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Life Sciences Small Business Matching Grant Program

Solicitation No. 2010-SBMG-01

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Solicitation Issued: February 1, 2010
Applications Due: March 1, 2010

1. Summary

In order to expand life sciences-related employment opportunities, promote health-related innovations and stimulate research and development, manufacturing and commercialization in the life sciences, the Massachusetts Life Sciences Center (Center) is pleased to announce the inaugural offering of the Life Sciences Small Business Matching Grant Program (the Program).

This Program is designed to provide grants for companies engaged in life sciences research and development, commercialization and manufacturing in Massachusetts that have received a Phase II, post-Phase II, or equivalent small business innovation research (SBIR) or small business technology transfer (STTR) grant(s) from federal agencies such as the National Institutes of Health, the National Science Foundation, or the Department of Defense.

Applicants are early-stage life sciences companies with a high potential for technology commercialization, rapid growth, and downstream private equity financing that have raised no more than \$5 million in total private financing. MLSC recognizes that many companies struggle to address the significant financial investment associated with the long life sciences R&D cycle and the high cost of translating research into a commercially viable product. This solicitation is designed to help sustain these companies through a critical stage of development and to leverage additional sources of capital to bring cutting edge innovation to the marketplace.

Interested applicants will be required to submit an application that is due on March 1, 2010 by 11:59 pm EST. Please note that if you apply to the Program, you will not be eligible to apply to the anticipated next round of the Center's Accelerator Program, estimated to launch on February 24, 2010.

The following key terms are used in this solicitation:

- **Agreement** means the funding agreement to be executed between the Center and Awardees under the Program. A copy of the standard Agreement will be posted on the Center's website by February 4, 2010.
- **Applicant** means the organization submitting an Application.
- **Application** means the Program application available online at www.masslifesciences.com.
- **Awardee** means an eligible applicant that receives a notice from the Center that it has been awarded a grant pursuant to this Solicitation.
- **Life Sciences** means advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science, as defined in the Massachusetts General Laws (MGL), chapter 23I, section 2.
- **Life Sciences Company** means a business corporation, partnership, firm, unincorporated association or other entity engaged in life sciences research, development, manufacturing or commercialization in the Commonwealth of Massachusetts, and any affiliate thereof, which is, or the members of which are, subject to taxation under MGL chapters 62, 63, 64H or 64I, as defined in MGL, chapter 23I, section 2.
- **Life Sciences Statute** means Chapter 23I of the MGL.
- **Program** means the Life Sciences Small Business Matching Grant Program as described more fully in this Solicitation.

2. Who We Are

The Massachusetts Life Sciences Center (Center) is a quasi-public agency of the Commonwealth of Massachusetts tasked with implementing the Massachusetts Life Sciences Act, a ten-year, \$1 billion initiative that was signed into law in June of 2008. The Center's mission is to create jobs in the life sciences and support vital scientific research that will improve the human condition. This work includes making financial investments in public and private institutions that are advancing life sciences research, development and commercialization as well as building ties between sectors of the Massachusetts life sciences community. For more information, visit www.masslifesciences.com.

3. Life Sciences Small Business Matching Grant Program

3.1 General

On January 27, 2010 the Board of Directors of the Center approved the launch of a new Small Business Matching Grant Program (SBMG or the Program). This program reflects the Center's ongoing commitment to provide financing to small life sciences companies that will grow employment opportunities, promote manufacturing and commercialization, and stimulate innovation across the Commonwealth. The Center is targeting an FY10 investment of three million dollars in capital funding in the Small Business Matching Grant Program.

The Center recognizes that many companies struggle to address the significant financial investment associated with the long life sciences R&D cycle and the high cost of translating research into a commercially viable product. The Program is designed to help sustain these companies through a critical stage of commercialization and to leverage additional sources of capital to bring cutting edge innovation to the marketplace.

The primary objective of the SBMG is to provide grants to commercialization-ready life sciences companies that have received a Phase II, post Phase II, or equivalent small business innovation research (SBIR) or small business technology transfer (STTR) grant from federal agencies such as the National Institutes of Health, the National Science Foundation, or the Department of Defense.

3.2 Funding

The Center's Board of Directors has allocated \$3 million dollars to the Program for FY10. The Center envisions that recipients under the Program will receive a grant amount that matches their federal SBIR/STTR grant funding on a 1:1 basis, but can not exceed \$500,000 per Awardee. For example, a successful applicant that received \$300,000 in total SBIR/STTR grant funding would be eligible to receive \$300,000; whereas a successful applicant that received \$750,000 in SBIR/STTR grant funding would be eligible to receive no more than \$500,000 from the Center. The number of grants will be determined by the quality of the proposals.

3.3 Competitive Program

THE PROGRAM IS COMPETITIVE AND THE CENTER'S BOARD OF DIRECTORS HAS FULL DISCRETION AND AUTHORITY TO DETERMINE (1) WHICH LIFE SCIENCES COMPANIES, IF ANY, ARE ENTITLED TO RECEIVE GRANTS UNDER THE PROGRAM AND (2) THE AMOUNTS OF ANY SUCH GRANTS. SUBMISSION OF AN APPLICATION DOES NOT GUARANTEE THE AWARD OR RECEIPT OF ANY GRANT UNDER THE PROGRAM.

4. Eligibility Criteria and Requirements

4.1. Eligibility

Each Application received will be evaluated and assessed for eligibility using the following criteria.

4.1.1 Eligible Entity

The Applicant must be a legally organized, "for-profit" entity engaged in life sciences research, development, manufacturing or commercialization in the Commonwealth of Massachusetts.

As defined in the Life Sciences Statute, life sciences means "advanced and applied sciences that expand the understanding of human physiology and have the potential to lead to medical advances or therapeutic applications including, but not limited to, agricultural biotechnology, biogenerics, bioinformatics, biomedical engineering, biopharmaceuticals, biotechnology, chemical synthesis, chemistry technology, diagnostics, genomics, image analysis, marine biology, marine technology, medical devices, nanotechnology, natural product pharmaceuticals, proteomics, regenerative medicine, RNA interference, stem cell research and veterinary science."

4.1.2 Recipient of SBIR/STTR Grant from a Federal Agency

To be eligible for this Program, Applicant must have received a Phase II, post Phase II, or equivalent Small Business Innovation Research (SBIR) or Small Business Technology Transfer (STTR) grant(s) from a Federal agency such as the National Institutes of Health, the National Science Foundation, or the Department of Defense.

4.1.3 Ineligible if Recipient of Funding under the Center's 2009 Accelerator Loan Program

The companies that received financing under the Center's 2009 Accelerator Loan Program are not eligible to apply to the Life Sciences Small Business Matching Grant Program.

4.1.4 Raised Less than \$5 Million or More in Private Financing

If you meet any of the following criteria, you are not eligible to apply to the Life Sciences Small Business Matching Grant Program:

- You have raised \$5 million or more in total equity financing.
- You are majority owned (greater than 50%) by a parent company that is an operating or holding company and
 1. Have raised \$5 million or more in total equity financing, or
 2. Have received \$5 million or more in debt/equity financing from your parent, or
 3. Have raised/received \$5 million or more as a combination of 1. and 2. above.
- You are majority owned (greater than 50%) by a parent that is an investment company, investment partnership, or investment fund and have received \$5 million or more in financing from your parent.

4.2. Requirements of Award

The following criteria must be met by Applicant in order for the Center to consider and evaluate an Application.

4.2.1 Acceptance of Terms.

Applicants are required to indicate that they have read, understood, and are willing to accept the terms of this Solicitation, of the grant for which they are applying, and to the Agreement memorializing receipt of such grant in substantially the form provided in the Agreement which will be posted on the Center's

website by February 4, 2010. Any modifications to this Agreement will be at the sole discretion of the Center, and receipt of any award is contingent upon execution of such Agreement. Submission of the Authorized Representative's Signature in the online application will satisfy this requirement.

Acceptance of the terms of the grant will not confer any rights on the Center to Applicant's intellectual property.

4.2.2 Business Location.

Consistent with the purpose of the Program and the requirements of the Life Sciences Statute that its provisions for financial assistance be tied to the development of maximum benefits for citizens of the Commonwealth, Awardees are required to perform life sciences research, development, manufacturing or commercialization in Massachusetts. Applicants are encouraged to form or make use of any partnerships and supplier relationships within Massachusetts. Applicants will be asked in the Application to represent how the proposed business benefits Massachusetts and its citizens.

4.2.3 Use of Proceeds and Proposed Business Plan.

The Life Sciences Small Business Matching Grant Program award is to serve as flexible working capital or for the purchase of capital assets to help Awardees achieve product development milestones and obtain private investment. The Business Plan is a key component of the Application. It must articulate a strategy to develop the Applicant's product, service or technology toward commercial use. Specifically, the Business Plan may include a prototype demonstration, a design/process improvement, testing and certification, applied research, commercialization activities or pilot production, and financials and projections. Furthermore, the Business Plan should clearly demonstrate Applicant's understanding of the product market as well as identify its go-to-market strategy, fundraising schedule, and cash management plan. The Applicant must also be able to demonstrate its ability and commitment to honor the terms of the Agreement.

4.2.4 Information Requirements.

During the course of the Center's evaluation of applications, Center staff, Board members, advisors or the Center's qualified contractors may contact the Applicant to request supplemental information, or to request an interview with, or presentation by, Applicant. Applicant may also be required to host site visits by Center staff and contractors for purposes of evaluation. Should an award be made, the Awardee will be required to provide the Center with certain information to help the Center monitor information pertaining to: employment figures, revenue generation, taxable income, employee salaries, amount of private capital leveraged, and information as to the recipient's operations and business affairs.

4.2.5 Requirements for Submission of Confidential Information.

In accordance with the Commonwealth's Public Records Law, Awardees will be required to agree that the Center shall have the unlimited right to make use of and disseminate all periodic reports, case studies and any other deliverables and work products. **SEE SECTIONS 5.1 AND 8.1 FOR A DISCUSSION OF PUBLIC DISCLOSURE REQUIREMENTS AND PROCEDURES FOR HANDLING DOCUMENTS SUBMITTED TO THE CENTER AND IDENTIFIED BY THE APPLICANT AS "CONFIDENTIAL INFORMATION."**

5. Application Process

5.1. General Requirements

Applicants are cautioned to read carefully and conform to the requirements of this specific Solicitation. Failure to comply with the provisions of this Solicitation may serve as grounds for rejection of a proposal.

Any and all data, materials and documentation submitted to the Center in response to this Solicitation shall become the Center's property and shall be subject to public disclosure under the Massachusetts Public Records Act, with the exception of information that may be eligible as trade secrets or commercial

or financial information regarding the operation of any business. **PLEASE NOTE: BY EXECUTING THE AUTHORIZED APPLICANT'S SIGNATURE AND ACCEPTANCE FORM CONTAINED AS PART OF THE APPLICATION AND SUBMITTING A RESPONSE TO THIS SOLICITATION, APPLICANTS CERTIFY THAT THEY (1) ACKNOWLEDGE AND UNDERSTAND THAT ALL MATERIALS SUBMITTED AS PART OF THIS APPLICATION ARE SUBJECT TO DISCLOSURE UNDER THE MASSACHUSETTS PUBLIC RECORDS LAW; (2) ACKNOWLEDGE AND UNDERSTAND THE PROCEDURES FOR HANDLING MATERIALS SUBMITTED TO THE CENTER AS SET FORTH HEREIN INCLUDING THE SUBMISSION OF ANY MATERIALS BELIEVED TO BE PROPRIETARY IN NATURE; (3) AGREE TO BE BOUND BY THOSE PROCEDURES; AND (4) AGREE THAT THE CENTER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR THE DISCLOSURE OF ANY MATERIALS SUBMITTED TO THE CENTER PURSUANT TO THIS SOLICITATION OR UPON THE APPLICANT'S SELECTION AS A GRANTEE.**

Furthermore, Applicants are cautioned to review the procedures regarding the submission of confidential information contained in Section 8.1 prior to submitting an electronic copy of any documents in response to this Solicitation.

5.3. Application Process

- (a) All Applications must be submitted online at www.masslifesciences.com and companies are limited to one application per company. Again, Applicants are cautioned to review the procedures regarding the submission of confidential information contained in Section 8.1 prior to submitting the electronic copy of their Application.
- (b) As provided in the on-line application, Applicant will be required to certify that it acknowledges, understands, and agrees to comply with all terms, conditions and specifications contained in this Solicitation. Applicants may use the Authorized Applicant's Signature and Acceptance Form attached to the Application to satisfy this requirement.

5.4. Schedule

The solicitation process will proceed according to the following anticipated schedule:

Deadline for Submission of Application	March 1, 2010 at 11:59 pm EST
Awards Notification	May 28, 2010
Agreement Execution	Within forty-five 45 days of receipt of award notification

6. Application Requirements

Applications **must** be completed and submitted online at www.masslifesciences.com. Applications not completed on-line will not be accepted.

Applications must include the following:

1. Completed Life Sciences Small Business Matching Grant Program Application
2. Completed Authorized Applicant's Signature and Acceptance Form (attached to Application)
3. Certificate of Good Standing from the Secretary of State (in PDF format)
4. Certificate of Good Standing/Letter of Compliance from the Department of Revenue (in PDF format)
5. Revenue Plan
6. Business Plan
7. Scientific and Technological Advancements Summary

7. Application Assessment

7.1. General

Applications will be evaluated according to the criteria outlined below. The process for reviewing applications will be transparent, competitive, and based on sound science and commercial viability. Center staff will conduct the initial administrative review of all applications to ensure that Applicants are eligible for the Program.

This administrative review will be followed by two rounds of peer review: 1) an initial screen of applications using Peer Reviewers that broadly represent the Commonwealth's life sciences scientific and business experts; and 2) an intensive second round Peer Review process to recommend finalists to the Center's Scientific Advisory Board (SAB). Members of the SAB will then review the recommended finalists with respect to the scientific and/or technological merits of the proposal. The Center's staff will conduct corporate due diligence on the anticipated ten to twelve finalists that pass these reviews, and such finalists will make in-person presentations to a combined group of SAB and Board of Directors Investment Committee members. The SAB and Board of Directors Investment Committee will then make recommendations to the Center's Board of Directors for approval.

The Center reserves the right to modify this assessment process, as necessary, and to make an award only to the Applicant that, in its sole judgment, meets the following criteria. The Center reserves the right to consider other criteria in making an award among comparably qualified Applicants. The order of the criteria listed does not denote relative importance.

7.2 Threshold Criteria

The Center will review Applications to screen out Applicants who have not met eligibility requirements under the threshold criteria. Applicants must meet the following threshold criteria:

1. The Applicant is a life sciences company with operations in Massachusetts eligible for support under the Solicitation;
2. The Applicant is the recipient of a Phase II, post-Phase II, or equivalent SBIR/STTR grant;
3. The Applicant has not exceeded the required financing levels;
4. The Applicant is in good standing with the Commonwealth of Massachusetts;
5. The Applicant has developed credible employment, salary, revenue, and taxable income targets for the next five years and a reasonable plan for achieving such targets; and
6. The Applicant has completed the Application.

Once an Applicant has been reviewed for compliance with threshold criteria, the Application will be evaluated using the following qualitative and programmatic criteria.

7.3 Qualitative Criteria

1. Economic Development:
 - a. Contribution to strengthening industry cluster activities in Massachusetts;
 - b. Number of jobs expected to be created or maintained in Massachusetts over next five years;
 - c. Demonstration of commitment to working with Massachusetts-based companies throughout the supply chain;
 - d. Contribution to cost-competitiveness of life sciences in Massachusetts;
 - e. Contribution to Massachusetts Economic Target Areas, if applicable;
 - f. Potential to attract additional resources to Massachusetts;

- g. Potential to build manufacturing capacity in Massachusetts; and
 - h. Reasonableness of expected benefits to Massachusetts taxpayers.
2. Scientific and Technical Merit:
 - a. Innovativeness of the technology, product or service;
 - b. Potential for further technological advancements in the life sciences;
 - c. Potential to offer a breakthrough medical treatment for a particular disease or medical condition;
 - d. Improvement over the state-of-the-art solution, if any;
 - e. Barriers/risks to product commercialization;
 - f. Likelihood of scale production; and
 - g. Strength of intellectual property.
 3. Market Opportunity:
 - a. Size of potential market and market growth potential;
 - b. Clear definition of target customer and a clear articulation of the significant need, niche, or “pain point” that the new product addresses;
 - c. Ability of the Applicant to economically and efficiently reach the target market;
 - d. Demonstrated evidence of acceptance of the product in the marketplace;
 - e. Ability to achieve unique, sustainable, competitive advantage;
 - f. Quality of analysis of market risks and barriers;
 - g. Quality of competitive market analysis; and
 - h. Potential for the science/technology to provide opportunities for repeat product sales and multiple product lines.
 4. Team Qualifications:
 - a. Qualifications and track record of management team;
 - b. Qualifications and track record of scientific/technical team;
 - c. Management’s demonstrated ability to understand and address the identified risks and barriers to successful product commercialization;
 - d. Plan for acquiring customers, pricing strategy, distribution and marketing;
 - e. Quality and completeness of financial analysis and work plan, if applicable;
 - f. Potential for profits and returns; and
 - g. Clear path to commercialization within a reasonable time frame.
 5. Investment Quality:
 - a. Financial strength of Applicant;
 - b. Demonstrated ability or potential to secure additional financing for Applicant’s operations or the proposed project, as applicable; and
 - c. A well thought-out capital structure and fundraising plan.

Qualitative criteria will be assessed differently for each Applicant depending on their stage of development.

7.4 Programmatic Criteria

1. Portfolio Objectives: MLSC may place emphasis on and consider Applications that contribute to a balanced and strong portfolio of Awardees, including but not limited to factors such as:
 - a. Wide geographic distribution of life sciences operations in Massachusetts;
 - b. Wide distribution of life sciences technologies and industries supported by the Center; and
 - c. Diversity among businesses at different stages of product development and commercialization.

2. Other Considerations: The Center may, in its sole judgment, also take other factors into consideration in making a final award recommendation including but not limited to:
 - a. Minimal geographic overlap of project areas; and
 - b. Applicant's plans or policies with respect to environmental sustainability, corporate governance, labor standards and achieving a diverse workforce.

7.5 Corporate Due Diligence Criteria

The Center will conduct corporate due diligence on the anticipated ten to twelve Applicants that are finalists. Information requested may include, but is not limited to, the following:

1. Corporate and Shareholder Information
 - a. Detailed list of financings (date, type, amount, price).
 - b. Current capitalization table (including outstanding options issued and outstanding warrants, and convertible debenture/preferred with details of same).
 - c. Corporate chart (details of subsidiaries / affiliates with associated ownership information).
2. Financial Information
 - a. Historical audited financial statements 2008 and 2009: Balance Sheet, Cash Flow, and Income Statement broken out by quarter in excel.
 - b. Current interim / YTD financial statements (i.e. income statement, balance sheet, and cash flow) by quarter or month up until April 30th (electronic copy in excel).
 - c. Detailed forecast (income statement, balance sheet, and cash flow) with supporting assumptions and detail (by quarter or month for next two fiscal years including 2010 and 2011) assuming a grant from the Center. Electronic copy in excel.
 - d. Details of senior facility or other financing arrangements if applicable.
 - e. List of banking relationships.
 - f. List of all off-balance sheet items / commitments, including amounts, if any.
3. Intellectual Property
 - a. List of any patents, trademark, trade names, brands, copyrights, or service marks.
 - b. List licensing or other arrangements regarding any intellectual property used by the Company that is owned or controlled outside the Company.
 - c. Schedule listing all agreements, options or other commitments, if any, giving anyone rights to acquire any right, title or interest in any of the Company's products or related technology, together with copies of the agreements.
4. Sales and Marketing
 - a. Copies of any publications, news releases or magazine / journal / news articles in previous 24 months.
 - b. List of top 10 customers by revenue (2009 and YTD 2010), by product line, as applicable.
5. Human Resources
 - a. Organizational chart with employee listing showing number of employees broken down by department and location.
 - b. Planned significant hires over next 18 months, if any.
6. Legal

- a. Contact information for the Company's professional advisors including legal counsel.
- b. List of any threatened, pending or prior litigation, claims, proceedings, investigations, injunctions, settlements, regulatory or government action.
- c. Employment contracts for senior management, if any.

8. General Conditions

8.1 Notice of Public Disclosure.

8.1.1. General Statement.

Funds awarded are public funds and any information submitted to the Center by the Applicant in response to this grant Solicitation or generated in relation thereto is subject to public disclosure requirements as set forth in the Massachusetts Public Records Act, M.G.L. c. 66 (the "Public Records Act"), which governs the retention, disposition and archiving of public records. For purposes of the Public Records Act, "public records" include all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by the Center.

The foregoing notwithstanding, "public records" do not include certain materials or data which fall within one of the specifically enumerated exemptions set forth in the Public Records Act or in other statutes, including the Center's enabling act, M.G.L. Chapter 23I. One such exemption that may be applicable to documents submitted by the Applicant in response to the Solicitation is for any documentary materials or data made or received by the Center that consists of trade secrets or commercial or financial information regarding the operation of any business conducted by the Applicant, or regarding the competitive position of such Applicant in a particular field of endeavor (the "MLSC Trade Secrets Exemption").

It is the Center's expectation and belief that the overwhelming percentage of documents it receives from Applicants does not contain any information that would warrant an assertion by the Center of an exemption from the Public Records Act. Applicants should therefore take care in determining which documents they submit to the Center in response to this Solicitation, and should assume that all documents submitted to the Center in response to the Solicitation are subject to public disclosure without any prior notice to the Applicant and without resort to any formal public records request.

8.1.2. Procedures for Handling Documents Identified as "Confidential Information"

In the event that Applicant's response to the Solicitation includes the submission to the Center of documents that Applicant believes may be proprietary in nature and may fall within the parameters of the MLSC Trade Secrets Exemption and/or some other applicable exemption, the following procedures shall apply:

- A) At the time of the Applicant's initial submission of documents to the Center, the Applicant must provide a cover letter, addressed to the Center's Counsel, indicating that it is submitting documents which it believes are exempt from public disclosure, including a description of the specific exemption(s) that Applicant contends is/are applicable to the submitted materials, a precise description of the type and magnitude of harm that would result in the event of the documents' disclosure, and a specific start date and end date within which the claimed exemption applies. If different exemptions, harms and/or dates apply to different documents, it is Applicant's responsibility to provide detailed explanations for each such document.
- B) At the time of the Applicant's initial submission of documents to the Center, the applicant must also clearly and unambiguously identify each and every such document that it contends is subject to an exemption from public disclosure as "Confidential Information." It is the Applicant's responsibility to ensure that all such documents are sufficiently identified as "Confidential Information," and Applicant's designation must be placed in a prominent location on the face of each and every document that it contends is exempt from disclosure under the Public Records Act.

- C) Documents that are not accompanied by the written notification to the Center's Counsel or are not properly identified by the Applicant as "Confidential Information" at the time of their initial submission to the Center are presumptively subject to disclosure under the Public Records Act, and the procedures for providing the Applicant with notice of any formal public records request for documents, as set forth below, shall be inapplicable.
- D) At the time the Center receives documents from Applicant in response to the solicitation, any such documents designated by Applicant as "Confidential Information" shall be segregated and stored in a secure filing area when not being utilized by appropriate Center staff for purposes of evaluating the application for funds. By submitting a signed application to the Center, Applicant certifies, acknowledges and agrees that (a) the Center's receipt, segregation and storage of documents designated by Applicant as "Confidential Information" does not represent a finding by the Center that such documents fall within the MLSC Trade Secrets Exemption or any other exemption to the Public Records Act, or that the documents are otherwise exempt from disclosure under the Public Records Act, and (b) the Center is not liable for the subsequent disclosure of any documents submitted to the Center by the Applicant, whether or not such documents are designated as "Confidential Information" or the Center was negligent in disclosing such documents.
- E) In the event that the Center receives an inquiry or request for documents submitted by Applicant in response to the solicitation, the Center shall produce all responsive documents without notice to Applicant. In the event that the inquiry or request entails documents that the Applicant has previously designated as "Confidential Information", the inquiring party shall be notified in writing that one or more of the documents it has requested has been designated by the Applicant as "Confidential Information", and that a formal, written public records request must be submitted by the requesting party to the Center's Counsel for a determination of whether the subject documents are exempt from disclosure.
- F) Upon the Counsel's receipt of a formal, written public records request for documents that encompass materials previously designated by Applicant as "Confidential Information", the Applicant shall be notified in writing of the Center's receipt of the public records request, and the Center may, but shall not be required to provide Applicant an opportunity to present the MLSC with information and/or legal arguments concerning the applicability of the MLSC Trade Secrets Exemption or some other exemption to the subject documents.
- G) The Center's Counsel shall review the subject documents, the Public Records Act and the exemption(s) claimed by the Applicant in making a determination concerning their potential disclosure.

THE CENTER'S COUNSEL IS THE SOLE AUTHORITY WITHIN MLSC FOR MAKING DETERMINATIONS ON THE APPLICABILITY AND/OR ASSERTION OF AN EXEMPTION TO THE PUBLIC RECORDS ACT. NO EMPLOYEE OF THE CENTER OTHER THAN THE COUNSEL HAS ANY AUTHORITY TO ADDRESS ISSUES CONCERNING THE STATUS OF "CONFIDENTIAL INFORMATION" OR TO BIND THE CENTER IN ANY MANNER CONCERNING THE CENTER'S TREATMENT AND DISCLOSURE OF SUCH DOCUMENTS.

FURTHERMORE, THE POTENTIAL APPLICABILITY OF AN EXEMPTION TO THE DISCLOSURE OF DOCUMENTS DESIGNATED BY THE APPLICANT AS "CONFIDENTIAL INFORMATION" SHALL NOT REQUIRE THE CENTER TO ASSERT SUCH AN EXEMPTION. THE CENTER'S COUNSEL RETAINS THE SOLE DISCRETION AND AUTHORITY TO ASSERT AN EXEMPTION, AND HE MAY DECLINE TO ASSERT SUCH AN EXEMPTION IF, WITHIN HIS DISCRETION, THE PUBLIC INTEREST IS SERVED BY THE DISCLOSURE OF ANY DOCUMENTS SUBMITTED BY THE APPLICANT.

- H) The Center shall provide the requesting party and Applicant with written notice of its determination that the subject documents are either exempt or not exempt from disclosure.

- I) In the event that the Center determines that the subject documents are exempt from disclosure, the requesting party may seek review of the Center's determination before the Supervisor of Public Records, and the Center shall notify the Applicant in writing in the event that the requesting party pursues a review of the Center's determination.
- J) In the event the requesting party pursues a review of the Center's determination that the documents are exempt from disclosure and the Supervisor of Public Records concludes that the subject documents are not exempt from disclosure and orders the Center to disclose such documents to the requester, the Center shall notify the Applicant in writing prior to the disclosure of any such documents, and Applicant may pursue injunctive relief or any other course of action in its discretion.
- K) In the event that the Center determines that the subject documents are not exempt from disclosure or the Center's Counsel determines that, under the circumstances and in his discretion, the Center shall not assert an exemption, the Center shall notify the Applicant in writing prior to the disclosure of any such documents, and Applicant may pursue injunctive relief or any other course of action in its discretion.

APPLICANT'S SUBMISSION OF AN APPLICATION, WITH OR WITHOUT SUPPORTING DOCUMENTATION, SHALL REQUIRE A SIGNED CERTIFICATION THAT APPLICANT ACKNOWLEDGES, UNDERSTANDS AND AGREES WITH THE APPLICABILITY OF THE FOREGOING PROCEDURES TO ANY DOCUMENTS SUBMITTED BY APPLICANT IN RESPONSE TO THE SOLICITATION, INCLUDING BUT NOT LIMITED TO THE ACKNOWLEDGEMENTS SET FORTH IN SECTION 8.1.2(D), AND THAT APPLICANT SHALL BE BOUND BY THE PROCEDURES SET FORTH IN THIS SECTION 8.1.

All documents submitted by Applicant, whether designated as "Confidential Information" or not, are not returnable to Applicant.

8.2 Contractual Requirements

The Center intends to enter into an Agreement with the Awardees containing certain standard provisions. A copy of the standard Agreement will be posted on the Center's website by February 4, 2010. The Center reserves the right to amend the Agreement without further issuance of another solicitation. The Center anticipates that Awardee will enter into an Agreement in substantially the form to be posted.

8.3 Waiver Authority

The Center reserves the right, at its sole discretion, to waive minor irregularities in submittal requirements, to request modifications of the application, to accept or reject any or all applications received, and/or to cancel all or part of this solicitation at any time prior to awards.

8.4 Disclaimer

This solicitation does not commit the Center to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies. The Center reserves the right to accept or reject any or all applications received, negotiate with all qualified Applicants, cancel or modify the solicitation in part or in its entirety, or change the application guidelines, when it is in its best interests.

8.5 Changes/Amendments to Solicitation

This Solicitation has been distributed electronically using the Center's website. It is the responsibility of Applicants to check the Center's website for any addenda or modifications to the Solicitation to which they intend to respond. The Center, the Commonwealth of Massachusetts, and its subdivisions accept no liability and will provide no accommodation to Applicants who submit an application based on an out-of-date solicitation document.