

1.0 STANDARD DOCUMENTS

1.1 INTRODUCTION

A. Purpose

As identified on the Cover Page the Owner has issued this Request for Proposals (RFP) for the designated Project. The RFP defines service requirements; solicits proposals; details proposal requirements; and outlines the process for evaluating proposals and selecting and contracting with a Construction Manager/General Contractor (CM/GC).

B. Scope of Services

1. RFP Section 1.6, Pro Forma Master Contract (MC) Between Owner and CM/GC, and RFP Section 1.7, Scope of Services, together detail the Owner's requirements for the CM/GC's scope of services. The MC substantially represents the contract document that the Proposer selected by the Owner must agree to and sign.
2. For Project information refer to RFP Section 2.4, Project Narrative and Documentation.

C. Nondiscriminatory Participation

1. Through this RFP the Owner seeks to procure the best services at the most favorable, competitive prices and to give all qualified businesses, including those that are owned by minorities, women, persons with a disability, and small business enterprises, opportunity to do business with the Owner.
2. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the State's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the State of Tennessee or in the employment practices of the State's contractors. Accordingly, all vendors entering into contracts with the State of Tennessee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
3. Upon request the Owner will provide the Owner's designated contact to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and applicable federal regulations.

D. Diversity in Contractual Relationships

It is the express desire of the State Building Commission (SBC) to include an emphasis on diversity in its contractual relationships with contractors for the construction, demolition or renovation of State Projects under the jurisdiction of the Commission. Refer to Item 5 in the SBC Policy.

1.2 RFP COMMUNICATIONS

A. Notice of Intent to Propose

1. Potential proposers shall submit a Notice of Intent to Propose by email to the RFQ Coordinator. The notice should include the following.

Proposer's organization name
Name and title of a contact person
Contact person's telephone number and email address
Contractor license number, classification, expiration date, and license limit

2. The Owner will convey all official communications and addenda to such proposers.
3. The Notice of Intent to Propose must be submitted no later than the date detailed in RFP Section 2.1, Schedule of Events.
4. Such notice creates no obligation and is not a prerequisite for making a proposal.

B. RFP Addenda and Cancellation

1. The Owner reserves the right to issue addenda to this RFP in writing up to five days prior to the Proposal Deadline.
2. The Owner reserves the right, at its sole discretion, to cancel and reissue this RFP or to cancel this RFP in its entirety.

C. Additional Communications Processes

1. Unauthorized contact regarding this RFP with employees or officials of the Owner or of the State of Tennessee other than the RFP Coordinator may result in disqualification.
2. Interested parties and potential proposers must direct all communications regarding this RFP to the RFP Coordinator who is the Owner's official point of contact for this RFP.
3. Notwithstanding the foregoing, for information and assistance regarding this RFP interested parties may contact the staff of the Governor's Office of Diversity Business Enterprise.
4. The SBC Number for the Project shown on the Cover must be referenced in all communications regarding the RFP.
5. Oral communications shall be considered unofficial and non-binding with regard to this RFP.
6. Each Proposer shall assume the risk of the method of dispatching a communication or proposal to the Owner. The Owner assumes no responsibility for delays or delivery failures resulting from the method of dispatch. "Postmarking" of a communication or proposal shall not substitute for actual receipt of a communication or proposal by the Owner.
7. Only the Owner's official written responses and communications shall be considered binding with regard to this RFP.
8. The Owner reserves the right to determine, at its sole discretion, the method of conveying official written responses and communications pursuant to this RFP such as by letter, by email, or by website posting.

1.3 PRE-PROPOSAL CONFERENCE AND PROPOSER COMMENTS

A. Pre-Proposal Conference

1. A Pre-Proposal Conference will be held at the time, date, and location detailed in RFP Section 2.1, Schedule of Events. Attendance is not a prerequisite for making a proposal.
2. The purpose of the Pre-Proposal Conference is to discuss the RFP scope of services and contract requirements. While questions will be entertained, the oral response to a question at the conference shall be considered tentative and non-binding with regard to this RFP.

B. Proposer Comments and Waiver of Objections

1. Each Proposer shall carefully review this RFP and all attachments for comments, questions, defects, objections, or other matters requiring clarification or correction, collectively called Comments. Comments must be made in writing and received by the RFP Coordinator no later than the Comments Deadline detailed in the RFP Section 2.1, Schedule of Events.
2. A Proposer's protests based on objections concerning the RFP shall be considered waived and invalid if Comments relevant to the objections have not been brought to the attention of the RFP Coordinator, in writing, by the Comments Deadline detailed in RFP Section 2.1, Schedule of Events.
3. The Owner reserves the right to determine, at its sole discretion, the appropriate and adequate responses to Comments. The Owner's official responses to Comments pursuant to this RFP shall be issued as an addendum to this RFP.

1.4 PROPOSAL REQUIREMENTS

A. Proposal Deadline and Location

1. Section 2.1, Schedule of Events, details the requirements for the location and the deadline time and date for submitting a Proposal. A late proposal or a proposal not submitted to the designated location will not be accepted.
2. The Proposal Deadline time shall be established by the timepiece of the Owner.

B. Proposal Contents

1. A proposal must respond to the description of CM/GC scope of services, contract requirements, and proposal requirements described in this written RFP and RFP attachments, exhibits, or addenda.
2. Each Proposer must submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer in recognition that there will be no best and final offer procedure.
3. No portion of a proposal may be delivered orally or by means of electronic transmission.
4. A proposal in response to this RFP shall consist of the following two documents as described herein in regard to content and required number of copies.
 1. Technical Proposal (Reference section C below and RFP Section 2.2)
 2. Cost Proposal (Reference section D below and RFP Section 2.3)
5. Each Proposer must submit four copies of the Technical Proposal and a single

digital file copy in a searchable PDF format on a flash drive, not password protected. The digital file should not exceed 20 MB and should be named using the following format: "<<Proposer Name>> CMGC <<SBC Number>>". Proposals should be clearly marked as follows.

Technical Proposal

CM/GC Services

<<Project Name>>

SBC No. <<Number>>

For RFP Coordinator Opening Only

6. Each Proposer must submit one original Cost Proposal in a separately sealed package that is clearly marked as follows.

Cost Proposal

CM/GC Services

<<Project Name>>

SBC No. <<Number>>

For RFP Coordinator Opening Only

7. The Proposer must enclose all documents and flash drive in a larger sealed package. The Proposer shall clearly mark the outermost package as follows.

Technical Proposal and Cost Proposal

For CM/GC Services

<<Project Name>>

SBC No. <<Number>>

Submitted By:

<<CM/GC Name>>

<<Contractor License No., Classification, Expiration Date, License Limit>>

<<Contact Person Name, Address, Telephone Number, Email>>

C. Technical Proposal Requirements

1. No pricing information shall be included in the Technical Proposal. Inclusion in the Technical Proposal of a direct or implied revelation of requested Cost Proposal information shall make the proposal non-responsive and the Owner will reject it.
2. Each Proposer must use RFP Section 2.2 to guide organization of the Technical Proposal. Each Proposer shall duplicate RFP Section 2.2 for use as the Table of Contents for the Technical Proposal by adding proposal page numbers and the Proposer's name as indicated. The Proposer must address all items for all sections and provide, in sequence, the required information and documentation with the associated item references.
3. The Technical Proposal must be economically prepared, with emphasis on completeness and clarity of content, legibly written, brief, and to the point in a direct response to the information requested for each item. All material must be on standard 8 1/2" x 11" paper with exceptions permitted for foldouts containing non-text information such as charts and spreadsheets. The proposal must be in a spiral bound format that lays flat on a desktop.
4. All pages must be numbered excluding covers.
5. The Technical Proposal shall not exceed 40 pages excluding covers. Pages or sheets with print on both sides will be counted as two pages.

6. All information included in a Technical Proposal shall be relevant to a specific requirement detailed in RFP Section 2.2. All information must be incorporated into a response to a specific requirement and clearly referenced. Information not meeting these criteria will be deemed extraneous and will in no way contribute to the evaluation process.

D. Cost Proposal Requirements

1. Each Proposer shall record and submit Cost Proposal information required by RFP Section 2.3, Cost Proposal, on exact duplicates of subsections A through F and shall not record other rates, amounts, or information.
2. The Cost Proposal must be signed and dated by an individual empowered to contractually bind the Proposer.

E. Proposal Prohibitions and Right of Rejection

1. Each proposal must comply with all of the terms and requirements of this RFP and all applicable State laws and regulations. The Owner reserves the right, at its sole discretion, to consider non-responsive and reject a proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP.
2. A proposal of alternate services (i.e., a proposal that offers services different from those requested by this RFP) may be considered non-responsive and rejected.
3. A Proposer shall not restrict the rights of the Owner or otherwise qualify a proposal. The Owner may determine such a proposal to be a non-responsive counteroffer and reject the proposal.
4. A Proposer shall not submit the Proposer's own contract terms and conditions in a response to this RFP. If a proposal contains such terms and conditions, the Owner may determine, at its sole discretion, the proposal to be a non-responsive counteroffer, and the proposal may be rejected.
5. A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer.
6. A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a CM/GC and permitting a second Proposer to submit another proposal with the first Proposer offered as a subcontractor. This restriction does not prohibit different Proposers from offering the same subcontractor as a part of their proposals, provided that the subcontractor does not also submit a proposal as CM/GC. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.
7. The Owner will reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to a matter relating to such prices with another Proposer. Regardless of the time of detection, the Owner shall consider the foregoing prohibited actions that are detected to be grounds for proposal rejection or contract termination.
8. The Owner reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.
9. The Owner will not contract with or consider a proposal from:
 - a. an individual who is, or within the past six months has been, an employee or

official of the State of Tennessee;

- b. a company, corporation, or other contracting entity in which an ownership of two percent or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this shall not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent of the total outstanding amount of the stocks or bonds of the issuing entity);
- c. a company, corporation, or other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of a person; or,
- d. an individual, company, or other entity involved in assisting the Owner in the development, formulation, or drafting of this RFP or its scope of services shall be considered to have been given information that would afford an unfair advantage over other Proposers, and such individual, company, or other entity may not submit a proposal in response to this RFP.
- e. for the purposes of applying the requirements herein, an individual shall be deemed an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid.

F. Waiver of Variances

The Owner reserves the right, at its sole discretion, to waive a proposal's variances from full compliance with this RFP. If the Owner waives minor variances in a proposal, such waiver shall not modify the RFP requirements or excuse the Proposer from full compliance with such. Notwithstanding a minor variance, the Owner may hold a Proposer to strict compliance with this RFP.

G. Proposal Withdrawal

A Proposer may withdraw a submitted proposal at any time up to the Proposal Deadline time and date detailed in RFP Section 2.1, Schedule of Events. To do so, a Proposer must submit a written request, signed by a Proposer's authorized representative to withdraw a proposal. After withdrawing a previously submitted proposal, a Proposer may submit another proposal at any time up to the Proposal Deadline.

H. Proposal Errors and Amendments

Each Proposer is liable for all proposal errors or omissions. A Proposer may not alter or amend proposal documents after the Proposal Deadline time and date detailed in RFP Section 2.1, Schedule of Events, unless such is requested in writing and approved by the Owner.

I. Proposal Preparation Costs

The Owner will not pay costs associated with the preparation, submittal, presentation, or contracting of a proposal.

J. Disclosure of Proposal Contents

1. Each proposal and all materials submitted to the Owner in response to this RFP shall become the property of the Owner. Selection or rejection of a proposal does not affect this right. All proposal information shall be held in confidence during the evaluation process. Notwithstanding, a list of actual Proposers submitting timely proposals may be available to the public, upon request, immediately after Technical Proposals are opened by the Owner.
2. By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection in accordance with Tennessee Code Annotated (TCA), § 10-7-504(a)(7).

K. Licensure and Qualifications

1. A Proposer must be a licensed General Contractor in the State of Tennessee. Before a contract pursuant to this RFP is signed, the Proposer and its personnel, if applicable, must hold all necessary, applicable business and professional licenses as may be required for specific services. The Owner may require a Proposer to submit evidence of proper licensure.
2. Proposers shall be familiar with the Contractors Licensing Act of 1994, as currently amended (codified in TCA § 62-6-101, et seq.). A contract will not be awarded to a Proposer whose proposal is in conflict with State licensing law.
3. Proposals submitted shall not include a contractor or subcontractor disqualified from participating in SBC Projects. The Office of the State Architect (OSA) maintains a list of those that are disqualified.
4. In compliance with TCA § 50-9-114 Proposers are advised that the Owner does not operate a certified drug-free workplace program that serves for compliance with TCA § 50-9-113.
5. The Proposer and its subcontractors shall not knowingly utilize the services of an illegal immigrant in the performance of the Work, and shall not knowingly utilize the services of a subcontractor, sub-subcontractor, or consultant who utilizes the services of an illegal immigrant in the performance of the Work.
6. In compliance with the Iran Divestment Act bids submitted shall not include a contractor or subcontractor on the list created pursuant to TCA § 12-12-106.
7. In compliance with TCA § 12-4-119, Contractors currently engaged in a boycott of Israel or who intend to engage in a boycott of Israel should not bid.

L. Proposals by Joint Ventures

1. A form of joint venture business arrangement may be proposed for this Project. However, the Owner prefers that a single firm serve as the Project leader and administrative manager supported by business partners and consultants that serve under the management of that single firm. If a Proposer intends to submit a Proposal as a joint venture, then the following requirements shall apply:
 - a. For the purposes of this RFP, the Owner recognizes a joint venture as separate organizations or business entities that intend to combine professional or technical expertise and business experience, and to share contractual and Project responsibilities in performance of a contract pursuant to this RFP.

b. Each joint venture participant shall meet the licensure and insurance requirements stated in the RFP.

2. A subcontractor to a Proposer is not a joint venture participant.

M. Severability

If a provision of this RFP is declared by a court to be illegal or in conflict with a law, said decision shall not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the Owner and Proposers shall be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

N. Material Changes in Performance Capabilities Prior to Award

Material changes are defined as changes in the operations, management or performance capabilities of the Proposer that may impact performance of the contract requirements. If there are material changes after the submission of the Proposal, but prior to the award of the MC, the Proposer shall immediately notify the Owner of the details of such changes. The Owner reserves the right to disqualify the Proposer for a material change.

O. Audited Statements

The Owner reserves the right to request CPA audited or reviewed financial statements prepared in accordance with generally accepted accounting principles. If the requested documents do not support the financial stability of the Proposer the Owner reserves the right to reject the proposal.

1.5 CONTRACT REQUIREMENTS

A. Assignment and Subcontracting

1. The Proposer awarded a contract pursuant to this RFP shall not transfer or assign a portion of the contract without the Owner's prior, written approval.
2. A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Owner and with the Owner's prior, written approval.
3. At its sole discretion, the Owner reserves the right to refuse approval of a subcontract, transfer, or assignment.
4. Notwithstanding the use of subcontractors, the successful Proposer awarded a contract under this RFP, shall be the prime contractor and shall be responsible for all work performed.

B. Right to Refuse Personnel

At its sole discretion, the Owner reserves the right to refuse personnel of the CM/GC or a subcontractor for use in the performance of a contract pursuant to this RFP.

C. Insurance

1. The Owner will require proof of insurance as detailed below. Failure to provide such insurance certificate is a material breach and grounds for termination of contract negotiations.
 - a. Prior to execution of a MC a certificate of insurance(s) is required as detailed in RFP Section 1.6, Pro Forma Master Contract (MC) Between Owner and CM/GC as evidenced on a certificate provided to the Owner.

- b. Prior to execution of an agreement for construction services a certificate(s) of insurance will be required as detailed in the Owner's Designers' Manual, Appendix 2, Section 00 72 13 General Conditions of the Contract for Construction.
2. At the option of the CM/GC the contract(s) for hazardous materials abatement may be held by the CM/GC or the Owner if a part of the work scope. Under either option the CM/GC shall coordinate the bidding process and implementation of the Work. The Owner shall be a named insured under either option.

D. Contract Award

1. The RFP Coordinator will forward the evaluation results to the responsible Owner official, who will consider the results and all pertinent information available to make a recommendation of contract award to the SBC. The Owner reserves the right to make an award recommendation without further discussion of a proposal.
2. Prior to approval of the SBC, the Owner will issue an Intent to Award Notice to identify the apparent highest evaluated proposal on the date detailed in the RFP Section 2.1, Schedule of Events. The Intent to Award Notice shall not create rights, interests, or claims of entitlement in either the Proposer with apparent highest evaluated proposal or another Proposer.
3. The Owner will make the RFP files available for public inspection on the date in the RFP Section 2.1, Schedule of Events.
4. RFP protest procedures are located in the SBC Policies and Procedures posted on the OSA's website.
5. The Owner reserves the right, at its sole discretion, to add terms and conditions or to revise pro forma contract requirements in the Owner's best interests subsequent to this RFP process. No such terms and conditions or revision of contract requirements shall materially affect the basis of proposal evaluations or negatively impact the competitive nature of the RFP process.
6. The Proposer with the apparent highest evaluated proposal must sign and return the contract drawn by the Owner pursuant to this RFP within ten calendar days of receipt of the contract form provided by the Owner. If the Proposer fails to provide the signed contract within this time period, the Owner may determine the Proposer non-responsive to the terms of this RFP and reject the proposal.
7. The RFP process does not obligate the Owner and does not create rights, interests, or claims of entitlement in Proposers. Contract award and the Owner obligations pursuant thereto shall commence only after contract approval of all State officials as required by State laws and regulations and not prior to the Proposer's receipt of a fully signed contract.

E. Contract Payments

All contract payments shall be made in accordance with the contract's provisions for Payment Terms and Conditions as detailed in Section 1.6, Pro Forma Master Contract (MC) Between Owner and CM/GC. No payment shall be made until the contract is approved as required by State laws and regulations. Under no conditions shall the Owner be liable for payment associated with the contract or responsible for work done by the CM/GC, even work done in good faith and even if the CM/GC is orally directed to proceed with the delivery of services, if it occurs before contract approval by the Owner as required by applicable statutes and rules of the State of Tennessee or before

the contract start date or before the CM/GC's receipt of a fully executed contract or after the contract end date specified by the contract.

F. CM/GC Performance

The CM/GC shall be responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and acceptance by the Owner. The Owner may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract.

G. Additional Work

1. The Owner may request the CM/GC to perform additional work during the pre-construction phase services for which the CM/GC would be compensated in accordance with the MC. That work shall be within the general scope of this RFP. In such instances, the Owner shall provide the CM/GC a written description of the additional work, and the CM/GC shall submit a time schedule for accomplishing the additional work and a price for the additional work. If the Owner and the CM/GC reach an agreement regarding the work and associated compensation, such agreement shall be effected by means of a written letter of authorization. Such letter requiring additional work must be mutually agreed upon by the parties. The CM/GC shall not commence additional work until the Owner has issued a written letter of authorization and secured all required approvals.
2. Additional work requested by the Owner may include services for facilitated partnering sessions with the Project team as a part of the pre-construction and construction phase services.

**1.6 PRO FORMA MASTER CONTRACT (MC)
BETWEEN OWNER AND CM/GC**

Master Contract

Between

Owner and Construction Manager/General Contractor.

MASTER CONTRACT (MC)

made as of the <<Number, e.g. "2nd">> day of <<Month>>
in the year of <<Year number in words>>.

BETWEEN THE OWNER:

State of Tennessee, via the Contracting Agency:

<<State Procurement Agency>>

<<Street or P.O. Box>>

<<City, State, Zip Code>>

AND

THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC):

<<CM/GC Name>>

<<Street or P.O. Box>>

<<City, State, Zip Code>>

ACH Address: <<Street or P.O. Box>>

<<City, State, Zip Code>>

THE PROJECT:

<<SBC Number>>

<<Campus or Institution Name>>

<<Project Title Designated by Owner>>

THE DESIGNER:

<<Designer Name>>

<<Street or P.O. Box>>

<<City, State, Zip Code>>

THE OWNER AND THE CM/GC AGREE AS SET FORTH BELOW.

A. SCOPE OF SERVICES

- A.1 The CM/GC shall provide the services as detailed in the attached RFP Section 1.7, Scope Services, which provides the primary input for development of a Construction Services Agreement in the form of the attached RFP Section 1.8, Pro Forma Construction Services Agreement (CSA) Between Owner and CM/GC. Construction services shall be provided contingent upon the execution of a mutually acceptable CSA between the Owner and the CM/GC.
- A.2 The intent of the scope is to establish a partnership between the CM/GC, the Owner, and Designer, governed by specific contracts, that is responsible for expeditious and economic progress of the Project consistent with the interests of the Owner.
- A.3 Additional services not defined herein shall be negotiated with the Owner and approved in writing by the Owner prior to commencement of services. Compensation for additional services shall not be payable to the CM/GC prior to such additional services are rendered and invoiced as set forth in this MC.

B. CONTRACT TERM

- B.1 This MC shall be effective for the period commencing on execution of this agreement and ending at the end of the one-year correction period.
- B.2 The Owner shall have no obligation for services rendered by the CM/GC which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS

- C.1 Compensation by the Owner to the CM/GC under this MC for pre-construction phase services shall be a lump sum fee of the following amount.
<<Dollar amount of lump sum fee written in words>>
(\$<<Dollar amount of lump sum fee written in numbers>>)
- C.2 This amount shall constitute the entire compensation due the CM/GC for Pre-Construction Phase Services (PCPS) and all of the CM/GC's obligations hereunder. This amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, travel, printing, shipping, and all other direct and indirect costs incurred or to be incurred by the CM/GC for PCPS regardless of the difficulty, hours worked, or materials or equipment required.
- C.3 The PCPS lump sum fee does not include the amounts that are to be covered under the CSA.
- C.4 The PCPS lump sum fee represents available funds for payment to the CM/GC and does not guarantee payment of such funds to the CM/GC unless the CM/GC performs said work satisfactory to the Owner, in which case, the CM/GC shall be paid as detailed herein.
- C.5 The lump sum fee liability of the Owner for PCPS under this MC is firm for the duration of the MC and is not subject to escalation unless amended.
- C.6 Prior to a payment for PCPS the CM/GC shall submit an invoice in form and substance acceptable to the Owner and with all of the necessary supporting documentation. Invoices shall state (a) CM/GC name, (b) invoice date and number, (c) Project title and SBC Number, (d) the invoice period of service, (e) amount being invoiced for the invoice period, (f) prior cumulative amount invoiced, and (g) new cumulative amount invoiced.

- C.7 The CM/GC's progress payment requests for PCPS shall be submitted in the form of a monthly invoice in an amount based on a pro-ration of the lump sum fee divided by the period of PCPS.
- C.8 Final payment may be requested upon the completion of PCPS satisfactory to the Owner.
- C.9 Payment is due no later than 45 days after an undisputed invoice for payment has been received by Owner and payable in accordance with Tennessee Code Annotated (TCA) Title 12, Chapter 4, Part 7.
- C.10 The CM/GC shall not be compensated or reimbursed for travel, meals, or lodging over and above the PCPS fee under this MC and the Guaranteed Maximum Price in the CSA.
- C.11 The payment of an invoice for PCPS by the Owner shall not prejudice the Owner's right to object to or question an invoice or matter in relation thereto. Such payment by the Owner shall neither be construed as acceptance of a part of the work or service provided nor as an approval of the amounts invoiced therein.
- C.12 The CM/GC's invoices shall be subject to reduction for amounts included in an invoice or payment theretofore made which are deemed by the Owner not to be justifiable costs, and on the basis of audits where applicable, conducted in accordance with the terms of this MC, not to constitute proper remuneration for the services performed.
- C.13 The Owner reserves the right to deduct from amounts which are or shall become due and payable to the CM/GC under this or a contract between the CM/GC and the Owner amounts which are or shall become due and payable to the Owner by the CM/GC.
- C.14 Payments to CM/GC shall be made through Owner's automated clearing house wire transfer system. Contractor shall have completed an Authorization Agreement for Automatic Deposits ACH Credits Form prior to commencing services and prior to submitting first invoice. At the Owner's option, other payment methods may be utilized.

D. STANDARD TERMS AND CONDITIONS:

- D.1 Neither party is bound by this MC until it is approved by the Owner in accordance with applicable Tennessee State laws and regulations. This MC shall not be considered awarded prior to the CM/GC's receipt of a fully signed MC.
- D.2 For pre-construction phase services, the CM/GC shall furnish to the Owner a certificate(s) of insurance, acceptable to the Owner, providing evidence of policies in accordance with and in no less than the minimum limits stipulated in the Owner's Designer Manual, Appendix 2, Section 00 72 13 General Conditions of the Contract for Construction. The following lines of coverage shall be included and maintained for the duration of the MC.
 - 1. Workers' Compensation Insurance
 - 2. General Liability Insurance
 - 3. Automobile Liability Insurance
- D.3 For Construction Phase Services (CPS), CM/GC agrees to provide insurance coverage as required by the CSA.
- D.4 This MC may be modified only by a written amendment executed by all parties hereto in accordance with applicable Tennessee State laws and regulations.
- D.5 The Owner may terminate the services of this MC upon seven days notice in writing from the Owner to the CM/GC specifying the effective date of termination. Said termination shall not be deemed a breach of contract by the Owner. If this MC is terminated by the

Owner as provided herein, the CM/GC shall be entitled to receive equitable compensation for satisfactory authorized service completed as of the termination date but in no event shall the Owner be liable to the CM/GC for compensation for a service which has not been rendered. At the option of the Owner, all finished or unfinished documents, data, studies, surveys, analyses, estimates, models, and reports prepared by the CM/GC shall become Owner's property. Upon such termination, the CM/GC shall have no right to actual, general, special, incidental, consequential, or other damages whatsoever on account of services.

If the CM/GC fails to properly perform its obligations under this MC in a timely or proper manner, or if the CM/GC violates terms of this Contract, the Owner shall have the right to immediately terminate the MC and withhold payments in excess of fair compensation for completed services. With respect to the construction phase, this section D.5 shall be subject and subordinate to the terms of the CSA.

Notwithstanding the above, the CM/GC shall not be relieved of liability to the Owner for damages sustained by virtue of a breach of this MC by the CM/GC, and the Owner may withhold reasonable payments to the CM/GC for the purpose of setoff until such time as the exact amount of damages due the Owner from the CM/GC is determined.

- D.6 If the Owner does not pay the CM/GC within seven days after the date for payment established in this MC the amount currently due as of that date pursuant to the terms of this MC, then the CM/GC may, upon seven additional days' written notice to the Owner, stop the work until payment of the amount due has been received. The CM/GC may terminate this MC if the work is stopped for non-payment for a period of 30 consecutive days. The CM/GC shall be entitled to receive equitable compensation for satisfactory, authorized service completed as of the termination date. Upon such termination, the CM/GC shall have no right to actual, general, special, incidental, consequential, or other damages whatsoever on account of services.
- D.7 The CM/GC shall not assign this MC without obtaining the prior written approval of the Owner. Subcontracts to this MC shall contain, at a minimum, Sections D.8, D.9, and D.10 of this MC.
- D.8 The CM/GC warrants that no part of the total amount paid to the CM/GC shall be paid directly or indirectly to an employee or official of the Owner as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the CM/GC in connection with work contemplated or performed relative to this MC.
- D.9 The CM/GC shall not discriminate against an employee nor applicant for employment because of race, creed, color, religion, sex, age, or national origin as defined in TCA § 4-21-401, et seq, nor because of handicap, in accordance with TCA § 8-50-103.

The CM/GC shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to handicap, race, creed, color, religion, sex, age, or national origin, including but not limited to practices in recruitment, recruitment advertising, employment, selection for training or apprenticeship, rates of pay or other forms of compensation, upgrading, demotion, transfer, layoff, or termination.

The CM/GC shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

Solicitations or advertisements for employees placed by or in behalf of the CM/GC shall state that qualified applicants shall receive consideration for employment without regard to handicap, race, creed, color, religion, sex, age, or national origin.

- D.10 The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of a contract to supply goods or services to the State of Tennessee, shall be a material provision of this MC, a breach of which shall be grounds for monetary and other penalties, including termination of this MC.

The CM/GC by entering into this contract attests, certifies, warrants, and assures that the CM/GC shall not knowingly utilize the services of an illegal immigrant in the performance of this MC and shall not knowingly utilize the services of a subcontractor or consultant who will utilize the services of an illegal immigrant in the performance of this MC.

The CM/GC understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law provides for the prohibition of a CM/GC from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a CM/GC is discovered to have knowingly used the services of illegal immigrants during the performance of this MC.

For purposes of this MC, "illegal immigrant" shall be defined as a person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the MC.

- D.11 The CM/GC shall maintain documentation for all charges under this Contract. The books, records, and documents of the CM/GC, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of seven full years from the date of the final payment and shall be subject to audit at a reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles. Upon final completion of the Project, the CM/GC shall have the right to transfer such records to the State, along with a sworn statement that all such records are included in this transfer.
- D.12 Failure by the Owner to insist on strict compliance with a provision of this MC by the CM/GC will not operate as a waiver of the right to require strict performance by the CM/GC of a term, covenant, condition or provision of this MC nor construed as a waiver or relinquishment of such term, covenant, condition or provision. No term or condition of this MC shall be held to be waived, modified, or deleted except by written amendment to this MC signed by the parties hereto.
- D.13 The parties hereto, in the performance of this MC, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this MC shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party.
- D.14 The Owner shall have no liability except as specifically provided in this MC and the executed CSA.
- D.15 With respect to pre-construction phase services only, the CM/GC agrees to indemnify and hold harmless the Owner as well as its officers, agents and employees from and against claims, liabilities, losses, and causes of action which may arise or result to a person, firm,

corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the CM/GC, its employees, or a person acting for or on its or their behalf.

In the event of such suit or claim, the CM/GC shall give the Owner immediate notice thereof and shall provide all assistance required by the Owner in the Owner's defense. The Owner shall give the CM/GC written notice of such claim or suit, and the CM/GC shall have the full right and obligation to conduct the CM/GC's own defense thereof. Nothing contained herein shall be deemed to accord to the CM/GC, through its attorney(s), the right to represent the State of Tennessee in a legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

With respect to the construction phase, the CM/GC's indemnity and hold harmless obligations shall be as provided in the terms and conditions of CSA to be negotiated and executed by the parties.

- D.16 The CM/GC agrees that it shall be liable for all costs, including reasonable attorney fees incurred by Owner to enforce the terms of this MC against the CM/GC or the obligations of the CM/GC under this MC.
- D.17 The CM/GC shall comply with all applicable State and Federal laws and regulations in the performance of this MC.
- D.18 This MC shall be governed by and construed in accordance with the laws of the State of Tennessee. The CM/GC agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this MC. The CM/GC acknowledges and agrees that rights or claims against the Owner or its employees hereunder, and remedies arising therefrom, shall be subject to and limited to those rights and remedies, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.
- D.19 This MC is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This MC supersedes prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral. With respect to the construction phase services, all terms and conditions of this MC shall, however, be subject and subordinate to the terms and conditions of RFP Section 1.8, Pro Forma Construction Services Agreement (CSA) Between Owner and CM/GC, in the form negotiated and executed by the parties.
- D.20 If terms and conditions of this MC are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this MC are declared severable.
- D.21 Section headings of this MC are for reference purposes only and shall not be construed as part of this MC.
- D.22 Pursuant to Tenn. Code Ann. § 12-4-119, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract, engage in a boycott of Israel, as defined by Tenn. Code Ann. § 12-4-119(a)(1).

E. SPECIAL TERMS AND CONDITIONS:

- E.1 Should these special terms and conditions conflict with other terms and conditions of this MC, these special terms and conditions shall control.
- E.2 Should a conflict arise within the requirements of these MC documents, the documents shall be interpreted in priority in the order shown.
1. Construction Services Agreement (CSA) upon negotiation of its terms and conditions and execution by both parties, and subsequent amendments, and modifications.
 2. This MC and its attachments and amendments.
 3. The RFP documents and addenda which are incorporated by reference.
 4. The CM/GC's Proposal for services in response to the RFP which is incorporated by reference.
- E.3 The Owner shall own all ideas, technical approaches and CM/GC deliverables developed as a part of this MC.
- E.5 Upon completion or termination of this Contract, application programs and systems and other management systems developed and used by the CM/GC solely for the implementation of this MC shall be licensed to the Owner at no fee or otherwise remain with the Owner for use in management of other capital Projects.
- E.6 The CM/GC shall indemnify and hold the Owner harmless of all claims or suits which may be brought against the Owner for infringement of laws regarding patents or copyrights which may arise from the performance of the CM/GC under the MC. In such action brought against the Owner, the CM/GC shall satisfy and indemnify the Owner for the amount of a final judgment against the Owner, or settlement entered into in good faith by the Owner for infringement.
- E.7 The MC is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Owner reserves the right to terminate the MC upon written notice to the CM/GC. Said termination shall not be deemed a breach of contract by the Owner. Upon receipt of the written notice, the CM/GC shall cease all services associated with this MC. Should such an event occur the CM/GC shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the CM/GC shall have no right to recover from the Owner actual, general, special, incidental, consequential, or other damages whatsoever.
- E.8 Notices required by this MC shall be in writing and shall be made by email, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate email address or postal address as set forth below or to such other party, email address, or postal address as may be hereafter specified by written notice.

The Owner:

<<Name of individual for the Owner>>

<<Organization Name, SPA Name>>

<<Address line 1>>

<<Address line 2>>

<<Telephone Number>>

<<Email address>>

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The CM/GC:

<<Name of individual for the CM/GC>>

<<Firm name>>

<<Address line 1>>

<<Address line 2>>

<<Telephone>>

<<Email address>>

- E.9 Notices required by the MC shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three business days after the date of mailing; or on the day email receipt is confirmed.
- E.10 In the event it is determined that the Proposer failed to disclose requested information, or made a false statement, misrepresentation or omission regarding a material fact concerning an aspect of the award of this MC, the Proposer may be considered in default and the Owner may terminate this MC immediately and/or withhold full or partial payment as it deems appropriate. In addition, the Owner may seek other available remedies to which it is entitled by law.
-

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all the parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

This Master Contract entered into as of the day and year first written above as witnessed:

BY CM/GC: <<CM/GC Name>>

Signature: _____
Name: _____
Title: _____

AND BY OWNER: State of Tennessee,
<<State Procurement Agency>>

By: _____
Head of Higher Education Institution
<<Name>>
<<Title>>

Approved: _____
Head of Financial Office
<<Name>>
<<Title>>

Approved: _____
Head of Legal Office
<<Name>>
<<Title>>

Approved: _____
Head of State Procurement Agency
<<Name>>
<<Title>>

Approved: _____
State Architect

END OF MASTER CONTRACT for the Project titled:

<<SBC Number>>
<<Campus or Institution Name>>
<<Project Title Designated by Owner>>

1.7 SCOPE OF SERVICES

The Construction Manager/General Contractor (CM/GC) shall provide Pre-Construction Phase Services (PCPS) and Construction Phase Services (CPS) for the Project described in RFP Section 2.4, Project Narrative and Documentation, including, but not limited to, development of a Guaranteed Maximum Price (GMP). Services shall be provided by the personnel designated in the CM/GC's Technical Proposal or by substitute personnel approved in writing by the Owner. Requests for substitute personnel shall include justification for the substitution and qualifications of the substitute personnel in similar form and content as required for the Technical Proposal.

1.7.1 PRE-CONSTRUCTION PHASE SERVICES

A. Project Information and Procedures

1. Meet with the Owner, the Designer, and other design team members and review documents to gain a full understanding of the program, the design documents, the Project scope and all other aspects of the Project.
2. The CM/GC may develop written Project procedures, in cooperation with the Owner and the Designer, which will augment the Owner's requirements, as necessary, to be used as a guide for the management and coordination of the Project.

B. Meetings and Key CM/GC Personnel

1. Provide the designated key personnel who shall consistently attend and participate as construction management consultants in meetings scheduled with the Owner and the Designer throughout the duration of PCPS. Such meetings shall be as frequent as needed to support Project progress.
2. Provide the designated PCPS Project manager to facilitate such meetings.
3. Prepare and distribute an agenda at least one day in advance of meetings.
4. Record and distribute meeting notes to the Designer, Owner, and other attendees.

C. Consultation

1. Advise the Owner and Designer on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment. This includes exploring alternative non-traditional building systems.
2. Provide recommendations to the Owner and Designer on the items below. Submit recommendations concurrently to the Owner and the Designer in writing.
 - a. Construction feasibility actions designed to minimize adverse effects of labor or material shortages.
 - b. Time requirements for procurement, installation and construction completion.
 - c. Factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies which should include conceptual cost estimates based on preliminary designs.
3. Recommend to the Owner and Designer opportunities to phase issuance of drawings and specifications to facilitate phasing or sequencing of demolition, site work, site utilities and building construction activities of each phase to improve economies, performance time, and responses to construction resource conditions.

4. The CM/GC shall not be called upon to provide advice on legal issues or to engage in the practice of architecture or engineering. The CM/GC's scope of services is solely in its capacity as a CM/GC, not as a design professional. The CM/GC is not responsible for design of the Project.

D. Schedule

Two types of schedules are required of the CM/GC in the pre-construction phase as described in the following sections, (1) the pre-construction phase schedule and (2) the preliminary construction schedule.

Prepare, maintain, and communicate the schedules in writing in appropriate detail to enable determination of critical paths and enable Project decision-making throughout the duration of the Project.

Develop the schedules on industry standard software with proven compatibility.

Monitor the schedules throughout the duration of the Project and advise the Owner of deficiencies in adhering to these schedules by a party.

Update schedules at the end of each Design phase established by the contract between the Owner and the Designer (for design phases during which the CM/GC is performing pre-construction phase services).

1. Pre-Construction Phase Schedule

In collaboration with the Designer and Owner, prepare and maintain a pre-construction phase schedule detailing the services, activities, durations, and sequences of the remaining Designer, CM/GC, and Owner activities leading to the negotiation and execution of a Construction Services Agreement (CSA) between Owner and CM/GC for a GMP. Within 14 days from the execution of the Master Contract (MC) submit an initial version of the pre-construction phase schedule. This schedule and subsequent versions of this schedule is subject to approval by the Designer and the Owner.

2. Preliminary Construction Schedule

Within 30 days from the execution of the MC submit to the Designer and Owner for review an initial version of the preliminary construction schedule. Include the schedule components listed below.

- a. Proposed construction activity sequences and durations.
- b. Milestone dates.
- c. Occupancy dates meeting the Owner's requirements and showing portions of the Project having occupancy priority, if applicable.
- d. A proposed date of Substantial Completion that does not exceed the RFP construction time.

E. Constructability

Review the design documents for opportunities to enhance constructability including proposals for alternate construction means, methods, and materials. Provide a constructability report within 14 calendar days of receipt of design documents. For each item identified provide the following in writing.

1. A description of the construction issue with background information, including, as necessary, backup data from subcontractors and suppliers.

2. A listing of design documents relevant to the issue.
3. Detailed written recommendations addressing each issue.

F. Construction Cost Estimate

1. Within 30 days from the execution of the MC, develop and communicate in writing to the Designer and Owner for review a construction cost estimate that shall be independent from the Designer's estimate of cost of construction (Designer's Estimate). Updates shall be provided as needed but at a minimum at the end of each Design phase established by the agreement between the Owner and the Designer.
2. Each version of the construction cost estimate shall detail the amount for the GMP with sufficient supporting information to communicate each cost component and the significant contributing costs within each component. Alternates under consideration by the Designer and Owner shall be separately detailed with the same supporting information.
3. Each construction estimate will be reviewed by the Designer and the Owner for reasonableness and compatibility with the GMP Target. The Owner, Designer, and the CM/GC will work together to resolve differences between the Designer's Estimate and the CM/GC's construction cost estimate.
4. In the event that either of the CM/GC's construction cost estimate or the Designer's Estimate exceeds the GMP Target, the Owner may direct the CM/GC to continue to provide its PCPS as described below in conjunction with the Designer's redesign of the Project as necessary to maintain the Project program within the GMP Target; in which case, the CM/GC shall do so without additional compensation. The Owner may also elect to revise the Project scope or increase funding. After consultation with the Owner:
 - a. Coordinate and cooperate with the Project team as the Designer revises construction documents as necessary to meet the GMP Target.
 - b. Analyze the Designer's originally submitted and revised construction documents, and make recommendations to the Owner as to opportunities to reduce Project construction costs to meet the GMP Target.
 - c. Develop and provide to the Owner and Designer a revised GMP in connection with the revised construction documents.
5. In the construction document portion of the PCPS the versions of the construction cost estimate shall identify the anticipated subcontract amount for each planned subcontractor bid package and other significant supporting information.

G. Value Analysis

1. Provide value analysis information to the Designer to identify opportunities for cost reductions and Project enhancements. The value analysis shall include a list of recommendations including pro/con analyses to achieve a balance between initial costs, life cycle operating costs, aesthetics, and function.
2. In coordination with the Owner and Designer select and document the value improvements to be implemented including the details of the value improvements stated in dollars, time, or other appropriate measures.

H. Construction Documents

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1. Review the construction documents submitted for State Fire Marshal review. Review comments shall be by written report, with references to the Designer's documents. Include construction documents coordination review comments from CM/GC PCPS trade consultants, if any. Submit the report to the Owner and Designer within 14 calendar days of receipt of the documents.
 2. Notify the Owner and Designer immediately of ambiguous, conflicting, or erroneous features discovered in the construction documents during the review process.
 3. Review the final documents to confirm that comments have been addressed.
- I. Subcontractor Qualification Requirements and Subcontractor List
1. Qualification requirements for subcontractors shall, at a minimum, address the information requested by AIA Document A305-1986, Contractor's Qualification Statement. The CM/GC may add other requirements for subcontractors that are not addressed in A305. The CM/GC may establish qualification requirements that are not prohibited by law or by specific published State Building Commission policies and procedures.
 2. It is the express desire of the State Building Commission to include an emphasis on diversity.
 3. Upon Owner request provide a written list of potential subcontractors and suppliers for which proposals are likely to be requested. The receipt of the list shall not waive the right of the Owner or Designer to later objections to a subcontractor or supplier.
 4. Major equipment suppliers shall be deemed the same as subcontractors.
- J. Subcontract Bidding
1. Prepare subcontractor bid packages required for completing construction and to encourage competitive bidding among subcontractors. Conduct bidding in accordance with the preliminary construction schedule.
 2. The CM/GC shall provide subcontractor bid package advertisements to the Owner for review. The Owner shall make solicitations for bids publicly known.
 3. The CM/GC shall confirm the cost estimate for the portion of work to be bid in a letter to the Designer and Owner which includes the following:
 - a. A statement that the work to be bid is within the budget for that scope of work and supports achievement of the GMP Target.
 - b. If applicable, a statement that remaining work is within budget and supports achievement of the GMP Target.
 - c. Request approval to begin the bid process.
 - d. Reference and attach a cost estimate for item a and for item b if applicable.
 4. The CM/GC shall receive bids for all qualified subcontractors for each package.
 5. The CM/GC shall notify the Owner and Designer of the time and location of the bid opening for each package so that they may attend.
 6. The CM/GC shall open the bids and tabulate the bids received on each package and provide the tabulation to the Owner upon request. Provide a summary

tabulation with the values of the subcontracts and compare this total with the budgeted amount within the GMP construction cost estimate.

7. The CM/GC shall determine the apparent low bidder for each package. Upon this determination, the CM/GC shall review all bid documentation from the apparent low bid subcontractor to verify the scope of the bid.
8. If the CM/GC's review shows that the low bidder fully accounted for all costs associated with the scope of the work on which it was bidding, and the low bidder satisfies all qualification criteria and requirements then, after CSA execution, the contract shall be awarded to the low bidder as a subcontractor.
9. If, however, the CM/GC's review shows that the low bidder failed to account for all costs associated with the scope of the work on which it was bidding or the low bidder is not in full and strict compliance with all qualification criteria and requirements then the bid may be disqualified with the approval of the Owner, which shall not be unreasonably withheld. The CM/GC shall have the right as outlined above to verify the scope and qualifications of each low bidder in the same manner to determine the lowest verified bid from a qualified bidder.
10. The CM/GC may repeat the bidding for a subcontract only if:
 - a. the initial bidding produces no responsible, responsive bid for that portion of the work, or
 - b. no responsible, responsive bidder for that portion of the work will execute the subcontract form included in the bid package without material alterations, and
 - c. the Owner approves of such a re-bid, which approval shall not be unreasonably withheld.
11. All contract documents between the CM/GC and the subcontractors shall be made available for review by the Designer and the Owner.
12. Subcontracts are not to include contingencies. All construction contingency is to be included in the CM/GC contingency.

K. GMP for Construction

1. The GMP shall be established not later than the date documented in the preliminary construction schedule. The CM/GC may bid subcontracts prior to establishment of the GMP at its own risk subject to sections P and Q below; however, the CM/GC shall not enter into binding contracts with subcontractors until CM/GC receipt of a fully signed Construction Services Agreement (CSA). The CM/GC shall develop and provide to the Owner a GMP which shall include all construction costs and Project related cost required under the GMP, the CM/GC Contingency, the construction services Fixed Fee, and the construction services General Conditions costs. The GMP shall be submitted in the format of RFP Section 1.10, GMP Request Form.
2. The CM/GC's GMP will be reviewed by the Designer and the Owner for reasonableness and compatibility with the GMP Target. The Owner, Designer and the CM/GC will work together to resolve questions and differences that may occur between the GMP Target and the CM/GC's corresponding GMP.
3. The GMP shall not exceed the GMP Target as established by the Owner.

4. In the event that a preliminary GMP exceeds the GMP Target, the Owner reserves the right to direct the CM/GC to continue to provide PCPS in conjunction with the Designer's redesign of the Project as necessary to maintain the Project program and meet the GMP Target.
 - a. After consultation with the Owner, the CM/GC shall coordinate and cooperate with the Project team as the Designer revises construction documents as necessary to accomplish the required reduction in cost.
 - b. The CM/GC shall analyze the Designer's originally submitted and revised construction documents and make recommendations to the Owner as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the GMP Target.
 - c. The CM/GC shall develop and provide to the Owner and Designer a revised GMP in connection with the revised construction documents.
 - d. The CM/GC shall perform the work set forth in this section without additional compensation over and above the lump sum PCPS fee provided in the MC.
5. Upon acceptance by the Owner of a GMP, the Owner and the CM/GC shall negotiate and execute a mutually acceptable agreement including the approved GMP as a part of the CSA. All required bonds and insurance shall be provided on or before the date of the Owner's execution of the CSA.

L. CM/GC Contingency

1. The GMP shall include a construction contingency (Contingency) in an amount approved by the Owner, to help reduce the risks assumed by the CM/GC in providing the GMP for the Project. The Owner retains the right to specifically request revisions to the amount of the Contingency prior to the Owner's acceptance and approval of the GMP. The Owner and the CM/GC acknowledge that this Contingency is included to adjust for eventualities which have not been taken into precise account in the establishment of the GMP, including, but not limited to, those resulting from
 - a. The Construction Documents not being complete at the time the GMP is established,
 - b. Scope gaps between subcontractors,
 - c. Unforeseen field conditions, circumstances, occurrences, or errors and omissions in the Contract Documents which would not have been reasonably detected or anticipated during the discharge of the CM/GC's preconstruction duties, and
 - d. Net overage in subcontracts awarded after CSA execution.
2. The amount of the Contingency is the maximum sum available to the CM/GC to cover costs incurred as a result of such unanticipated causes. Cost in excess of the amount of the Contingency will be borne by the CM/GC under the GMP, unless the GMP is adjusted pursuant to the terms of the CSA.
3. The Contingency may be applied to items within the cost of the Work without the necessity of a modification, without constituting a change in the Work, and without resulting in a change in the GMP. The CM/GC shall advise the Designer and the Owner prior to applying a part of the Contingency to an item within the cost of the Work. The CM/GC shall document the change on the record documents.

M. Owner's Construction Contingency:

The Owner's Construction Contingency is not included in the GMP.

N. Subcontract Award and Estimate Amounts in the GMP

1. Upon completion of the bid process for subcontracts, the CM/GC will summarize the values of all of the subcontracts it will award after CSA execution and utilize them in GMP development.
2. Subcontracts that will not be awarded after CSA execution shall be identified as estimates and incorporated in the GMP.

O. Reserve Fund

1. If the awarded net value of all subcontracts incorporated as estimates in the GMP is less than the GMP subcontract budget the net value may be allocated to a Reserve Fund.
2. The sum of the Contingency and the Reserve Fund shall be a maximum of ten percent of the value of the GMP or a different percent agreed to in writing by the Owner and the CM/GC. Funds in excess of the ten percent maximum will be deducted from the GMP by modification and added to the Owner's Construction Contingency.
3. The CM/GC may utilize the Reserve Fund for Contingency after the Contingency has been expended upon prior written approval by the Owner or for purposes defined and approved by the Owner in writing.

P. Non-Acceptance of the Proposed GMP and Termination

1. The Owner, at its sole discretion, may decline to proceed with the CM/GC's proposed GMP for the Project or Project phase(s) and thereupon, without penalty, the services for the Project or Project phase(s) shall terminate at the end of the PCPS.
2. Such termination shall likewise terminate all further services, except to finish PCPS, and obligations of the CM/GC for the Project or Project phase(s). The CM/GC shall accept the amount of the MC contract amount for PCPS as full and complete reimbursement of all costs and services performed by the CM/GC for PCPS and shall not be entitled to a further amount for such services. Thereafter, the Owner shall have the right to continue its activities to place the Project or Project phase(s) under construction with no obligation or restriction regarding the CM/GC and with full ownership and use of data and information developed during PCPS.
3. Such termination is in addition to the termination provisions set forth elsewhere in the MC, including, but not limited to, those defined in a negotiated and executed CSA.

Q. Ownership of Documents

All data information, material and all copies thereof developed by the CM/GC or in the CM/GC's possession or control, relating to the Project are the property of the Owner and shall be turned over to the Owner within fourteen calendar days after the Owner's request. However, the CM/GC may keep its own counterparts of executed agreements and one duplicate of its other data and documents for its own records but not for reuse.

R. Support Incomplete Project Design Activities

1. If, upon execution of an early package CSA there are PCPS services required in this document for remaining incomplete Project design activities (e.g. incomplete design work due to fast-tracking of construction), provide those services throughout the duration of those incomplete design activities.
2. Perform the work set forth in this Section without additional compensation over and above the lump sum fee for PCPS compensation for PCPS detailed in the MC.

1.7.2 CONSTRUCTION PHASE SERVICES

The CM/GC services shall consist of providing CPS as required herein and by the Contract Documents including, but not limited to, the General Conditions of the Contract for Construction and all additional documents enumerated in Article 1 of the CSA to affect the complete construction of the Project and to maintain the established GMP and Contract Time of the Project.

A. Consultation During Continuing Project Development

Upon acceptance of the GMP, the CM/GC shall continue to advise and assist the Owner and Designer during continuing design activities as described in Section 1.7.1 above.

B. Modifications to Standard Documents

The CM/GC shall meet the following requirements that modify or expand those provided by the Owner's Standard Documents Division 00 and 01 provided on the Owner's website and specific documents enumerated in Article 1 of the executed CSA.

1. Project Construction Schedule

- a. The CM/GC shall provide a critical path schedule utilizing accepted standard computer based software.
- b. If the CM/GC finds that the schedule is likely to be impacted by an action or inaction on the part of the Designer or Owner, the CM/GC must review the situation with the Designer and the Owner in a timely manner, and proceed in accordance with the CSA.

2. Project Staffing

- a. The CM/GC's shall coordinate the work of the subcontractors and coordinate the work with the activities and responsibilities of the Owner, Designer and CM/GC to complete the Project in accordance with the CSA requirements.
- b. The CM/GC representatives will remain on the job and in responsible charge as long as those persons remain employed by the CM/GC, unless the Owner has reason to agree otherwise during the course of the Project.

3. Meetings

- a. The CM/GC shall schedule and conduct regular progress meetings with subcontractors as conditions on the Project require.
- b. The CM/GC shall conduct biweekly progress meetings to discuss items as identified in the Construction Progress Meeting Agenda provided in the Owner's Designers' Manual.

- c. Other meetings may be required.
 - d. The CM/GC shall take and distribute minutes of meetings to all attendees and to the Designer and Owner within three days of such meetings.
 - 4. Requests for Information (RFI)
 - a. The CM/GC will be responsible for developing and implementing an RFI form for use on the Project.
 - b. The CM/GC will be responsible for logging and reviewing all RFIs prior to submission to the Designer.
 - c. The CM/GC shall track and monitor all RFIs throughout the CPS in a timely manner until they are processed by the Designer.
 - d. All responses to the RFIs that have an added cost impact shall also be discussed with the Designer and the Owner.
 - e. The CM/GC shall develop an RFI aging report which is to be submitted at each progress meeting.
 - 5. Substitution Requests
 - a. The CM/GC shall log all substitution requests.
 - b. The CM/GC shall review substitution requests to ensure that they are complete and in accordance with the Contract Documents.
 - c. The CM/GC shall not submit a substitution request to the Designer if CM/GC believes it to be inappropriate.
 - d. The CM/GC shall track and monitor all substitution requests until all substitution requests are processed and approved by the Designer and Owner.
 - e. The CM/GC shall include substitution requests, if applicable, on the agenda at the progress meetings.
- C. Financial Management
 - 1. The CM/GC shall maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, and afford the Designer and the Owner access to these records and preserve them in accordance with section D.11 of the MC.
 - 2. Upon completion of the CM/GC's obligations under the CSA, all non-expended funds remaining in the GMP will be credited to the Owner by Change Order.
- D. Self-Performed Work

The CM/GC may self-perform Project work to assist with the coordination of subcontracts and minor Project facilitation. The CM/GC shall not perform trade contract work. The maximum percent of the GMP that the CM/GC can self-perform shall be three percent (or as approved by the Owner).
- E. Quality Control
 - 1. The CM/GC shall perform quality control inspections on subcontractor work to guard the Owner against defects and deficiencies and shall coordinate this activity with the on-site duties of the Designer. CM/GC shall advise the Designer of identified deviations from the Contract Documents and shall take corrective action.

CM/GC shall provide inspection reports as part of the bi-weekly progress meetings.

2. The Owner reserves the right to independently contract for compliance inspection and testing.

F. Modifications and Change in GMP

1. Changes in the scope of work to be performed during the CPS shall be governed by the Contract Documents.
2. The CM/GC shall develop and implement a system for review, negotiation, and processing of proposed Modifications that is consistent and compatible with the Contract Documents; and shall, with complete supporting data, recommend necessary Modifications to the Owner and the Designer for approval.
3. Modification proposals will consist of actual costs only; that is, subcontractors' change order proposals and General Conditions items, if applicable, only. No CM/GC fee shall be assessed for modifications to the work of the Project until such modifications aggregate to a sum in excess of two percent of the final GMP. Additional CM/GC fee shall apply only to modifications that exceed the two percent.
4. Net cost savings associated with a Modification shall revert to the Owner in accordance with the Contract Documents.

G. Submittals

1. The CM/GC shall be responsible for logging all submittals prior to submission to the Designer. The CM/GC is to ensure that submittal packages are submitted in accordance with the Contract Documents.
2. The CM/GC shall develop and implement a procedure for review, acceptance or rejection, and processing of all submittals, including the projected lead time on the schedule; and shall review this procedure with the Designer.
3. The CM/GC shall be responsible for tracking and monitoring submittals until all submittals have been approved by the Designer.
4. The CM/GC shall include submittals as an agenda item on all progress meetings.
5. The CM/GC shall develop a submittal aging report which is to be submitted at each biweekly progress meeting.

H. Document Control

The CM/GC shall implement a process to develop and maintain records of contracts, logs, documents that facilitate the development of O&M manuals, record documents, and other documents and revisions thereto which arise out of the CSA; and, shall keep these documents readily available to the Designer and the Owner during the performance of the CSA.

I. Reports

1. The CM/GC shall submit a monthly progress report to the Designer and the Owner to include the status of construction with progress photographs, updated copies of logs, the Construction Schedule.
2. The CM/GC shall maintain a work log of events occurring at the jobsite which affect progress. The log shall include material deliveries and describe the construction activities of the day with manpower and major equipment usage. The log shall be

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available to the Designer and Owner and shall be submitted to the Owner upon request.

**1.8 PRO FORMA CONSTRUCTION SERVICES AGREEMENT (CSA)
BETWEEN OWNER AND CM/GC**

Construction Services Agreement

Between

Owner and Construction Manager/General Contractor

Where the Basis of Payment is a
GUARANTEED MAXIMUM PRICE

AGREEMENT

made as of the <<Number, e.g. "2nd">> day of <<Month>>
in the year of <<Year number in words>>.

BETWEEN THE OWNER:

State of Tennessee, via the Contracting Agency:
<<State Procurement Agency>>
<<Street or P.O. Box>>
<<City, State, Zip Code>>

AND

THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC):

<<CM/GC Name>>
<<Street or P.O. Box>>
<<City, State, Zip Code>>

ACH Address: <<Street or P.O. Box>>
<<City, State, Zip Code>>

THE PROJECT:

<<SBC Number>>
<<Campus or Institution Name>>
<<Project Title Designated by Owner>>

THE DESIGNER:

<<Designer Name>>
<<Street or P.O. Box>>
<<City, State, Zip Code>>

THE OWNER AND THE CM/GC AGREE AS SET FORTH BELOW.

ARTICLE 1 -- THE WORK AND THE CONTRACT DOCUMENTS

- 1.1 The CM/GC shall perform all the Work required by the Contract Documents for the Project identified on page one.
- 1.2 The Contract Documents are identified in the Conditions of the Contract (General, Supplementary, and other Conditions). These form the Contract and constitute the entire agreement between the Owner and the CM/GC and are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in paragraph 1.4.
- 1.3 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.
- 1.4 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:
 - a. The Master Contract between Owner and CM/GC with attachments for the Project dated <<Date>>.
 - b. This Agreement.
 - c. The Project Manual for the Project dated <<Date>>, which includes, but is not limited to, (1) the Owner's Standard Documents Divisions 00 and 01 including the General Conditions of the Contract for Construction and (2) the Specifications.
 - d. The Drawings for the Project as listed in the <<Project Manual Section 00 01 20 List of Drawings or CM/GC's Proposal>> for the Project dated <<Date>>.
 - e. Addenda as apply to the above documents:

ARTICLE 2 – TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 2.1 The Work to be performed under this Contract shall be commenced on the date stipulated in the Notice to Proceed; and, subject to authorized adjustments, Substantial Completion shall be achieved
 <<Number of calendar days from and including the date stipulated in the Notice to Proceed>>
- 2.2 Liquidated Damages, as set forth in the Conditions of the Contract, are
 <<Dollar amount per calendar day>>

ARTICLE 3 – CONTRACT SUM

- 3.1 The Owner shall pay the CM/GC in current funds for the performance of the Work, subject to by Modifications as provided in the Contract Documents, an amount not to exceed the Guaranteed Maximum Price (GMP), also referred to as the “Contract Sum”, of
 <<Contract Sum in words>>
 (\$<<Contract Sum in numbers>>)
- 3.2 The GMP includes the following at the time of the execution of this Agreement:

	DOLLAR AMOUNT
Subcontracts	
Self-Performed Work	
General Conditions, Monthly (total of all months)	
General Conditions, Lump Sum	
Project Related Cost Not Included Above	
CM/GC Contingency	
CM/GC Construction Services Fixed Fee	
Guaranteed Maximum Price	

- 3.3 The following Unit Prices will be used as specified:
 <<Listing or statement of none established at initial award>>

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains the signatures of all the parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

This Agreement entered into as of the day and year first written above as witnessed:

BY CM/GC: <<CM/GC Name>>

Signature: _____

Name: _____

Title: _____

AND BY OWNER: State of Tennessee,
<<State Procurement Agency>>

By: _____

Head of Higher Education Institution
<<Name>>
<<Title>>

Approved: _____

Head of Financial Office
<<Name>>
<<Title>>

Approved: _____

Head of Legal Office
<<Name>>
<<Title>>

Approved: _____

Head of State Procurement Agency
<<Name>>
<<Title>>

Approved: _____

State Architect

END OF AGREEMENT FORM for the Project titled:

<<SBC Number>>

<<Campus or Institution Name>>

<<Project Title Designated by Owner>>

1.9 EVALUATION GUIDE

A. Scoring

The evaluation process is designed to award the contract not necessarily to the Proposer of least cost but rather to the Proposer with the highest Total Score which is derived by adding the Technical Proposal Score to the Cost Proposal Score of the qualifying proposers.

B. Technical Proposal Score

1. Technical Proposal Scores are based on Owner evaluations in accordance with RFP Section 2.2, Technical Proposal. For each Proposer the median score of evaluator scores is determined for both Technical Proposal Sections B and C.
2. The two median scores for each Proposer are added to develop the Proposer Evaluation Amount.
3. Proposers with a Proposer Evaluation Amount less than 70 are disqualified and their cost proposal will be returned and not opened.
4. Proposers with a Proposer Evaluation Amount of 70 or more qualify for development of the Proposer's Technical Proposal Score as shown in the formula below.

QUALIFYING PROPOSER'S TECHNICAL PROPOSAL SCORE =

$(\text{Proposer's Evaluation Amount}) \div (\text{Highest Evaluation Amount of All Proposers}) \times 70$

C. Cost Proposal Score

Cost Proposal Scores are based on Proposer Total Cost Amounts in accordance with RFP Section 2.3, Cost Proposal. The Proposer's Cost Proposal Score is developed as shown in the formula below.

COST PROPOSAL SCORE =

$(\text{Lowest Total Cost Amount of All Proposers}) \div (\text{Proposer's Total Cost Amount}) \times 30$

D. Total Score

The Proposer's Total Score is developed as shown in the formula below.

TOTAL SCORE =

$(\text{Technical Proposal Score}) + (\text{Proposer's Cost Proposal Score})$

E. Process

1. After the Proposal Deadline provided in RFP Section 2.1, Schedule of Events, the Owner will open and review each Technical Proposal for a "Pass" or "Fail" evaluation based on compliance with each of the Mandatory Requirements of Section 2.2, Technical Proposal, and the following Proposal format and content requirements.
 - a. Received on or before the Proposal Deadline.
 - b. Number of copies, digital file, and packaging as required.
 - c. Formatted as required and does not exceed size or page number limits.
 - d. Contains no Cost Proposal information.

- e. Proposer did not submit alternate proposals.
 - f. Proposer did not submit multiple proposals in a different form.
 - g. Does not contain restrictions of the rights of the Owner or other qualification of the proposal.
2. If the Owner determines that a proposal may have failed to meet one or more of the "Pass or Fail" criteria or the Proposal format and content requirements, the Evaluation Team, described below, will review that proposal and make its own determination, documented in writing, of whether (1) the proposal meets requirements for further evaluation or (2) the Owner will request clarifications or corrections to enable further evaluation or (3) the Owner will determine the proposal non-responsive to the RFP and reject it.
 3. An Evaluation Team made up of three or more employees of the State of Tennessee will evaluate responsive Proposals. The Evaluation Team may utilize technical advisers.
 4. The Owner may contact references provided by the Proposer and other source available for reference information.
 5. Each Evaluation Team member will independently evaluate Proposals and assign points using Section B, Qualifications and Experience, and Section C, Technical Approach, in RFP Section 2.2, Technical Proposal.
 6. The Owner reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with Proposers. Such discussions shall be limited to specific sections of the proposal identified by the Owner. The subject Proposer shall put the resulting clarification in writing as may be required by the Owner.
 7. The Owner reserves the right to receive an oral presentation from a Proposer. Oral presentation topics and the number of firms presenting are at the sole discretion of the Owner.
 8. Using the scores from the Evaluation Team, the Owner will develop Technical Proposal Scores as described above.
 9. After Technical Proposal evaluations are completed the Owner will open Cost Proposals and develop Cost Proposal Scores as described above.
 10. If the Owner determines that a Cost Proposal is non-responsive and the proposal is rejected; the Owner may make appropriate revisions to Technical Proposal Scores.
 11. The Owner will develop Cost Proposal Scores as described above.
 12. The Owner will develop Total Scores as described above.

END