
REQUEST FOR PROPOSALS

Construction Manager / General Contractor

For the Project Titled:
New Data Center Facilities

Nashville and Smyrna, Tennessee
SBC NUMBER: 529/031-01-2007

STATE OF TENNESSEE
Department of Finance and Administration



10 October 2007



STATE OF TENNESSEE
Department of Finance and Administration

REQUEST FOR PROPOSALS
for
Construction Manager / General Contractor
For the Project Titled:
New Data Center Facilities
Nashville and Smyrna, Tennessee
SBC NUMBER: 529/031-01-2007

CONTENTS

FORMS

01 13 00 CM at Risk RFP 9 Pages

SECTIONS

- 1 INTRODUCTION
- 2 RFP SCHEDULE OF EVENTS
- 3 PROPOSAL REQUIREMENTS
- 4 PROPOSAL EVALUATION & CONTRACT AWARD

02 00 02 RFP General Requirements 4 Pages

02 00 03 Proposal Cover Attachment 1 Page

02 00 04 Proposal Transmittal/Statement of Certifications & Assurances 1 Page

02 00 05 Related Project History Form 1 Page

02 00 06 Client Reference Form 2 Pages

03 13 00 Technical Proposal Forms 7 Pages

04 13 00 Cost Proposal & Scoring Guide 3 Pages

05 00 01 Proposal Score Summary Matrix 1 Page

06 13 01 Pro Forma Master Contract 7 Pages

06 13 02 Construction Services Agreement 5 Pages

07 00 01 Contract Bond Form 2 Pages

07 00 02 Wage Determination Form 1 Page

08 13 01 Scope of Services and Deliverables 3 Pages

01 13 00

1 INTRODUCTION

1.1 Statement of Purpose

The State of Tennessee, Department of Finance and Administration, hereinafter referred to as the Owner, has issued this Request for Proposals (RFP) to define the Owner's minimum service requirements; solicit proposals; detail proposal requirements; and, outline the Owner's process for evaluating proposals and selecting the Construction Manager / General Contractor (CM/GC).

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 as contractors and sub-contractors.

1.2 Project Description

During 2006 the State of Tennessee Department of Finance and Administration engaged IBM to develop a Statement of Requirements for two new comprehensive Tier III data center facilities. These facilities will be located on separate sites approximately 25 miles apart on State-owned property, one north of Nashville and the other in Smyrna, Tennessee. Each building will be approximately 35,000 square feet.

Tier III buildings, as defined by the Uptime Institute, were the basis for the IBM model. Redundant systems, dual electric and communications feeds to the building, along with reduction in single points of failure in power distribution and cooling systems, are features of Tier III design.

The need for two buildings was identified in a January 2006 Business Continuity and Disaster Recovery report for State Government operations. The existing State Data Center in Nashville is not considered part of the proposed plan due to power limitations and building structural concerns.

The anticipated gross area of each new building will accommodate limited office space, approximately 15,000 SF of raised floor data center, and required support areas. The raised floor area and critical electrical and cooling support systems shall be sized to accommodate future IT facility requirements.

The structure and materials of the new buildings shall be inherently durable, easily maintainable, provide antiterrorist shielding at pertinent locations on the site, provide reasonable storm wind load and debris shielding throughout (tornados etc.), have efficient thermal qualities, and provide an appropriate acoustical barrier relative to the nearby flight zones. Economic and appropriate construction systems for this project type are expected.

1.2.1 Anti-terrorism protection requirements

The entire complex shall meet pertinent anti-terrorism protection standards (reference DoD Anti-terrorism/Force Protection Minimum Standards For Buildings available online, currently UFC 4-010-01, includes changes through 22 January 2007. UFC is Unified Facilities Criteria).

1.2.2 Design shall include but not be limited to: prohibition of vehicular traffic within twenty-five (25) meters of any occupied facility, sufficient control of access with the use of active barriers to service the facility which includes mechanical spaces, dumpster pads, etc, that may be located within the required distance.

1.3 Current Project Status

A designer for the project should be selected by State Building Commission action on November, 8 2007.

1.4 Expectations and Objectives

1.4.1 To be considered for selection, the Proposer is expected to demonstrate specific experience in the construction of mission critical facilities, including data centers. The Proposer shall feature this information in their Proposal responses for Qualifications and Experience.

1.4.2 The Proposer shall have a working understanding of the Uptime Institute Tier III performance standards for data center facilities, as well as all applicable codes required by the State of Tennessee as listed in the Owner's Designers' Manual. (The Designers' Manual is accessible online, located at <http://www.state.tn.us/finance/rpa/designermanual.html>).

1.4.3 The Proposer will be expected to have significant experience providing successful pre-construction services with particular emphasis on value analysis and accurate cost estimating, project scheduling, and to assist the Owner in identifying and evaluating the Project's design, details, systems and equipment.

1.5 Schedule

The CM/GC pre-construction services will start when the Master Contract is fully executed. The following schedule is based on issuance of design document packages. The construction period is anticipated to be sixteen months.

Once the CM/GC is selected, input may be solicited concerning a fast-track approach to the construction process, and fast-track packages determined.

1.5.1 The tentative schedule for the Project is:

SD Complete	61 Calendar Days
DD Complete	91 Calendar Days
CD / Fire Marshal Code Review Complete	91 Calendar Days
Bid Trade Contracts	70 Calendar Days
Construction	540 Calendar Days

1.5.2 The tentative fast-track packages are:

Site Earthwork, Utilities Infrastructure, Grading	Package 1
Building Foundation	Package 2
Building Construction and Building Systems	Package 3
FF&E	Package 4
Paving and Landscaping	Package 5

1.6 Project Construction Budget

GMP Target.....	\$ 34,000,000
Owner Contingency.....	\$ <u>1,700,000</u>
MACC	\$ 35,700,000

The "MACC" is the Maximum Allowable Construction Cost approved by the Tennessee State Building Commission.

1.7 Exhibits

The following exhibits are posted on the Owner's webpage. The information is provided for reference. Exhibits include:

- Site location information;
- Boundary survey;
- Geotechnical information on both sites;
- Topographic data from available maps;
- Space needs analysis and data;
- Diagrammatic space layout; and,
- Systems requirements Report.

1.9 RFP Communications

1.9.1 The Owner has assigned the following RFP identification number for referencing in all communications regarding the RFP: **SBC No. 529/031-01-2007**

1.9.2 Unauthorized contact regarding this RFP with employees or officials of the State of Tennessee other than the RFP Coordinator detailed below may result in disqualification from this procurement process.

- 1.9.3 Interested Parties must direct all communications regarding this RFP to the following RFP Coordinator, who is the State of Tennessee's only official point of contact for this RFP.

Lorraine Walla, RFP Coordinator
Department of Finance and Administration
William R. Snodgrass Tennessee Tower, Suite 2200
312 Eighth Avenue North
Nashville, Tennessee 37243
Telephone: 615-741-6489
FAX: 615-741-6308
lorraine.walla@state.tn.us

1.10 Licensure

Proposers shall be familiar with the Contractors Licensing Act of 1994, as currently amended (codified in Tennessee Code Annotated Sections 62-6-101, et seq.). A contract will not be awarded to a Proposer whose proposal is in conflict with State of Tennessee licensing law.

- 1.10.1 Proposer shall have an "Unlimited" minimum License Limit amount, and a minimum License Classification of "Building Construction - Commercial" (BC-B). Contractor must maintain licensure during the period of this Contract, and shall notify the Owner of any changes in licensure.
- 1.10.2 Proposer shall complete Proposal Package Cover Attachment which is to be affixed to the outside of the Proposal package.

1.11 Insurance

The Owner will require the apparent successful Proposer to provide proof of insurance coverage as required by the Owner's Designers' Manual (Conditions of the Contract) before entering into a contract. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the contract negotiations. Any insurance required by the Owner shall be in form and substance acceptable to the Owner.

At the Option of the CM/GC the trade 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 named insured under either option. This modifies the insurance requirements of the Owner's Designers' Manual and the Project Manual in Supplementary Conditions Article 11.1.2.1.d.

1.12 Notice of Intent to Propose

Each potential Proposer shall submit a Notice of Intent to Propose to the RFP Coordinator by the deadline shown in the RFP Schedule of Events. The notice should include:

- Proposer's name
- Name and title of a contact person
- Address, telephone number, and facsimile number of the contact person

NOTICE: A Notice of Intent to Propose creates no obligation and is not a prerequisite for making a proposal, however, it is necessary to ensure receipt of RFP amendments and other communications regarding the RFP. (refer to RFP Communications above).

1.13 Proposal Deadline

The proposal submission deadline time and date is listed in the RFP, Schedule of Events. Proposals shall respond to the written RFP instructions and any RFP exhibits, attachments, and amendments. Late proposals will not be accepted, and a Proposer's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.

1.14 Pre-Proposal Conference

- 1.14.1. A Pre-Proposal conference for all potential Proposers, scheduled as shown in the RFP Schedule of Events, will be held at

William R. Snodgrass Tennessee Tower,
Davidson Room, 3rd Floor
312 8th Avenue North,
Nashville, Tennessee 37243.

A maximum of three representatives for a Proposer are permitted to attend. Allow sufficient time to locate vehicle parking at a commercial parking lot in the downtown Nashville area, and to obtain Visitor's Badges at the 7th Avenue entrance Security Station on the east side of the building. All visitors must use this entrance, and each must show proper identification such as a valid Driver's License.

- 1.14.2 The purpose of the conference is to discuss the types of work expected with the prospective Proposers and to allow them to ask questions concerning the RFP.

- 1.14.3 Verbal responses given at the Pre-Proposal Conference are considered tentative and non-binding on the Owner. In order to ensure accurate and consistent information, the Owner will, in accordance with the RFP Schedule of Events, mail official published responses to all written questions to each potential Proposer who submits a *Letter of Intent to Propose*. Only these written responses from the Owner will be official.

End of Section

2 RFP SCHEDULE OF EVENTS

The following Schedule of Events represents the Owner's best estimate of the schedule that will be followed. Unless otherwise specified, the time of day for the following events will be between 8:00 a.m. and 4:30 p.m., Central Time.

RFP SCHEDULE OF EVENTS		
<p>NOTICE: The Owner reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. The Owner will communicate any adjustment to the Schedule of Events to the potential Proposers from whom the Owner has received a Notice of Intent to Propose.</p>		
EVENT	TIME	DATE (all dates are State business days)
1. Owner Issues RFP		Wednesday 10-Oct-2007
2. Disability Accommodation Request Deadline		Monday 15-Oct-2007
3. Pre-proposal Conference	1:30 p.m.	Monday 22-Oct-2007
4. Notice of Intent to Propose Deadline		Friday 26-Oct-2007
5. Written Comments Deadline		Friday 2-Nov-2007
6. Owner Responds to Written Comments		Friday 9-Nov-2007
7. Proposal Deadline	2:00 p.m.	Monday 26-Nov-2007
8. Tentative Dates for Proposer Interviews		Thursday and Friday 20-Dec-2007, 21-Dec-2007
9. State Building Commission Review and Approval of Proposer for Contract		Thursday 10-Jan-2008
10. Owner Issues Evaluation Notice and Opens RFP Files for Public Inspection		Friday 11-Jan-2008
11. End of allowed seven work-day Protest Period		Friday 18-Jan-2008
12. Contract Signing and Contract Bond Deadline		Friday 25-Jan-2008
13. Conclusion of Owner Contract Signature Process		Friday 7-Mar-2008
14. Anticipated Contract Start Date		Friday 14-Mar-2008

3 PROPOSAL REQUIREMENTS

Each Proposer shall submit a proposal in response to this RFP with the most favorable terms that the Proposer can offer. There will be no best and final offer procedure.

3.1 Proposal Form and Delivery

3.1.1 Each response to this RFP shall consist of a Technical Proposal and a Cost Proposal.

3.1.2 Each Proposer shall submit one (1) original and six (6) copies of the Technical Proposal to the Owner in a sealed package that is clearly marked:

“Technical Proposal in Response to RFP- 529/031-01-2007 -- Do Not Open”

3.1.3 Each Proposer shall submit one (1) Cost Proposal to the Owner in a separate, sealed package that is clearly marked:

“Cost Proposal in Response to RFP- 529/031-01-2007 -- Do Not Open”

3.1.4 If a Proposer encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Proposer shall clearly mark the outermost package:

“Contains Separately Sealed Technical and Cost Proposals for RFP- 529/031-01-2007”

3.1.5 Proposals shall include the completed Proposal Cover Attachment which is to be affixed to the outside of the Proposal package.

3.1.6 The Owner must receive all proposals in response to this RFP, at the following address, no later than the Proposal Deadline time and date detailed in the RFP Schedule of Events.

William R. Snodgrass Tennessee Tower, Suite 2200
312 Eighth Avenue North
Nashville, Tennessee 37243

3.1.7 A Proposer shall not deliver a proposal orally or by any means of electronic transmission.

3.2 Technical Proposal

3.2.1 The Technical Proposal and Evaluation Guide details specific requirements for making a Technical Proposal in response to this RFP. This guide includes mandatory and general requirements as well as technical queries requiring a written response.

NOTICE: No pricing information (except what is specifically requested) shall be included in the Technical Proposal. Inclusion of Cost Proposal amounts in the Technical Proposal will make the proposal non-responsive and the Owner will reject it.

3.2.2 Each Proposer shall use the Technical Proposal and Evaluation Guide to organize, reference, and draft the Technical Proposal. Use the Technical Proposal and Evaluation Guide as a table of contents covering the Technical Proposal (adding proposal page numbers as appropriate).

3.2.3 Proposers shall use the form provided as Related Project History Form to submit example projects for qualifications and experience information.

3.2.4 Each proposal shall be economically prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English and must be written on standard 8 ½” x 11” paper (although foldouts containing charts, spreadsheets, and oversize exhibits are permissible). All proposal pages should be numbered.

3.2.4.1 All proposal pages should be numbered and printed double sided. The complete Proposal package should not exceed fifty (50) pages (25 sheets), excluding dividers and résumés.

3.2.5 All information included in a Technical Proposal shall be relevant to a specific requirement detailed in the Technical Proposal and Evaluation Guide. All information shall be incorporated into a response to a specific requirement and clearly referenced. Any information not conforming to these criteria will be deemed extraneous and will in no way contribute to the evaluation process.

3.2.6 The Owner may determine a proposal to be non-responsive and reject it if the Proposer fails to organize and properly reference the Technical Proposal as required by this RFP and the Technical Proposal and Evaluation Guide.

01 13 00

3.2.7 The Owner may determine a proposal to be non-responsive and reject it if the Technical Proposal document fails to appropriately address/meet all of the requirements detailed in the Technical Proposal and Evaluation Guide

3.3 Cost Proposal

3.3.1 The Cost Proposal shall be submitted to the Owner in a sealed package separate from the Technical proposal. If a Proposer fails to submit a Cost Proposal as required, the Owner may determine the submitted Proposal as non-responsive and reject it.

3.3.2 Each Cost Proposal shall be recorded on an exact duplicate of the Cost Proposal and Evaluation Guide.

3.3.3 Each Proposer shall ONLY record the proposed cost exactly as required by the Cost Proposal and Evaluation Guide and shall NOT record any other rates, amounts, or information.

3.3.4 The proposed cost shall incorporate all costs for services under the contract for the total contract period.

3.3.5 The Proposer shall sign and date the Cost Proposal.

4 PROPOSAL EVALUATION & CONTRACT AWARD

4.1 Evaluation Categories and Maximum Points

The Owner will consider qualifications and experience, technical approach, and cost in the evaluation of proposals. The maximum points that may be awarded for each of these categories are detailed below.

4.1.1 Each category is weighted as follows, and one hundred (100) points is the maximum total number of points which may be awarded to a proposal:

Technical Proposal	70 (maximum points possible)
- Mandatory Qualifications	<i>(pass/fail)</i>
- Qualifications & Experience	<i>(40 points possible)</i>
- Technical Approach	<i>(30 points possible)</i>

Cost Proposal	30 (maximum points possible)
----------------------	-------------------------------------

4.1.2 The Contractor Selection will be a two-part process: **Technical Proposal** and **Cost Proposal**.

Part One: There will be Qualification of all Technical Proposals. The written Technical Proposal must attain a combined score of fifty-three (**53**) or above in order for a Proposal to be qualified. The Technical Proposal receiving the highest score will be allocated the maximum score of seventy (**70**) points. The Technical Proposal Score will be used in the following formula to determine the points a Proposer will receive for the Technical Proposal.

$$\frac{\text{Technical Score for Proposal Being Evaluated}}{\text{Highest Scoring Technical Proposal}} \times \text{Maximum Cost Points} = \text{Technical Proposal Points}$$

Part Two: Cost Proposals will only be considered for those Technical Proposals that have achieved qualified status in Part One. The Cost Proposal containing the lowest cost will receive the maximum score of thirty (**30**) points. The proposed cost will be used in the following formula to determine the points a Proposer will receive for the Cost Proposal:

$$\frac{\text{Lowest Cost of Qualified Cost Proposals}}{\text{Cost for Proposal Being Evaluated}} \times \text{Maximum Cost Points} = \text{Cost Proposal Points}$$

The apparent successful Proposer will be identified by the Qualified Proposal having the highest total combined score from Part One and Part Two.

End of Section

RFP GENERAL REQUIREMENTS

NONDISCRIMINATION

1.1 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 of Tennessee's contracted programs or activities on the grounds of disability, age, race, color, religion, sex, national origin, or any 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.

1.2 The Owner has designated the following 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

Buddy Lea, Acting Title VI Coordinator
Department of Finance and Administration
William R. Snodgrass Tennessee Tower, Suite 1200
312 Eighth Avenue North
Nashville, Tennessee 37243
Telephone: (615) 741-6049

ASSISTANCE TO PROPOSERS WITH A DISABILITY

2.1 A Proposer with a disability may receive accommodation regarding the means of communicating this RFP and participating in this RFP process. A Proposer with a disability should contact the RFP Coordinator to request reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Schedule of Events.

RFP COMMUNICATIONS

3.1 Any verbal communications shall be considered unofficial and non-binding with regard to this RFP.

3.2 Each Proposer shall assume the risk of the method of dispatching any communication or proposal to the Owner. The Owner assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or electronic "postmarking" of a communication or proposal to the Owner by a deadline date shall not substitute for actual receipt of a communication or proposal by the Owner.

3.3. The RFP Coordinator must receive all written comments, including questions and requests for clarification, no later than the Written Comments Deadline detailed in the RFP Schedule of Events.

3.4 The Owner reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests for clarification. The Owner's official responses and other official communications pursuant to this RFP shall constitute an amendment of this RFP.

3.5 The Owner will convey all official responses and communications pursuant to this RFP to the potential Proposers from whom the Owner has received a Notice of Intent to Propose.

3.6 Only the Owner's official, written responses and communications shall be considered binding with regard to this RFP.

3.7 The Owner reserves the right to determine, at its sole discretion, the method of conveying official responses and communications pursuant to this RFP (e.g., written, facsimile, electronic mail, or Internet posting).

3.8 Any data or factual information provided by the Owner, in this RFP or an official response or communication, shall be deemed for informational purposes only, and if a Proposer relies on such data or factual information, the Proposer shall either: (1) independently verify the information; or, (2) obtain the Owner's written consent to rely thereon.

GENERAL RFP CONDITIONS AND CONTRACTING INFORMATION

4.1 Waiver of Objections. Each Proposer shall carefully review this RFP and all Attachments, including but not limited to the *pro forma* contract, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Comments concerning RFP objections must be made in writing and received by the Owner no later than the Written Comments Deadline detailed in the RFP Schedule of Events. This will allow issuance of any necessary amendments and help prevent the opening of defective proposals upon which contract award could not be made. Protests based on any objection shall be considered waived and invalid if these comments/objections have not been brought to the attention of the Owner, in writing, by the Written Comments Deadline.

4.2 RFP Amendment and Cancellation. The Owner reserves the unilateral right to amend this RFP in writing at any time. If an RFP amendment is issued, the Owner will convey such amendment to the potential Proposers who submitted a Notice of Intent to Propose. Each proposal must respond to the final written RFP and any exhibits, Attachments, and amendments. The State of Tennessee reserves the right, at its sole discretion, to cancel and reissue this RFP or to cancel this RFP in its entirety in accordance with applicable laws and regulations.

4.3 Proposal Prohibitions and Right of Rejection.

4.3.1 The State of Tennessee reserves the right, at its sole discretion, to reject any and all proposals in accordance with applicable laws and regulations.

4.3.2 Each proposal must comply with all of the terms of this RFP and all applicable State laws and regulations. The Owner may reject any proposal that does not comply with all of the terms, conditions, and performance requirements of this RFP. The Owner may consider any proposal that does not meet the requirements of this RFP to be non-responsive, and the Owner may reject such a proposal.

4.3.3 A proposal of alternate services (i.e., a proposal that offers services different from those requested by this RFP) shall be considered non-responsive and rejected.

4.3.4 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 the proposal may be rejected.

4.3.5 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.

4.3.6 A Proposer shall not submit more than one proposal. Submitting more than one proposal shall result in the disqualification of the Proposer.

4.3.7 A Proposer shall not submit multiple proposals in different forms. This prohibited action shall be defined as a Proposer submitting one proposal as a prime contractor 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 a prime contractor. Submitting multiple proposals in different forms may result in the disqualification of all Proposers knowingly involved.

4.3.8 The Owner will reject a proposal if the Cost Proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to such prices with any other Proposer. Regardless of the time of detection, the Owner will consider any of the foregoing prohibited actions to be grounds for proposal rejection or contract termination.

4.3.9 The Owner will not contract with or consider a proposal from:

4.3.9.1 an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;

4.3.9.2 a company, corporation, or any other contracting entity in which an ownership of two percent (2%) 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 2% of the total outstanding amount of the stocks or bonds of the issuing entity);

4.3.9.3 a company, corporation, or any 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 any person; or,

4.3.9.4 any 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.

4.3.9.5 For the purposes of applying the requirements of RFP subsection 4.3.9, et. seq., 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.

4.4 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 any minor variance, the Owner may hold any Proposer to strict compliance with this RFP.

4.5 Incorrect Proposal Information. If the Owner determines that a Proposer has provided, for consideration in this RFP process or subsequent contract negotiations, incorrect information that the Proposer knew or should have known was materially incorrect, that proposal shall be determined non-responsive and shall be rejected.

4.6 Proposal of Additional Services

4.6.1 If a proposal offers services in addition to those required by and described in this RFP, the additional services may be added to the contract before contract signing at the sole discretion of the Owner. Notwithstanding the foregoing, a Proposer shall not propose any additional cost amount(s) or rate(s) for additional services.

4.6.2 The Proposer's Cost Proposal shall record only the proposed cost as required in this RFP and shall not record any other rates, amounts, or information.

4.6.3 If a Proposer fails to submit a Cost Proposal as required, the Owner will determine the proposal to be non-responsive and shall reject the proposal.

4.7 Assignment and Subcontracting

4.7.1 The Proposer awarded a contract pursuant to this RFP shall not subcontract, transfer, or assign any portion of the contract without the Owner's prior, written approval.

4.7.2 A subcontractor may only be substituted for a proposed subcontractor at the discretion of the Owner and with the Owner's prior, written approval.

4.7.3 At its sole discretion, the Owner reserves the right to refuse approval of any subcontract, transfer, or assignment.

4.7.4 Notwithstanding Owner approval of each subcontractor, the Proposer, if awarded a contract pursuant to this RFP, shall be the prime contractor and shall be responsible for all work performed.

4.8 Joint Ventures If the Owner allows consideration of joint venture Proposals, and if a Proposer intends to submit a Proposal as a joint venture, then the following requirements shall apply:

4.8.1 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.

4.8.2 Each joint venture participant shall meet the licensure requirements stated in the RFP.

4.8.3 Each joint venture participant shall meet the insurance requirements stated in the RFP.

4.8.4 Each joint venture participant shall individually provide all documentation required for review of financial responsibility and stability. The Owner will not recognize nor accept as a singular qualification, any combination of financial assets and resources from separate organizations or business entities submitting a Proposal in response to this RFP.

4.8.5 A sub-contractor to a Proposer is not a joint venture participant.

4.9 Right to Refuse Personnel At its sole discretion, the Owner reserves the right to refuse any personnel, of the prime contractor or a subcontractor, for use in the performance of a contract pursuant to this RFP.

4.10 Service Location and Work Space. Management, performance, completion and delivery of the services pursuant to this RFP are to be as specified in the Pro Forma Contract. Working space on the Owner's premises may be available for contractor use in accordance with the pro forma contract or at the Owner's discretion.

4.11 Proposal Withdrawal. A submitted proposal can be withdrawn at any time up to the Proposal Deadline time and date detailed in the RFP Schedule of Events. To do so, a Proposer shall submit a written request, signed by a Proposer's authorized representative to withdraw a proposal.

After withdrawing a previously submitted proposal, a Proposer is eligible to submit another proposal at any time up to the Proposal Deadline.

4.12 Proposal Errors and Amendments. Each Proposer is liable for all proposal errors or omissions. A Proposer shall not be allowed to alter or amend proposal documents after the Proposal Deadline time and date detailed in the RFP Schedule of Events unless such is formally requested, in writing, by the Owner.

4.13 Proposal Preparation Costs. The Owner will not pay any costs associated with the preparation, submittal, or presentation of any proposal.

4.14 Disclosure of Proposal Contents.

4.14.1 Each proposal and all materials submitted to the Owner in response to this RFP shall become the property of the State of Tennessee.

4.14.2 Selection or rejection of a proposal does not affect this right. All proposal information, including detailed price and cost 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, directly after technical proposals are opened by the Owner.

4.14.3 Upon the completion of the evaluation of proposals, indicated by public release of an Evaluation Notice, the proposals and associated materials shall be open for review by the public in accordance with Tennessee Code Annotated, Section 10-7-504(a)(7).

4.14.4 By submitting a proposal, the Proposer acknowledges and accepts that the full proposal contents and associated documents shall become open to public inspection.

4.15 Contractor Registration. All service contractors with State of Tennessee contracts must be registered through the Department of Finance and Administration's Service Provider Registry prior to contract approval. However, registration with the State is not required to make a proposal (any unregistered service provider must simply register as required prior to the final contract approval). Refer to the following Internet URL for more information about the Service Provider Registry and to register "on-line."

www.state.tn.us/finance/rds/ocr/sprs.html

4.16 Severability. If any provision of this RFP is declared by a court to be illegal or in conflict with any 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.

PROPOSAL EVALUATION

5.1 Evaluation Process.

5.1.1 The proposal evaluation process is designed to award the contract to the Qualified Proposal having the highest total score.

5.1.2 The RFP Coordinator will use the RFP Technical Proposal and Evaluation Guide to manage the Technical Proposal Evaluation and maintain evaluation records.

5.1.3 The RFP Coordinator will review each Technical Proposal to determine compliance with mandatory requirements (refer to RFP Technical Proposal and Evaluation Guide). If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the proposal and document its determination of whether:

(1) the proposal meets requirements for further evaluation; (2)

the Owner will request clarifications or corrections; or, (3) the Owner will determine the proposal non-responsive to the RFP and reject it.

5.1.4 A Proposal Evaluation Team, made up of three or more State employees, will evaluate each Technical Proposal that appears responsive to the RFP.

5.1.5 Each Proposal Evaluation Team member will evaluate each proposal against the evaluation criteria in this RFP, and will score each in accordance with the RFP Technical Proposal and Evaluation Guide.

5.1.6 The Owner reserves the right, at its sole discretion, to request Proposer clarification of a Technical Proposal or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion may be limited to specific sections of the proposal identified by the Owner. The subject Proposer shall submit any resulting clarification in writing as may be required by the Owner. (Also see RFP Cost Proposal section)

5.2 Presentations – Interviews. The Owner reserves the right to receive an oral presentation from, or conduct interviews with Proposers. Oral presentations and the number of firms interviewed are at the sole discretion of the Owner. Presentations or interviews will be scheduled by the Owner and included as a component of Technical Proposals.

5.3 Cost Proposal Review. After Technical Proposal evaluations are completed, (see Schedule of Events) the RFP Coordinator will open and review the Cost Proposals for each qualified Proposer and use a Cost Proposal Summary and Scoring Guide to calculate and document the Cost Proposal scores.

5.3.1 The Owner reserves the right to ascertain the confidence of the cost amount as proposed, and/or the confidence that all work specified under this RFP can be accomplished for the cost amount as proposed without penalty to the Owner of additional cost, project time or quality.

5.3.2 If requested by the Owner, the Proposer shall be prepared to present evidence that a submitted Cost Proposal contains no clerical error, miscalculation, nor other mistake, and/or to provide other clarification of proposed costs submitted by the Proposer.

5.3.3 Upon notification by the Owner, the Proposer shall respond in writing with clarification details, cost breakdowns, or other specification as stipulated by the Owner. If the Proposer fails to provide such evidence, the Owner, at its own discretion, may determine the Proposal to be non-responsive and reject it.

5.3.4 Subsequent to such Cost Proposal review notification by the Owner, the Proposer may elect to withdraw its Proposal due to mistake, and request to withdraw. The request shall be in writing to the RFP Coordinator, delivered in person, by facsimile transmission, by overnight courier service, or by registered mail, postage prepaid. The request shall be made not later than twenty-four hours after the official time of notification by the Owner. Any communication regarding this RFP sent by facsimile transmission must also be sent by United States mail on the same date. The request for withdrawal shall acknowledge that the Proposer refuses to enter into a contract based on the submitted Cost Proposal. Any Proposer making such request shall be removed from consideration, and evaluation proceedings for the Proposal terminated.

5.4 Non-Responsive Cost Proposal. After opening Cost Proposals, should the Owner determine that a Cost Proposal is non-responsive and rejects the Cost Proposal, the RFP Coordinator will re-calculate scores for each responsive Cost Proposal to determine the new, apparent best-evaluated proposal.

5.5 Evaluation Notice. The Owner will issue an Evaluation Notice to identify the apparent best-evaluated proposal on the Evaluation Notice date detailed in the RFP Schedule of Events. The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer. The Owner will also make the RFP files available for public inspection on the Evaluation Notice date detailed in the RFP Schedule of Events.

5.6 Closure of Evaluation. The State Building Commission's action to approve a Proposer as contractor officially closes the evaluation process. Refer to the RFP Schedule of Events.

5.7 Protest Process. The Owner will allow seven (7) calendar days after the State Building Commission's action for consideration of protests from a Proposer. Written protests shall be submitted to the State Architect who will evaluate the merits of the protest. If the State Architect denies a protest, then the contract process proceeds.

5.8 Appeal. A Proposer may appeal its denied protest to the State Building Commission for further review. State Building Commission determination of a protest is final action. If the State Building Commission's review through appeal concurs with the State Architect and denies the protest, then the contract process proceeds. If, after review of the protest through appeal, the State Building Commission decides in favor of the protest then the result may be RFP cancellation or other resolution.

CONTRACT AWARD & APPROVAL PROCESS

6.1 Contract Award Process. The RFP Coordinator will forward the results of the proposal evaluation process to the head of the procuring agency that will consider the proposal evaluation process results and all pertinent information available to make a determination about the contract award. The Owner reserves the right to make an award without further discussion of any proposal.

6.2 Contracting Obligations. The Proposer with the apparent best-evaluated proposal shall agree to and sign a contract with the Owner that shall be substantially the same as the *Pro Forma* Contract. 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.

6.3 Contract Signature Deadline. The Proposer with the apparent best-evaluated proposal shall sign and return the contract drawn by the Owner pursuant to this RFP no later than the Contract Signature Deadline date detailed in the RFP Schedule of Events. If the Proposer fails to provide the signed contract by the deadline, the Owner may determine that the Proposer is non-responsive to the terms of this RFP and reject the proposal.

6.4 Contract Approval. The RFP and the contractor selection processes do not obligate the Owner and do not create rights, interests, or claims of entitlement in either the Proposer with the apparent best-evaluated proposal or any other Proposer. Contract award and Owner obligations pursuant thereto shall commence only after the contract is signed by the Contractor and the head of the procuring State agency and after the contract is approved and signed by all other State officials as required by State laws and regulations.

6.5 Contract Payments. All contract payments shall be made in accordance with the contract's Payment Terms and Conditions provisions (refer to RFP Pro Forma Contract). 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 of any type associated with the contract or responsible for any work done by the Contractor, even work done in good faith and even if the Contractor is orally directed to proceed with the delivery of services, if it occurs before contract approval by State officials as required by applicable statutes and rules of the State of Tennessee or before the contract start date or after the contract end date specified by the contract.

6.6 Contractor Performance. The Contractor 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. At reasonable times, the Owner may inspect those areas of the Contractor's place of business that are related to the performance of the contract. If the Owner requires such an inspection, the Contractor shall provide reasonable access and assistance.

6.7 Contract Amendment.

6.7.1 During the course of this contract, the Owner may request the Contractor to perform additional work for which the Contractor would be compensated. That work shall be within the general scope of this RFP. In such instances, the Owner will provide the Contractor a written description of the additional work, and the Contractor shall submit a time schedule for accomplishing the additional work and a price for the additional work based on the rates included in the Contractor's proposal to this RFP. If the Owner and the Contractor reach an agreement regarding the work and associated compensation, such agreement shall be effected by means of a contract amendment.

6.7.2 Any such amendment requiring additional work must be mutually agreed upon by the parties and signed by the Contractor and the head of the procuring State agency and must be approved by other State officials as required by State laws and regulations.

6.7.3 The Contractor shall not commence additional work until the Owner has issued a written contract amendment and secured all required approvals

END OF RFP GENERAL REQUIREMENTS

PROPOSAL PACKAGE COVER ATTACHMENT

New Data Center Facilities RFP

SBC # 529/031-01-2007

Tennessee Contractor License Information

Any blank spaces may cause Proposal to be unacceptable and rejected.

Provide State contractor license number, expiration date, and classifications for Proposer as applicable and in accordance with State licensing law. Provide all names as used for licensing or other legal transactions.

Proposer Identification:

Proposer _____

Address _____

Tennessee Contractor License information:

Provide complete information if licensed, or circle:

License Number _____ (Proposer Unlicensed)

License Classification(s) applicable to Project _____

License expiration date _____ \$(_____)
Dollar Limit

PROPOSAL TRANSMITTAL AND STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Proposer shall complete and sign this Proposal Transmittal. It must be signed, in the space below, by an individual empowered to bind the proposing entity to the provisions of this RFQ and any contract awarded pursuant to it. If said individual is not the Proposer's chief executive, this document shall attach evidence showing the individual's authority to bind the proposing entity.

**PROPOSER LEGAL ENTITY
NAME:**

**PROPOSER FEDERAL EMPLOYER IDENTIFICATION
NUMBER:**
(or Social Security Number)

The Proposer does hereby affirm and expressly declare confirmation, certification, and assurance of the following:

- 1) This proposal constitutes a commitment to provide all services as defined in the RFQ *Pro Forma* Contract Scope of Services for the total contract period and confirmation that the Proposer shall comply with all of the provisions in this RFQ and shall accept all terms and conditions set out in the RFQ *Pro Forma* Contract.
- 2) The information detailed in the proposal submitted herewith in response to the subject RFQ is accurate.
- 3) The proposal submitted herewith in response to the subject RFQ shall remain valid for at least 120 days subsequent to the date of the Proposal opening and thereafter in accordance with any contract pursuant to the RFQ.
- 4) The Proposers shall comply with:
 - a) the laws of the State of Tennessee;
 - b) Title VI of the federal Civil Rights Act of 1964;
 - c) Title IX of the federal Education Amendments Act of 1972;
 - d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
 - e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government;
 - f) the condition that the submitted proposal was independently arrived at, without collusion, under penalty of perjury; and,
 - g) the condition that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the Procurement under this RFQ.
- 5) The Proposer shall comply with all of the provisions in the subject RFQ and shall accept all terms and conditions set out in the RFQ *Pro Forma* Contract.
- 6) The Proposer shall provide a contract bond in accordance with the requirements of the RFQ.

**SIGNATURE &
DATE:**

CLIENT REFERENCE FORM

State of Tennessee RFP

Proposers: Please instruct your Referees to open this Microsoft Word® form directly from the State website and save to their computer, or provide them this form as a Microsoft Word® 2003 file electronically.
<http://www.state.tn.us/finance/rpa/rfpad.html>

Reference forms are due not later than the Proposal Deadline Date.
This Microsoft Word® file is provided for convenience. The form is designed to be used on a computer.
The response fields expand as text is entered.

Referee: Please record your responses in the fields that are provided. The fields automatically expand as needed. Mail or Email your completed reference form to the RFP Coordinator. Include a letter of transmittal on company letterhead with your signature.

Address to:
Lorraine Walla, RFP Coordinator
Division of Real Property Administration
Suite 2200 William R. Snodgrass Tennessee Tower
312 Eighth Avenue North
Nashville, Tennessee 37243-0299
Email: Howard.Symons@state.tn.us

Proposer:	
Referenced Project:	
Referee Company Name:	
Referee Name:	
Position Title:	
Telephone Number:	
Email Address:	
Date Reference Completed:	

1. Describe the work/services that the Proposer's company did for you.

--

2. What was the time period (approximately) in which the services were provided?

--

3. What is your overall opinion of the Proposer and the Proposer's staff?

--

4. Discuss your satisfaction or dissatisfaction with the workmanship, technical abilities, professionalism, and interpersonal skills of the project managers and on-site technicians.

--

02 00 06

5. Describe any performance problems with the Proposer's personnel.

6. Discuss the Proposer's response to short lead-time, i.e., emergency or special requests.

7. Project completion. Please comment on assigned tasks being completed in compliance with the terms of the contract.

8. Project completion. Please comment on projects being completed on time and within budget.

9. Rate your level of satisfaction with both the appropriateness and quality of the work. Use a scale of one (1) to five (5), with one being "least satisfied" and five "most satisfied."

10. What are the main reasons you would procure this Proposer's services again?

Additional Comments:

Proposal & Evaluation Guide Forms

Construction Manager / General Contractor Services

Sections A through C

PROPOSAL & EVALUATION GUIDE — SECTION A

PROPOSER NAME:		
SECTION A — MANDATORY REQUIREMENTS		
<p>The Proposer shall address ALL Mandatory Requirements section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). The RFP Coordinator will review all general mandatory requirements, including but not limited to the following:</p> <ul style="list-style-type: none"> ▪ Proposal received on or before the Proposal Deadline. ▪ Technical Proposal copies and Cost Proposal packaged separately. ▪ Technical Proposal contains NO cost data. ▪ Proposer did NOT submit alternate proposals. ▪ Proposer did NOT submit multiple proposals in a different form. ▪ Technical Proposal does NOT contain any restrictions of the rights of the Owner or other qualification of the proposal. <p>The RFP Coordinator will also review the proposal to determine if the Mandatory Requirement Items (below) are met and mark each with pass or fail. For each requirement that is not met, the Proposal Evaluation Team must review the proposal and attach a written determination.</p> <p>NOTICE: In addition to these requirements, the Owner will also evaluate compliance with ALL RFP requirements.</p>		
Proposal Page # (completed by Proposer)	Mandatory Requirement Items	Owner Use ONLY
		Pass/Fail
A.1	Provide the Proposal Transmittal and Statement of Certifications and Assurances (detailed in RFP Attachment 6.2) completed and signed, in the space provided, by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting contract.	
A.2	Provide a statement on the Proposer's experience at providing CM/GC services (pre-construction and construction phase services). A Proposer, to be considered, must have a minimum of five (5) years of experience as a CM/GC in providing these services outlined in RFP Attachment 6.1 Pro Forma Master Contract. If a Proposer is a joint venture firm, at least one joint venture party must have a minimum of five (5) years of said experience and other joint venture party or parties must have a minimum of three (3) years of said experience. If a joint venture, provide a history of this joint venture relationship.	
A.3	Insurance and Bonding: Provide a letter from an insurance/surety agency stating the Proposer's capability to provide insurance and bonding for this Project in accordance with the Owner's Designers' Manual (Conditions of the Contract).	

	A.4	For the last three (3) years, provide the following ratios for the Proposer, calculated according to the generally accepted account principles: 1) Quick Ratio and 2) Debt / Worth. The Owner may request CPA audited or reviewed financial statements prepared in accordance with generally accepted accounting principles from the apparent best-evaluated Proposer prior to the final award of the contract. If the requested documents do not support the financial stability of the Proposer the Owner reserves the right to reject the proposal.	
	A.5	Describe the Proposer's form of business (i.e., individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and detail the name, mailing address, telephone number, and e-mail address of the person the Owner should contact regarding the proposal.	
	A.6	Provide a statement of whether the Proposer or any individual who shall perform work under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.	
	A.7	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Proposer company within the last five (5) years, and if so, an explanation providing relevant details.	
	A.8	Provide a statement of whether the Proposer or any of the Proposer's employees, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony, and if so, an explanation providing relevant details.	
	A.9	Provide a statement of whether there is any pending litigation against the Proposer; and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Proposer's performance in a contract under this RFP.	
	A.10	Provide a statement of whether, in the last ten (10) years, the Proposer has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.	
	A.11	Describe the Proposer organization's number of employees, type of client base, and location of offices.	
	A.12	Provide annual dollar workload volume inclusive of number of projects on a per year basis for the last five (5) years and indicate what percentage of such work are CM/GC services.	
	A.13	Provide the Proposer's insurance experience modification rate for the last three (3) years.	

End of Section A

Construction Manager / General Contractor Services PROPOSAL & EVALUATION GUIDE — SECTION B

PROPOSER NAME:		
SECTION B — QUALIFICATIONS & EXPERIENCE		
<p>The Proposer shall address ALL Qualifications and Experience section items and provide, in sequence, the information and documentation as required (referenced with the associated item references).</p> <p>A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the proposal's "qualifications and experience" responses.</p> <p>Information previously provided and shown in the Section A, Mandatory Requirement Items, will be included in the evaluation and scoring of these Qualification & Experience Items.</p>		
Proposal Page # (completed by Proposer)	Qualifications & Experience Items	Owner's Use ONLY
	<p>B.1 Provide a brief, descriptive statement indicating the Proposer's credentials to deliver the services sought under this RFP.</p>	
	<p>B.2 Provide the following information:</p> <p>a. A summary description of three projects of similar scope and complexity that are under construction or have been completed or substantially completed by the Proposer as a CM/GC within the last seven (7) years. The information for each project shall include specific details on the extent of services provided by this Proposer. A Related Project History Form is provided for the Proposer's use in compiling and presenting this information.</p> <p>b. Arrange for written references to be sent directly to the RFP Coordinator by the referee. Provided references shall report on current or recently completed projects of similar type, scope and complexity. A Client Reference Form is provided for your referee's use in compiling and presenting their information. The Owner reserves the right to contact references as well as any other source available.</p>	
	<p>B.3 Provide the following information:</p> <p>a. A list of current projects on which your firm is presently committed, and both the dollar volume and time frame for each, and what services are being provided.</p> <p>b. A list of all current contracts with the State of Tennessee, and all State of Tennessee contracts completed within the previous five (5) year period.</p>	
	<p>B.4 Provide a statement of the Proposer's familiarity and experience with sustainable design practice in general, including the "LEED Rating System," but also specifically address applications as may pertain to the Project's building type.</p>	
	<p>B.5 Provide the following:</p> <p>A statement on the Proposer's familiarity and experience with "Partnering." Explain the process for this activity throughout both the design and construction phases. All cost related to this process will be the responsibility of the CM/GC.</p>	

	<p>B.6 Provide the following for Key Personnel assigned to this Project:</p> <p>a. Résumés of key personnel who shall be assigned by the Proposer to perform duties or services under the Contract. The résumés shall detail each individual's title, education, current position with the Proposer, and employment history.</p> <p>On the page opposite to the résumé of each individual, please show the corporate organizational chart for this Contract illustrating lines of authority and where this person is positioned. Such personnel shall include, but not be limited to, the project manager (for pre-construction and construction if different), field superintendent(s) and other key personnel who may be required.</p> <p>A principal-in-charge (by whatever name called) must also be named in key personnel but who may not be exclusively assigned to this Project.</p> <p>b. Provide a reference (an owner representative) from each of the last three projects that the project manager and the superintendent were assigned. Provide a contact name, address, telephone number, email address, and project name and location for each reference. The Owner reserves the right to contact references given as well as any other source available.</p>	
	<p>B.7 Diversity Information:</p> <p>It is the policy of the State of Tennessee to include diversity in its contractual relations with commercial firms. Proposers that presently demonstrate and embrace diversity within their programs and policies are assisting the Owner achieve its goals in building a marketplace more reflective of the community within this State.</p> <p>B.7.1 Though strongly encouraged, participation in diversity is neither obligatory nor a condition or pre-qualification for submitting a Proposal. However, Proposers shall provide descriptions and information of their present participation in diversity through:</p> <p>1) business strategy, 2) business relationships, and 3) workforce.</p> <p>(Note: Business relationships include but are not limited to partnering, subcontracting, contracts with materials and equipment suppliers, and special technical or professional services the Proposer procures in order to satisfy contractual obligations.)</p> <p>B.7.2 Diversity Documentation shall detail:</p> <p>a. A description of the Proposer's existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, persons with a disability, and small business enterprises, both on past and current contracts awarded.</p> <p>b. A listing of Proposer's current contracts with business enterprises owned by women, persons with a disability, minorities, and small business enterprises firms, including:</p> <p>1) Contract description and total value;</p> <p>2) Relevant ownership characteristics (i.e., ethnicity, sex, disability);</p> <p>3) Contact person and telephone number.</p> <p>c. In a contract awarded to the Proposer pursuant to this RFP, an estimate of the level of participation of business enterprises owned by small business firms, persons with a disability, women, and minorities, including the following information:</p> <p>1) Participation estimate (expressed as a percent of the total contract value that will be dedicated to business with anticipated subcontractors, anticipated supply contractors, or other anticipated technical or professional business relationship having such ownership characteristics),</p>	

	<p>d. The percent of the Proposer's current employees by ethnicity, sex, and disability.</p> <p>(Note: Proposal evaluation will recognize the positive qualifications and experience of Proposers utilizing small businesses, women-owned businesses, minority-owned businesses, and businesses owned by persons with a disability, as well as a diverse workforce, in their Proposal to meet the Owner's service needs.)</p> <p>B.7.3 Governor's Office of Diversity Business Enterprise Notwithstanding the foregoing, interested parties may contact the staff of the Governor's Office of Diversity Business Enterprise for general, public information regarding assistance available from the Governor's Office of Diversity Business Enterprise, information on registration, on current qualified businesses, or potential future procurements.</p> <p>Web Site: http://www.tennessee.gov/businessopp/</p> <p>This website also contains Vendor Registration information and forms. Contact the office in Nashville, Tennessee at (615)253-4657; Toll Free 1-866-894-5026</p> <p>Richard.VanNorman@state.tn.us or Shelia.J.Simpson@state.tn.us</p>	
<i>(Maximum Section B Score = 40)</i>		
SCORE (for all Section B items above, B.1 through B.7):		

End of Section - B

**Construction Manager / General Contractor Services
PROPOSAL & EVALUATION GUIDE — SECTION C**

PROPOSER NAME:		
SECTION C — PROJECT APPROACH		
The Proposer shall address ALL Project Approach section items and provide, in sequence, the information and documentation as required (referenced with the associated item references). A Proposal Evaluation Team, made up of three or more State employees, will evaluate and score the Proposal's response to each item.		
Proposal Page # (completed by Proposer)	Technical Approach Items	Owner's Use ONLY
	C.1 Provide a brief, descriptive statement indicating the Proposer's approach to delivering the services sought under the RFP for pre-construction phase and construction phase services for this Project.	
	C.2 Provide a statement of how the Proposer intends to address all major design disciplines (civil, architectural, structural, mechanical, plumbing, and electrical) for pre-construction phase services, and if subcontractors are to be used provide the names and mailing addresses of the subcontractors and a description of the scope and portions of the work the subcontractors will perform.	
	C.3 Provide the following: A statement on the Proposer's approach to "Partnering." Explain the process for this activity during the construction phase. All cost related to this process will be the responsibility of the CM/GC.	
	C.4 Provide a comprehensive narrative, captioned "Project Staffing Plan," that illustrates how the Proposer will staff. This Plan shall include proposed management team, staffing plan, including information on its sources of labor, skill training, and safety training capabilities. The Plan shall include: a. Identity of the Proposer's project management team which cannot be substituted without written approval of the Owner. The Proposer's project management team shall include, at a minimum, the construction management, field supervision, and technical personnel of the Proposer in relation to their role in the project. With the project management team list, the Proposer shall provide resumes of the listed personnel. b. Proposer's staffing for this particular project indicative of their ability to provide professional management and craft personnel. c. Provide the amount of time (in percentage or hours of positions) that each key person will be committed to this Project during both the pre-construction and construction phases, and who will be responsible for the following services and overall project management. 1) Pre-Construction: Pre-construction phase management, constructability review, interdisciplinary coordination, cost model/estimates, schedule, and value analysis. 2) Construction: Construction phase management, procurement, coordination of trade contractors, vendors, suppliers, safety, quality control/inspections, shop drawing process/review, change order process/review, claims resolution, schedule control, and payment process/approval. d. The total (100%) monthly direct personnel expense (raw salary x labor burden multiplier) for all key personnel proposed.	

03 13 00

	<p>C.5 Provide a brief descriptive summary as to the Proposer's approach to the following items:</p> <ul style="list-style-type: none"> a. Value Analysis: Describe the process by which your firm performs value analysis so as to achieve an appropriate balance between costs and function. Provide a sample value analysis report from one (1) of the projects listed in B.2 above. b. Constructability Items: Identify three (3) constructability items in regard to the projects listed in B.2 above and provide a brief description of your firm's approach to these items. c. Cost Model/Estimates: Provide the cost model format used on one of the projects listed in B.2 above and describe the timing of its updates during design, and summarize how the final construction cost related to this cost model. d. Project Tracking/Reporting: Describe your firm's approach and procedures for project tracking and reporting, including scheduling, and accounting. Name the software used. Provide an example of a progress report. e. Request for Information, Request for Proposals, change orders, and shop drawings: Describe your firm's approach to handling, tracking and reporting these documents to ensure accuracy and timeliness. f. Quality Control: Describe how your firm implements quality control throughout pre-construction and construction. 	
<i>(Maximum Section C Score = 30)</i>		
SCORE (for all Section C items above, C.1 through C.5):		

CM/GC Construction Services
COST PROPOSAL and PROPOSAL GUIDE FORMS
Sections A through D

PRE-CONSTRUCTION PHASE SERVICES FEE GUIDE — SECTION A

PROPOSER NAME:	
-----------------------	--

Provide the total lump sum fee for delivery of the Pre-Construction Phase Services for this Project as defined by CM at Risk Scope of Services and Deliverables, Section 1. This fee should not include costs of printing the Designer's design/construction documents, geotechnical investigations, environmental testing, and property surveys during the Design Phase. This fee will be paid upon successful completion of services and is not to be included as a part of the CM/GC construction services fixed fee. This fee may be negotiated prior to execution of the Pro Forma Master Contract.

Pre-Construction Phase Services Lump Sum Fee \$ _____
November 2007 – February 2009

CM/GC CONSTRUCTION SERVICES FIXED FEE — SECTION B

The proposed cost for the CM/GC construction services fixed fee shall be for providing the construction services defined in the CM at Risk Scope of Services and Deliverables, Section 2 for the total contract time and project closeout. The Fee shall be stated as a percentage of the Project construction cost that includes the following:

- General company overhead and profit
- Personnel not directly assigned to the Project such as accountants, clerks, secretaries and personnel other than those listed under Construction Services General Conditions Budget (whether on site or in the office)
- Company officers and other personnel with supervisory status not listed under Construction Services General Conditions Budget
- The cost of main office equipment and related supplies, maintenance and service not located on site.

CM/GC Construction Services Fixed Fee	%
---------------------------------------	---

CM/GC CONSTRUCTION SERVICES
GENERAL CONDITIONS BUDGET GUIDE — SECTION C

The CM/GC owned equipment and corresponding rental rates proposed for use on this Project shall not exceed 80% of the Associated Equipment Distributors Nationally Averaged Rental Rates for Construction Equipment (AED) rates.

Labor burden multiplier _____%

Contract bond rate percentage based on the total GMP target _____%
--

04 13 00

**CM/GC CONSTRUCTION SERVICES
GENERAL CONDITIONS BUDGET GUIDE — SECTION C
(continued)**

PROPOSER NAME:

Provide costs for general conditions including, but not limited to, the following items for general conditions during the new construction services phase. CM/GC may indicate some of these items as not applicable and may also identify additional items. These costs may be negotiated prior to an agreed to GMP. Actual cost records of general condition items will be part of the final accounting at project completion to certify total actual costs. CM/GC is to base the calculation of the monthly general conditions charge on the preliminary schedule information provided in this RFP.

Item Description	Quantity	Unit	Lump Sum Cost	Monthly Cost
Photographs	*	Mo	\$ —	\$
Superintendent ✓	*	Mo	\$ —	\$
Clerk ✓	*	Mo	\$ —	\$
Asst Superintendent ✓	*	Mo	\$ —	\$
Project Manager ✓	*	Mo	\$ —	\$
Project Director ✓	*	Mo	\$ —	\$
Project Engineer / Other ✓	*	Mo	\$ —	\$
Layout Instruments	*	Mo	\$ —	\$
Temporary Office Trailer(s)	*	Mo	\$ —	\$
Storage Trailer(s)	*	Mo	\$ —	\$
Portable Toilets	*	Mo	\$ —	\$
Temporary Construction Utilities	*	Mo	\$ —	\$
Employee Parking	**	Mo	\$ —	\$ NA
Phones and Beepers	*	Mo	\$ —	\$
Safety Measures	*	Mo	\$ —	\$
Trash Collection and Disposal	*	Mo	\$ —	\$
Pick Up Truck	*	Mo	\$ —	\$
Auto	*	Mo	\$ —	\$
Fuel	*	Mo	\$ —	\$
Office Furniture & Equipment (fax, copier, computer, etc)	*	Mo	\$ —	\$
Supplies & Expenses	*	Mo	\$ —	\$
Permits (building, water & sewer)	1	LS	\$	\$ —
General Liability Insurance	1	LS	\$	\$ —
Contract Bond (based on GMP Target)	1	LS	\$	\$ —
Gross Receipt Tax (for this project)	1	LS	\$	\$ —
Project Sign & Other Signage	1	LS	\$	\$ —
Temporary Construction Items	1	LS	\$	\$ —
Miscellaneous Printing***	1	LS	\$	\$ —
List Total of Additional Items as needed and			\$	\$
Attach Additional Items List				
TOTALS			\$	

- * Quantity as required to accomplish the services required by the RFP and the scope of the project
- ** Employee parking will be available at no cost at the project site; however, parking may be limited. The cost, if any, for additional parking will be negotiated prior to establishing the GMP.
- *** CM/GC printing only. This does not include printing of design/construction documents.
- ✓ Personnel monthly cost shall include Labor Burden.

04 13 00

**CM/GC CONSTRUCTION SERVICES
COST PROPOSAL SUMMARY FORM**

SUMMARY & SCORING GUIDE — SECTION D			
This Cost Proposal must be completed exactly as required.			
Proposer Name:			
Signature & Date:			
The signatory must be an individual or a company officer empowered to contractually bid the Proposer.			
The proposed cost and the submitted technical proposal associated with this cost shall remain valid for at least 60 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any resulting contract between the Proposer and the Owner. All monetary amounts are United States currency.			
1. Pre-Construction Phase Services Lump Sum Fee November 2007 – February 2009			\$
2. Construction Services Fixed Fee _____% X <u>\$34,000,000</u>			\$
3. Construction Services General Conditions Budget			
A. Lump Sum Items			\$
B. _____ X 16 Months			\$
<small>Monthly Rate for new Construction Phase</small>			
TOTAL COST ITEMS 1- 3			\$
<u>Lowest Evaluation Cost Amount for all Proposals</u> Evaluation Cost Amount Being Evaluated	X 30	= SCORE:	
<small>Calculations shall result in numbers rounded to two decimal places.</small>			

04 13 00

RFP

PROPOSAL SCORE SUMMARY MATRIX FORMAT

	Qualification & Experience Maximum 40 Points						Technical Maximum 30 Points						Q&E+T			
	1	2	3	4	5	Median	1	2	3	4	5	Median	Total Q&E+T	Normalized Q&E+T		
Evaluator																
Proposer																
Proposer A																
Proposer B																
Proposer C																
Proposer D																
Proposer E																
Proposer F																

The Median of the scores of all evaluators for the Q&E+T will be totaled and then the scores will be normalized to give the highest Proposer score a value of 70 points. The formula is:

$$\frac{\text{Proposers Median Score Total Q\&E+T}}{\text{Highest Median Score Total Q\&E+T}} \times 70 \text{ Points}$$

The Cost score from the Cost Proposal will be entered in this matrix and the Normalized score for Q&E+T will be added to the Cost score to determine the Total Score. The highest score will be determined to be the apparent best-evaluated Proposer.

RFP Coordinator

Date

05 00 01

PRO FORMA MASTER CONTRACT

The *pro forma* contract detailed in this Attachment contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from this RFP.

**CONSTRUCTION MANAGER / GENERAL CONTRACTOR
MASTER CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Department of Finance and Administration
AND
[CM/GC Contractor]
SBC NUMBER 529/031-01-2007**

This Master Contract (MC), by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the “Owner” and _____ **[CONTRACTOR LEGAL ENTITY NAME]** _____, hereinafter referred to as the “CM/GC,” is for the provision of providing Design Build Construction Services, as further defined in the “SCOPE OF SERVICES.”

The CM/GC is **[AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A GOVERNMENTAL ENTITY / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]** and was approved by the State Building Commission on _____ **(Enter Date)** _____.

The CM/GC is a Corporation. The CM/GC's address is:

The CM/GC's place of incorporation or organization is _____.

A. SCOPE OF SERVICES

A.1 The CM/GC shall provide consulting, scheduling and estimating/cost control services during the Pre-Construction phase of the Project, and shall be the General Contractor during construction, holding the trade contracts and providing the management and construction services during the construction phase. As soon as practicable after execution of this Master Contract (MC), the CM/GC and the Owner shall negotiate in good faith mutually acceptable terms, conditions, and pricing for a written *Construction Services Agreement* with a *Guaranteed Maximum Price* (“CSA-GMP”) covering the construction phase. The CM/GC shall competitively procure and contract with the trade contractors and assume the responsibility and the risk of construction delivery within the specified cost and schedule terms, and provide a *Guaranteed Maximum Price* (GMP) for the scope(s) of work for the New Data Center Facilities (Project), SBC Project No. 529/031-01-2007. (Refer to CM at Risk Scope of Services and Deliverables.)

B. CONTRACT TERM

B.1 Contract Term. This MC shall be effective for the period commencing on _____ and ending on _____. The Owner shall have no obligation for services rendered by the CM/GC which are not performed within the specified period.

B.2 Term Extension. The Owner reserves the right to extend this MC for an additional period or periods of time. An extension of the term of this MC will be affected through an amendment to the MC. If the extension of the MC necessitates additional funding beyond that which was included in the original MC, the increase in the Owner's maximum liability will also be affected through an amendment to the MC.

B.3 Construction Services Agreement with a Guaranteed Maximum Price (CSA-GMP). Under no circumstances shall the initial term of the CSA-GMP, to be negotiated after execution of this MC, extend beyond that set forth in Sections B.1 and B.2 above.

B.4 The time periods provided above and elsewhere in this MC shall be subject to adjustment as provided by the terms and conditions of the CSA-GMP.

06 13 01

C. PAYMENT TERMS AND CONDITIONS

- C.1 Lump Sum Payment For Pre-Construction Phase Services. Payment by the Owner to the CM/GC under this MC for pre-construction phase services shall be a lump sum of WRITTEN AMOUNT (NUMBER). This amount shall constitute the entire lump sum fee due the CM/GC for the design phase services hereunder regardless of the difficulty, materials or equipment required. The MC amount includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the CM/GC for pre-construction phase services. This pre-construction lump sum fee does not include the amounts that are to be covered under the CSA-GMP.

The design lump sum fee represents available funds for payment to the CM/GC and does not guarantee payment of any such funds to the CM/GC under this MC unless the CM/GC performs said work. In which case, the CM/GC shall be paid in accordance with Section C.3.

- C.2 Compensation Firm. The lump sum fee liability of the Owner for design phase services under this MC is firm for the duration of the MC and is not subject to escalation for any reason unless amended.
- C.3 Payment Methodology. For payment for the design phase services described in Section A of this MC, the GM/GC shall submit an invoice, in form and substance acceptable to the Owner and with all of the required, if any, supporting documentation, prior to any payment. Progress payments and final payment for the construction phase shall be applied for and paid as provided in the CSA-GMP.
- C.4 Travel Compensation. The CM/GC shall not be compensated or reimbursed for travel, meals, or lodging over and above the design lump sum fee under this MC and the guaranteed maximum price for construction under the CSA-GMP.
- C.5 Payment of Invoice. The payment of the invoice by the Owner shall not prejudice the Owner's right to object to or question any invoice or matter in relation thereto. Such payment by the Owner shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6 Invoice Reductions. The CM/GC's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Owner, 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.7 Deductions. The Owner reserves the right to deduct from amounts which are or shall become due and payable to the CM/GC under this or any contract between the CM/GC and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the CM/GC.
- C.8 Automatic Deposits. The CM/GC shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the CM/GC by the Owner. Once this form has been completed and submitted to the Owner by the CM/GC all payments to the CM/GC, under this or any other contract the CM/GC has with the State of Tennessee shall be made by Automated Clearing House (ACH). The CM/GC shall not invoice the Owner for services until the CM/GC has completed this form and submitted it to the Owner.

D. STANDARD TERMS AND CONDITIONS:

- D.1 Required Approvals. Neither party is bound by this MC until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations. The Owner shall notify the CM/GC in writing when such approvals have been obtained.
- D.2 Modification and Amendment. This MC may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3 Termination for Convenience. The Owner may terminate this MC without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State of Tennessee. The Owner shall give the CM/GC at least Ninety (90) days written notice before the effective termination date. The CM/GC shall be entitled to receive 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 any pre-construction phase service which has not been rendered. Upon such termination, the CM/GC shall have no right to any actual, general,

special, incidental, consequential, or any other damages whatsoever of any description or amount on account of pre-construction phase services. With respect to the construction phase, this Section D.3 shall be subject and subordinate to the terms of the CSA-GMP.

- D.4 Termination for Cause. 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 any 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. Notwithstanding the above, the CM/GC shall not be relieved of liability to the Owner for damages sustained by virtue of any breach of this MC by the CM/GC.
- D.5 Subcontracting. 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.6, D.7, and D.8 of this MC.
- D.6 Conflicts of Interest. 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 State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the CM/GC in connection with any work contemplated or performed relative to this MC.
- D.7 Nondiscrimination. No person on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal and/or Tennessee State constitutional or statutory law shall be excluded from participation in, or be denied the benefits of, or be otherwise subjected to discrimination in the performance of this MC or in the employment practices of the CM/GC or subcontractors. The CM/GC and its subcontractors shall, upon request, of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

The parties also agree to take affirmation action, if required to do so by law, to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

- D.8. Prohibition of Illegal Immigrants. 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 any Contract to supply goods or services to the State of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the standard form entitled "Personnel used in Contract Performance" with each application for payment. This form is provided in the Contract Documents. Such attestations shall be maintained by the Contractor and made available to Tennessee State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to Tennessee State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor 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 requires the Commissioner of Finance and Administration to prohibit a contractor 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 contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any 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 federal 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 Contract.
- D.9 Records. The CM/GC shall maintain documentation for all charges against the State of Tennessee and all costs of delivery of the Project under this MC. The books, records, and documents of the CM/GC shall be maintained for a period of seven (7) full years from the date of final maturity of any debt issued by the State of Tennessee providing funding under this MC and shall be subject to audit at any reasonable time and upon reasonable notice by the State of Tennessee or the Comptroller of the Treasury, or their duly appointed representatives. The records shall be maintained 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.10 Monitoring. The CM/GC's activities conducted and records maintained pursuant to this MC shall be subject to monitoring and evaluation by the State of Tennessee, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11 Progress Reports. The CM/GC shall submit brief, periodic, progress reports to the Owner as required by the Scope of Work and Deliverables.
- D.12 Strict Performance. Failure by any party to this MC to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this MC shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this MC shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13 Independent Contractor. 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 for any purpose whatsoever.
- The CM/GC, being an independent contractor and not an employee of the State of Tennessee, agrees to provide insurance coverage as required by the CSA-GMP.
- D.14 Owner Liability. The Owner shall have no liability except as specifically provided in this Contract and the CSA-GMP.
- D.15 State and Federal Compliance. The CM/GC shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16 Governing Law. 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 Contract. The CM/GC acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any 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.17 Completeness. This Contract 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 any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral. With respect to the construction phase, all terms and conditions of this Contract shall, however, be subject and subordinate to the terms and conditions of the CSA-GMP to be negotiated and executed between the parties.
- D.18 Severability. If any 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.19 Headings. Section headings of this MC are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1 Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2 Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this MC shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The Owner:

Steve Westerman
William R. Snodgrass Tennessee Tower
312 8th Avenue North, Suite 2200
Nashville, Tennessee 37243
Telephone: 615-741-1563
Facsimile: 615-741-7599

The CM/GC:

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3 Document Priority. Should any conflict arise within any of the requirements of these MC documents, the documents shall be interpreted in priority in the following order:

1. Construction Services Agreement-Guaranteed Maximum Price ("CSA-GMP"), upon negotiation of its terms and conditions and execution by both parties, and subsequent amendments, and modifications.
2. Addenda or amendments to the documents referenced in 3 and 4 below
3. This MC and its attachments
4. The RFP documents, which are incorporated by reference.
5. The Proposer's Proposal, which is hereby incorporated by reference

E.4 Rights to Ideas and Technical Approach. The Owner shall own or have the option to obtain ownership of all ideas, technical approaches and contractor deliverables developed as a part of this MC.

E.5 CM/GC Developed Programs. Upon completion or termination of this MC, application programs and systems and other management systems developed and used by the CM/GC solely for the implementation of this Project 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 Patents or Copyrights. 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 any laws regarding patents or copyrights which may arise from the performance of the CM/GC under the MC. In any such action brought against the Owner, the CM/GC shall satisfy and indemnify the Owner for the amount of any final judgment, or settlement entered into in good faith by the Owner for infringement.

E.7 Subject to Funds Availability. The MC is subject to the appropriation and availability of State of Tennessee 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 State of Tennessee. Upon receipt of the written notice, the CM/GC shall cease all work 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 any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

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

IN WITNESS WHEREOF:

CM/GC:

[NAME AND TITLE]

Date

APPROVED:

STATE ARCHITECT:

Michael Fitts, State Architect

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

ATTORNEY GENERAL:

Approved as for Form and Legality

Robert E. Cooper, Jr., Attorney General

Date

06 13 01

Construction Services Agreement
between
Owner and Construction Manager / General Contractor

where the Basis is a
GUARANTEED MAXIMUM PRICE

Use only with the coordinated documents identified in the current
Owner's Designers' Manual
for projects of the State Building Commission of Tennessee and the
Tennessee Department of Finance and Administration

AGREEMENT

made as of the **Day** Day of **Month** in the year of Two Thousand Seven

BETWEEN the Owner:	STATE OF TENNESSEE
Via the Contracting Agency:	Department of Finance and Administration Real Property Management 312 Eighth Avenue North, Suite 2200 Nashville, Tennessee 37243

and the Construction Manager / General Contractor (hereinafter "CM/GC"):

--	--

the Project:	New Data Center Facilities Nashville and Smyrna, Tennessee SBC Project No. 529/031-01-2007
--------------	---

the Designer:	
---------------	--

The Owner and the CM/GC agree as set forth below.

Construction Services Agreement
between
Owner and Construction Manager / General Contractor

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 include the Master Contract and the Individual Contract elements of the Contract Documents identified below in Paragraph 1.4. These form the Contract and together constitute the entire agreement between the Owner and the Contractor, 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:

<p>1. The Construction Manager / General Contractor (CM/GC) Master Contract Dated _____ between the State of Tennessee, Dept. of Finance and Administration and _____ for the project titled: New Data Center Facilities Nashville and Smyrna, Tennessee SBC Project No. 529/031-01-2007</p>
<p>2. This Agreement</p>
<p>3. General Conditions AIA document A201, 1997 edition as modified and dated _____.</p>
<p>4. Supplementary Conditions Tennessee Prevailing Wage Decision _____ (1 page) _____ Building Prevailing Wage Rates (2 pages)</p>
<p>5. Specifications Included in the Project Manual as listed in the Table of Contents, the Project Manual is dated _____ and titled as follows: New Data Center Facilities Nashville and Smyrna, Tennessee SBC Project No. 529/031-01-2007</p>
<p>6. Drawings, dated _____, and titled: New Data Center Facilities Nashville and Smyrna, Tennessee SBC Project No. 529/031-01-2007</p>
<p>7. The portions of the following Addenda as apply to the above documents:</p>
<p>8. Scope of Services and Deliverables Document dated _____.</p>

9. Standard Bidding and Construction Documents applicable to the CM/GC's Work that are to included

06 14 02

Construction Services Agreement
between
Owner and Construction Manager / General Contractor

in the Owner's Designers' Manual:

- 00 38 60 Disqualified Contractors and Subcontractors
- 00 54 33 ACH form
- 00 54 35 Substitute W-9 form
- 00 61 13 Contract Bond
- 00 61 43 Three Year Roof Bond
- 00 73 13 Supplementary Conditions (General Work)
- 00 73 41 Special Additional Supplementary Conditions
- 01 21 19 Allowances
- 01 22 13 Unit Prices
- 01 26 00 Contract Modification Procedures
- 01 26 20 Weather Delays
- 01 26 40 Form for Amendment, Change Order or Directive
- 01 26 50 Cost Itemization Form
- 01 29 73 Schedule of Values
- 01 29 76 Payment Procedures
- 01 29 76.13 .. Attestation of Personnel Used in Contract Performance
- 01 31 13.91 .. Commissioning Coordination
- 01 31 19 Project Meetings
- 01 31 90 Administrative Logs
- 01 33 91 Commissioning Submittals
- 01 41 15 Basic Regulatory Requirements
- 01 43 25 Testing Laboratory Services
- 01 52 25 Owner's Field Offices
- 01 62 25 Product Options and Substitutions
- 01 63 32 Substitution Request Form
- 01 77 70 Closeout Procedures
- 01 77 70.91 .. Contract Commissioning Closeout
- 01 78 21G..... Closeout Submittals (detailed Example)
- 01 78 36 Roofing System Warranty
- 01 78 88 Report of Subcontractors and Suppliers
- 01 79 13 Demonstration and Training
- 01 91 13 Commissioning

The Owner's Designers Manual can be accessed at
<http://www.state.tn.us/finance/rpa/dm/designermanual.html>
or a hard copy can be requested through the Owner.

Construction Services Agreement
between
Owner and Construction Manager / General Contractor

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 for the work and each Phase thereof in accordance with the number of calendar days Contract Time allotted each, from and including the Commencement of each, wholly and severally for the Work of each Phase.

--

- 2.2** Liquidated Damages, as set forth in paragraph 9.12 of the Supplementary Conditions, are

--

ARTICLE 3

CONTRACT SUM

- 3.1** The Owner shall pay the Contractor in current funds for the performance of the Work an amount not to exceed the Guaranteed Maximum Price, also referred to as the "Contract Sum", of,

--

subject to additions and deductions by Modifications as provided in the Contract Documents.

- 3.2** The Guaranteed Maximum Price (GMP) is determined as follows:

Trade Contracts	
General Conditions Budget	
CM/GC Contingency	
CM/GC Construction Services Fixed Fee	
Project Related cost	
Guaranteed Maximum Price	

- 3.3** Unit Prices will be used as specified.

--

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

06 14 02

Construction Services Agreement
between
Owner and Construction Manager / General Contractor

IN WITNESS WHEREOF:

CM/GC:

[NAME AND TITLE]

Date

APPROVED:

STATE ARCHITECT:

Michael Fitts, State Architect

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

ATTORNEY GENERAL:

Approved as for Form and Legality

Robert E. Cooper, Jr., Attorney General

Date

END of AGREEMENT FORM for the Project titled:

New Data Center Facilities
Nashville and Smyrna, Tennessee
SBC Project No. 529/031-01-2007

06 14 02

CM at Risk

Scope of Services and Deliverables

1 PRE-CONSTRUCTION PHASE SERVICES

The CM/GC services shall consist of providing Pre-Construction Phase Services (PCPS) as required including an acceptable Guaranteed Maximum Price(s).

1.1 Project Review

1.1.2 The CM/GC shall meet with the Owner, the Designer and any other design team members to gain a full understanding of the program, the design documents, the Project scope and all other aspects of the Project.

1.1.3 The CM/GC is an integral part of the Project team that will coordinate the development and progress of the pre-construction and construction phases.

1.1.4 The CM/GC may develop written Project procedures, in cooperation with the Owner and the Designer, that will augment the Owner's Designers' Manual, as necessary, to be used as a guide for the management and coordination of this Project.

1.2 Consultation During Project Development

1.2.1 The CM/GC shall attend regularly scheduled meetings with the Designer and consultants during the design phases established by the contract between the Owner and the Designer, to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing, and cost. The CM/GC shall provide written recommendations. 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 review of design documents is solely in its capacity as a construction manager and general contractor, not as a design professional. Such review is limited to issues of constructability, cost, value analysis, and scheduling. The CM/GC is not responsible for design of the Project.

1.3 Schedule

1.3.1 The CM/GC in consultation with the Designer shall prepare, provide, and maintain appropriately detailed pre-construction phase Critical Path Method (CPM) schedules utilizing the same standard software that will later be used to develop the Project Construction Schedule.

1.3.2 The Project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations. Updated schedules will be required at the end of each Design phase established by the contract between the Owner and the Designer, and after major value analysis decisions.

1.3.3 Within thirty (30) days from the execution of the Master Contract, the CM/GC is to establish a detailed CPM schedule of the pre-construction phase with the concurrence of the Owner and the Designer. The CM/GC is responsible to monitor this schedule during the pre-construction/design phases, and advise the Owner of any deficiencies in adhering to this schedule by any party.

1.4 Constructability Review

1.4.1 CM/GC shall review the design documents during the pre-construction phase as to constructability. The review shall be conducted and reported following "Uniformat." With respect to each such issue, the CM/GC shall submit a written report to both the Owner and the Designer. At a minimum, each such written report shall contain:

- (1) A description of the constructability issue with background information;
- (2) a summary of the CM/GC's in-depth study/research

including a disclosure of the degree that the design/construction documents have been reviewed; and,
(3) written recommendations for addressing the issue.

1.4.2 The CM/GC shall promptly notify the Owner and Designer in writing upon recognizing any features in the design documents that appear to the CM/GC to be ambiguous, confusing, conflicting or erroneous.

1.5 Construction Cost Model / Estimates

1.5.1 The CM/GC shall develop a Project Construction Cost Model/Estimate that shall be independent from any similar estimate of probable construction cost required of the Designer and shall be updated as needed, but at a minimum at the end of each design phase during which the CM/GC is performing PCPS.

1.5.2 Each Construction Cost Model/Estimate must contain a statement of the total amount determined to be the total construction costs for the Project, including alternates, CM/GC construction services General Conditions Budget, CM/GC construction services Fixed Fee, and CM/GC Contingency.

1.5.3 The Maximum Allowable Construction Cost (MACC) is the amount available for construction: GMP Target as established by the Owner plus the Owner's construction contingency. The GMP Target shall include the amount available for construction, the CM/GC construction services General Conditions Budget, CM/GC construction services Fixed Fee, and CM/GC Contingency.

1.5.4 Each Construction Cost Model/Estimate and the Designer's estimate of probable construction cost 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 Designer's estimate of probable construction cost and the Construction Cost Model/Estimate and to reach a mutually acceptable joint estimate of probable construction cost.

1.5.5 In the event that the Designer's or the CM/GC's estimate of probable construction cost exceeds the GMP Target, the Owner may direct the CM/GC to continue to provide its pre-construction phase services 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. Also, the Owner may elect to revise the Project scope or increase funding.

1.6 Value Analysis

1.6.1 The CM/GC shall, after a complete review of the Project program, review the design documents available at the time of the CM/GC's commencement of PCPS, and obtain an understanding of the intent of the Owner and the Designer, provide an initial value analysis study within a time frame agreed upon between Owner, Designer, and CM/GC based on available information and offer cost savings suggestions to the Owner. All recommendations shall be in writing, and must be fully reviewed with the Designer and Owner, and approved by the Owner prior to implementation.

1.6.2 Value analysis efforts are intended to facilitate a design by the Designer that is effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Designer to achieve an appropriate balance between costs, aesthetics and function. The CM/GC's analyses and recommendations are for issues of constructability,

08 13 00

scheduling, value analysis, and cost, and are not made in the capacity of a design professional evaluating the adequacy of the design or compliance of the design with applicable design standards or codes.

1.6.3 Value analysis efforts shall take into consideration applicable constructability issues.

1.6.4 All value analysis studies must be provided on a timely basis within the pre-construction schedule.

1.6.5 Value analysis shall be continuous.

1.6.6 The CM/GC shall conduct a value analysis study on a date agreed upon by the Project team which shall include, but not be limited to, the items noted below:

- a. Develop value analysis concepts for consideration at the session noted in (b) below. This activity shall be coordinated with the Designer.
- b. Brainstorming session(s) with design team and Owner.
- c. Written cost studies and a pro/con evaluation shall be produced and submitted to the Owner within two (2) weeks of the brainstorming session.
- d. Formal presentation of the written study shall be conducted by the CM/GC.
- e. A formal written value analysis study document including a summary of value analysis items, applicable cost savings, selected items and their corresponding cost savings shall be presented to the Owner and Designer.

1.7 Coordination of Contract Documents

1.7.1 The CM/GC shall review the construction documents, recommending alternatives whenever the CM/GC recognizes that design details unduly affect costs, construction feasibility or schedules. The CM/GC shall notify the Designer and the Owner in writing upon recognizing any features in the construction documents, which appear to the CM/GC to be ambiguous, confusing, conflicting or erroneous.

1.7.2 The CM/GC shall provide a thorough trade coordination review of the construction documents before trade contract bidding. Review shall be performed utilizing a structured, industry-accepted process. The CM/GC shall review the final documents to see that all comments have been incorporated.

1.7.3 All ambiguous, confusing, conflicting and/or erroneous features discovered in the construction documents by the CM/GC during the review process shall be promptly reported to the Owner and Designer.

1.8 Guaranteed Maximum Price (GMP) for Construction

1.8.1 The GMP shall be established not later than 30 days after final review submission of the construction documents to the Owner. The CM/GC may bid trade contracts prior to establishment of the GMP at its own risk subject to Paragraph 1.10 below; however, the CM/GC shall not enter into binding contracts with trade contractors until after the Construction Services Agreement - Guaranteed Maximum Price (CSA-GMP) is negotiated and executed. The CM/GC shall develop and provide to the Owner a GMP which shall include all construction costs, and all other projected costs including, but not limited to, the CM/GC-GMP Contingency, the CM/GC construction services Fee, and construction services General Conditions Budget. The GMP shall identify each anticipated trade contract amount, the CM/GC's Fixed Fee, General Conditions reimbursable costs, identifying all line items, and all Project related costs, such as bonds, personnel payroll benefits, and other costs.

1.8.2 The CM/GC's detailed construction cost estimates and GMP will be reviewed by the Designer and the Owner for reasonableness and compatibility with the Project 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 construction cost estimate and corresponding GMP.

1.8.3 The GMP shall not exceed the GMP Target as established by the Owner.

1.8.4 In the event that the GMP exceeds the GMP Target, the Owner reserves the right to direct the CM/GC to continue to provide pre-construction phase services 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 alters and redrafts construction documents as necessary to accomplish the required reduction in cost.

b. The CM/GC shall analyze the Designer's originally submitted and as altered and redrafted 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 redrafted and altered construction documents.

1.8.5 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 Owner-CM/GC Construction Contract (the CSA-GMP). All required bonds and insurance shall be provided in accordance with the terms of the CSA-GMP, and shall be furnished on or before the date of the Owner's execution of the CSA-GMP.

1.8.6 The CM/GC shall perform the work set forth in this Section without additional compensation over and above the lump sum pre-construction fee provided in the Master Contract.

1.9 Contingencies

1.9.1 Owner's Construction Contingency:

a. An Owner's Construction Contingency will be established. Expenditures against this contingency will be available to cover all costs resulting from modifications not specifically covered in subparagraph 1.9.2 and initiated by the Owner's designated representative and implemented through a modification to the CSA-GMP during the Construction Phase Services.

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

1.9.2 CM/GC-GMP Contingency

a. The GMP shall include a construction contingency (CM/GC-GMP 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 and the CM/GC acknowledge that the contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including, but not limited to, those resulting from (1) the Construction Documents not being complete at the time the GMP is established, (2) scope gaps between trade contractors, and (3) unforeseen field conditions, circumstances, or other occurrences which a prudent CM/GC would not have reasonably detected or anticipated during the discharge of the CM/GC's pre-construction duties.

b. The amount of the CM/GC-GMP Contingency is the maximum sum available to the CM/GC to cover costs incurred as a result of such unanticipated causes or details. Cost overruns in excess of the amount of the CM/GC-GMP Contingency will be borne by the CM/GC, unless the GMP

is adjusted pursuant to the terms of the Owner-CM/GC CSA-GMP.

c. The CM/GC-GMP Contingency may be applied to any items within the cost of the work without the necessity of a modification, without constituting a change in the work, and without resulting in any change in the GMP. The CM/GC shall advise the Designer and the Owner in writing prior to applying a part of the CM/GC-GMP contingency to an item within the cost of the work. The CM/GC shall fully document the change on its copy of the construction documents that will be used as a part of the record documents.

d. The amount of the CM/GC-GMP Contingency is to be reviewed by the Owner as part of its review of the GMP. No set amount or percentage for the CM/GC-GMP Contingency will be agreed to prior to the submittal of the GMP. The Owner retains the right to specifically request revisions to the amount of the CM/GC-GMP Contingency prior to the Owner's acceptance and approval of the GMP.

1.10 Non-Acceptance of the GMP and Termination

1.10.1 The Owner, at its sole discretion, may decline to proceed with the CM/GC's GMP for the Project or Project phase(s) and thereupon without penalty, the Contract services for the Project or Project phase(s) shall terminate at the end of the Pre-Construction Phase.

1.10.2 In any event, such termination shall likewise terminate all further services and obligations of the CM/GC for the Project or Project phase(s). The CM/GC shall accept the lump sum 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 any 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 any data and information developed during PCPS.

1.10.3 Termination under this Section is in addition to the termination provisions set forth elsewhere in the Contract, including, but not limited to, the Conditions of the Contract included in the CSA-GMP.

1.11 Ownership of Documents

1.11.1 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 ten (10) 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.

1.12 Trade Contractor Qualification Requirements

1.12.1 The Owner and the Designer shall cooperate and participate with the CM/GC in the CM/GC's establishment of qualification requirements for all trade contractors. Then the CM/GC shall proceed to obtain written, sealed competitive bids from qualified trade contractors.

1.12.2 Basic qualification information from principal trade contractors may be requested on AIA Document 305 (Contractor's Qualification Statement). There may be a need to request additional Project or task specific information. The CM/GC may establish any qualification requirements that are not prohibited by law or by any specific and explicit terms of any written and published State Building Commission policies and procedures.

1.12.3 The CM/GC shall conduct pre-bid meetings and award meetings for all trade contracts. The CM/GC shall notify the Owner and Designer of the time and place of each such meeting.

1.12.4 The CM/GC may verify any trade contract bid as hereinafter provided.

2 CONSTRUCTION PHASE SERVICES

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

2.1 Consultation During Continuing Project Development

Upon acceptance of the GMP, the CM/GC shall continue to advise and assist the Owner and Designer during any continuing design activities as described in Part A, but solely in its capacity as a construction manager and general contractor, not as a design professional. Such advice and assistance is limited to issues of constructability, cost, value analysis, and scheduling. The CM/GC is not responsible for design of the Project.

2.2 Project Construction Costs

2.2.1 The CM/GC will publicly bid trade contracts in accordance with the established Project schedule. Upon completion of the award process for trade contracts, the CM/GC will summarize the values of all of the subcontracts and compare this total with the budgeted amount within the GMP cost summary. Should the value of the awarded subcontracts be less than the GMP trade contract budget, a reserve fund will be established. The sum of the CM/GC contingency and the reserve fund shall be limited to ten percent of the value of the GMP or a different percent agreed to by the Owner and the CM/GC. Any funds in excess of the ten percent cap will be deducted from the GMP by modification and added to the Owner's contingency. The CM/GC may utilize the reserve fund as follows:

a. There are certain uses for the CM/GC contingency delineated in 1.9.2 above. The CM/GC can only utilize the reserve fund for these uses after the CM/GC contingency has been expended and upon prior written approval of the Owner, which shall not be unreasonably withheld.

b. The CM/GC shall be authorized to use or allocate reserve funds for other purposes only upon mutual agreement that the purpose is appropriate to the Project and to the CSA-GMP, and only with the prior written approval of the Owner.

2.2.2 Upon completion of the CM/GC's obligations under the CSA-GMP, any and all non-expended funds remaining in the GMP will be retained by the Owner.

2.3. Project Construction Schedule

2.3.1 The CM/GC shall provide a Critical Path Method (CPM) schedule utilizing accepted standard computer based software. The scheduling software shall allow for integration of all aspects of the Project and provide for coordination of all work to be performed. The scheduling software used by the CM/GC shall be capable of producing and coordinating logic developed network diagrams, and tabular format reports.

2.3.2 After acceptance of the GMP and issuance of a CSA-GMP to the CM/GC for a Construction Phase of the Project and within fifteen (15) days after receipt of the written Notice To Proceed with construction (NTP), the CM/GC shall submit a preliminary CPM schedule that is consistent with the preliminary schedule included in trade contract bid packages.

2.3.3 The CM/GC shall develop the complete and final CPM schedule in the form of a CPM network diagram using the CM/GC's logic and time estimates for each segment of the work. The network diagram will be drawn in a level of detail suitable for display of salient features of the work including, but not limited to, the placing of orders for materials,

submission of shop drawings for approval, approval of shop drawings by the Designer, delivery of material, and all work activities inclusive of the punch list. Each work activity shall be assigned a time estimate by the CM/GC. One-day shall be the smallest time unit used. Data shall also be provided in Gantt form.

2.3.4 Upon completion of the Network diagrams, the CM/GC shall have computer input data prepared, and a computer run made to generate a printout for the Project based on the information supplied. In the event the completion date indicated by the schedule exceeds the contractual date(s), the logic and time estimates used to develop the plan will be reviewed, changes will be made in the logic and time estimates, and another computer run will be made to generate a new schedule. This procedure shall be repeated, if necessary, to provide a plan and schedule to meet the contractual date(s). All submissions shall be both in hard copy and in electronic format.

2.3.5 Within thirty (30) days after receipt of the written NTP with construction, the final CPM schedule shall be submitted to the Designer and the Owner. This working plan shall show job identification, job duration, calendar dates for start and finish of each job, and jobs critical to the completion of the Project on schedule.

2.3.6 The CM/GC shall review the plan and schedule each month. An updated Project schedule shall be furnished showing actual completed work at the end of each month in respect to the entire Project.

2.3.7 The CM/GC shall provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and desired completion dates, review schedule for work not started or incomplete and take the action necessary to meet the required completion date.

2.3.8 Adherence to Schedule:

- a. It is the CM/GC's responsibility to meet the required construction completion date(s) as modified pursuant to Article 8 of the Conditions of the Contract.
- b. If the CM/GC finds that the schedule is likely to be impacted by an action or inaction on the part of the Owner, the CM/GC must review the situation with the Designer and the Owner in a timely manner, and proceed in accordance with the Conditions of the Contract.

2.4 Trade Contracts

2.4.1 The CM/GC shall prepare trade contract packages as required. Contracts between the CM/GC and trade contractors shall be in accordance with the Conditions of the Contract, and shall be procured in accordance with the State Building Commission policies and procedures for bidding of Public Contracts (this document can be accessed at <http://www.state.tn.us/finance/rpa/policy.pdf> or a hard copy can be requested through the Owner), and documents enumerated in Article I of the CSA-GMP.

2.4.2 After the CM/GC has developed qualifications for trade contractors, the CM/GC shall invite and receive bids for all qualified contractors for each package. The CM/GC shall publicly open the bids and then tabulate the bids received on each package. Next, the CM/GC shall determine the apparent low bidder for each package. Upon this determination, the CM/GC shall have the right to review all bid documentation from the apparent low bid contractor to verify the scope of the bid. 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 fully and strictly satisfies all qualification criteria and requirements established pursuant to subparagraph 1.12.2, then the contract shall be awarded to the low bidder as a subcontractor. 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 established pursuant to subparagraph A.12.2, 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.

2.4.3 The CM/GC may repeat the bidding for a trade contract only if:

- (1) the initial bidding produces no responsible, responsive bid for that portion of the work, or
- (2) no responsible, responsive bidder for that portion of the work will execute the subcontract form included in the bid package without material alterations, and
- (3) the Owner approves of such a re-bid, which approval shall not be unreasonably withheld.

2.4.4 All contract documents between the CM/GC and the trade contractors shall be made available for review by the Designer and the Owner.

2.4.5 Trade contracts are not to include contingencies. All construction contingency is to be included in the CM/GC GMP contingency.

2.5 Project Control

2.5.1 Project Staffing

a. The CM/GC's on-site representatives shall coordinate the work of the trade contractors 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-GMP requirements.

b. The CM/GC shall maintain a competent and adequate full-time staff at the Project site to coordinate and provide adequate direction of the work, and to monitor progress of the trade contractors on the Project at all times.

c. The on-site 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.

2.5.2 Meetings

a. The CM/GC shall schedule and conduct regular progress meetings with trade contractors as conditions on the Project require. The CM/GC shall conduct biweekly Owner's meetings and other meetings as may be required, at which trade contractors, Owner, Designer, and other designated representatives, and the CM/GC can discuss jointly such matters as identified in the Owner's Designers' Manual under Administrative Procedures, Chapter 6 paragraph 6.07 Progress Meetings.

b. The CM/GC shall take and distribute complete minutes of meetings to all attendees, and to the Designer and Owner even if not attending, within three (3) days of such meetings. Representatives of the Owner and Designer may attend meetings and shall in any case receive all notices and minutes of meetings.

2.5.3 The CM/GC may self perform Project work to assist with the coordination of trade contracts 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 (3) percent.

2.6 Requests for Information (RFI)

2.6.1 The CM/GC will be responsible for developing and implementing a RFI form for use on the Project.

2.6.2 The CM/GC will be responsible for logging and reviewing all RFIs prior to submission to the Designer. The CM/GC is to ensure that the RFIs submitted are not frivolous.

2.6.3 The CM/GC shall track and monitor all RFIs throughout the Construction Phase in a timely manner until they are processed by the Designer.

2.6.4 All responses to the RFIs that have an added cost impact shall also be discussed with the Designer and the Owner.

2.6.5 The CM/GC shall develop an RFI aging report which is to be submitted at each progress meeting.

2.7 Substitution Requests

2.7.1 The CM/GC shall log all substitution requests.

2.7.2 The CM/GC shall review all substitution requests to ensure that they are complete; and, if not complete, return them to the trade contractor for proper submission.

2.7.3 The CM/GC shall not submit a substitution request to the Designer if CM/GC believes it to be inappropriate. The CM/GC's review of substitution requests will be solely in its capacity as a construction manager and general contractor, not as a design professional. Such review shall be in accordance with the Contract Documents enumerated in Article 1 of the CSA-GMP.

2.7.4 The CM/GC shall track and monitor all substitution requests throughout the Construction Phase until all substitution requests are processed by the Designer. The CM/GC shall ensure that all substitution requests are submitted in accordance with the Contract Documents.

2.7.5 The CM/GC shall include substitution requests, if any, on the agenda at the progress meetings.

2.8 Project Photographs

2.8.1 The CM/GC shall submit progress photographs monthly in sufficient detail to properly record the work.

2.9 Cost Control

2.9.1 The CM/GC shall develop and maintain an effective system of Project cost tracking and control.

2.9.2 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 Paragraph D.8 of the Master Contract.

2.10 Quality Control / Inspection

2.10.1 The CM/GC shall perform quality control inspections on the work of the trade contractors to guard the Owner against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the Designer. He shall advise the Designer of any apparent variation and deviation from the Contract Documents and shall take the necessary action to cause such variations and deviations from the Contract Documents to be corrected. CM/GC shall provide one set of all inspection reports (in binder form) as part of the bi-weekly job progress meetings.

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

2.10.3 The CM/GC shall track deficiencies reported by the Designer, as well as those noted in item 2.10.1.

2.11 Project Safety

2.11.1 The CM/GC shall develop and implement a Project safety program in accordance with the Conditions of the Contract and applicable regulations.

2.11.2 The CM/GC shall document any safety violations and actions taken to protect the safety of persons and property engaged in the work.

2.12 Modifications and Change in GMP

2.12.1 Changes in the scope of work to be performed during the Construction Phase shall be governed by the Conditions of the Contract.

2.12.2 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 changes to the Owner and the Designer for approval.

2.12.3 Modification proposals will consist of actual costs only; that is, trade contractors' change order proposals and General Conditions items, if applicable, only. No additional CM/GC fee shall be assessed for Owner requested modifications to the work of the Project until such modifications aggregate to a sum in excess of five (5%) percent of the Project original GMP.

2.12.4 All actual net costs associated with scope reductions shall revert to the Owner in accordance with the Conditions of the Contract.

2.13 Shop Drawing Review/Processing

2.13.1 The CM/GC will be responsible for logging all shop drawings / submittals prior to submission to the Designer. The CM/GC is to ensure that shop drawing / submittal packages are submitted in an appropriate manner and, if not appropriately submitted, return them to the trade contractor for proper submission.

2.13.2 The CM/GC shall develop and implement a system for review, acceptance or rejection, and processing of all shop drawings / submittals, including the projected lead time on the CPM schedule; and shall review this system with the Designer.

2.13.3 The CM/GC shall be responsible for tracking and monitoring all shop drawings/submittals throughout the Construction Phase until all shop drawings/submittals have been approved by the Designer.

2.13.4 The CM/GC shall include shop drawings as an agenda item on all progress meetings.

2.13.5 The CM/GC shall develop a shop drawings/submittal aging report which is to be submitted at each bi-weekly progress meeting.

2.14 Document Control

2.14.1 The CM/GC shall devise, implement and maintain at the Project site, a structured document control system which includes and tracks records of all necessary contracts, RFIs, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Contract; and, shall keep these documents readily available to the Designer and the Owner any time during the performance of this contract.

15 Reports

2.15.1 General

a. The CM/GC shall keep accurate and detailed written records of Project progress during all stages of construction.

b. The CM/GC shall submit a monthly progress report, bound in booklet form, to the Designer and the Owner to include a progress report on the status of construction, updated copies of all logs including Pending Action Items

Log, RFI Log, Modification Status Log, Submittals Log, an updated Construction Schedule, updated Contract Time and GMP Status, and progress photographs.

2.15.2 Daily Diary

The CM/GC shall maintain a detailed daily diary of all events, which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, Project progress. The diary shall record, as applicable, weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities, and be used to support the standard Weather Delay Report. The diary shall include a detailed list of all material deliveries to the site and describe the construction activities of the day along with manpower and equipment usage, including that of the trade contractors. The diary shall be available to the Designer and Owner at all times and shall be turned over to the Owner upon completion of the Contract.

2.16 Bidding Documents

2.16.1 The following Bidding Requirements, Contract Forms, Conditions of the Contract, and General Requirements shall be a part of the CSA-GMP and, in all cases in these documents, references to "General Contractor" shall mean the CM/GC:

- a. The Contract Documents including AIA Document A201-1997 General Conditions of the Contract for Construction and Supplementary Conditions as enumerated in Article 1 of the CSA-GMP.
- b. Wage Rate Determination(s) - from the Tennessee department of Labor, applicable to the portions of the Work performed by the CM/GC and applicable to portions of the Work performed by the CM/GC's trade contractors regardless of the number of subcontract tiers between the CM/GC and the worker.
- c. Standard Bidding and Construction Documents that are applicable to the CM/GC's Work are identified in Article 1 of the CSA-GMP.

End of Scope of Services and Deliverables.

Combined Request and Decision form for Wage Determination

Request made by		
<i>Name of person</i>	Nicholas DePalma	
<i>Title</i>	Architect/Project Manager	
<i>Department, Agency, or Bureau</i>	Dept. of Finance and Administration Real Property Administration	
<i>Address, phone, fax</i>	312 8 th Avenue North, Ste 2200 Nashville, TN 37243 Tel 615-741-4083 Fax 615-741-2335	
<i>Date of request</i>	<i>Date of Advertisement</i>	<i>Supersedes Decision</i>
27 Sep 2007	10 Oct 2007	

If Work is in multiple building rates regions, then a separate request is required for each region; and, if in multiple counties within a region, then all counties within each region must be listed.

The Project		
<i>CITY</i>	<i>State</i>	<i>County</i>
Nashville & Smyrna	TN	Davidson & Rutherford
<i>PROJECT IDENTIFICATION</i>		
New Data Center Facilities		
SBC Project No. 529/0xx-xx-2007		
<i>BRIEF PROJECT DESCRIPTION</i>		
The Project consists of construction two Comprehensive Data Center facilities, staff areas, and ancillary functions.		

Decision rendered by
State of Tennessee Dept. of Labor and Workforce Development Labor Standards Division 404 James Robertson Parkway, Suite 1606 Nashville, Tennessee 37243-0657

Wage Determination	
Decision Number	T-31707
Building Rates	<input checked="" type="checkbox"/> Apply <input type="checkbox"/> Do not apply
Highway Rates	<input type="checkbox"/> Apply <input checked="" type="checkbox"/> Do not apply
REPORT TO	
CEDRICK CUSIC DEPT OF LABOR & WORKFORCE DEV. DIVISION OF LABOR STANDARDS 225 MLK DRIVE JACKSON TN 38301	
<i>Date assigned</i>	<i>Assigned by</i>
09/29/2007	Mary Ellen Grace

The project identification and brief project description given herein shall not act to define, expand, or limit the Work required by the Contract Documents. Such information provided herein is intended only as information to the Department of Labor and Workforce Development. No other use or interpretation is intended.

07 00 02

CONTRACT BOND
TENNESSEE STATE BUILDING COMMISSION STANDARD FORM

BOND NO. _____

Know all men by these presents: that we

(hereinafter called the "Principal") and

hereinafter called the "Surety") do hereby acknowledge ourselves indebted and securely bound and held unto

(hereinafter called the "Owner"), and in the penal sum of

good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

But the condition of the foregoing obligation or bond is this:

Whereas, the Owner has engaged the principal for the sum of

to complete the Work of the project titled:

as more fully appears in a written agreement or contract bearing the date of

a copy of which said agreement or contract is by reference hereby made a part hereof, as fully and to the same extent as if copied at length herein, and it is the desire of the Owner that the Principal shall assure all undertakings under said agreement or contract and shall assure and protect all laborers and furnishers of material on said Work both as provided by Tennessee Code Annotated Sections 4-15-102 (f)(2) and 12-4-201 through 12-4-206, and any and all amendments thereto, and shall assure the prompt payment of claims as provided by Tennessee Code Annotated Sections 12-4-207 through 12-4-208, and any and all amendments thereto. The Principal shall also comply with provisions of Tennessee Code Annotated Sections 12-4-401 through 12-4-415, and any and all amendments thereto, pertaining to the payment of the prevailing wage rate.

07 00 01

Now, therefore, if the Principal shall fully and faithfully perform all undertakings and obligations under the contract herein before referred to and shall fully indemnify and hold harmless the Owner from all costs and damage whatsoever which it may suffer by reason of any failure on the part of the Principal to do so, and shall fully reimburse and repay the Owner any and all outlay and expense which it may incur in making good any such default, and shall fully pay for all of the labor, material and work used by the Principal and any immediate or remote sub-contractor or furnisher of material under him in the performance of said contract, in lawful money of the United States, as the same shall become due, then this obligation or bond shall be null and void, otherwise to remain in full force and effect.

And for value received, it is hereby stipulated and agreed that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or to the specifications accompanying the same shall in any wise affect the obligation under this bond, and notice is hereby waived of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the specifications.

In witness whereof the Principal has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this _____ day of _____, 20____.

Executed in _____ counterparts.

Witness:

(name of Principal)

(name of Surety)

(authorized signature)

(signature of Attorney-in-fact)

(name of signatory)

(name of Attorney-in-fact)

(title of signatory)

(Tennessee license number of Agent or Attorney-in-fact)

(countersignature of resident Agent if not same as Attorney-in-fact)

Surety Company issuing bond shall be licensed to transact business in State of Tennessee by Tennessee Department of Commerce and Insurance. Bonds shall have certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached. Attorney-in-fact who executes bond on behalf of Surety shall be licensed by and a resident of State of Tennessee, and shall affix license number to bond; or, countersignature by a licensed agent who is a resident of State of Tennessee, and the agent's license number, shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.