

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY



**REQUEST FOR PROPOSALS
FOR RISK MANAGEMENT AND INSURANCE SERVICES
FOR
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY**

SEPTEMBER 23, 2022

Proposals Due: OCTOBER 21, 2022 (2:00 p.m.)



REQUEST FOR PROPOSALS FOR RISK MANAGEMENT AND INSURANCE SERVICES

1. Introduction

1.1 Background on the Request for Proposal

- (a) The University of Massachusetts Building Authority (the “Authority” or “UMBA”) is issuing this Request for Proposals for Risk Management and Insurance Services (“RFP”) for the full range of general risk management services that UMBA may prospectively require from time to time composed of the categories set forth in section 2 of this RFP (“the Risk Management Services”). UMBA will evaluate submissions of all Respondent firms pursuant to the evaluation criteria set forth in this RFP. UMBA may award work orders to any selected firm (via “Mini-bid” or “List Selection”, as those terms are defined in Section 5. Any firm selected to provide the UMBA with general risk management and insurance services on work orders awarded will be required to execute a **contract** with UMBA in the form set forth in **Attachment B** or as further modified by the UMBA.
- (b) UMBA is soliciting responses to this RFP from risk management and insurance firms to provide it with Risk Management and Insurance. UMBA anticipates that such Risk Management and Insurance Services shall be provided on both an “on-call basis” and in connection with specific projects that may arise from time to time. Risk Management and Insurance Services may relate either to assisting with the development and implementation of UMBA’s capital program and initiatives, or providing advice to UMBA concerning authority-specific matters.

At the conclusion of this RFP, UMBA intends to select and enter into an agreement with the selected individual and/or firm to assure that UMBA has ongoing and expeditious access to Risk Management and Insurance Services providers at competitive (and preferably discounted) rates.

1.2 Background on the UMBA

UMBA is an independent body politic and corporate and an authority of the Commonwealth of Massachusetts created by and existing under Chapter 773 of the Acts of 1960, as amended (the “Enabling Act”).

UMBA is created for the general purposes of aiding and contributing to the performance of the educational and other purposes of the University of Massachusetts (“University”), by providing residence halls, dining commons and other buildings and structures for the use of the University, its students, staff and their dependents and certain approved organizations. UMBA serves the University of Massachusetts, which is comprised of five campuses at Amherst, Boston, Dartmouth, Lowell, and the Medical School in Worcester.

UMBA consists of eleven (11) members, five of whom are Trustees of the University of Massachusetts and all of whom are appointed by the Governor.



In the exercise of its powers and performance of duties under UMBA's Enabling Act, UMBA has certain general and specific powers relative to the financing and construction of capital projects and the acquisition and disposition of real and personal property for the benefit of the University.

2. Scope of Services Required

The scope of requested services shall include the following specific services, and such other services as are necessary to meet the general requirements set forth below:

- A. General Requirements: To provide such services as are necessary to ensure on a continuous basis that the Authority's risk management and insurance programs are adequate for the Authority's activities and the nature of its individual properties and projects, and that those programs are appropriately administered and maintained, all at the lowest reasonable cost.
- B. Specific Services:
 1. Review of the Authority's current Property, General Liability, Directors and Officers, Auto, Crime, Workers' Compensation and Excess Liability, and any other policies to assess sufficiency of limits, adequacy of coverage given the Authority's current activities and competitiveness of costs, and recommendation regarding any necessary or advisable changes that should be implemented upon renewal, and any additional coverages which may be required or advisable at any time.
 2. Support for the Authority's Construction Projects, including:
 - a) providing analysis of Authority needs and advice regarding advisability of procuring necessary insurance through traditional contractor provided programs, or other new coordinated risk approaches such as owner-controlled programs and contractor-controlled programs;
 - b) providing advice regarding insurance requirements for designers, contractors and subcontractors involved in the various Projects; and
 - c) reviewing and recommending contract language to ensure that proper insurance coverage is included.
 3. As needed, consultation with Authority and University employees regarding:
 - a) changes or additions to insured assets; and
 - b) identification of potential liability exposures.
 4. Conduct solicitation of proposals from qualified brokers and underwriters for all required coverages, and negotiation with brokers for proper coverage at



competitive pricing.

5. Communicating with brokers and others, as needed, to ensure that insurance requirements are met and the interests of the Authority protected, and that insurance coverage is evidenced through Certificates of Insurance.
6. Review binders and policies as they are issued for consistency with requested coverages, negotiate clarifications and changes as necessary; and review invoices to verify accuracy.
7. Recommend vendor insurance requirements, review certificates and contract language to make sure that the Authority is properly covered. As necessary, discuss proposed activities with Authority legal staff.
8. Monitor claim and safety activities. Assist in the claim review process to make sure that the Authority is not improperly charged with the liability for claims that should be directed elsewhere and assist with all claim processing, as requested by the Authority.
9. Continuously monitor the Authority's risk management program to identify changing insurance market conditions and the Authority's changing needs, of which the Authority will provide timely notice, as well as notice of any changes and proposed projects.
10. Monitor insurance broker and insurance carrier activities to insure that each is delivering services likely to achieve the Authority's risk management goals.
11. Be available to offer as needed and in a timely manner consulting advice on all aspects of the property and casualty lines.
12. Upon notification by the Authority to the Advisor of accidents or other events, the Advisor will advise the Authority when notice of accidents or other events should be reported to carriers to ensure coverage is not adversely affected by the lack of notice. The Authority agrees to promptly provide Advisor with notification and information of any such incidents of which it is aware regardless of whether a formal claim has been made against the Authority.
13. Be available to meet in person with the Authority on a monthly basis to address risk management related open items. Advisor will also be available to speak at, or prepare reports for, quarterly board of director meetings as needed.
14. Act as intermediary between project design team and the Authority's property insurer to ensure building design meets Authority standards and best financial interests.
15. Market, manage and advise the Authority on insurance related to the UMass



Club operations.

As requested services: Provide additional risk management and insurance services as needed and related special projects as may arise.

Term of Contract

The Authority expects to enter into a five (5) year contract, with three (1) year option contracts with the successful firm with option at discretion of the Authority.

RESPONDENTS PLEASE NOTE: Individuals performing Risk Management and Insurance Services to the UMBA may be considered to be “special state employees” subject to the provisions of the Massachusetts Conflict of Interest Law (M.G.L. c.268A). As a condition of any contract entered with the UMBA for the provision of General Legal Services, UMBA will require contractors to certify, among other things, compliance with the Conflict of Interest Law.

3. Fee

Provide a fee schedule and estimate for the risk management and insurance services described herein. Provide assumptions behind your fee proposal.

UMBA will select firms to provide the Risk Management and Insurance Services described below. UMBA will choose, in the sole exercise of its discretion, one of the Respondents. In addition, selection of a Respondent pursuant to this RFP does not guarantee that UMBA will award any work orders for Risk Management and Insurance Services to any of the Respondent firms.

4. Submission of Responses

4.1 Schedule

(a) The RFP process will proceed according to the following anticipated schedule:

Activity	Date
Risk Management and Insurance Services RFP Issued	September 23, 2022



Deadline for Questions	October 7, 2022
Answers to Questions (if any)	October 14, 2022
Proposals Due	October 21, 2022 (2:00 p.m.)

- (b) Responses must be received by UMBA at the address set forth in Section 4.2 no later than **2:00 p.m. EST, on Friday October 21, 2022**. UMBA shall determine in its sole discretion whether the response has been received within the deadlines established herein. UMBA shall not be responsible or liable in any way for late delivery or receipt of responses for any reason whatsoever including, but not limited to, equipment, technical, or network malfunction. Respondents shall assume the risk that an electronic submission may not be received by UMBA within the deadlines established in section 4.2 because of equipment, network or technical malfunction.
- (c) The responses will be evaluated pursuant to the criteria set forth in this RFP. Notification of selection or non-selection of all Respondents who submitted conforming responses will be mailed when the prequalification selection process is final.
- (d) The selected Respondent(s) will execute the **Risk Management and Insurance Services Agreement**, substantially in the form attached hereto as **Attachment B**. **RESPONDENTS ARE REQUIRED TO SPECIFY ANY EXCEPTIONS TO THE MASTER SERVICES AGREEMENT AND TO MAKE ANY SUGGESTED COUNTERPROPOSAL WITH THEIR RESPONSE. UMBA WILL REVIEW ANY SUCH SUGGESTIONS, BUT RESERVES SOLE RIGHT TO ACCEPT OR NOT. A FAILURE TO SPECIFY EXCEPTIONS AND/OR COUNTERPROPOSALS WILL BE DEEMED AN ACCEPTANCE OF THE MASTER SERVICES AGREEMENT'S TERMS AND CONDITIONS.**

4.2 Instructions for Submission of Responses:

I. Minimum Qualifications

- A. Evidence of satisfaction of all required business, industry, etc. registrations and/or licensing at the firm level or at the individual (to be assigned to the Authority) level.
- B. At least five (5) years' experience in providing services of the type sought by the Authority for both the firm and the principal to be in charge of the assignment.



II. Evaluation Criteria

Evaluation and selection will be based on written qualification and oral presentations, if deemed necessary, with emphasis on the following general criteria:

- A. Demonstrated experience in providing risk management and insurance services to clients with similar needs as the Authority.
- B. Technical ability, capabilities and capacity of the firm to provide risk management and insurance as described herein.
- C. The knowledge, skills, experience and professional credentials of the key personnel to be assigned to the Authority.
- D. Approach to risk management and insurance and overall responsiveness to RFP.
- E. Proposed cost for services to be provided.

III. Submission Requirements

All proposing firms must submit the following information and materials:

- A. Certification in the form and substance of Attachment A.
- B. Description of the firm and its relevant experience, including a statement of the date of establishment or incorporation under the present management structure. Statement describing the full extent of the responding firm's business, including all parent and subsidiary entities.
- C. Description of the firm's experience performing the type of services requested in this RFP, including description of current and recent arrangements with other clients for which similar services are performed.
- D. Description of the firm's understanding of the Authority's risk management and insurance needs.
- E. Description of the firm's approach to providing the type of services sought by the Authority.
- F. Description of the software and analytic capabilities of the firm.



- G. Identification of the proposed risk management and insurance team, including the principal-in-charge who will have overall responsibility for the direction and supervision of the team, and a description of the responsibilities of each team member. Provide short biographies of team members describing at a minimum education, and professional experience and related credentials.
- H. Three (3) references of clients or other entities that are familiar with the work of your firm in providing services of the type requested by the Authority with current contact information for each reference, and three (3) references of persons familiar with the work and professional skill of the proposed principal-in-charge. The references for the firm and the principal-in-charge may, but need not, be the same.
- I. Identification of any material litigation, administrative proceedings or investigations regarding your firm or team member that is ongoing or has been settled or otherwise concluded during the past two years. Identification of any conflict of interest related to this proposal.
- J. All responses must include, if respondent is incorporated, identification of the bidder's state of incorporation and a statement that it is in good standing in that state, and, if the state of incorporation is not Massachusetts, a statement that the Respondent has complied with all filing requirements of that state.
- K. All questions regarding this RFP must be submitted via e-mail or in writing to the persons indicated below no later than 2:00 P.M. on October 7, 2022. Oral questions will not be permitted. Authority may issue response, if any, in writing and will distribute such response to all firms that requested a RFP. Please note that the Authority may decline to answer any question:
- Attn: David Mullen, UMBA, Dmullen@umassp.edu
 - CC: Patricia N. Vantine, Pvantine@umassp.edu

No other employee or agent (including bond counsel, rating agencies and trustee) of the Authority and no member of the Authority's Board or employee of the Universities should be contacted until the RFP process has concluded and firms have been notified of the outcome. Failure to adhere to this may result in disqualification of the RFP

Proposal submittal

Proposals must be received by the Authority no later than **2:00 p.m., on October 21, 2022** at the e-mail address indicated below. Proposals must be clearly marked "UMBA RISK MANAGEMENT AND INSURANCE SERVICES". Firms shall submit the proposal in PDF format to the e-mail address below.



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David Mullen
Deputy Director/General Counsel
University of Massachusetts Building Authority
Dmullen@umassp.edu

Other Information

- A. The Authority reserves the right to seek additional information from any responding party and to schedule interviews with one or more of the responding firms.
- B. The Authority reserves the right to reject any and all Proposals, to waive any minor informality in the Proposals or to enter into any contract deemed by the Authority to be in its best interest.
- C. The Authority reserves the right to amend this RFP at any time and negotiate the scope of services and/or fee terms with one or more of the responding firms.

4.3 Affirmative Action/Diversity, Equity and Inclusion Policies. All responses must include a copy of the interested firm's Affirmative Action Policy and its policy describing its diversity, equity and inclusion plan.

5. Equal Employment Opportunity, Non-Discrimination, Affirmative Action/ Diversity, Equity and Inclusion

UMBA is committed to equal employment opportunity and non-discrimination in contracting for goods and services necessary to perform its business. UMBA will take affirmative action to ensure equal employment opportunity and to eliminate discriminatory barriers. UMBA is equally committed to advance diversity, equity and inclusion throughout the operations of the Authority and works to cultivate a workforce that draws from the entire community. UMBA will strongly consider the Respondents' commitment to diversity, equity and inclusion and its equal employment opportunity and affirmative action programs in selecting the individuals or firms for Risk Management and Insurance Services and Respondents are encouraged to propose a team that reflects such diversity. As set forth in Section 3.3 of this RFP, Respondents are required to submit copies of their employment and affirmative action policies and diversity, equity and inclusion plans, demonstrating their commitment to these matters.



6. **Other Provisions**

6.1 **General Information**

- (a) UMBA may cancel or modify this RFP, in whole or in part, or reject all Proposals submitted in response to this RFP if such action is determined to be in the best interest of UMBA. UMBA may extend the deadline for submission of Proposals if, in UMBA's judgment, such extension is necessary for any reason. If UMBA determines that it is necessary to revise any part of this RFP, or if UMBA determines that additional data is necessary to clarify any of its provisions, an Addendum will be posted on UMBA's website at www.umassba.net. UMBA reserves the right to amend the RFP at any time prior to the deadline for submission of responses. Such amendments will be issued in the form of an Addendum and posted on UMBA website at www.umassba.net.
- (b) UMBA reserves the right to reject any and all responses if UMBA determines, within its sole discretion, that it is in the best interests of UMBA to so, UMBA reserves the right to reject any Response that fails to meet any of the terms, conditions, requirements, and procedures included in this RFP. If a Respondent fails to meet any material terms, conditions, requirements or procedures, the Response may be deemed unresponsive and disqualified.
- (c) All expenses and costs, including but not limited to legal costs, associated with developing or submitting a proposal in response to this RFP, or associated with oral or written clarification thereof, including all presentation materials and related costs and travel expenses, shall be the sole responsibility of the responding firm, and under no circumstances shall UMBA be responsible for any such cost or expense incurred by any responding firm. UMBA assumes no responsibility for these costs and expenses.
- (d) Responding firms may withdraw their proposals, by written request only, received by UMBA prior to, but not after, the time set for proposal submission. Thereafter, proposals shall be irrevocable for a period of not less than sixty (60) days, and may not be withdrawn or modified.
- (e) Any proposal which is not received by UMBA by the date and time and at the location for submission of proposals set forth herein will be determined to be late and shall not be considered.
- (f) UMBA also reserves the right to waive any irregularities or requirements; and to negotiate with all respondents, in any manner necessary, in its sole judgment and discretion, to serve the best interest of UMBA.
- (g) All responses, proposals, related documentation and information submitted in response to this RFP are subject to the Massachusetts Freedom of Information Law, M.G. L. c. 66, §10, and to M.G.L. c. 4, §7(26), regarding public access to such documents. Any statements submitted by the respondent that purport to reserve any confidentiality or privacy rights in submitted



responses or that are otherwise inconsistent with these statutes will be void and disregarded. By submitting its Response to UMBA, the Respondent agrees that UMBA shall not be liable under any circumstances for the subsequent disclosure of any materials submitted to it by Respondent pursuant to this RFP and/or in connection with any contract entered into between Respondent and UMBA as a result of the RFP process.

- (h) Further, any selected Respondent must recognize that in the performance of the Master Services Agreement, and any work orders issued thereto, it may become a holder of personal data (as defined in M.G.L. c. 66A) or other information deemed confidential. Respondent shall comply with the laws and regulations relating to confidentiality and privacy, including any rules or regulations of UMBA. Any questions concerning issues of confidentiality, the submission of materials to UMBA, or any other questions related to these matters, should be directed to David P. Mullen, Deputy Director/General Counsel, at UMBA.
- (i) Respondents are prohibited from communicating directly with any employee of UMBA, except as specified in this RFP, regarding the RFP, and no other individual UMBA employee or representative is authorized to provide any information or respond to any questions or inquiries concerning this RFP. Respondents may contact the Contact Person for this RFP provided in Section 6 in the event that this RFP appears incomplete in any way.
- (j) UMBA may provide reasonable accommodations, including the provision of material in an alternative format, for qualified Respondents with disabilities or other hardships. Respondents requiring accommodations shall submit requests in writing, with supporting documentation justifying the accommodations, to the contact person listed in Section 4 above. UMBA reserves the right to grant or reject any request for accommodations.
- (k) If a Respondent is unable to meet any of the specifications required in this RFP, the Respondent's response must include an alternative method for meeting such specification by identifying the specification, the proposed alternative and thoroughly describing how the alternative achieves substantially equivalent or better performance to the performance required in the RFP specification. UMBA will determine, in its sole discretion, if a proposed alternative method of performance achieves substantially equivalent or better performance.
- (l) The Respondent may not alter the RFP or its components except for those portions intended to collect the Respondent's response. Modifications to the body of this RFP, specifications, terms and conditions, or which change the intent of this RFP are prohibited. Any modifications other than where the Respondent is prompted for a response may disqualify the bid. The foregoing notwithstanding, proposed exceptions and/or counterproposals to the Master Services Agreement are permitted to be submitted with a Response.
- (m) Respondent's submitted Response shall be treated by UMBA as an accurate statement of Respondent's capabilities and experience. Should any statement asserted by Respondent prove to be inaccurate, misleading or inconsistent with the foregoing, such inaccuracy or inconsistency shall constitute sufficient cause for rejection of the Response and/or of any



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resulting contract. UMBA, within its sole discretion, will rule on any such matters and will determine appropriate action.

- (n) UMBA's prior approval is required for any subcontracted services under any Master Services Agreement entered into as a result of this RFP. Selected Respondent contractors are responsible for the satisfactory performance and adequate oversight of their subcontractors. Subcontractors, if allowed by UMBA, are required to meet the same requirements and are held to the same reimbursable cost standards as the selected Respondent contractors.
- (o) Master Services Agreements (MSA) and work orders entered into as a result of this RFP shall be on a fee for service basis. Once Respondent has been selected and have executed a MSA, UMBA intends to award all work orders for Risk Management and Insurance Services based on either (1) bids submitted by selected Respondents (the "Mini-Bid"), or (2) based on UMBA's sole discretion in determining which of the selected Respondents presents the best value option (the "List Selection"). Procurements done by either Mini-Bid or List Selection shall be deemed competitive. It is further anticipated that the term of the MSA entered into pursuant to this RFP will be for a term of at least sixty (60) months, with UMBA options to renew it in its sole discretion.

Your interest in the University of Massachusetts Building Authority is appreciated.

Barbara J. Kroncke
Executive Director
University of Massachusetts Building Authority



List of Attachments to the RFP

Attachment A: Authorized Representative's Signature and Acceptance Form

Attachment B: Form of Contract

Attachment C: Work Order

Attachment D: Disclosure Form

Attachment E: Certificate of Disclosure

Attachment F: Compliance with Executive Order Number 598

ATTACHMENT A

**UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY
AUTHORIZED RESPONDENT'S SIGNATURE AND ACCEPTANCE FORM**

The undersigned is a duly authorized representative of the Respondent listed below. The Respondent has read and understands the RFP requirements. The Respondent acknowledges that all of the terms and conditions of the RFP are mandatory, and that Respondent's response is compliant with such requirements. The Respondent understands that, if selected by the University of Massachusetts Building Authority ("UMBA"), the respondent and UMBA will execute written agreements specifying the mutual requirements of participation. The Respondent agrees that the RFP will be incorporated into and made part of any Agreement resulting from the Respondent's response to the RFP. The Respondent further agrees to the contract terms in UMBA consultants' Master Services Agreement. Respondent agrees that the entire bid response will remain valid for sixty (60) days from receipt by UMBA.

I hereby certify that: (i) I am an authorized representative of the Respondent herein; and (ii) the statements made in this response to the RFP, including all attachments and exhibits, are true and correct to the best of my knowledge.

Respondent: _____
(Printed Name of Respondent)

By: _____
(Signature of Authorized Representative)

Name: _____

Title: _____

Date: _____

ATTACHMENT B

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

**ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108**

RISK MANAGEMENT AND INSURANCE SERVICES AGREEMENT

This **RISK MANAGEMENT AND INSURANCE SERVICES AGREEMENT** (as may be amended from time to time, the "Agreement") is made and entered into as of _____ (the "Effective Date") by and between the University of Massachusetts Building Authority (the "UMBA"), an independent public authority of the Commonwealth of Massachusetts with a principal office and place of business at 100 Carlson Avenue, Newton, Massachusetts, and _____, with a principal office at _____, ("Contractor").

Whereas, UMBA desires to retain Contractor to render certain services to UMBA and Contractor desires to be so retained by UMBA and to perform the services specified herein, all in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Certain Definitions:** The following capitalized terms have the following meanings for purposes of this Agreement:
 - a) "Agreement" means this **RISK MANAGEMENT AND INSURANCE SERVICES** Agreement, including all work orders entered into hereunder and attached hereto and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of this Agreement.
 - b) "Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).
 - c) "Contractor" means any Person providing the services contemplated by this Agreement.
 - d) "General Counsel" means UMBA's General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to UMBA as UMBA's Executive Director may designate.
 - e) "Governmental Authority" means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

- f) “UMBA” means the University of Massachusetts Building Authority and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.
 - g) “Person” means any individual, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority or any other entity.
 - h) “Project Personnel” means, with respect to the project hereunder, the employees or other personnel of each party responsible for such project.
 - i) “Public Records Act” means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto and M.G.L. Chapter 66A.
2. **Scope of Services:** UMBA hereby retains Contractor to provide services to UMBA during the term of this Agreement, and Contractor hereby accepts such engagement. Contractor represents itself as competent and qualified to accomplish the specific requirements of this Agreement to the satisfaction of UMBA and in accordance with the terms and conditions of this Agreement and acknowledges that UMBA is relying upon such representation in entering into this Agreement. This Agreement shall apply to all services provided from time to time by Contractor to UMBA during the term specified in Section 4. Each service request shall be in writing and shall be attached to this Agreement as a separate work order, substantially in the form of Attachment A, specifying the start date and duration of the service request, the services to be performed, any deliverables to be furnished by Contractor and payment terms, and shall be signed by a duly authorized officer or employee of each of the parties. Each work order shall reference this Agreement and will be numbered sequentially. In the event of any conflict between the terms and conditions set forth in this Agreement and any provision(s) set forth in any work order or other attachment hereto, the terms of this Agreement shall control unless and until amended in accordance with Section 18 hereof.
3. **Payment:** UMBA shall compensate Contractor as set forth in the attached work order(s). Contractor shall submit to UMBA detailed monthly invoices in a format acceptable to UMBA, which will include such information as is set forth on the relevant work order or as otherwise requested by UMBA.
4. **Term of the Agreement:** This Agreement shall take effect as of the Effective Date set forth in the first paragraph of this Agreement, and shall remain in effect until _____ or until Contractor has completed all services specified in the attached work order(s), whichever is sooner, unless terminated sooner under the provisions of Section 8(a).
5. **Project Personnel:** The relevant Project Personnel shall be set forth on the applicable work order. Unless otherwise agreed by the parties, each party will use all reasonable efforts to maintain the same personnel on its project team unless replacement is necessitated by the resignation, extended illness, incapacity or death of specific Project Personnel. UMBA may request the removal or replacement of any individual(s) from Contractor’s project team, and if such a request is made, Contractor shall use all reasonable efforts to replace the relevant individual promptly.
6. **Timely Performance:** Contractor acknowledges that expeditious completion of Contractor’s services and the expeditious delivery of the deliverables is of the utmost importance to UMBA and that Contractor will diligently and continuously perform its Services during the term of this Agreement.

7. **Notices:** Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and shall be sent either (i) by facsimile or telecopier, (ii) by courier, or (iii) by first class mail, postage, prepaid, addressed to the Project Personnel listed in the applicable work order at the addresses of such Persons indicated in the first paragraph of this Agreement (or to such other address as a party may provide by notice to the party pursuant to this Section 7), and shall be effective (i) if dispatched by facsimile or telecopier and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after written confirmation by said courier of delivery, (iii) if sent by first class mail, two business days after its date of posting. A copy of each notice required to be sent pursuant to this Agreement shall also be sent to the General Counsel.
8. **Termination or Suspension:**
 - a) This Agreement shall terminate on the date specified in Section 4, unless amended in accordance with Section 18 to extend the term hereof, or unless earlier terminated or suspended as provided in this Section 8(a). UMBA may terminate this Agreement without cause and without penalty at any time upon provision of written notice to the Contractor. UMBA also may terminate or suspend this Agreement if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by this Agreement, by providing written notice of termination or suspension to the Contractor.
 - b) Obligations in Event of Termination; Survival: Upon termination of this Agreement, the parties shall have the following obligations:
 - i) *Deliverables:* Contractor shall deliver to UMBA all work papers and all written and tangible work product identified as deliverables in the applicable work order(s) for which services have been performed and payment has been made, and all other property of UMBA, and all copies thereof in the direct or indirect possession or control of Contractor, up to and including the date of termination.
 - ii) *Payment:* Contractor shall be paid for all requested and authorized services and deliverables described in the applicable work order(s) and performed to the satisfaction of UMBA up to and including the date of termination.
 - iii) Sections 7 and Sections 9 through 22 of this Agreement shall survive termination of this Agreement.
9. **Contractor's Representations:** As of the date of this Agreement, and as of each date on which a work order is entered into by the parties, Contractor hereby represents under the penalties of perjury as follows:
 - a) Contractor is duly authorized to enter into this Agreement (including all work orders hereunder), and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Contractor or any of its assets is bound.

- b) Contractor and all Project Personnel of Contractor are fully capable and qualified to perform the described service(s) and Contractor's other obligations under this Agreement, and have obtained all requisite licenses and permits to perform such obligations.
- c) Contractor and all Project Personnel of Contractor are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other Governmental Authorities applicable or implicated by the subject matter of this Agreement, including, without limitation, the statutes referenced in Sections 9(d), 9(e), 13, 15 and 16 of this Agreement.
- d) Contractor and its employees are independent contractors of UMBA, and not employees, partners or joint-ventures of UMBA. Contractor will be solely responsible for withholding and paying all applicable payroll taxes of any nature, including social security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Contractor has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply will all laws of the Commonwealth relating to Worker's Compensation, M.G.L. c. 152.
- e) Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c.151B.
- f) Contractor represents and warrants that all personnel supplied under this Agreement are eligible to work in the United States at the time of execution of this Agreement and that Contractor has a continuing obligation to ensure such status for the duration of the Agreement.

10. **Indemnification and Insurance:**

- a) To the full extent allowed by law, the Contractor shall indemnify and hold harmless UMBA, including its employees, agents, officers and directors (the "Covered Persons") from and against any and all liability, loss, claims, damages, fines, penalties, costs and expenses (including reasonable legal fees and costs), judgments and awards (collectively, "Damages") sustained, incurred, or suffered by or imposed upon any Covered Person resulting from: (i) any breach of this Agreement or false representation of Contractor under this Agreement, or (ii) any negligent acts or omissions or willful misconduct of Contractor or any of Contractor's agents, officers, directors, employees or subcontractors. Without limiting the foregoing, Contractor shall indemnify and hold harmless each Covered Person against any and all Damages that may directly or indirectly arise out of or may be imposed because of the failure to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees, or subcontractors.

- b) Contractor shall obtain and maintain in effect through the term of this Agreement appropriate insurance coverage for its activities under this Agreement, including but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance in amounts that may be required by UMBA. At UMBA's request, Contractor will provide UMBA with copies of the certificates of insurance evidencing such coverage.
11. **Ownership of Intellectual Property:** Unless provided otherwise by law, ownership and possession of all information, data, reports, computer programs, drawings, documents, designs, models, inventions, equipment, and any other documentation, product of tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by Contractor pursuant to this Agreement (collectively, the "Materials"), other than Contractor's administrative communications, records, and files relating to this Agreement, are the sole property of, and shall vest in, UMBA as "works made for hire" or otherwise. UMBA will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by Contractor pursuant to this Agreement, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and UMBA will have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by Contractor. UMBA shall retain exclusive intellectual property rights in all graphics and text provided to Contractor by UMBA for incorporation into final Materials prepared by Contractor. Contractor shall use graphics and text provided by the UMBA for the sole purpose of fulfilling contractual obligations created by this Agreement.
12. **Assignment by Contractor; Subcontracting:** UMBA may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of UMBA's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of UMBA. The Contractor shall not subcontract any services to anyone without the prior written consent of UMBA, and any such subcontracts shall be consistent with and subject to the provisions of this Agreement. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Agreement. The Contractor shall provide UMBA with copies of all subcontracts.
13. **Conflicts of Interest:** Contractor acknowledges the application of the Massachusetts Conflict of Interest Law (M.G.L. c.268A) to the subject matter of this Agreement and that Contractor's personnel, and Contractor's subcontractor's personnel, if any, may be considered "special state employees" and thus subject to the provisions of such law. Contractor represents that it and its subcontractors, if any, are now in full compliance with the Massachusetts Conflict of Interest Law as it relates to the subject matter of this Agreement and the Contractor further agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Massachusetts Conflict of Interest Law as it relates to the subject matter of this Agreement. Contractor agrees to provide UMBA with the information listed in Attachment B hereto and to disclose all financial interests in the subject matter of this Agreement held by either Contractor or Contractor's other clients. With respect to the

subject matter of this Agreement, Contractor further represents that it has consulted with the State Ethics Commission concerning any potential conflicts of interest and has filed all required disclosures regarding its financial interests, both direct and indirect, in any contract to provide designer, project management, or other services to a city, town, or regional school district that may be eligible to receive a Total Facilities Grant from UMBA for a public school repair, renovation, or construction project. Contractor and its subcontractors, if any, shall not take any action which it knows or has a reasonable basis to believe would cause any officer or employee of UMBA to participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, or association in which (s) he is directly or indirectly interested or to have any interest, direct or indirect, in this Agreement or the proceeds thereof. It is hereby acknowledged by UMBA and understood by all parties that individuals providing services to UMBA under this Agreement are permitted to engage in personal or private employment during normal business hours. Contractor agrees that it will immediately disclose to UMBA any such conflicts as they arise. The Contractor further acknowledges and agrees that its failure to comply with the provisions of this section may be deemed a material breach of this Agreement. **Record Keeping, Audit, and Inspection of Records:** Contractor shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be kept for a period of not less than seven (7) years or for such longer period as is specified by UMBA (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. UMBA, or its designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Contractor shall refund to UMBA the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.

14. **Confidentiality/Publicity:**

- a) Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the services hereunder in accordance with Contractor's reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c.66A implicated by the subject matter of this Agreement.
- b) Contractor will collaborate with UMBA to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which UMBA is concerned or discussed. Contractor shall not release, make or

issue any such public statement or announcement without the prior written consent of UMBA.

15. **Public Records:**

- a) As a public entity, UMBA is subject to the Massachusetts Public Records Law (M.G.L. c.66 and 66A) and thus certain documents and other materials made or received by UMBA are subject to public disclosure unless they are specifically exempted. Contractor specifically acknowledges that it bears the risk that any material submitted by Contractor to UMBA pursuant to this Agreement may be deemed not to qualify for a public records exemption.
- b) Furthermore, it is the intention of the parties that UMBA will continue to exercise custody of records received or produced under the Agreement. Requests for access to said records shall be forwarded immediately to UMBA for response. Contractor shall not release information except as authorized to deliver services under this Agreement.

16. **Choice of Law:** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to the conflict of laws principles thereof. All legal actions arising out of or relating to this Agreement shall be commenced and maintained in a state or federal court sitting in the Commonwealth. By execution and delivery of this Agreement, each of the parties accepts for such party, generally, exclusively and unconditionally, the jurisdiction of said courts. This Section 16 shall not be construed to limit any other legal rights of the parties. Contractor acknowledges and agrees that any breach or threatened breach of this Agreement by Contractor will result in substantial, continuing and irreparable damage to UMBA. Therefore, in addition to any other remedy that may be available to UMBA, UMBA will be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by Contractor of the terms of this Agreement.

17. **Amendments and Waivers:** UMBA may amend Attachment B (without any action by Contractor) to reflect changes in law or UMBA policies and shall promptly deliver any and all such amendments to Contractor in the manner provided in Section 7 of this Agreement. Except as provided in the immediately preceding sentence, no amendment to or modification of this Agreement (including any work order), and no waiver of any provision hereof, shall be effective unless the same shall be in writing and shall be signed by each of the parties hereto. Any waiver by UMBA of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.

18. **Severability:** Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.

19. **Binding Effect; Benefit; Entire Agreement and Attachments:** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the parties hereto, and *no Person shall be regarded as a third party beneficiary of this Agreement*. This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. The following (together with all exhibits, schedules and attachments thereto) are hereby incorporated into this Agreement by reference:
- a) Attachment C – Form of Work Order, and all work orders entered into in accordance with the terms of this Agreement and attached hereto.
 - b) Attachment D – Consultant/Contractor Mandatory Disclosure Form
 - c) Attachment E – Consultant/Contractor Certificate of Disclosure
 - d) Attachment F – Compliance with Executive Order Number 597
20. **Headings:** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.
21. **Counterparts:** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

University of Massachusetts Building Authority

By: _____

By: _____

Name: Barbara J. Kroncke

Name: _____

Title: Executive Director

Title: _____

Federal Tax ID No.: _____

ATTACHMENT C

Work Order A-17-1

This Work Order is subject to the terms and conditions of the **RISK MANAGEMENT AND INSURANCE SERVICES** Agreement (as may be amended from time to time, (the “Agreement”) dated as of _____ between the University of Massachusetts Building Authority (UMBA) and _____. Capitalized terms used and not otherwise defined in this Work Order shall have the meanings ascribed to such terms in the Agreement. In the event of any conflict between this Work Order and the Agreement, the Agreement shall govern.

Pursuant to the terms and conditions of the Agreement and this Work Order, UMBA and Contractor agree as follows:

1. Services: Contractor shall provide services related to the _____ (the “Services”) to UMBA, with the prior consultation and approval of UMBA:

[To be defined by UMBA]
2. Location: Contractor shall provide the Services at the Contractor’s premises or such other premises as UMBA and Contractor may deem appropriate.
3. Deliverable(s): Contractor shall provide the following deliverables (the “Deliverables”).

[To be defined by UMBA]
4. Term of Work Order: This Work Order will become effective as of _____. Unless otherwise expressly agreed by UMBA in writing, Contractor shall complete the Services and provide the Deliverables described above on or before _____.
5. Payments /Services and Deliverable Schedule/Invoices:
 - a. In consideration of the Services and Deliverables provided pursuant to this Work Order to the satisfaction of UMBA, Contractor shall be paid for the Services and Deliverables based on the hourly rate(s) set forth below, up to a total maximum fee amount that shall not exceed \$ _____ without the prior written approval of UMBA.
 - b. UMBA shall only pay for Services and Deliverables rendered that have been properly documented and invoiced and are to the satisfaction of UMBA. The fee amount shall be the sole and complete compensation for Services performed by Contractor under this Work Order, including contingencies, direct and indirect expenses, except as provided above. The fee amount stated in Section 5(a) is a maximum amount, and the total fee amount due pursuant to this Work Order may be an amount less than that amount.

- c. Unless otherwise agreed in writing by Contractor and UMBA, Contractor shall perform the Services and provide the Deliverables in accordance with the following Services and Deliverables Schedule:

Services and Deliverable Schedule

<u>Completion</u>	<u>Service or Deliverable</u>
<u>Date</u>	

[To be defined by the UMBA]

- d. Contractor shall invoice UMBA monthly. Invoices must be submitted in a format and with such detail as required by UMBA. Payments hereunder will be made by UMBA within forty-five (45) days following receipt of reasonably detailed invoices from Contractor, according to the banking information submitted by Contractor to UMBA on the attached form (*Attachment A-1*), and subject to the fee limitations set forth in this Section 5. Contractor’s monthly invoices shall be in a format consistent with the Services set forth in Section 1, the Deliverables set forth in Section 3 and the Services and Deliverables Schedule set forth in Section 5 of this Work Order. All invoices submitted for payment shall provide reasonable documentation to provide evidence of costs incurred, including for each employee, the name, title, hours worked per task, and description or work performed.

6. Project Personnel:

For Contractor:

For UMBA:

7. Contractor hereby represents and warrants that, as of the date of this Work Order, all of the representations, warranties and certifications of Contractor set forth in the Agreement are true and correct and Contractor is in compliance with all of Contractor’s obligations under the Agreement and each other Work Order between UMBA and Contractor.

University of Massachusetts Building Authority

By: _____

By: _____

Name: Barbara J. Kroncke

Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

Attachment C-1

To: [CONTRACTOR]

Attention:

From: Aaron D'Elia, Chief Financial Officer

Date:

Re: Electronic Payment of the University of Massachusetts Building Authority Invoices

In an effort to pay your company's invoices in a timely and efficient manner, the University of Massachusetts Building Authority would prefer to make electronic ACH transfers directly to the company's account. For this transaction to be possible, the Authority requests the following banking information.

Financial Institution: _____

Address: _____

City & State: _____

Account No.: _____

Transit Number (ABA#): _____

Company Contact Person: _____

Contact Telephone No.: _____

Please return this form to:

University of Massachusetts Building Authority
Attention: Aaron D'Elia, Chief Financial Officer
adelia@umassp.edu

ATTACHMENT D

CONSULTANT/CONTRACTOR MANDATORY DISCLOSURE FORM

Additional Income Disclosure. Please identify any contracts or grants with (or other income received from) the Commonwealth, including any political subdivision or public authority, in effect as of the date of execution of this Agreement. Enter N/A if none. Attach additional sheets as necessary.

Disclosure of Persons with Financial Interest. The following individuals have a financial interest in the Agreement and/or more than a one percent (1%) equity interest in the Consultant/Contractor. Enter N/A if none. Attach additional sheets as necessary.

Conflict of Interest. Consultant/Contractor acknowledges that the individuals performing services under this Agreement may be considered “special state employees” subject to the provisions of the Massachusetts Conflict of Interest Law, M.G.L. c.268A, and certifies that these individuals are familiar with the restrictions imposed thereon.

Key Personnel. Attach a resume for all key personnel to be assigned to the performance of this Agreement.

The information submitted herein is certified by Consultant/Contractor to be accurate and signed under the penalty of perjury.

Name of Consultant/Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT E
CERTIFICATE OF DISCLOSURE

- 1.) State your firm's name and address.
- 2.) State the name and position of the officer completing this disclosure statement.
- 3.) Describe your firm's organizational structure (e.g. partnerships, corporation, etc.) and list any controlling stockholders, general partners or principals. Also list any subsidiaries, joint ventures, consultants, lobbyists, subcontractors or agents that have relationships with your firm and relate in any way to your proposed business with the Authority.
- 4.) Did your firm or will your firm, its related entities or any individual listed in response to question 3 above, provide, agree to provide or arrange to provide any compensation or benefit, direct or indirect to any individual or entity, including without limitation, lobbyists, consultants or agents, whether related or unrelated to your firm, for their services in your firm's obtaining its engagement for the provision of services to the Authority? If the answer is "Yes", please provide the name and address of such individual or entity and a description of the services performed by them and the compensation or benefit.
- 5.) Has your firm, its related entities or any individual listed in response to question 3 above, shared any fees with any person or entity, whether related or unrelated, with respect to your firm's proposed engagements for services with the Authority? If so, please describe such arrangements whether or not any fees have actually been shared.
- 6.) Does your firm, its related entities or any individual listed in question 3 above, have any on-going arrangement with any related or unrelated individual or entity with respect to sharing fees that would be received from services provided to the Authority? If so, please describe such arrangements.
- 7.) Consultant/Contractor agrees to disclose all pending and threatened litigation, regulatory and administrative actions or processes that could be adverse to the reputation of the firm or could have a material adverse impact to its current financial position and its ability to perform its services under the contract, during the term of the current contract.
- 8.) If selected pursuant to this RFP to which this statement is attached, please certify and agree that during the term of your engagement if any information provided by this disclosure changes or is untrue in any way, your firm will update this disclosure promptly, in writing.

Name of Consultant/Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT F

**COMPLIANCE WITH EXECUTIVE
ORDER NUMBER 597**

- 1.) State your firm's name and address.
- 2.) State the name and position of the officer completing this disclosure statement.
- 3.) Describe your firm's organizational structure (e.g. partnerships, corporation, etc.) and list any controlling stockholders, general partners or principals. Also, list any subsidiaries, joint ventures, consultants, lobbyists, subcontractors or agents that have relationships with your firm and relate in any way to your proposed business with the Authority.
- 4.) Did your firm or will your firm, its related entities or any individual listed in response to question 3 above, provide, agree to provide or arrange to provide any compensation or benefit, direct or indirect to any individual or entity, including without limitation, a Russian state-owned company or Russian government controlled entity? If the answer is "Yes", please provide the name and address of such individual or entity and a description of the services performed by them and the compensation or benefit.
- 5.) Has your firm, its related entities or any individual listed in response to question 3 above, shared any fees with any Russian state-owned company or Russian government controlled entity? If so, please describe such arrangements whether or not any fees have actually been shared.
- 6.) Does your firm, its related entities or any individual listed in question 3 above, have any on-going arrangement with any Russian state-owned company or Russian government controlled entity? If so, please describe such arrangements.
- 7.) Please note that any affirmative responses to Questions 4, 5, and 6 may disqualify your firm from doing any business with the Authority or the Commonwealth of Massachusetts pursuant to Executive Order 597 until its rescission.

Name of Consultant/Contractor: _____

Signature: _____ **Name:** _____

Title: _____ **Date:** _____