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April 7, 2008

Conference Committee Members:

The Honorable Daniel E. Bosley

The Honorable Bradford R. Hill

The Honorable Michael J. Rodrigues

RE: S.2566 and H. 4554 providing for Investment in and Expansion of the Life Sciences Industry in the Commonwealth

Dear Representatives Bosley, Hill and Rodrigues:

On behalf of the small subcontracting businesses who perform most of the work on public and private construction projects in the commonwealth, I am writing today to express strong support for the Life Sciences legislation recently approved by the House and Senate.

At the same time, we have concerns about provisions in the bill that appear to give the University of Massachusetts exemptions from the public bidding laws on the construction of new “life sciences” research and laboratory facilities throughout the UMass system. The bid law is meant to prevent wasteful spending of increasingly limited taxpayer money.

Exemptions for two projects are clearly stated in the House version of the bill, which allows the use of “alternative methods of procurement of design and construction” on the advanced therapeutics cluster at UMass Medical in Worcester at \$90 million and the life science laboratory research center at UMass Amherst at \$95 million.

The Senate version does not mention alternative methods, BUT, like the House bill, requires the University to provide to the Legislature a list of private donors and amounts donated, and requires the Secretary of Administration & Finance to provide documentation that all sources of funding are secured. Those requirements suggest that substantial funding for the projects will be provided by sources other than the state. Under their enabling statute, c.773 of the Acts of 1960, the University of Massachusetts has the authority to use alternative methods of procurement on all projects funded by more than 50% “nongovernmental sources of funding.”

On its face, such authority seems reasonable; indeed, we have no objection to the use of alternative methods on projects built primarily with private funding. However, in the past, the University’s definition of private funding (or “nongovernmental sources” of funding) has been very broad, and included student tuitions, rents and fees. As a result, many projects qualified for the use of “alternative methods” that otherwise wouldn’t. The Legislature took a dim view of this, and in the 2004 Construction Reform Law (c.193 of the Acts of 2004) redefined “nongovernmental sources” to mean private donations or certain federal grants. The limits set by Construction Reform expired in August 2006. There are therefor once again virtually no restrictions on what UMass can claim as “nongovernmental” or private sources of funding.

Letter to House Conferees
On S.2566 and H.4554, Life Sciences Bill

If the past serves as any indication, the University will seek to use “alternative methods of construction,” exempt from the public bidding laws, on all life sciences projects funded by more than 50% nongovernmental sources, according to their broad definition of the term. Such exemptions will go against long standing public policy of fair and open competitive bidding, without any apparent justification. We see no reason why the University should not be expected to follow the procedures that serve all other public agencies well, particularly with the improvements brought by the 2004 Construction Reforms. The 2004 Reforms already allow an “alternative method of procurement,” in the form of Construction Management at Risk, which provides flexibility while preserving many of the protections currently in the law.

The interests of the taxpayers and the Commonwealth are best served by having the University of Massachusetts comply with the competitive bidding laws in the construction of their buildings. Toward that end, we recommend striking the outright bid law exemption in the House version of the bill, and inserting into the legislation the suggested text below, that would allow the use of alternative methods on all projects funded by more than 50% nongovernmental sources, provided that “nongovernmental sources” is defined to have the more limited meaning approved by the Legislature in c.193 of the Acts of 2004.

Suggested amendment:

In accordance with Section 18 of c. 773 of the Acts of 1960, the University of Massachusetts shall have the authority to use an alternative method of procurement of design and construction, without limitation, on all projects undertaken under this law which are funded by more than 50% nongovernmental sources of funding, provided that the term “nongovernmental sources” shall be limited to private donations, gifts, contracts or grants, including commercial ventures and intellectual property contracts, or grants and contracts from the federal government or the administrative overhead associated with such grants and contracts; but the term shall not mean revenue derived from fees, tuition or charges of any kind paid by students, faculty or staff.

This language will give the University of Massachusetts the flexibility it desires on projects funded largely by private donations, while preserving the protections of the public bidding laws on projects funded with public money.

This is an approach we believe is reasonable, and we urge your support. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Monica Lawton". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Monica Lawton
CEO

cc: The Honorable Salvatore F. DiMasi, Speaker of the House