 institutions; then 7 or more institutions. Actual pricing for each successive year will depend upon how many institutions contracts with the firm in each tier category for that specific audit year.

4. Similar to item 3 above, there have been established tiers for an institution's Foundations ("Foundation"). The tier will be based on total operating expenses and are as follows:

- Tier 1: Operating expenses than \$1 Million
- Tier 2: Operating expenses between \$500K through \$1 Million
- Tier 3: Operating expenses under \$500K

Once developed, a base price should be developed that would combine the institution's effort with that of the Foundation's. It's anticipated that this "combined" price would recognize economies of scale and result in favorable pricing for those interested in such combined efforts. However, this RFP and firms must recognize that each institution's policies and governance allows for separate approvals for such engagement. There is no guarantee that the same firm may be engaged for all Community Colleges, State Universities and foundations audit requirements.

5. Clarification on Tier Pricing:

The RFP refers to the Colleges/Universities and not necessarily their Foundation. If a firm contracts with an institution and its Foundation the count for discount purposes would be 2 as it entails two different entities. Institutions and Foundations combine for financial statement purposes but must produce Financials for the Foundation as well as the institution.

6. Simplification of Discounting Methodology:

Instead of identifying discounts for each tier, each firm should just identify an appropriate percentage based on the number of Institutions or Foundations that contract with them each year of the contract. Example: If 2 Institutions or Foundations contract with a firm then X% discount would apply for the 2; if 5 contracted then Y% would apply to all 5; and if 8 contracted then Z% would apply to all. The attached template (Addendum E) allows space to identify the percentage that should be applied to the base price regardless of entities within each tier for all Institutions or Foundations under contract for that audit year. Please supply the discount percentage in the shaded space provided.

7. It should be reiterated that this RFP is to provide information for basic year-end audit services. Each institution may have specific needs above and beyond such basic service. For example such things as State Financial Aid (MOFSA) audit, and separate audits for other component units are not included in this RFP. Please include on the pricing proposal (Addendum E) what you would expect to charge for a MOFSA audit, if required.

8. Each campus receiving your service will be invoiced directly

9. Proposal Instructions:

- It is the vendor's responsibility to ensure that submission of proposal to this bid is received in its entirety **electronically on a flash drive and in hard copy, with four (4) copies**, by Feb. 12, 2016 at 2:00 PM. In case of inclement weather and the office is closed, the snow date for opening of proposals is scheduled for the next business day.
- Address all proposals to:

**MA STATE COUNCILS OF PRESIDENTS  
85 DEVONSHIRE STREET, 7<sup>th</sup> Floor**

**BOSTON, MA 02109**  
**ATTENTION: BETTY ANN LEARNED**

**1.4 Scope of Services**

1. Required services consist of an annual audit of the Community College/State University's financial statements.

This examination is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), the standards for Audit of Governmental Organizations, Programs, Activities and Functions, 1981 revision issued by the United States General Accounting Office (i.e. last version of the Yellowbook issued December 2011) as well as Generally Accepted Auditing Standards.

The annual financial audits shall cover the fiscal years ended June 30, 2016, 2017 and 2018. The financial statements are prepared on a comparative basis and in accordance with standards established by Governmental Generally Accepted Accounting Principles promulgated by the Government Accounting Standards Board.

2. The annual financial audit is to be conducted in accordance with auditing standards generally accepted in the United States of America and the standard applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. The auditor will also conduct a compliance audit of federal awards in accordance with Uniform Guidance, formerly known as OMB Circular A-133. The annual compliance audit shall cover the fiscal years ending June 30, 2016, 2017 and 2018.
3. Other services may be requested as part of the audit as follows:
  - a) Limited assistance with the financial information relevant to the Comptroller's Office for their preparation of its annual Comprehensive Annual Financial Report.
  - b) General advice, as requested periodically, by the board of trustees, related committees and/or management. It may be requested to provide technical advice regarding business compliance and regulatory issues as they arise. The audit staff and partner shall be available during the period of this agreement for general consultation. If general consultation requests are beyond the scope of the audit, such determination, scope and agreed upon fees shall be discussed with each participating campus in advance and prior to the performance of the request.
  - c) Accounting for long term leases with affiliated entities (such as MSCBA), especially as the GASB is anticipated to issue an exposure draft this month related to capital leases.
  - d) The auditors will be required to periodically apprise the institution of changes in accounting standards that are developing and will impact the institution.
4. At minimum, prior to and at the conclusion of each annual audit, a representative of the accounting firm will be expected to appear before the Audit or Finance Committee and the Board of Trustees to discuss the findings and other required communications related to the audit(s).

**1.5 Reporting Requirements**

1. The College/University will also request limited assistance in completing its information



necessary to communicate to the State Comptroller's office for their completion of its Comprehensive Annual Financial Report for the years specified in this Request for Proposal.

2. The annual audit services shall consist of printing and binding copies of the audited financial statements and related footnotes and the management letter, if issued. The single audit services shall consist of printing and binding copies of the single audit report. The auditor shall also be responsible for filing copies of the completed audit report(s) with required State and federal agencies, as appropriate.
3. The accounting firm will hold an exit conference with its respective client management and draft copies of the aforementioned reports before such reports are presented to the Audit and/or Finance Committee and prior to when finals can be issued.

## **1.6 Work Schedule**

The draft audit reports will be reviewed with the respective client management at an exit conference to be held in ample time before the October 15<sup>th</sup> deadline required by the State Comptroller. A presentation of the draft reports will be made to the Audit and/or Finance Committee and the Board of Trustees, as requested by individual institutions. A final draft and/or final annual audit reports will be completed in ample time before the October 15<sup>th</sup> deadline.

## **GENERAL INSTRUCTIONS**

### **2.1 Letter of Intent to Submit Proposal (Appendix A)**

Recipients of this RFP, who may or may not elect to submit a proposal, are requested to complete the attached Appendix A form. This form states the intention of the potential proposer as to whether or not they will be submitting a proposal.

### **2.2 Required Information**

Failure to follow this format may result in disqualification. The following information is required to accompany all proposals:

- Certification that the proposer is licensed for public practice as a certified public accountant.
- The hired auditor will confirm that they will conduct the audit in accordance with Government Auditing Standards.
- Evidence of participation in and results of peer review.
- Evidence of experience and extensive knowledge of Massachusetts State Finance Laws and the Commonwealth of Massachusetts Audit Rules and Regulations.
- List of similar clients in the past five (5) years with contact information and indicate those that are new clients within the past two years. Also indicate those clients lost in the past five years and the reasons for the discontinuation of work with them.
- Resume and curriculum vitae of engagement partner, audit manager and senior auditors that may be assigned.
- Audit firm's Statement of Qualifications (Appendix B).
- Pricing Proposal (Appendix D), submitted under separate cover.
- Billing hourly rates(s) in effect for any additional work needed or requested by the auditee. Please submit this under a separate cover.
- Once an Audit Firm has indicated its interest in this contract, it shall not contact the Community Colleges/State Universities current audit firm or any individual at the schools regarding this RFP.

Should there be any communication that might be considered to influence its response, the Firm shall be disqualified.

**2.3 Pre-Bid Conference**

A pre-bid conference will be held on Jan. 27, 2016 at Massachusetts Maritime Academy. In the case of inclement weather the pre-bid conference will be held on the next business. Location and directions will be posted on the PACE website. **Please check this website up until the day of pre-bid conference for any changes in location.** The purpose of this conference is to field any questions regarding the RFP and ensure all interested parties have a clear understanding of the Community Colleges/State Universities expectations and requirements.

Snow dates below will only become effective should the campus that is hosting the Pre-Bid Conference noted above publically announces a cancellation of day classes due to inclement weather. Please contact the individual campus for verification as necessary.

**2.4 Schedule of Events**

Issue RFP	<b>January 19, 2016</b>
Letter of Intent to submit Proposal	<b>January 25, 2016</b>
Pre-Bid Conference Massachusetts Maritime Academy ABS Building, Room #201 101 Academy Drive, Buzzards Bay, MA 02532	<b>January 27, 2016, 10:00 AM to 12:00 PM</b> Snow Date: January 28, 2016, 10:00 AM to 12:00 PM
Due Date	<b>February 12, 2016, 2:00 PM</b>
Entrance Conference Held and Commencement of Services	Per individual campus schedule

**2.5 Services Required by Community Colleges/ State Universities**

The Community Colleges/State Universities and related Foundations require annual audited financial statements to be prepared in accordance with the Governmental Accounting Standards Board (GASB) and are presented as consolidated financial statements, as well as other supplemental information.

The Community Colleges/State Universities receive Federal student financial assistance funded through the United States Department of Education and other Federal grants from other Federal agencies. These programs are required to be audited under the Uniform Guidance, formerly known as OMB Circular A-133.

**2.6 Audit Services**

Basic yearend audit services and report delivery included.

Expected Product

**For Institutions:**

- Report on Audit of Consolidated financial statements and Supplemental Information
- Management Letter (if appropriate)

**For Foundations/Alumni Associations:**

- Report on financial statements and Supplemental Information
- Management Letter for Foundations and Alumni Associations (if appropriate)
- Report on Salem State University's Assistance Corporation financial statements
- The Foundations' IRS Form 990/990T (if engaged to prepare) and all required reports by the Massachusetts Attorney General and Secretary of State.

## **2.7 Institution Financial Information**

Refer to Appendix E

## **2.8 Financial Requirements**

The audit shall include all sources of funds utilized by the Community Colleges/State Universities, including but not limited to federal, state, local and private funding. The audit shall include the production of consolidated financial statements to the level of detail as may be required by (a) the Comptroller of the Commonwealth of Massachusetts to satisfy the State Single Audits, and, (b) any internal or external constituent, upon approval of each individual Community College/State University President.

The scope of the audit shall include consolidated financial statements prepared in accordance with GASB, and a management letter (if necessary). The audit firm shall produce an annual audit document consisting of, but not limited to, the following:

- Management's Discussion and Analysis (Unaudited)
- Independent Auditor's Report
- Consolidated Statement(s) of Net Position (primary and component units)
- Consolidated Statement(s) of Revenues and Expenses (primary and component units)
- Consolidated Statement(s) of Cash Flows
- Notes to Consolidated Financial Statements (primary and component units)
- Supplemental information:
  - Independent Auditor's Report on Supplemental Information
  - Residence Hall Fund and Residence Hall Damage Fund Activity Statement of Net Position and Statement of Revenues and Expenses (Required for State Universities)
  - Report on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
  - Any other required reporting now or in the future.

The audit firm shall provide any necessary and appropriate support, in accordance with GASB and State Comptroller guidelines, in the preparation of the above mentioned audited financial statements.

This scope may be expanded at any time by the hiring Institution upon 10 days written notice to the auditor. The rate of payment for such expanded scope shall be consistent with those rates negotiated by both the Auditor and the Community Colleges/State Universities.

The audit firm shall prepare IRS Form 990/990T (if engaged to prepare) and all reports required by the Massachusetts Attorney General for tax-exempt organizations.

## **2.9 Other Services**

The audit firm will provide general advice to the Board of Trustee's and/or related committees. It may be required to provide assistance for tax and business related issues as they arise. The Firm's partner and

staff shall be available during the period of this agreement for consultation. Special services beyond the scope of the audit will be invoiced separately from audit charges. Such special services and applicable billing rates must be pre-approved by appropriate chief financial officer.

Upon approval of the respective Board of Trustees and President, the audit firm will provide requested information to the State Auditor's Office, Attorney General's Office and other state or federal agencies.

Other audit services may be contracted separately by each institution. Services include but not limited to Massachusetts Office of Student Financial Assistance (MOSFA), and any other component units. Firms should supply a separate price and scope of services as part of their submission.

### **2.10 Comparative Evaluation Criteria**

Each proposal meeting the minimum evaluation criteria shall be rated according to the following Comparative Evaluation Criteria in no particular order.

- Quality of proposal
- Demonstration of intent to adhere to deadlines established in this RFP
- Demonstration of the understandability of the requirements of the solicitation
- Quality of relevant experience
- Adequacy of the work plan
- Quality of presentation
- Pricing



**APPENDIX A  
FINANCIAL AUDIT SERVICES  
JOINT REQUEST FOR PROPOSAL  
RFP NO.: AUDITPACE001**

**LETTER OF INTENT TO SUBMIT PROPOSAL**

**LETTER OF INTENT TO SUBMIT PROPOSAL – Appendix A**

Please e-mail this notification of receipt and intent on or before January 25, 2016 to [LearnedB@mcceo.mass.edu](mailto:LearnedB@mcceo.mass.edu).

**A. Acknowledgment of Receipt:**

_____	Hereby Acknowledges Receipt of RFP packet
(Company)	
_____	Print name
_____	Authorized Signature
_____	Title
_____	Date

I will attend the pre-bid meeting and intend to submit a proposal (please fill in Part B)

I will not attend the pre-bid meeting; intend to submit a proposal.

**B. Representative Attending the Pre-bid Meeting:**

Name and contacts of Representative(s):

1. _____	Tel.No.: _____
(Name) (Title)	Email: _____
2. _____	Tel.No.: _____
(Name) (Title)	Email: _____
3. _____	Tel.No.: _____
(Name) (Title)	Email: _____



**APPENDIX B  
FINANCIAL AUDIT SERVICES  
JOINT REQUEST FOR PROPOSAL  
RFP NO.: AUDITPACE001  
STATEMENT OF QUALIFICATIONS**

## STATEMENT OF QUALIFICATIONS – Appendix B

1. The proposal should contain an executive summary, not to exceed two pages, indicating why your firm should be selected.
2. Explain your approach to the audit of automated systems. Does your firm have an IT specialist? If “yes” explain the contractual arrangements.
3. Describe the firm's approach to assessing control risk in Community Colleges, State Universities and their component units. Please include concrete examples of your approach.
4. Identify your firm's experience with the higher education industry (specifically citing any experience within Massachusetts institutions). Please cite those institutions over the past five (5) years.
5. Describe the firm's knowledge and experience in federal financial aid, grants and contracts and A-133 audits, and MOSFA audits. Specifically identify those, by office, who will be responsible for the audit. Describe the firm's qualifications in terms of the requirements of *Government Auditing Standards*. Please include concrete examples.
6. The nonprofit environment has been the subject of extensive studies and declarations by the various standard-setting bodies-FASB, GASB, and AICPA. Describe your firm's position on current pronouncements and issues, particularly those pertaining to higher education. Identify and discuss emerging issues that you predict would be addressed in future years.
7. Describe the level and frequency of communication between the firm and auditee during the audit process and how changes or potential changes in accounting pronouncements and/or audit standards are communicated. Please include concrete examples.
8. What publications does your firm issue on a regular basis that would be of interest to our institutions? Please provide copies as a part of your response. Describe briefly the training courses, computer software, internal control checklists, or other forms of assistance that could be made available, along with the costs of these services. (The Institution will retain all submitted materials. If any materials are considered confidential, they must be marked as such). Please give concrete examples.
9. Describe how your firm would advise auditee of the need for special services (outside scope of audit) that would result in additional charges. Please give concrete examples.
10. Generally, all State higher education institutions are required to file their respective financial Statements by the date mandated by the State Comptroller. Given the potential of a number of institutions contracting with the same CPA firm, describe your firm's ability and staffing levels to meet such demands from multiple entities while adhering to such mandated deadlines.
11. In light of the expectation that accounting for long term leases with affiliated entities within the state system that may be anticipated, would you please describe your firms qualifications and experience in handling this type of subject matter and your approach in handling it through multiple state institutions.





State Universities  
of Massachusetts



Massachusetts Community Colleges



**APPENDIX C  
FINANCIAL AUDIT SERVICES  
JOINT REQUEST FOR PROPOSAL  
RFP NO.: AUDITPACE001**

**PROPOSAL SIGNATURE SHEET**

**PROPOSAL SIGNATURE SHEET – Appendix C**

The proposer hereby agrees to furnish items and/or services pursuant to all requirements and specifications contained in this document. The proposer further agrees that the language in this document shall govern in the event of a conflict with the proposer's proposal.

<b>AUTHORIZED SIGNATURE</b>	<b>PRINTED NAME</b>	<b>TITLE</b>
<b>COMPANY</b>		<b>DATE</b>
<b>MAILING ADDRESS</b>		<b>PHONE</b>
<b>CITY</b>	<b>STATE</b>	<b>ZIPCODE</b>



State Universities  
of Massachusetts



Massachusetts Community Colleges



**APPENDIX D  
FINANCIAL AUDIT SERVICES  
JOINT REQUEST FOR PROPOSAL  
RFP NO.: AUDITPACE001**

**PRICING PROPOSAL  
Include Billing Rates Under Separate Cover**

**PRICING PROPOSAL SAMPLE – Appendix D**

Please complete two pricing proposal forms. Below is intended as a guide only.

	<b>Tier 1</b>	<b>Tier 2</b>	<b>Tier 3</b>	<b>Notes</b>
Base Price	\$49,000.00	\$44,000.00	\$39,000.00	
% of discount for # <u>0-3</u> of schools	15%	15%	15%	
% of discount for # <u>4-6</u> of schools	25%	25%	25%	
% of discount for # <u>7+</u> of schools	25%	25%	25%	
Discounted for # <u>0-3</u> of schools only	\$41,650.00	\$37,400.00	\$33,150.00	
Discounted for # <u>4-6</u> of schools only	\$36,750.00	\$33,000.00	\$29,250.00	
Discounted for # <u>7+</u> of schools only	\$36,750.00	\$33,000.00	\$29,250.00	

**AUDITING AND A-133 PRICING PROPOSAL – Appendix D**

Firm Name: \_\_\_\_\_  
 Name: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_

	Tier 1	Tier 2	Tier 3	Notes
Base Price				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				

**MOFSA PRICING PROPOSAL – Appendix D**

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

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

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

	Tier 1	Tier 2	Tier 3	Notes
Base Price				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
% of discount for # _____ of schools				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				
Discounted for # _____ of schools only				



**APPENDIX E  
FINANCIAL AUDIT SERVICES  
JOINT REQUEST FOR PROPOSAL  
RFP NO.: AUDITPACE001**

**INSTITUTION FINANCIAL INFORMATION**

**INSTITUTION FINANCIAL INFORMATION – Appendix E**

<b>Institution Financial Information FY15</b>	<b>Current/Non- Current Total Assets</b>	<b>Total Liabilities</b>	<b>Total Net Assets</b>	<b>Total Operating /Non- Operating Revenues</b>	<b>Total Operating Expenses</b>
Berkshire Community College	\$ 21,732,879	\$5,866,548	\$15,866,631	\$26,076,554	\$26,283,504
Bristol Community College	\$ 56,117,218	\$17,219,269	\$36,946,549	\$70,461,781	\$69,279,565
Bunker Hill Community College	\$ 67,995,757	\$36,605,432	\$32,238,564	\$95,853,627	\$92,252,715
Cape Cod Community College	\$ 25,564,213	\$8,539,887	\$17,223,191	\$31,767,718	\$32,571,109
Greenfield Community College	\$ 44,663,735	\$5,057,533	\$39,606,202	\$25,095,612	\$26,705,842
Holyoke Community College	\$ 61,671,225	\$22,923,404	\$34,425,599	\$62,570,074	\$62,498,376
MassBay Community College	\$ 20,202,384	\$9,765,208	\$8,890,996	\$44,114,393	\$43,173,756
Massasoit Community College	\$ 56,341,796	\$21,640,569	\$34,701,227	\$71,331,140	\$71,432,066
Middlesex Community College	\$ 56,587,865	\$26,214,778	\$29,217,231	\$80,299,723	\$77,406,639
Mt. Wachusett Community College	\$ 37,373,904	\$24,350,534	\$12,893,000	\$49,780,000	\$49,660,000
North Shore Community College	\$ 84,918,554	\$24,231,833	\$60,223,752	\$64,337,556	\$64,612,156
Northern Essex Community College	\$ 60,798,391	\$20,305,315	\$39,902,563	\$62,343,653	\$61,996,412
Quinsigamond Community College	\$ 57,966,157	\$25,314,337	\$41,288,482	\$77,945,214	\$81,072,664
Roxbury Community College	\$ 29,932,935	\$7,520,833	\$21,856,976	\$25,821,072	\$29,106,644
Springfield Technical Community College	\$ 55,944,963	\$15,802,710	\$40,199,346	\$66,200,582	\$69,836,236
Fitchburg State University	\$ 227,952,555	\$86,571,842	\$138,585,302	\$94,702,571	\$87,131,252
Framingham State University	\$ 190,829,361	\$64,593,615	\$125,992,788	\$93,766,003	\$88,334,873
Massachusetts College of Art and Design	\$ 87,059,815	\$37,343,328	\$49,716,487	\$67,236,612	\$66,545,498
Massachusetts Maritime Academy	\$103,734,697	\$27,190,199	\$74,322,762	\$58,318,208	\$58,922,369
Massachusetts College of Liberal Arts	\$84,915,899	\$13,527,279	\$69,734,645	\$45,388,220	\$46,562,345
Salem State University	\$216,052,428	\$96,209,323	\$118,904,705	\$98,061,704	\$157,764,551
Westfield State University	\$134,830,672	\$60,581,052	\$72,159,024	\$114,379,703	\$109,025,859
Worcester State University	\$143,675,339	\$53,525,482	\$82,871,582	\$89,411,500	\$90,084,965
<b>Foundations participating</b>	<b>Tier 1</b>		<b>Tier 2</b>		<b>Tier 3</b>
	<b>Greater than \$1M</b>		<b>\$500K-\$1M</b>		<b>0 to \$500K</b>
<b>Holyoke Community College</b>			<b>X</b>		
<b>Massasoit Community College</b>					<b>X</b>
<b>North Shore Community College</b>					<b>X</b>
<b>Northern Essex Community College</b>					<b>X</b>
<b>Fitchburg State University</b>	<b>X</b>				
<b>FSU Foundation Supporting Organization, Inc.</b>					<b>X</b>
<b>Massachusetts Maritime Academy</b>	<b>X</b>				
<b>Salem State University</b>	<b>X</b>				
<b>Westfield State University</b>			<b>X</b>		





**APPENDIX F  
FINANCIAL AUDIT SERVICES  
JOINT REQUEST FOR PROPOSAL  
RFP NO.: AUDITPACE001**

**SAMPLE  
MASSACHUSETTS STATE STANDARD CONTRACT FORM  
and  
TERMS AND CONDITIONS**

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the [Executive Office for Administration and Finance \(ANF\)](#), the [Office of the Comptroller \(CTR\)](#) and the [Operational Services Division \(OSD\)](#) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at [www.mass.gov/osc](http://www.mass.gov/osc) under [Guidance For Vendors - Forms](#) or [www.mass.gov/osd](http://www.mass.gov/osd) under [OSD Forms](#).

<b>CONTRACTOR LEGAL NAME:</b> (and d/b/a):		<b>COMMONWEALTH DEPARTMENT NAME:</b> MMARS Department Code:	
<b>Legal Address:</b> (W-9, W-4,T&C):		<b>Business Mailing Address:</b>	
<b>Contract Manager:</b>		<b>Billing Address</b> (if different):	
<b>E-Mail:</b>		<b>Contract Manager:</b>	
<b>Phone:</b>	<b>Fax:</b>	<b>E-Mail:</b>	<b>Fax:</b>
<b>Contractor Vendor Code:</b>		<b>Phone:</b>	
<b>Vendor Code Address ID</b> (e.g. "AD001"): AD ____ (Note: The Address Id Must be set up for <a href="#">EFT</a> payments.)		<b>Fax:</b>	
<input type="checkbox"/> <b>NEW CONTRACT</b> <b>PROCUREMENT OR EXCEPTION TYPE:</b> (Check one option only) <input type="checkbox"/> <a href="#">Statewide Contract</a> (OSD or an OSD-designated Department) <input type="checkbox"/> <a href="#">Collective Purchase</a> (Attach OSD approval, scope, budget) <input type="checkbox"/> <a href="#">Department Procurement</a> (includes State or Federal grants <a href="#">815 CMR 2.00</a> ) (Attach RFR and Response or other procurement supporting documentation) <input type="checkbox"/> <a href="#">Emergency Contract</a> (Attach justification for emergency, scope, budget) <input type="checkbox"/> <a href="#">Contract Employee</a> (Attach <a href="#">Employment Status Form</a> , scope, budget) <input type="checkbox"/> <a href="#">Legislative/Legal or Other:</a> (Attach authorizing language/justification, scope and budget)		<input type="checkbox"/> <b>CONTRACT AMENDMENT</b> Enter Current Contract End Date <u>Prior</u> to Amendment: ____, 20__. Enter Amendment Amount: \$ _____. (or "no change") <b>AMENDMENT TYPE:</b> (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> <a href="#">Amendment to Scope or Budget</a> (Attach updated scope and budget) <input type="checkbox"/> <a href="#">Interim Contract</a> (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> <a href="#">Contract Employee</a> (Attach any updates to scope or budget) <input type="checkbox"/> <a href="#">Legislative/Legal or Other:</a> (Attach authorizing language/justification and updated scope and budget)	
The following <a href="#">COMMONWEALTH TERMS AND CONDITIONS</a> (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract. <input type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services			
<b>COMPENSATION:</b> (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00. <input type="checkbox"/> <a href="#">Rate Contract</a> (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> <a href="#">Maximum Obligation Contract</a> Enter Total Maximum Obligation for total duration of this Contract (or <i>new</i> Total if Contract is being amended). \$ _____.			
<b>PROMPT PAYMENT DISCOUNTS (PPD):</b> Commonwealth payments are issued through <a href="#">EFT</a> 45 days from invoice receipt. Contractors requesting <b>accelerated</b> payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: __agree to standard 45 day cycle __ statutory/legal or Ready Payments ( <a href="#">G.L. c. 29, § 23A</a> ); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See <a href="#">Prompt Pay Discounts Policy</a> .)			
<b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)			
<b>ANTICIPATED START DATE:</b> (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:			
<input type="checkbox"/> 1. may be incurred as of the <a href="#">Effective Date</a> (latest signature date below) and <b>no</b> obligations have been incurred <b>prior</b> to the <a href="#">Effective Date</a> . <input type="checkbox"/> 2. may be incurred as of ____, 20__, a date <b>LATER</b> than the <a href="#">Effective Date</a> below and <b>no</b> obligations have been incurred <b>prior</b> to the <a href="#">Effective Date</a> . <input type="checkbox"/> 3. were incurred as of ____, 20__, a date <b>PRIOR</b> to the <a href="#">Effective Date</a> below, and the parties agree that payments for any obligations incurred prior to the <a href="#">Effective Date</a> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
<b>CONTRACT END DATE:</b> Contract performance shall terminate as of ____, 20__, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
<b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <a href="#">Contractor Certifications</a> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable <a href="#">Commonwealth Terms and Conditions</a> , this Standard Contract Form including the <a href="#">Instructions and Contractor Certifications</a> , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <a href="#">801 CMR 21.07</a> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
<b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b>  X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)  Print Name: _____ Print Title: _____		<b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b>  X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)  Print Name: _____ Print Title: _____	




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**INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS**

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

**CONTRACTOR LEGAL NAME (AND D/B/A):** Enter the **Full Legal Name** of the Contractor's business as it appears on the Contractor's [W-9](#) or [W-4 Form](#) (Contract Employees only) and the applicable [Commonwealth Terms and Conditions](#). If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

**Contractor Legal Address:** Enter the Legal Address of the Contractor as it appears on the Contractor's [W-9](#) or [W-4 Form](#) (Contract Employees only) and the applicable [Commonwealth Terms and Conditions](#), which must match the legal address on the 1099I table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

**Contractor Contract Manager:** Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on Comm-PASS, the Contract Manager must be listed on the Vendor Section tab.

**Contractor E-Mail Address/Phone/Fax:** Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

**Contractor Vendor Code:** The Department must enter the [MMARS Vendor Code](#) assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the [Vendor File and W-9s Policy](#) for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

**Vendor Code Address ID:** (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the [Bill Paying](#) and [Vendor File and W-9](#) policies.

**COMMONWEALTH DEPARTMENT NAME:** Enter the full Department name with the authority to obligate funds encumbered for the Contract.

**Commonwealth MMARS Alpha Department Code:** Enter the [three \(3\) letter MMARS Code](#) assigned to this Commonwealth Department in the state accounting system.

**Department Business Mailing Address:** Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

**Department Billing Address:** Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

**Department Contract Manager:** Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

**Department E-Mail Address/Phone/Fax:** Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

**MMARS Document ID(s):** Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

**RFR/Procurement or Other ID Number or Name:** Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

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**NEW CONTRACTS (left side of Form):**

Complete this section **ONLY** if this Contract is brand new. (Complete the **CONTRACT AMENDMENT** section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

**PROCUREMENT OR EXCEPTION TYPE:** Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See [State Finance Law and General Requirements](#), [Acquisition Policy and Fixed Assets](#), the [Commodities and Services Policy](#) and the [Procurement Information Center \(Department Contract Guidance\)](#) for details.

**Statewide Contract (OSD or an OSD-designated Department):** Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

**Collective Purchase approved by OSD:** Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

**Department Contract Procurement:** Check this option for a Department procurement including state grants and federal sub-grants under [815 CMR 2.00](#) and [State Grants and Federal Subgrants Policy](#), Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

**Emergency Contract:** Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

**Contract Employee:** Check this option when the Department requires the performance of an [Individual Contractor](#), and when the planned Contract performance with an Individual has been classified using the [Employment Status Form](#) (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

**Legislative/Legal or Other:** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

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**CONTRACT AMENDMENT (Right Side of Form)**

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) \*See [Amendments, Suspensions, and Termination Policy](#).)

**Enter Current Contract End Date:** Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

**Enter Amendment Amount:** Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

**AMENDMENT TYPE:** Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget:** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in [801 CMR 21.07](#), incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

**Interim Contracts:** Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

**Contract Employee:** Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

**Legislative/Legal or Other:** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



posted.

## COMMONWEALTH TERMS AND CONDITIONS

Identify which [Commonwealth Terms and Conditions](#) the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See [Vendor File and W-9s](#) Policy.

## COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as [available and encumbered](#) prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

## PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth [Bill Paying Policy](#) for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under [G.L. c. 29, s. 23A](#)). See [Prompt Pay Discounts Policy](#). PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments ([G.L. c. 29, § 23A](#)); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for *all* payments under a Contract. Initial grant or contract payments may be accelerated for the *first* invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

## BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the [Expenditure Classification Handbook](#)) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

## ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the [Effective Date](#) (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default [Effective Date](#) (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the [Settlement and Release Form](#) when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the [Effective Date](#) for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the [Effective Date](#) under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to [G.L. c.4, § 9](#).

## CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. **If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here.** A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to [G.L. c.4, § 9](#).

## CERTIFICATIONS AND EXECUTION

See [Department Head Signature Authorization Policy](#) and the [Contractor Authorized Signatory Listing](#) for policies on Contractor and Department signatures.

**Authorizing Signature for Contractor/Date:** The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Contract Start Date](#)". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization on a [Contractor Authorized Signatory Listing](#) may be required by the Department if not already on file.

**Contractor Name /Title:** The Contractor Authorized Signatory's name and title must appear legibly as it appears on the [Contractor Authorized Signatory Listing](#).

**Authorizing Signature For Commonwealth/Date:** The [Authorized Department Signatory](#) must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Start Date](#)". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See [Department Head Signature Authorization](#). The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an [approved Interdepartmental Service Agreement \(ISA\)](#). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

**Department Name /Title:** Enter the Authorized Signatory's name and title legibly.

## CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

**Commonwealth and Contractor Ownership Rights.** The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

**Qualifications.** The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the [Secretary of State's website](#) as licensed to do business in Massachusetts, as required by law.

**Business Ethics and Fraud, Waste and Abuse Prevention.** The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

**Collusion.** The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

**Public Records and Access** The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under [Executive Order 195](#) and [G.L. c. 11, s.12](#) seven (7) years beginning on the first day after the final payment



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under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under [950 C.M.R. 32.00](#).

**Debarment.** The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, [Executive Order 147](#); [G.L. c. 29, s. 29F](#); [G.L. c. 30, § 39R](#); [G.L. c. 149, § 27C](#); [G.L. c. 149, § 44C](#); [G.L. c. 149, § 148B](#) and [G.L. c. 152, s. 25C](#).

**Applicable Laws.** The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable [Massachusetts General Laws](#); the Official [Code of Massachusetts Regulations](#); [Code of Massachusetts Regulations](#) (unofficial); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services); [AICPA Standards](#); confidentiality of Department records under [G.L. c. 66A](#); and the [Massachusetts Constitution Article XVIII](#) if applicable.

**Invoices.** The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth [Bill Paying Policy](#). Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15<sup>th</sup> for performance made and received (goods delivered, services completed) prior to June 30<sup>th</sup>, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15<sup>th</sup> or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

**Payments Subject To Appropriation.** Pursuant to [G.L. c. 29 § 26, § 27](#) and [§ 29](#), Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by [G.L. c. 29, § 9C](#). A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

**Intercept.** Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to [G.L. c. 7A, s. 3](#) and [815 CMR 9.00](#). Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

**Tax Law Compliance.** The Contractor certifies under the pains and penalties of perjury tax compliance with [Federal tax laws](#); [state tax laws](#) including but not limited to [G.L. c. 62C](#); [G.L. c. 62C, s. 49A](#); compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under [G.L. c. 62E](#), withholding and remitting [child support](#) including [G.L. c. 119A, s. 12](#); [TIR 05-11: New Independent Contractor Provisions](#) and applicable [TIRs](#).

**Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts.** The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal

services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

**Federal Anti-Lobbying and Other Federal Requirements.** If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including [31 USC 1352](#); [other federal requirements](#); [Executive Order 11246](#); [Air Pollution Act](#); [Federal Water Pollution Control Act](#) and [Federal Employment Laws](#).

**Protection of Personal Data and Information.** The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under [G.L. c. 93H](#) and [c. 66A](#) and [Executive Order 504](#). The Contractor is required to comply with [G.L. c. 93I](#) for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) [Information Technology Division \(ITD\) Protection of Sensitive Information](#), provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the [Payment Card Industry Council Standards](#) and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to [G.L. c. 214, s. 3B](#).

**Corporate and Business Filings and Reports.** The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of the Commonwealth](#), the [Office of the Attorney General](#) or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

**Employer Requirements.** Contractors that are employers certify compliance with applicable state and [federal employment laws](#) or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance](#) and contributions; [workers' compensation and insurance](#), [child labor laws](#), [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#).

**Federal And State Laws And Regulations Prohibiting Discrimination** including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#); [42 U.S.C. Sec. 12,101, et seq.](#), the [Rehabilitation Act](#); [29 USC c. 16 s. 794](#); [29 USC c. 16 s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and [98A](#), [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, sc. II, Part II, s. 255](#) (Telecommunication Act); Chapter 149, [Section 105D](#), [G.L. c. 151C](#), [G.L. c. 272, Section 92A, Section 98](#) and [Section 98A](#), and [G.L. c. 111, Section 199A](#), and [Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities](#), and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also [MCAD](#) and [MCAD links and Resources](#).

**Small Business Purchasing Program (SBPP).** A Contractor may be eligible to participate in the SBPP, created pursuant to [Executive Order 523](#), if qualified through the SBPP SmartBid subscription process at: [www.comm-pass.com](#) and with acceptance of the terms of the SBPP participation agreement.

**Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized).** The [Information Technology Mandatory Specifications](#) and the [IT Acquisition Accessibility Contract Language](#) are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the [Expenditure Classification Handbook](#) or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term

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"other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

**Northern Ireland Certification.** Pursuant to [G.L. c. 7 s. 22C](#) for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor 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.

**Pandemic, Disaster or Emergency Performance.** In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**Consultant Contractor Certifications** (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to [G.L. Chapter 29, s. 29A](#)). Contractors must make required disclosures as part of the RFR Response or using the [Consultant Contractor Mandatory Submission Form](#).

**Attorneys.** Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to [G.L. c. 30, s. 65](#), and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

**Subcontractor Performance.** The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors. .

## EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable [Executive Orders](#) (see also [Massachusetts Executive Orders](#)), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

**Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts.** For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

**Executive Order 130. Anti-Boycott.** The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See [IRC § 999\(b\)\(3\)-\(4\)](#), and [IRS Audit Guidelines Boycotts](#)) or engages in conduct declared to be unlawful by [G.L. c. 151E, s. 2](#). A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

**Executive Order 346. Hiring of State Employees By State Contractors** Contractor certifies compliance with both the conflict of interest law [G.L. c. 268A specifically s. 5 \(f\)](#) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed

to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

**Executive Order 444. Disclosure of Family Relationships With Other State Employees.** Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

**Executive Order 504. Regarding the Security and Confidentiality of Personal Information.** For all Contracts involving the Contractor's access to personal information, as defined in [G.L. c. 93H](#), and personal data, as defined in [G.L. c. 66A](#), owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth [Information Technology Division's Security Policies](#). Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "[Security Policies](#)"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the [Commonwealth's Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A. **Executive Orders 523, 524 and 526.** Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes [Executive Order 478](#)). [Executive Order 524](#) (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390). [Executive Order 523](#) (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.



# COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure

any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

**12. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

**13. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.



# COMMONWEALTH TERMS AND CONDITIONS

**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract 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. The

Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent

permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

**IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:**

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_  
(signature)

Print Name: \_\_\_\_\_

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

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

(Check One): \_\_\_\_\_ Organization \_\_\_\_\_ Individual

Full Legal Organization or Individual Name: \_\_\_\_\_

Doing Business As: Name (If Different): \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

**INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS**

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: **Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.