
	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

**MASSACHUSETTS BAY TRANSPORTATION  
AUTHORITY**

**CONSTRUCTION MANAGEMENT AT RISK  
PROCEDURES**

**April 2020**


	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

The following Construction Management (CM) at Risk Procedures have been adopted by the Massachusetts Bay Transportation Authority (MBTA) pursuant to Massachusetts General Laws, Chapter 149A, sections 1 thru 13 inclusive, to ensure that MBTA receives the highest quality services for each CM at Risk contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost not less than \$5,000,000.

These CM at Risk Procedures also serve as a basis for MBTA's authorization to proceed from the Inspector General pursuant to section 4 of Chapter 149A.

These CM at Risk procedures by reference here include all Federal Transit Administration Circular 4220.1F Third Party Contracting requirements and regulations. These procedures are an extension of the MBTA Capital Support Procurement Manual.

**Introduction.** MBTA has established a TWO PHASE PROCESS for the selection of a Construction Management at Risk firm, hereinafter referred to as CM or CM firm, with whom it may enter into a contract to provide construction management at risk services for a particular project. Each contract between MBTA and a CM firm shall be secured by a performance and payment bond in the full sum of the guaranteed maximum price by a surety company licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

## PHASE ONE – REQUEST FOR QUALIFICATIONS


**Purpose.** MBTA shall utilize a Request for Qualifications in order to prequalify CM firms capable of providing CM at Risk services for a particular project.

**Prequalification Committee.** Before issuing a Request for Qualifications, hereinafter referred to as a RFQ, MBTA shall establish a Prequalification Committee for the purpose of reviewing and evaluating Qualification Statements received in response to a RFQ. The Prequalification Committee shall be comprised of five (5) voting persons including a Chief in Capital Programs (or designee), a Deputy Chief in Capital Programs (or designee), the MBTA PM, a representative of the Designer, and one (1) other representative of MBTA. The Prequalification Committee may include non-voting representatives from the MBTA.

**Advertisement.** MBTA shall publicly advertise the RFQ in a newspaper of general circulation in the area in which the project is located, in the Central Register, COMMBUYS and on the MBTA’s website at [www.MBTA.com](http://www.MBTA.com). The advertisement shall appear in the Central Register at least 2 weeks prior to the deadline for submitting responses to the RFQ.

**Request for Qualifications.** The RFQ shall include, at a minimum, the following information:


1. Time and date for receipt of submittals, the number of copies of the submittal required; the address of the office to which the submittals are to be delivered including the specific location where submittals shall be received in a timely manner; and the timeframe in which MBTA plans to conduct its review and evaluation of submittals.
2. Description of the project including preliminary concept designs and key factors important to the final selection.
3. Summary of the selection process including a schedule for implementation of the process.
4. Description of the scope of services including specific services that may be expected during design, preconstruction and construction phases of the project.
5. Description of the anticipated project schedule and estimated construction cost for the building project.
6. Identification of the owner, the designer, and the owner’s project manager.
7. List of the evaluation criteria which shall be used in the selection process including minimum experience, requirements for presentations and the schedule for the selection process, as well as any related rating system.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

8. Strict prohibition against any unauthorized communication or contact with MBTA or others involved with the project outside of official preproposal meetings;
9. Description of the format to which the submittal shall conform as well as the size and number of pages to be included in the submittal.
10. Statement indicating that the RFQ process is being used to prequalify CM firms that will later be invited to submit a proposal in response to a request for proposals (RFP) pursuant to these procedures.

**Qualification Statements.** The RFQ shall provide that a Qualification Statement submitted in response to the RFQ shall include, at a minimum, the following:

1. Cover letter.
2. Executive summary detailing the response to each evaluation criteria as well as the key elements and factors that may differentiate the firm from other responders.
3. Completion of an application providing general business information and financial capacity in the form of the Standard Form 330.
4. A list of lawsuits and arbitrations to which the firm is a party relative to construction contracts within the last 3 years, including, if applicable, any convictions or fines for violations of state or federal law.
5. Organization chart identifying key project personnel including subconsultants and their respective roles and responsibilities unless otherwise required by the application form.
6. Audited financial statement for the most recent fiscal year and firms shall be notified that financial information submitted shall remain confidential and shall not be a public record to the fullest extent permissible under the law.
7. Letter from a surety company confirming the CM firm's ability to provide performance and payment bonds in the full amount of the construction estimate.
8. Information on the firm's safety record including its workers' compensation experience modifier or similar data for the prior 3 years.
9. Evidence of the firm's compliance record with Disadvantage Business Enterprise, minority business enterprise and women business enterprise goals and workforce goals, if applicable.
10. Information regarding the firm's experience for prior similar projects including references and contact information from the owners and architects of such projects unless otherwise required by the application form.
11. Information regarding the firm's experience for prior CM at Risk projects including references and contact information from the owners

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>


and architects of such projects unless otherwise required by the application form.

12. Identification of any projects on which the firm was terminated, failed to complete the work, or paid liquidated damages to the owner.
13. Summary of the firm’s project management capabilities including specific examples of prior project management reports or other illustrations of the company’s operating policies and procedures.
14. Certificate of eligibility issued by the DCAMM (Division of Capital Asset Management and Maintenance) pursuant to section 44D of chapter 149, showing a capacity rating sufficient for the project, and an update statement.
15. Any other relevant information that MBTA determines to be desirable.

**Affidavit.** The Statement of Qualifications submitted by a firm in response to the RFQ shall be signed under pains and penalties of perjury. The RFQ shall remind firms that notarizing a document does not take the place of signing under the pains and penalties of perjury.

**Prequalification and Shortlist Process.** Upon receipt of the Qualification Statements submitted in response to the RFQ, a copy of each submittal shall be delivered to each member of the Prequalification Committee. The Prequalification Committee shall select a minimum of three qualified construction management at-risk firms who will be eligible to move on to Phase 2 of the process and receive the Request for Proposals. The decision of the Prequalification Committee shall be final and binding and shall not be subject to appeal except on the grounds of fraud or collusion.

If the Prequalification Committee is not able to identify a minimum of three (3) qualified CM firms, then MBTA shall either re-advertise the project using these same procedures, or may choose to procure the project pursuant to some other lawful procurement method

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

## PHASE TWO – REQUEST FOR PROPOSALS


**Purpose.** MBTA shall utilize a Request for Proposals (RFP) in order to evaluate the prequalified firms that were shortlisted under Phase One and make a final selection of a CM firm to provide CM at Risk services for a particular project.

**Selection Committee.** Before issuing an RFP, MBTA shall establish a Selection Committee for the purpose of reviewing and evaluating proposals submitted by prequalified CM firms in response to a RFP. The Selection Committee shall be comprised of five (5) voting persons including a Chief in Capital Programs (or designee), a Deputy Chief in Capital Programs (or designee), the MBTA PM, a representative of the Designer, and one (1) other representative of MBTA. The Selection Committee may include non-voting representatives from the MBTA.

MBTA may appoint any or all of the same individuals who served on the Prequalification Committee to serve as members of the Selection Committee.

**Request for Proposals.** MBTA shall issue a RFP to each prequalified CM firm which incorporates the elements of the RFQ and shall also include but shall not be limited to:

1. Date, time and place for submission of proposals.
2. Description of the submission requirements including separate price and technical components.
3. Information concerning the project scope including any preliminary design information, geotechnical reports, existing condition surveys or specifications that may be available.
4. Information on the project schedule including design deliverables, site availability and occupancy expectations.
5. Description of the scope of work and deliverables expected from the construction management at risk firm during the preconstruction phase.
6. Disadvantaged business enterprise, minority business enterprise and women business enterprise goals, as applicable and workforce inclusion goals for the building project.
7. Description of the communication guidelines to be followed during the procurement process including any measures to ensure that the selection process will be open and fair.
8. Draft form of contract including general and supplemental conditions including any incentive or damages for delay provisions.
9. Budget for the project.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>


10. Schedule of cost items including MBTA's estimate of the fee, cost of the work and the cost of general conditions.
11. Information on the evaluation criteria, including any related rating system.
12. Timetable and process for establishing a GMP including the status of design.
13. List of the trade contractor classes of work to be required in the trade contractor prequalification plan.

**Price Proposal.** The RFP shall require the submission of a separate price proposal which shall include an estimate of the following;

1. Preconstruction Services
2. General Conditions
3. General Requirements
4. CM Fee for Construction Services
5. In addition, the RFP may require the submission of the Construction Contingency and the Cost of the Work.
6. All estimates shall provide sufficient detail to appropriately back-up the values.

**Technical Proposal.** The RFP shall require the submission of a separate technical proposal which shall include;

1. Detailed project approach, including preconstruction services.
2. Supplemental relevant project references.
3. A listing of project team members with position descriptions and relevant time commitments of said team members during the project.
4. Construction management plan indicating approach to controlling costs, schedule, quality, documents and potential claims.
5. Preliminary definition of trade contractor and subcontractor bid packages and scopes of work.
6. Affidavit of prevailing wage compliance pursuant to sections 26 and 27 of chapter 149.
7. Commitment letter from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the building project in the full sum of the contract at 110 per cent of the budget for the building project.
8. A technical challenges and solutions plan, and
9. Qualifications or exceptions to the terms of the form of contract or supplemental conditions as included in the RFP.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

**Selection Process.** Upon receipt of the Proposals in response to the RFP, a copy of each proposal shall be delivered to each member of the Selection Committee. The Selection Committee shall evaluate all proposals in accordance with the criteria included in the RFP and rank each proposal in order to identify the highest ranked CM firm. The Selection Committee may elect to interview all of the CM firms who submitted proposals. If interviews are conducted, the Selection Committee shall make its final selection based on its evaluation of the proposals and the interviews. The decision of the Selection Committee shall be final and not subject to appeal except on the grounds of fraud or collusion.

Following the selection process, MBTA shall commence non fee negotiations with the highest ranked CM firm. The list and ranking of CM firms shall be certified by MBTA and made available as a public record after such negotiations are complete and a contract has been awarded to a CM firm.


## NEGOTIATIONS

**Order of Negotiations.** MBTA shall commence non-fee negotiations with the highest ranked CM firm.

**Form of Agreement.** MBTA shall initially execute a contract with the CM firm for preconstruction services only. At the appropriate time, the MBTA shall negotiate a guaranteed maximum price, hereinafter referred to as the GMP, with the CM to provide construction services. The contract will then be amended to include the GMP (the “GMP Amendment”). MBTA shall establish a schedule for finalizing the GMP which shall comply with the following:


1. The GMP shall be established based on documents which are developed to a minimum of sixty (60) percent design development.
2. The GMP, shall include a pricing structure which specifically identifies the following costs (a) General Conditions, (b) General Requirements, (c) Cost of the Work, (d) Construction Contingency and (e) Fee. The GMP Amendment shall allow MBTA to monitor and audit all project costs.
3. The GMP may allow for incentives related to various performance objectives so long as the total dollars available to the CM from incentive provisions shall not exceed one percent of the estimated construction cost.



	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

4. The MBTA may choose to authorize the implementation of construction work prior to the execution of a GMP in the form of early construction packages. While the MBTA is not required to negotiate a GMP for an early construction package, the pricing of any early work shall include a pricing structure that is limited to that scope of work. If an early construction package is authorized by MBTA, any class of work included in the scope of work for that early construction package shall be subject to the trade and non-trade subcontractor selection process set forth below.
  
5. In the event that a final GMP cannot be successfully negotiated between MBTA and the CM firm, any existing trade contractor agreements between the CM firm and a trade contractor for work associated with an early construction package may be assigned to MBTA or to another CM firm designated by MBTA without the assent of the trade contractor. MBTA, the CM firm and the trade contractor shall be bound by the terms of the trade contractor agreement
  
6. The GMP shall include a detailed schedule of values including a detailed line item cost breakdown of all costs associated with construction services including any cost for early construction packages which shall be included in the GMP. The GMP shall also include other items on which the GMP is based including but not limited to
  - (a) The plans and specifications;
  - (b) A description of allowances and a statement of their basis;
  - (c) A list of appropriate milestones including the dates for substantial and final completion and any related liquidated damages;
  - (d) A description of assumptions and clarifications, if applicable; and
  - (e) A schedule applicable alternates or unit prices.

Within five (5) business days after the execution of the GMP Amendment, the CM firm shall provide all required performance and payment bonds in the full amount of the GMP.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>


**Failure to Reach Agreement.** In the event that MBTA is unable to negotiate a GMP with the CM firm, MBTA may commence negotiations with one additional ranked CM firm starting with the next highest ranked CM firm. In the event that a GMP contract cannot be successfully negotiated between MBTA and the next highest ranked CM firm, MBTA shall terminate the CM at Risk process and shall instead procure the project in accordance with other lawful procurement methods. Following such termination, MBTA may not use the CM at Risk delivery method for the same building project unless the building project has been materially changed in form or function.

**Return of Bid Bonds.** All bid bonds of CM firms, except those of the prequalified CM firms, shall be returned within 5 days, Saturdays, Sundays and legal holidays excluded, after the prequalification of CM firms has been completed. The bid bonds of the prequalified CM firms shall be returned upon the execution of a contract with a CM firm or within 30 days of a decision of MBTA not to award a contract to a CM firm. If a CM firm fails to execute a contract and provide payment and performance bonds as required by these procedures, his bid bond may become the property of MBTA as liquidated damages, if necessary to cover costs between his proposed GMP and the next highest ranked construction management firm.

## TRADE CONTRACTORS AND SUBCONTRACTORS

MBTA shall establish separate processes relative to the prequalification of trade contractors and subcontractors. For Trade Contractors who are those firms interested in performing any sub-bid class of work listed in section 44F of chapter 149, or other sub-bid class of work identified by MBTA for the project, MBTA shall establish the Trade Contractor Process. However, the Trade Contractor Process is only required if the cost of sub-bid work meets or exceeds the threshold sum identified in subsection (1) of section 44F of chapter 149. For subcontractors, who are those firms interested in performing non-sub-bid work, MBTA shall establish the Subcontractor Process. The Subcontractor Process is only required if the cost of the non-sub-bid work meets or exceeds the same threshold sum described above,

If the cost of either the sub-bid work or the non-sub-bid work falls below the threshold sum identified in subsection (1) of section 44F of chapter 149, the CM firm may award contracts using any selection method, so long as such selection method is approved by MBTA.


	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

**TRADE CONTRACTOR PROCESS.**

The Trade Contractor Process requires that all trade contractors be prequalified in accordance with the Trade Prequalification Process described below. If the CM firm wishes to self-perform any sub-bid work, it may submit its qualifications to bid in accordance with the Trade Prequalification Process, provided that the CM firm customarily performs the sub-bid work for which it submits qualifications; provided, that if the CM firm is selected to perform the sub-bid work, it must provide such work with employees on its own payroll and provided further that the CM firm meets all the requirements of the selection process. If the CM submits its qualifications and/or bid for any sub-bid work, the CM shall not participate as a member of the Trade Contractor Prequalification Committee for such trade for which it wishes to submit its qualifications and/or bid for consideration by the MBTA. If the CM wishes to submit its qualifications and/or bid then the MBTA shall identify another individual to perform the prequalification committee responsibilities of the CM.

**Trade Prequalification Committee.** Before issuing a Request for Qualifications for sub-bid work, hereinafter referred to as a Trade RFQ, MBTA shall establish a Trade Prequalification Committee for the purpose of reviewing and evaluating Qualification Statements received from trade contractors in response to a Trade RFQ. The Trade Prequalification Committee shall be comprised of four (4) persons including the Director of Construction Procurement (or Designee), the MBTA PM, a representative of the designer and a representative of the CM firm.

**Trade Prequalification Process.** A Trade RFQ shall be developed for each category of sub-bid work and such Trade RFQ shall be advertised in a newspaper of general circulation in the area in which the project is located, COMMBUYS, in the Central Register and MBTA’s website at [www.MBTA.com](http://www.MBTA.com). The advertisement shall appear in the Central Register at least 2 weeks prior to the deadline for submitting responses to the Trade RFQ. The CM firm shall provide detailed information describing the scope of work required for each category of sub-bid work which shall serve as the basis of a Trade RFQ. A Trade RFQ shall be used to solicit Qualification Statements from all interested trade contractors. The Trade Prequalification Committee shall review and evaluate such Qualification Statements from trade contractors in order to prequalify all of those trade contractors who are eligible to participate on the building project. The Advertisement shall include but shall not be limited to the following;


	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

1. Date, time and place for submission of Qualification Statements.
2. All relevant information about the project.
3. A description of the Trade Selection Process including the Trade Prequalification Process with a statement that the Trade RFQ is being used to prequalify trade contractors that will then be invited to submit a bid.
4. Evaluation criteria for trade contractor prequalification and selection.
5. A statement that a list of all trade contractors who respond to the Trade RFQ shall be posted and made public.
6. A statement that the process does not include a public opening of Qualification Statements received from trade contractors.
7. A description of the point system identified below which includes all of the information that can be requested from Trade Contractors.

#### **RFQ/Trade Prequalification Ranking.**

The RFQ shall require from Trade Contractors only the information listed in subparagraphs 1-4 below and shall identify the specific point allocation for each category and sub-category of information

1. Management Experience (50 points total with a minimum requirement of 25 points necessary to be prequalified)
  - Ownership – name, title, years with firm of each of the owner(s) of the business.
  - Personnel – names, titles, years with the firm, education, construction experience, and a list of projects completed by each person identified.
  - Similar Project Experience – detailed information on a maximum of five similar projects including the project name and general description, description of the scope, original trade contract sum, final trade contract sum with a detailed explanation of any differences, and the original completion date and final completion date with a detailed explanation of any differences.
  - Terminations – a list of any projects on which the trade contractor was terminated or failed to complete the work. The RFQ should inform Trade Contractors that leaving this information blank will not be interpreted as having no terminations but shall be deemed non-responsive for this item.
  - Lawsuits – a list of commercial lawsuits in which the trade contractor is a defendant or defendant-in-counterclaim within


	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

the last three years. Such list does not have to include lawsuits involving primarily personal injury or workers' compensation claims, or where the sole cause of action involves the trade contractor's exercise of its rights for direct payment under section 39F of chapter 30. The RFQ should inform Trade Contractors that leaving this information blank will not be interpreted as having no such lawsuits but shall be deemed non-responsive for this item.

- Safety Record – a 3 year history of the trade contractor's workers' compensation experience modifier.
2. References (30 points with a minimum requirement of 15 points necessary to be prequalified)
    - Clients – a list of references for all projects listed above including the project name, client's name, address, telephone number, fax number, if applicable, email address and contact person. The trade contractor should ensure that such contact information is current and usable.
    - Credit – a list of a minimum of 5 credit references, including telephone and email of contact person from key suppliers, vendors and banks. The trade contractor should ensure that such contact information is current and usable.
    - Public Project Record – a list of all completed public building construction projects as defined in section 44A of chapter 149 during past 3 years with client's name, address, telephone and fax number and contact person.
  3. Capacity to Complete Projects (20 points with a minimum requirement of 10 points necessary to be prequalified)
    - Annual revenue for prior three (3) fiscal years. There shall be no requirement for submission of financial statements.
    - Revenue under contract for the next 3 fiscal years. The RFQ shall inform Trade Contractors that this item is requesting actual revenues under contract not potential or expected future revenues based on prior years.

Additional Mandatory Requirements. Although there are no points assigned for the following mandatory requirements, these requirements are mandatory and a trade contractor cannot be prequalified if such requirements are not met.

1) Commitment Letter- Each Qualification Statement shall include a commitment letter stating the trade contractor's ability to secure payment and performance bonds at 110 per cent of the estimated trade contract value from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

2) A Qualification Statement submitted by a trade contractor in response to a Trade RFQ shall be signed under pains and penalties of perjury. The RFQ shall inform Trade Contractors that notarizing a document is not the same as signing under the pains and penalties of perjury and therefore does not satisfy this mandatory requirement.


3) A copy of the Certificate of Eligibility issued by the Division of Capital Asset Management along a completed Update Statement.

**Prequalification and Shortlist Process.** Qualification Statements submitted by trade contractors shall be reviewed and scored by the Trade Prequalification Committee. MBTA may, consistent with established D/M/WBE goals, provide an additional 5 points to the total score of each DBE, MBE or WBE trade contractor who is certified by Supplier Diversity Office (SDO) and participates in the Trade Prequalification Process. All trade contractors who achieve a score of 70 points or greater shall be prequalified. MBTA shall notify the prequalified trade contractors of their approval to submit a bid on the project as well as the schedule and timing for the submission of the Request for Bids (RFB). The decision of the Trade Prequalification Committee shall be final and binding and not subject to appeal except on the grounds of fraud or collusion.

An individual trade contractor’s score shall be made available to the trade contractor upon request, but shall not be a public record as defined in section 7 of chapter 4 and shall not be open to public inspection, to the fullest extent possible under the law. In addition, financial information provided from a trade contractor shall remain confidential and shall not become a public record as defined in section 7 of chapter 4 and shall not be open to public inspection, to the fullest extent possible under the law.

**Trade Bidding Process.** Prequalified trade contractors shall be invited to submit a bid on the proposed building project pursuant to a Request for Bids for a particular trade. The Request for Bids shall include, but not be limited to the following information:


1. Date, time and place for submission of bids.
2. Fully detailed drawings and specifications for a particular trade in order to provide for full competition of each item of material to be furnished under the trade contract in accordance with M.G.L. Ch.30 and Ch.149.
3. Description of the trade contractor’s scope of work, including alternates and allowances, if any within that scope of work.
4. Schedule indicating the planned sequence and duration of the trade contractor's work.
5. List of all prequalified trade contractors for a particular scope of work.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

6. Bid form that shall require, without limitation, a listing of price, addenda, alternates and allowances, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on its own payroll, except for work customarily performed by sub-trade subcontractors within the trade; and the names of all sub-trade contractors to be used if awarded the trade contract with the contract sum for each sub-trade contractor.
7. Affidavit that all sub-trade contractors named on the bid form have been prequalified by the trade contractor using criteria similar to the criteria used in the Trade Prequalification Process.
8. Affidavit of tax compliance.
9. Affidavit of prevailing wage compliance pursuant to sections 26 and 27 of chapter 149.
10. Non-collusion affidavit.
11. Requirement for the trade contractor to post a five (5) per cent bid bond from a surety company licensed to do business in the commonwealth and whose name appears on U.S. Treasury Department Circular 570; but, the bid bond shall be returned to the bidder if the bidder is not selected as the trade contractor.
12. Budget for the entire project, as well as the budget for the trade contractor scope of work as provided in the GMP, if available, or as provided in the most recent budget for the project.
13. Trade contractor agreement form including all exhibits.

Trade contractors submitting bids in response to the Request for Bids shall do so in accordance with the requirements contained in the Request for Bids. Any bid which does not include the bid bond or affidavits required or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the Request for Bids must be rejected.

Bids shall be opened publicly by MBTA and the contract shall be awarded to the lowest prequalified bidder whose bid was not rejected. However, if MBTA receives fewer than 3 responsive bids for any trade and the lowest bid exceeds the estimated cost of the work for which the bids are requested, the CM firm must attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the CM firm must terminate negotiations with the lowest prequalified bidder and initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the CM firm is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the CM, on behalf of and with the consent of MBTA, shall solicit additional bids, utilizing the Subcontractor Selection Process established by MBTA for those subcontractors interested in providing non sub-bid work.

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

Trade contractors selected by the CM firm shall return an executed trade contract including the required performance and payment bonds and insurance certificate to the CM firm within 10 business days of receipt of the trade contract from the CM firm. The trade contract shall be the same trade contract attached to this procedure. The CM firm shall execute a trade contract with each trade contractor selected via the Trade Bidding Process. The Trade Contract, which is attached, shall be secured by performance and payment bonds in the full amount of the trade contract amount from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570; provided that the bonds are subject to subsection (3) of section 44F of chapter 149.


**Subcontractor Process.** MBTA shall establish a Subcontractor Process for subcontractors, who are those firms interested in performing non-sub bid work, but for which the scope of work on which they are bidding exceeds the same threshold sum previously described for sub-bid work.

The CM firm shall provide MBTA with the qualifications that a subcontractor must have in order to perform the work successfully as well as a list of three (3) subcontractors which the CM firm believes meets such qualifications. MBTA may choose to eliminate subcontractors from the list without the approval of the CM firm and may choose to add subcontractors to the list; so long as such additional firms are acceptable to the CM firm. Once all of the approved subcontractors are identified and approved by MBTA, the CM firm shall prepare a list of approved subcontractors for each specific scope of subcontractor work. The CM firm shall develop detailed bidding information and provide such information to each subcontractor on the list of approved subcontractors and invite each approved subcontractor to submit a bid for the work. The CM firm shall present a list of the bids submitted by approved subcontractors to MBTA. The CM firm shall indicate the bidders who are selected to be awarded a subcontract. The CM firm shall provide a written explanation as to the reason for the award of a subcontract.

As indicated previously, if the cost of either the sub-bid work or the non-sub-bid work falls below the threshold sum identified in subsection (1) of section 44F of chapter 149, the CM firm may award contracts using any selection method, so long as such selection method is approved by MBTA.

**Subcontractor Agreements.** The CM firm may choose to utilize a Trade Contract or a different form of subcontract with each subcontractor, not defined as a trade contractor, who shall provide services on the building project.



	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

**TRADE CONTRACT.** The CM firm shall execute the following TRADE CONTRACTOR AGREEMENT with each trade contractor providing services on the project.


THIS AGREEMENT MADE THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_ a partnership consisting of \_\_\_\_\_ an individual doing business as \_\_\_\_\_ hereinafter called the “Construction Management At Risk Firm” and \_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_ an individual doing business as \_\_\_\_\_ hereinafter called the “Trade Contractor”.

WITNESSETH that the Construction Management at Risk Firm and the Trade Contractor for the considerations hereafter named, agree as follows:

1. The Trade Contractor agrees to furnish all labor and materials required for the completion of all work specified in Section No(s). \_\_\_\_ of the specifications for \_\_\_\_\_ (name of Sub-trade(s)) and the plans referred to therein and addenda No. \_\_\_\_ for the \_\_\_\_\_ (project) all as prepared by \_\_\_\_\_ designer. All work shall be in accordance with the contract documents listed on Exhibit A; and the detailed Scope of Work listed on Exhibit B. The Construction Management at Risk Firm agrees to pay the Trade Contractor as full payment for all the work in Exhibit B the sum of \$ \_\_\_\_\_. This price includes the following alternates: Nos. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

A. The Trade Contractor agrees to be bound to the Construction Management at Risk Firm by the terms of the hereinbefore described plans; specifications (including all general conditions stated therein) and addenda No. \_\_\_\_\_, and \_\_\_\_\_, and \_\_\_\_\_, and to assume to the Construction Management at Risk Firm all the obligations and responsibilities that the Construction Management at Risk Firm by those documents assumes to the \_\_\_\_\_ (Public Agency) hereinafter called the “Public Agency,” except to the extent that provisions contained therein are by their terms or by law applicable only to the Construction Management at Risk Firm.

B. The Construction Management at Risk Firm agrees to be bound to the Trade Contractor by the terms of the hereinbefore described documents and to assume to the Trade Contractor all the obligations and responsibilities that the Public Agency by the terms of the hereinbefore described documents assumes to the Construction

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

Management at Risk Firm, except to the extent that provisions contained therein are by their terms or by law applicable only to the Public Agency.


2. The Construction Management at Risk Firm agrees to begin, prosecute and complete the entire work specified by the Public Agency in an orderly manner so that the Trade Contractor will be able to begin, prosecute, and complete the work described in this Trade Contract; and, in consideration thereof, upon notice from the Construction Management at Risk Firm, either oral or in writing, the Trade Contractor agrees to begin, prosecute and complete the work described in this Trade Contract in an orderly manner and in accordance with the Project Schedule attached as Exhibit C as it may be reasonably modified from time to time by agreement of the Construction Management at Risk Firm and the Trade Contractor.

3. The Trade Contractor agrees to furnish to the Construction Management at Risk Firm, on execution of this Trade Contractor Agreement and prior to commencing the work, evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Public Agency by the Construction Management at Risk Firm.

4. The Construction Management at Risk Firm agrees that no claim for services rendered or materials furnished by the Construction Management at Risk Firm to the Trade Contractor shall be valid unless written notice thereof is given by the Construction Management at Risk Firm to the Trade Contractor during the first ten (10) days of the calendar month following that in which the claim originated.

5. This Trade Contractor Agreement is contingent upon the execution of an amendment to the contract between the Construction Management at Risk Firm and the Public Agency for the work of the Trade Contractor.

6. If the Trade Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to sub-trade subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Construction Management at Risk Firm, or otherwise be guilty of a substantial violation of any provision of the contract, then the Construction Management at Risk Firm may, without prejudice to any other right or remedy and after giving the Trade Contractor and his surety seven days' written notice, terminate the employment of the Trade Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Trade Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid

	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

balance of the trade contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Trade Contractor. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the Construction Management at Risk Firm. The Construction Management at Risk Firm and Trade Contractor shall have the right to seek damages for breach of this Trade Contract without terminating this Trade Contract or ceasing performance hereunder.

7. The following exhibits are incorporated into their subcontract:

- Exhibit A: Contract Documents
- Exhibit B: Detailed Scope of Work
- Exhibit C: Project Schedule

8. IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year first above-written.

SEAL

ATTEST

\_\_\_\_\_

\_\_\_\_\_

Trade Contractor


SEAL

ATTEST

\_\_\_\_\_

\_\_\_\_\_

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	<i>Massachusetts Bay Transportation Authority</i>
	PROCUREMENT POLICIES & PROCEDURES
	<b>Construction Management at Risk</b>

**Other Provisions.** Sections 26, 27, 27A, 27B, 27C, 27D, 29, 29C, and 34A of chapter 149, and sections 39F, 39J, 39K, 39N, 39O, 39P, and 39R of chapter 30 shall apply to all building projects using the construction management at risk delivery method as provided in this chapter.