

Request For Responses

Massachusetts School Building Authority
40 Broad Street, Suite 500, Boston, MA 02109

(617) 720-4466; Fax (617) 720-5260

SECTION I. SUMMARY

The Massachusetts School Building Authority (“MSBA”) requests Responses from law firms or individuals interested in providing for the full range of general legal services that the MSBA may prospectively require from time to time, composed of the categories set forth in Section I, Item B of this Request for Responses.

The MSBA anticipates that such General Legal Services shall be provided on both an “on-call basis” and in connection with specific projects that may arise from time to time. The General Legal Services may relate either to assisting with the development and implementation of the MSBA’s programs and initiatives or providing legal advice to the MSBA concerning authority-specific matters.

Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Veteran Business Enterprise (VBE), Service-Disabled Veteran-Owned Business Enterprise (SDVOBE), Disability-Owned Business Enterprise, LGBT Business Enterprise, Minority Nonprofit Organization (M/NPO), or Women Nonprofit Organization (W/NPO) firms are encouraged to submit Responses.

At the conclusion of this RFR, the MSBA intends to directly contract with the responsive and responsible firm or firms submitting the most advantageous proposal, taking into consideration qualifications, experience, capacity, references, approach to providing the services requested, and price.

This RFR consists of a 20-page Request for Responses and the following Attachments:

- Attachment A: Authorized Respondent’s Signature and Acceptance Form
- Attachment B: Certification Statement
- Attachment C: Master Services Agreement
- Attachment D: Supplier Diversity Program Plan Form
- Attachment E: Invest in Massachusetts Form

A. PROCUREMENT CALENDAR

The following is the tentative time schedule for the MSBA’s selection of recognized firms and individuals interested in providing general legal services for the MSBA. All dates are subject to modification by the MSBA with notice.

Issuance of RFR: Monday, October 2, 2023
Question Deadline: Monday, October 16, 2023, 3:00 PM
Responses to Questions Posted: on or before Monday, October 23, 2023
RFR Response Deadline: Monday, October 30, 2023, 3:00 PM
Oral Presentations (If conducted): TBA
Award of the Contract: Estimated December 2023

Questions concerning this RFR may be submitted to the RFR Contact Person in writing via email only at the address below. No telephone calls concerning this RFR are permitted. Questions must be received no later than 3:00 P.M. on Monday, October 16, 2023. Responses to questions will be posted on or before Monday, October 23, 2023.

Graham Waters, Legal and Procurement Administrator
ATTN: "MSBA-RFR-General Legal Services-2023"
E-Mail Address: Procurement@MassSchoolBuildings.org

Respondents should receive an email confirming receipt of submission. If Respondents do not receive a confirmation email, Respondents are encouraged to contact Graham Waters at Procurement@MassSchoolBuildings.org in advance of the submission deadline.

B. SCOPE OF SERVICES REQUIRED

It is anticipated that General Legal Services will be required on an ongoing basis to address a wide range of issues concerning the following:

1. Human Resources and Employment Law:

The MSBA requires legal advice and assistance on various human resources and/or employment law matters affecting the MSBA, including but not limited to employment commencement and termination decisions; design, implementation, and administration of benefits programs; sexual harassment and diversity training; compliance with applicable state and federal laws, including HIPAA requirements; workplace policies, and all other general human resources and employment law related matters.

2. Construction Law and Contracts:

The MSBA requires legal advice and assistance on various public construction law issues, including but not limited to: the drafting and enforcement of project funding agreements and other school construction project-related contracts; the drafting, revising, and updating of template contracts for municipalities to enter into with designers and owner's project managers; review and analysis of construction contract documents, including the general terms and conditions; and analysis of state and federal law pertaining to public construction, including but not limited to M.G.L. c. 7C, § 44 to 58, c. 30, c.149, and c. 149A.

3. Intellectual Property:

The MSBA requires legal advice and assistance on intellectual property issues including, but not limited to, any issues arising from the MSBA Model Schools Program, the anticipated development of a policy or policies for pursuing the MSBA's ownership interest in intellectual property on a going forward basis, and any other issues that may arise during the MSBA's operations.

4. General Litigation:

While the MSBA does not have an immediate need for general litigation services or representation, the MSBA requires expeditious access to providers of such services in the event such a need arises. These services may include, but are not limited to, defense of claims and lawsuits that may be brought against the MSBA, representation of MSBA employees responding to subpoenas for depositions, trials, and administrative proceedings, and prosecuting such lawsuits and claims as may be required to protect the MSBA's interests.

5. Risk Management and Insurance Matters:

The MSBA requires legal advice and assistance to ensure that the MSBA, and the MSBA's investment in public school construction projects, is adequately protected from a risk management perspective. These services may include, but are not limited to, periodic review of the MSBA's standard indemnification and insurance provisions contained in its funding agreements, service contracts and standard contracts for designers and owner's project managers; development and review of policies, procedures and guidelines related to risk management and insurance coverage issues; and advice and assistance on a case specific basis as such a need may arise.

6. Regulations:

From time to time, the MSBA requires legal advice and assistance in drafting and promulgating revisions to MSBA regulations.

7. Public Law, including Conflict of Interest, Constitutional, Public Meetings and Public Records:

As a public instrumentality of the Commonwealth, the MSBA and its employees are required to abide by numerous public law requirements. The MSBA and its employees take such public law requirements seriously and anticipate the need to seek clarification of certain obligations, required actions and prohibited actions thereunder. One example of services that are likely to be required include providing interpretations of the Commonwealth's conflict of interest statute (M.G.L. 268A), as well as providing advice on compliance to the MSBA and its employees.

8. Municipal Law and Public School Law:

From time to time the MSBA requires legal advice and assistance with respect to legal matters that are unique to Massachusetts cities, towns, and regional school districts. These issues may include, but are not limited to, contracting authority, appropriations, financing, legislative and administrative procedure, and the application of statutory, regulatory and charter provisions to cities, towns, and regional school districts.

9. Environmental Law:

From time to time the MSBA may require legal advice and assistance with respect to environmental law matters in connection with the MSBA Grant Program, including, but not limited to, the Massachusetts Environmental Policy Act and the Wetlands Protection Act.

10. Immigration Law:

From time to time the MSBA may require legal advice and assistance with respect to immigration law matters in connection with MSBA personnel, particularly related to worker documentation to work in the United States..

11. Real Estate Law:

From time to time the MSBA may require legal advice and assistance in connection with drafting and negotiating commercial lease documents, and with real estate law matters in connection with MSBA Grant Program school projects.

12. Additional Categories of Services:

In addition to the General Legal Services specified above, the MSBA invites Respondents to identify in their response any additional categories of services that it is qualified to provide and for which it would like to be considered for selection under this RFR.

Respondents may submit responses to one or more of the categories described above. Responding firms should clearly indicate the category or categories for which they wish to be considered for selection, including specifying any additional categories not set forth above for which consideration is being requested.

The MSBA will select firms to provide the General Legal Services described above. The MSBA may choose, in the sole exercise of its discretion, to select all, some, or none of the Respondents. In addition, selection of a Respondent pursuant to this RFR does not guarantee that the MSBA will award any work orders for General Legal Services to any of the Respondent firms.

RESPONDENTS PLEASE NOTE: Individuals performing General Legal Services to the MSBA may be considered to be “special state employees” subject to the provisions of the Massachusetts Conflict of Interest Law (M.G.L. c.268A). The MSBA’s Master Services Agreement requires contractors to certify, among other things, compliance with the Conflict-of-Interest Law.

SECTION II. RESPONSE REQUIREMENTS

A. Instructions to Respondents

- a. MSBA is soliciting RFR’s for General Legal Services pursuant to a determination that such a process best serves the interests of the MSBA and not because of any legal requirement to do so. The MSBA reserves the right to: accept or reject any or all RFR’s received as a result of this request, to negotiate with any qualified Respondent, to modify or waive any part of this RFR process in its entirety, to waive any minor informality in a Response, to request clarification of information from any Individual/firm responding, and to effect any agreement deemed by the MSBA to be in the MSBA’s best interest with one or more of the Individual/firms responding. The MSBA reserves the right to amend or cancel this RFR at any time. All Responses and their contents will become the sole property of the MSBA upon receipt by it.
- b. Proposals received after the specified date and time are considered late and will not be accepted. Please see Section 2-C for additional information.
- c. Pertinent and reasonable questions received by the stated deadline will be answered via email to individuals who submitted questions, on Commbuys, and publicly posted on the MSBA’s website.

B. Contents of the Response

All Responses to this RFR must include the following information:

- 1) **Mandatory Cover Letter:** Each Response must be accompanied by a cover letter of not more than two pages. The letter, which shall be considered an integral part of the submission, shall be signed by an individual who is authorized to bind the firm contractually, giving his or her title. The letter must acknowledge Addenda to the RFR, if any, and certify that all information contained in the Response is accurate and complete. Inaccurate or incomplete information may adversely affect the evaluation of the submission.
- 2) **Firm History:** A description of each firm associated with the Respondent’s team and their respective roles and history.

- 3) Qualifications Statement: A statement of the team's qualifications and prior experience as a team providing the types of services requested in this RFR. The response should clearly indicate the categories of General Legal Services identified in this RFR for which it seeks to be selected. The response also should specifically indicate the firm's current and historical expertise in the categories of General Legal Services identified in the RFR for which it seeks to be selected.
- 4) Professional Qualifications and Experience: A description of the professional qualifications and experience of the key personnel who would be assigned to the MSBA for this project, including subcontractors and joint venturers, if applicable. All responses must include resumes of each individual who will be providing General Legal Services under any work order, as well as written descriptions of the individuals' experience in the categories of General Legal Services identified in this RFR. All Respondents must identify the individual(s) who will have primary responsibility for contact and communications with the MSBA under each such category of General Legal Services. The MSBA reserves the right to reject a firm's use of any particular individual to perform General Legal Services, within the MSBA's sole discretion. Any changes to personnel require approval by the MSBA, and the MSBA reserves the right to terminate a contract if changes are not approved.
- 5) Approach to Providing Services: A description of the firm's approach to providing the Scope of Work described in Section I, Item B. Also, all Responses must include a table that describes the role of each member of your professional team that will be assigned to work on this project.
- 6) Statement of Limitations: Provide a statement clearly describing any limitations to the submitted Response (such as scope of proposed services, geography, etc.).
- 7) Business References: All responses must include references from at least three (3) clients of the firm, and preferably clients who have utilized the firm on matters related to the respective categories of General Legal Services for which Respondent desires to be selected. The references must include a contact person, a full address, and a phone number. In addition to the foregoing, please include a listing of public and private clients for whom the firm has provided services similar to those set forth in the categories of General Legal Services for which the Respondent seeks to be considered under this RFR, with a description of the services provided.
- 8) Hourly Rates, Fees: All responses must include a detailed explanation of the hourly rates for each individual identified as a provider of General Legal Services in each and every category of General Legal Services for which Respondent seeks consideration under this RFR. Additionally, Respondent must include an explanation of all other direct expenses (i.e., photocopying, faxing, telephone usage, etc.) ("Other Direct Expenses"). Respondents,

please note that work performed under a work order to the Master Services Agreement generally will be billed in accordance with the hourly rates provided by the Respondent for each distinct category of General Legal Services set forth in Section I, Item B above (on a category-by-category basis, the “Offered Rate”). Respondents should note whether they would offer additional discounts, flat fees, blended rates, fee caps, use of associates and other forms of competitive pricing during a mini-bid or list selection.

- 9) Supplier Diversity Program Plan Form: The MSBA is committed to developing and strengthening Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBE), Service-Disabled Veteran-Owned Business Enterprises (SDVOBE), Disability-Owned Business Enterprises, LGBT Business Enterprises, Minority Nonprofit Organizations (M/NPO), and Women Nonprofit Organizations (W/NPO) and expanding equal opportunity in the primary and secondary industries affected by this RFR. *Please note, completion of a Supplier Diversity Program Plan Form (**Attachment “D”**) by a Respondent is **NOT** mandatory for the purposes of the MSBA’s review of a Response. However, if a Respondent is a certified SDO business or has an SDO partner, the Respondent should complete the form to the extent possible. Respondents that clearly demonstrate the intent to further the development of the business enterprises and organizations listed above or the existence of a relationship which does further those goals may receive favorable consideration. If the Form is not completed or provided with a Response, the MSBA will assume that it was omitted intentionally.*
- 10) Anti-Discrimination Policy: Each Respondent must include a detailed copy of its policy relative to affirmative actions/equal opportunity and the prohibition of discriminatory employment practices.
- 11) Authorized Respondent’s Signature and Acceptance Form: If the Respondent is a corporation, partnership, or other business entity, complete **Attachment “A”** as indicated.
- 12) Mandatory Certifications: (an example of a comprehensive certification statement is attached as Attachment “B”):
 - a. Certification of Compliance with Massachusetts Child Care Laws
 - b. Certification of Compliance with the Revenue Enforcement and Protection Program
 - c. Certification Regarding Companies Doing Business in Northern Ireland
 - d. Certification of Disclosure
 - e. Certification of No Conflicting Relationship
 - f. Certificate Statement Regarding Criminal Actions and Pending Litigation
 - g. Certification of Solvency
 - h. Certification of Good Standing and Licensure
 - i. Statement of Compliance with RFR Requirements
 - j. Statement of Confidentiality

- 13) **Invest in Massachusetts Data Form:** The MSBA encourages investment in our local economy and is committed to advancing the creation and preservation of jobs in the commonwealth. Consequently, all Respondents must submit and Invest in Massachusetts Data Form (“IMD Form”). **(Attachment “E”).**

C. INSTRUCTIONS FOR SUBMISSION

Responses and Attachments to this RFR must be submitted electronically by the submission deadline or the response will not be considered. **Hard copy submissions will not be accepted.** Responses and attachments must be submitted by email to Procurement@MassSchoolBuildings.org **no later than October 30, 2023 at 3:00 P.M. EST.** Responses should not exceed 25MB in size.

When responding to this RFR, firms should take note of the following provisions.

- a) Responses should include the information and documents listed in **Section II, Item B – “Contents of the Response”.**
- b) The MSBA reserves the right to request additional information from firms responding to this Request. Additionally, upon reviewing the Responses the MSBA may decide to have certain firms make virtual presentations.

1. **Submission Format Requirements**

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

- a) All Responses must be submitted by email to Procurement@MassSchoolBuildings.org. The specific organization and orientation of the Response is at the Respondent’s discretion, but it is recommended that the Response be laid out in such a manner that the reader doesn’t need to be constantly rotating the proposal.
- b) Submissions must be limited to 12 pages excluding the following:
 - Cover Letter
 - Appendix for resumes
 - Proposed Fee/Commission Structure
 - Anti-Discrimination Policy
 - Attachments A-E
- c) Submissions must be in a PDF format, font of 12 point or larger on 8 ½” x 11” sized page, no less than single-spaced and with a minimum of ½” margin top/bottom and sides. Responses should be concise, and content should support specific answers provided. Please refrain from including standard

marketing materials and/or boilerplate responses.

- d) All data, materials, and documentation submitted to the MSBA in Response to this RFR will become the MSBA's property and shall be subject to public disclosure under the Massachusetts Public Records Act. In this regard, Respondents are required to sign the Authorized Respondent's Signature and Acceptance Form, set forth as **Attachment "A"** hereto.

RESPONDENTS PLEASE NOTE: BY EXECUTING THE AUTHORIZED RESPONDENT'S SIGNATURE AND ACCEPTANCE FORM AND SUBMITTING A RESPONSE TO THIS RFR, RESPONDENT AGREES THAT THE MSBA SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR THE DISCLOSURE OF ANY MATERIALS SUBMITTED TO THE MSBA PURSUANT TO THIS RFR OR UPON RESPONDENT'S SELECTION AS A SERVICE PROVIDER.

SECTION III. MINIMUM QUALIFICATIONS AND EVALUATION PROCESS

A. REQUIRED QUALIFICATIONS

In addition to the specific requirements set forth above, all Respondents must demonstrate that they have significant experience, knowledge and abilities in the categories of General Legal Services set forth in Section I, Item B of this RFR for which Respondent wishes to be considered for selection.

B. EVALUATION CRITERIA

The MSBA will evaluate the submissions of all Respondent firms pursuant to the evaluation criteria set forth in this RFR. The MSBA may award work orders to any selected firm (via "Mini-Bid" or "List Selection", as those terms are defined below). Any firm selected to provide the MSBA with General Legal Services on work orders awarded will be required to execute MSBA's Master Services Agreement, as set forth in Attachment C.

At the conclusion of this RFR, the MSBA intends to select and enter into Master Services Agreements with various individuals and/or firms to assure that the MSBA has ongoing and expeditious access to General Legal Service providers at competitive (and preferably discounted) rates. Master Services Agreements and work orders entered into as a result of this RFR shall be on a fee for service basis. It is anticipated that the MSBA shall select multiple Respondents to this RFR and intends to enter into a Master Services Agreement with each of the selected Respondents. Once Respondents have been selected and have executed a Master Services Agreement, the MSBA intends to award all work orders for General Legal Services based on either (1) bids submitted by selected Respondents (the "Mini-Bid"), or (2) based on the MSBA'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 each Master Services Agreement entered into pursuant to this

RFR will be for a term of three years, with an option to renew each individual Agreement for one additional year.

Selection of Respondents to provide General Legal Services in one or more of the specified categories will be based on the following criteria:

- (1) Qualifications and professional experience of the Respondent and the Respondent's key personnel who are identified to provide the services described in this RFR for which the Respondent seeks consideration.
- (2) Demonstrated capacity and organizational structure to perform the type of services sought in this RFR for which the Respondent seeks consideration.
- (3) Demonstrated knowledge of the area(s) of law for which the Respondent has provided a response and experience in providing similar services to other clients in the categories identified in Section I, Item B of this RFR for which Respondent seeks selection.
- (4) Proposed Overall Approach to providing legal services
- (5) Demonstrated intent to further the development of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Veteran Business Enterprise (VBE), Service-Disabled Veteran-Owned Business Enterprise (SDVOBE), Disability-Owned Business Enterprise, LGBT Business Enterprise, Minority Nonprofit Organization (M/NPO), or Women Nonprofit Organization (W/NPO) firms or the existence of a relationship which furthers these goals.
- (6) Demonstrated investment in our local economy – see the Invest in Massachusetts Data Form

The MSBA selection team may consider any other criteria that relate to the Respondent's qualifications and to the determination of the value of the General Legal Services that the Respondent proposes to provide.

The MSBA will consider the reasonableness of the offered rates and billing structure, including a stated willingness (and preferably a commitment) to offer additional discounts, flat fees, blended rates, fee caps, use of associates and other forms of competitive pricing during a Mini-Bid or List Selection.

The MSBA acknowledges that selecting "best value" providers primarily requires a balanced combination of (1) reasonable Offered Rates, and the availability of discounted rates, flat fees, blended rates and caps on fees, and (2) strong experience and demonstrated expertise in the category or categories of General Legal Services for which Respondent seeks selection.

The MSBA reserves the right to consider such other relevant factors as it deems appropriate in order to obtain “best value” providers of General Legal Services. The MSBA may or may not seek additional information from Respondents prior to making contractor selections. After submission and review of Responses, the MSBA may determine, in its sole discretion, that interviews of one or more firms will be conducted.

The fact that the MSBA advertises and publishes this RFR, accepts responses to this RFR, responds to inquiries, requests further information, conducted interviews, checks references or engages in any other conduct in furtherance of the publication of this RFR, the evaluation of responses, or the selection of finalists, does not commit the MSBA to select any firm or individual, award any work order, pay any costs incurred in preparing a response, or procure or contract for any services or supplies. The MSBA reserves the right to accept or reject any or all submittals received, cancel or modify the RFR in part or in its entirety, or change the RFR guidelines. The MSBA shall not be obligated to pay for any General Legal Services rendered to the MSBA until after the selected Respondent has entered into a Master Services Agreement duly executed by the MSBA’s Executive Director in accordance with the MSBA’s policies, by-laws and regulations and only after the performance of such services has been requested pursuant to the terms and conditions of a duly authorized work order and Master Service Agreement. The Master Services Agreement and any work orders issued to Respondent will be managed for the MSBA by its General Counsel.

C. EVALUATION PROCESS

The RFR Evaluation Process will be conducted in two phases. MSBA staff will complete the Phase One Review for all submitted Responses. The purpose of the Phase One Review is to eliminate any Respondents that do not meet the minimum qualifications and/or whose Responses are nonresponsive to the requirements of the RFR. Responses that are deemed to be complete and responsive based on the Phase One Review will be submitted to a committee of MSBA staff for additional review. The Phase Two Review will evaluate the Responses based on the criteria list provided within this RFR. The selection committee will make a recommendation of the qualified firms and/or individuals to the Executive Director of the MSBA who will then accept or reject the recommendation.

(Phase One and Phase Two Reviews of this RFR will be Conducted Separately)

The MSBA may select the Response that demonstrates the “Best Value” overall, including proposed alternatives that will achieve the procurement goals of the MSBA.

The MSBA and the selected Respondent may negotiate a change in any element of contract performance or cost identified in the original RFR or the selected Respondent’s Response which results in lower costs or in a more cost effective or better value than was presented in the selected Respondent’s original Response.

PHASE ONE REVIEW

Responses will be reviewed based on the completeness of Responses, including mandatory attachments and compliance to submission criteria, legal, and other requirements as described in Section II of the RFR. Responses that do not comply with these components may be rejected and may not proceed to Phase Two Review. The MSBA reserves the right to waive or permit cure of non-material errors or omissions.

Phase One of the Review will ensure compliance with the submission criteria in Section II and other areas of this request.

PHASE TWO REVIEW

In addition to the specific requirements set forth below, all Respondents must demonstrate that they have significant experience, knowledge, and abilities with respect to providing the legal services for which they wish to be considered and as described in the scope of work in Section I, item B. The MSBA will evaluate Responses based on criteria that shall include, but not be limited to, the following:

1) Qualifications and professional experience of the Respondent and the Respondent's key personnel who are identified to provide the services described in this RFR.

Highly Advantageous (30 Points): Respondent demonstrates that both the firm and its proposed key personnel have substantial experience providing the services described in this RFR.

Advantageous (15 Points): Respondent demonstrates that both the firm and its proposed key personnel have satisfactory experience providing the services described in this RFR.

Not Advantageous (0 Points): Respondent does not demonstrate that both the firm and its proposed key personnel have satisfactory experience providing the services described in this RFR.

2) Demonstrated capacity and organizational structure to perform the type of services sought in this RFR.

Highly Advantageous (30 Points): Respondent demonstrates that the firm or organization has substantial capacity and organizational structure to perform the type of services described in this RFR.

Advantageous (15 Points): Respondent demonstrates that the Firm or organization has satisfactory capacity and organization structure to perform the type of services described in this RFR.

Not Advantageous (0 Points): Respondent does not demonstrate that the Firm or organization has substantial capacity and organizational structure to perform the type of services described in this RFR.

3) Demonstrated knowledge of the area(s) of law for which the Respondent has provided a response and experience in providing similar services to other clients in the categories identified in Section I, Item B of this RFR for which Respondent seeks selection.

Highly Advantageous (30 Points): Respondent demonstrates that it has extensive knowledge of the area(s) of law for which the Respondent seeks consideration and substantial experience providing similar legal services and high-quality counsel to clients in these areas of law.

Advantageous (15 Points): Respondent demonstrates that it has a satisfactory knowledge of the area(s) of law for which the Respondent seeks consideration and satisfactory experience providing similar legal services and high-quality counsel to clients in these areas of law.

Not Advantageous (0 Points): Respondent does not demonstrate that it has a satisfactory knowledge of the area(s) of law for which the Respondent seeks consideration nor satisfactory experience providing similar legal services and high-quality counsel to clients in these areas of law.

4) Proposed Overall Approach to providing legal services

Highly Advantageous (10 points): Respondent presented a highly detailed and quality approach to providing the Services described in this RFR which demonstrated a clear understanding of the services sought in this RFR.

Advantageous (5 points): Respondent presented an acceptable approach to providing the Services described in this RFR.

Not Advantageous (0 points): Respondent failed to present an acceptable approach to providing the Services described in this RFR.

5) Demonstrated intent to further the development of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Veteran Business Enterprise (VBE), Service-Disabled Veteran-Owned Business Enterprise (SDVOBE), Disability-Owned Business Enterprise, LGBT Business Enterprise, Minority Nonprofit Organization (M/NPO), or Women Nonprofit Organization (W/NPO) firms or the existence of a relationship which furthers these goals.

Advantageous (5 points): Respondent clearly demonstrates, through the information provided in Attachment D, its intent to develop a relationship with

SDO certified Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBE), Service-Disabled Veteran-Owned Business Enterprises (SDVOBE), Disability-Owned Business Enterprises, LGBT Business Enterprises, Minority Nonprofit Organizations (M/NPO), or Women Nonprofit Organization (W/NPO) in performing the services identified in this RFR. Points awarded for this section will be based on the information provided by the Respondent in Attachment D.

Not Advantageous (0 points): Respondent does not demonstrate the existence of or an intent to develop a relationship with one or more businesses certified in the above-mentioned supplier diversity categories to perform the services identified in this RFR.

A rating of “Not Advantageous” on this component shall not prevent the MSBA from selecting a Respondent who otherwise demonstrates the knowledge, experience, and capacity to perform the requested scope of services. Respondents that do not complete Attachment D will not receive points under this section.

6) Demonstrated Investment in Massachusetts

Advantageous (5 points): A Respondent submits an IMD Form certifying that 50% or more of the work-hours performed in connection with any contract arising out of its Response will be performed in Massachusetts.

Not Advantageous (0 points): A Respondent submits an IMD Form certifying that less than 50% of the work-hours performed in connection with any contract arising out of its Response will be performed in Massachusetts.

A rating of “Not Advantageous” on this component shall not prevent the MSBA from selecting a Respondent who otherwise demonstrates the knowledge, experience, and capacity to perform the requested scope of services.

The MSBA will assign such weight as it deems appropriate and in the best interests of the MSBA, in its sole discretion, to each relevant factor that it takes into consideration.

D. BUSINESS REFERENCES AND VIRTUAL PRESENTATIONS

After Phase One and Phase Two reviews, the MSBA shall have the option to invite one or more Respondents to make virtual presentations, which will be conducted either via “Zoom”, “Microsoft Teams” or a similar platform. Virtual presentations provide the MSBA with an opportunity to evaluate a Respondent through the presentation of their Response. The MSBA may limit the number of virtual presentations conducted. Respondents will not be informed of their preliminary ranking at the time of the virtual presentations. After virtual presentations the MSBA reserves the right to adjust any preliminary ranking in Phase Two review.

The time allotments and format shall be the same for all virtual presentations. Respondents will be given further details in advance of their presentation. The MSBA will give notice of at least five (5) business days prior to the date of a virtual presentation. The MSBA may require the Respondent's assigned key personnel to conduct the virtual presentation.

A Respondent is limited to the presentation of material contained in its Response, with the limited exception that a Respondent may supplement its Response to address specific questions posed by the MSBA and provide clarification of information contained in its Response. A Respondent's failure to agree to a virtual presentation may result in disqualification from further consideration.

Additionally, the MSBA shall have the option to supplement the proposals Responses by checking the references provided by Respondents. The MSBA may limit the number of reference checks based on preliminary rankings i.e., checking references for only the top-ranked Respondents. The results of the reference checks may result in the MSBA adjusting any preliminary rankings. The Procurement Management Team may use information provided by references, clarifying written references through follow-up telephone calls.

E. DISQUALIFICATION

- 1) Late Proposals. Proposals that are received after the deadline date and time shall be disqualified.
- 2) Nonresponsive Proposals. Proposals which are not responsive, or which fail to comply with mandatory requirements of the RFR shall be deemed nonresponsive and shall be disqualified. Nonresponsive proposals shall include, but not be limited to, those that fail to address or meet any mandatory item and those submitted in insufficient number. The MSBA reserves the right to disqualify from consideration those Responses that are submitted in an incorrect format if the MSBA determines, in its sole discretion, that the formatting error is prejudicial to the interests of other Respondents and fair competition.
- 3) Collusion. Collusion by two or more Respondents agreeing to act in a manner intended to avoid or frustrate fair and open competition is prohibited and shall be grounds for rejection or disqualification of a proposal or termination of this contract.
- 4) Debarred Bidders or Subcontractors. A Respondent who is currently subject to any Commonwealth or federal debarment order or determination shall not be considered for evaluation by the Procurement Team. If a Respondent's proposal is dependent upon the services of a named subcontractor and the disqualification of this named subcontractor would materially alter the proposal, then that response shall be deemed nonresponsive if the named subcontractor is found to be debarred.

The MSBA reserves the right to waive or permit cure of non-material errors or omissions.

F. AWARD OF CONTRACTS

It is anticipated that the MSBA shall select multiple Respondents to this RFR and intends to enter into a Master Services Agreement with each of the selected Respondents.

SECTION IV. COMPONENTS OF THE PROCUREMENT

A. DURATION AND RENEWAL OPTIONS

1. The MSBA intends to execute a contract under this RFR for a three-year term. The MSBA may, at its option, extend the term for one additional year, under the same terms and conditions.
2. The selected Respondent will be required to execute the standard Master Services Agreement, a copy of which is attached hereto as (Attachment "C").
3. **RESPONDENTS ARE REQUIRED TO SPECIFY ANY EXCEPTIONS TO THE MASTER SERVICES AGREEMENT AND TO MAKE ANY SUGGESTED COUNTERPROPOSAL WITH THEIR RESPONSE. A FAILURE TO SPECIFY EXCEPTIONS AND/OR COUNTERPROPOSALS WILL BE DEEMED AN ACCEPTANCE OF THE MASTER SERVICES AGREEMENT'S TERMS AND CONDITIONS.**

B. RFR STIPULATIONS AND ACKNOWLEDGMENTS

1. Rejection of Proposals

The MSBA reserves the right to reject any and all proposals submitted under this solicitation.

2. Withdrawn/Irrevocability of Responses

A firm may withdraw and resubmit a Response prior to the deadline. No withdrawals or re-submissions will be allowed after the deadline.

3. Subcontracting and Joint Ventures

Respondents must obtain prior approval from the MSBA for subcontracting any portion of the Contract. Respondent's intention to subcontract or partner or joint venture with other firm(s) must be clearly stated in the Response. The MSBA reserves the right to reject any and all subcontracts, partners, or joint venture firms.

4. Price Limitation

The Respondent must agree that no other customer of similar size and similar terms and conditions shall receive a lower price for the same commodity and service during the contract period, unless this same lower price is immediately effective for the MSBA. The Respondent must also agree to provide current or historical pricing offered or negotiated with other governmental or private entities at any time during the contract period upon the request of the MSBA.

5. Security Breach Law, M.G.L. c. 93H

The bidders hereby acknowledge and agree to comply with the requirements and responsibilities, including those of providing notice and Response, as set forth in G.L. c. 93H concerning Security Breaches and any regulations implemented to effectuate security of “personal information” as defined in § 1 of G.L. c. 93H.

C. ADDITIONAL REQUIREMENTS, PROCEDURES AND CONDITIONS

1. **Respondent Communication.** All communication regarding this RFR must be **in writing** to the contact person designated in Section 1, Item A of the RFR. **Any individuals and/or firms that intend to submit a Response are prohibited from contacting any employee of the MSBA other than the contact person regarding this RFR. Failure to observe this rule will result in disqualification.** Furthermore, no other individual MSBA employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Respondents should notify, in writing, the contact person for this RFR in the event it is incomplete, or the Respondent is having trouble obtaining any required attachments electronically through COMMBUYS or from the MSBA’s website.
2. **Reasonable Accommodation.** Respondents that seek reasonable accommodation because of disabilities or other hardship, which may include the receipt of RFR information in an alternative format, may communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case-by-case basis.
3. **Public Records.** All Responses and related documentation and information submitted in Response to this RFR are subject to the Massachusetts Public Records Law, M.G.L. c. 66, §10; c. 4, §7(26)(h), regarding public access to such documents. Any statements in submitted Responses that are inconsistent with the provisions of these statutes will be void and disregarded. Respondent agrees that the MSBA shall not be liable under any circumstances for the subsequent disclosure of any information submitted to it by Respondent pursuant to this RFR and/or in connection with any contract entered into between Respondent and the MSBA as a result of the RFR process. Information submitted to it by Respondent pursuant to this RFR and/or in connection with any contract entered into between Respondent and the MSBA as a result of the RFR process. Information submitted to it by Respondent pursuant to this RFR and/or in connection with any contract entered into between Respondent and the MSBA as a result of the RFR process.

Respondents are advised that all proposals are deemed sealed, and therefore their contents will be treated as confidential and will not be disclosed to competing Respondents until the evaluation process has been completed and the contract has been awarded.

4. **Submission of Proposed Materials and Oral Presentation.** All materials, representations, and submissions made within the proposal and at oral presentation are subject to becoming part of the contract binding the selected Respondent to uphold the materials, representations, and submissions made by the selected Respondent within the proposal and at the oral presentations, if any.
5. **Conflict of Interest.** Prior to award of any contract and/or qualification, the Respondent shall certify in writing that no relationship exists between the Respondent and the procuring or contracting agency that interferes with fair competition or is a conflict of interest, and no relationship exists between the Respondent and another person or organization that constitutes a conflict of interest. No official or employee of the MSBA who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this project shall, prior to the completion of the project, voluntarily acquire any personal interest, either directly or indirectly, in this contract or proposed contract.

The Respondent shall provide assurance that it presently has no interest and shall not acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder. The Respondent shall also provide assurances that no person having any such known interest shall be employed during the performance of this contract.

6. **Best Value Selection and Negotiation.** The MSBA may select the Response(s) that demonstrates the “Best Value” overall, including proposed alternatives that will achieve the procurement goals of the MSBA. The MSBA and the selected Respondent(s) may negotiate a change in any element of contract performance or cost identified in the original RFR or the selected Respondent’s Response which results in lower costs or in a more cost effective or better value than was presented in the selected Respondent’s or contractor’s original Response.
7. **Costs.** The MSBA will not reimburse any individual or firm for any costs associated with the preparation or submittal of any Response to this RFR or for any travel and/or per diem incurred in any presentation of such Responses. Costs that are not specifically identified in the Respondent’s submissions, and accepted by the MSBA as part of a contract, will not be compensated.
8. **MSBA Website and COMMBUYS.** This RFR has been distributed electronically using the COMMBUYS system and can be accessed at <https://www.commbuys.com/bsa/>. RFR Attachments that are referenced are available either as separate files along with the RFR, or in the COMMBUYS

Attachments section. The RFR and Attachments are also available at the MSBA's website: www.massschoolbuildings.org

Respondents are solely responsible for obtaining and completing required attachments that are identified in this RFR; for regularly checking both COMMBUYS and the MSBA's website for any addenda or modifications that are subsequently made to this RFR or attachments; for obtaining, reviewing and appropriately responding to any such addenda or modifications to the RFR or attachments; and for acknowledging the receipt of any addenda in the transmittal letter. The MSBA accepts no liability and will provide no accommodation to Respondents who fail to regularly check for, obtain, review, and appropriately respond to addenda or modifications to the RFR and attachments, and then submit inadequate or incorrect Responses. Respondents are advised to check the MSBA's website and COMMBUYS to ensure that they have the most recent RFR files. Respondents may not alter (manually or electronically) the RFR language or any RFR component files. Modifications to the body of this RFR, specifications, terms and conditions, which change the intent of this RFR are prohibited and may disqualify a Response.

- 9. Validity of Response.** Responses must remain in effect for at least 120 days from the submission deadline and thereafter until either the Respondent withdraws the Response in writing, a contract is executed with Respondent, or the procurement is canceled, whichever occurs first.
- 10. Prohibition Against Distribution of Information.** Any Respondent awarded a contract under this RFR is prohibited from selling or distributing any information collected or derived from the contract and/or procurement process, including lists of participating or eligible MSBA employee names, telephone numbers, or addresses, including email addresses.
- 11. Right to Modify.** The MSBA reserves the right to modify, amend, or cancel the terms of this RFR at any time prior to the closing date. The MSBA reserves the right to negotiate with the selected Respondent(s) as to any element of cost or performance, including without limitation, elements identified in the RFR and/or the selected Response in order to achieve the best value for the MSBA.
- 12. Duration and Renewal Options.** The MSBA intends to select a qualified Respondent to provide the services solicited in this RFR for a three-year term. The MSBA may, at its option, extend the term for an additional one year, under the same terms and conditions.

SECTION V. MSBA BACKGROUND AND ADDITIONAL INFORMATION

The Massachusetts School Building Authority ("MSBA") is a quasi-independent government authority created to reform the process of funding capital improvement projects in the Commonwealth's public schools. The MSBA works with local communities to create affordable, sustainable, and energy efficient schools across Massachusetts.

Chapter 208 of the Acts of 2004 established the Massachusetts School Building Authority. The MSBA is an independent public authority not subject to the supervision and control of any other executive office, department, commission, board, bureau, agency or political subdivision of the Commonwealth. The MSBA's Board consists of the State Treasurer, who serves as chair, the Secretary of Administration and Finance, the Commissioner of Education, and four additional members appointed by the State Treasurer.

Prior to the establishment of the MSBA, the Department of Education administered and managed the former school building assistance program. Chapter 208 eliminated the former program and created a new program for school building construction, renovation and repair projects (the "Program"), administered by the MSBA. The new Program provides assistance to cities, towns, regional school districts and independent agricultural and technical schools to finance school building projects. The MSBA has adopted regulations necessary to administer the Program and to review and approve applications for reimbursement for school building construction projects.

For more information about the MSBA and its program, please visit our website at www.massschoolbuildings.org and refer to Massachusetts General Laws Chapter 70B, Chapter 208 of the Acts of 2004, and 963 CMR 2.00 *et seq.*

It is recommended that Respondents refer to chapter 70B of the Massachusetts General Laws, chapters 201, 208, and 210 of the Massachusetts Acts of 2004, and 963 CMR 2.00 *et seq.* for additional information about the MSBA.

Your interest in working with the Massachusetts School Building Authority is appreciated.

Mary Pichetti
Executive Director
Massachusetts School Building Authority