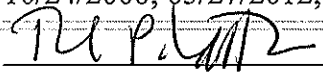


## Board of Selectmen

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| <b>Policy Number:</b> | BOS-PRO-004   |
| <b>Policy:</b>        | Procedure for Designer Selection by Town Agencies   |
| <b>Date Approved:</b> | 10/28/2003  |
| <b>Date Revised:</b>  | 10/24/2006; 03/27/2012; 06/13/2017; 9/25/2018   |
| <b>Approved:</b>      |  Chair, Board of Selectmen |

### Policy:

These procedures govern the selection of designers for any municipal building project subject to the state designer selection law, M.G.L. Chapter 7C, Sections 44 through 57. Any other local law governing the procurement of services will be inapplicable to these procurements.

### I. DEFINITIONS

**"Awarding Authority"** means a board, committee, commission, or town official that has been authorized to expend money and award a contract(s) for the study, design or construction of a building project, or procure on call related services:

**"Designer"** means an individual, corporation, partnership, sole proprietorship, joint venture, joint stock company or other entity engaged in the practice of architecture, landscape architecture, engineering or other professional services, which satisfies any of the following:

- i. If an individual, the individual is a registered architect, landscape architect, engineer, or qualified professional;
- ii. If a partnership, a majority of all the partners are persons who are registered architects, landscape architects, engineers or other qualified professionals;
- iii. If a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, or engineers, and the person to have the project in his or her charge is registered in the discipline for the project;
- iv. If a joint venture, each joint venture satisfies the requirements of this section.

**"Design Services"** means any of the following services provided by any designer, programmer, or construction manager in connection with any public building project:

- i. Preparation of master plans, studies, surveys, soil tests, cost estimates or programs;

- ii. Preparation of drawings, plans or specifications including but not limited to schematic drawings, preliminary plans and specifications, working plans and specifications or other administration of construction contracts documents;
- iii. Supervision or administration of a construction contract; and
- iv. Construction management or scheduling.

**"Building Project"** means a capital facility project undertaken for the planning, acquisition design, construction, installation, repair or maintenance of any building and appurtenant structures, facilities and utilities, including initial equipment and furnishings thereof; provided, however, that appurtenant buildings or structures which are required to be constructed as integral parts of the development of sewer, water, and highway systems shall not be subject these procedures.

**"Committee"** means the appointees of the awarding authority, made up of at least three members, to act as a designer selection board for selection of finalists to provide design services for a town building project in accordance with the intent of M.G.L. Chapter 7C, Sections 44 through 57. The committee shall include one or more members who are residents of the Town and one or more architects or engineers who may be in-house or outside people.

**"Extended Services"** means a designer or interior designer who has been appointed to provide design services for a project to act as designer or interior designer for work to be done on another project not originally included in that designer's or interior designer's contract.

## II. PROCEDURES

- A. The procedure for designer selection by town agencies as required under the provisions of M.G.L. Chapter 7C, 44 through 57 is to apply to the selection of designers for designer services by all municipal agencies for building projects, including construction, renovation, alteration, remodeling and repair projects, if both the estimated cost is three hundred thousand dollars or more and the design fee under the contract is thirty thousand dollars or more. These procedures do not apply to the selection of designers for projects requesting funding from the Massachusetts School Building Authority. These procedures do not apply to the selection of designers for the fabrication or construction of modular buildings procured under the provisions of M.G.L., Chapter 149, Section 44E. These procedures do not apply to the selection of designers for public works projects bid under the provisions of Chapter 30, Section 39M and projects, including building projects, that are integral parts of the development of sewer, water and highway systems.
- B.
  1. The awarding authority will determine the nature and extent of the design services required for the project and will develop the project criteria required under paragraph II, subparagraph 3 below.
  2. A Request for Proposals (RFP) will be publicly advertised in a newspaper of general circulation in the area of the project and in the Central Register at least two weeks prior to the deadline for submitting proposals.

3. The RFP will provide the following detailed information:
  - i. A description of the project, the specific designer services sought, estimated construction costs, and the time allotted for completion;
  - ii. When and where the program prepared for the project will be available for inspection by applicants, or a statement that there is no program beyond the information in (a) above.
  - iii. The qualifications required of applicants for the project;
  - iv. The categories of designer consultants, if any, for which applicants must list consultants they intend to use;
  - v. Whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated as a total dollar amount, not a percentage. If the fee is to be negotiated, the awarding authority shall set a not-to-exceed amount but this amount need not be published in the RFP.
  - vi. The deadline for submission of proposals;
  - vii. When and where a briefing session (if any) will be held;
  - viii. Any other pertinent information.
4. A committee of at least three members will be appointed by the awarding authority to evaluate proposals and select the finalists.
5. The Committee shall select at least three finalists, if there are three or more applicants. If less than three apply, each applicant shall be a finalist. The evaluation and selection of the proposals shall be based on the following criteria:
  - i. prior similar experience;
  - ii. past performance on public and private projects;
  - iii. financial stability;
  - iv. identity and qualifications of the consultants who will work with applicant on the project; and
  - v. any other criteria that the committee considers relevant for the project.
6. Applicants or finalists may be required to:
  - i. appear for an interview before the committee;
  - ii. present a written proposal to the committee; or

- iii. participate in a design competition held by the committee.
  - iv. provide additional information to the committee, as the committee shall determine, provided all other applicants or finalists are afforded an equal opportunity to do so.
7. When the committee has required the applicants to list consultants which they intend to use, any changes in, or addition to, consultants named in the application must be approved by the awarding authority and reported to the committee with a written statement by the designer or construction manager of the reasons for the change. In no event may a consultant be used who is debarred pursuant to Chapter 149, Section 44C or disqualified pursuant to Chapter 7C, Section 48.
8. The committee will select at least three finalists from among all applicants and transmit the list to the awarding authority. The list will rank the finalists in order of qualifications, provide a record of the final vote of the committee on the selection, and include a written statement explaining the committee's reasons for its choice and its ranking of the finalists. The list will be a public record and maintained in the contract file. The Committee shall transmit to the awarding authority all material made or received relating to the recommendation. In no event may a designer be used who is debarred pursuant to Chapter 149, Section 44C or disqualified pursuant to Chapter 7C, Section 48.
9.
  - i. If the fee for design services has been set by the awarding authority prior to the selection process, the awarding authority will select the designer or construction manager to be awarded the contract from the list submitted by the committee. If the list ranks the designers in order of qualification and a designer or construction manager other than the one ranked first is selected, the awarding authority shall file a written justification with the committee and with the Town Clerk.
  - ii. If the fee is to be negotiated, the awarding authority shall review the list transmitted by the committee, and may exclude any designer or construction manager from the list if a written explanation of the exclusion is filed with the Committee and maintained with the contract file. The awarding authority shall then appoint a designer based on successful fee negotiation among the remaining finalists in order of rank.
  - iii. If the awarding authority is unable to negotiate a satisfactory fee with any of the finalists, the awarding authority shall request the Committee to select additional finalists.
10. The awarding authority may allow a designer who conducted a feasibility study to continue with the design of the project, provided the awarding authority subsequently procures the services for such design in accordance with these designer selection procedures and Chapter 7C of the General Laws. However, the awarding authority may commission, at its discretion, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's

work to insure its reasonableness and its adequacy before allowing the designer to continue on the project.

11. The awarding authority may appoint a designer or interior designer to perform extended services if the following conditions are met:
  - i. a written statement is filed with the Town Manager explaining the reasons for the continuation or extension of services;
  - ii. and the Town Manager approves the appointment of the designer or interior designer for extended services and states the reason therefor.

C.

1. For smaller design service tasks, including study or design for certain repair or renovation projects, the Awarding Authority may select a list of “on-call” or “house doctor” services, as those terms are used by the State Designer Selection Board.
2. These consultants would be on call to perform tasks as needed after selection, but on a not-to-exceed total contract amount, which amount must be identified in the advertisement for services.
3. Such services may include but are not limited to the commissioning, energy modeling, cost estimating, structural consultants and mechanical consultants

### III. DESIGN CONTRACT

- A. The design contract shall state the fee for such services as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope or services. However, neither the designer, nor any of its consultants, shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, as reasonably determined by the awarding authority.
- B. Every contract awarded for design services shall include:
  1. a certification that the designer or construction manager has not given, offered or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
  2. a certification that no consultant to or subcontractor for the designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with the award to the consultant or subcontractor of a contract by the designer or construction manager;
  3. a certification that no person, corporation or other entity, other than a bona fide full time employee of the designer or construction manager, has been retained or hired to solicit for or in any way assist the designer or construction manager in

obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer;

4. a certification with respect to design contracts which exceed ten thousand dollars and which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that the designer has internal accounting controls as required by Chapter 30, Section 39R, and that the designer will:
    - i. maintain accurate and detailed accounts for a six year period after the final payment;
    - ii. file regular statements of management concerning internal auditing controls;
    - iii. file an annual audited financial statement; and
    - iv. submit a statement from an independent certified public accountant that such CPA has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements in (2) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to designer's financial statements. M.G. L., Chapter 7C, Section 51; and
  5. a requirement that the designer at his/her own expense obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of such contracts for design services. The awarding authority may require a consultant employed by the designer subject to this subparagraph to obtain and maintain a similar liability insurance policy. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the public agency may require, and shall cover the applicable period of limitations. A designer required to obtain all or a portion of such insurance coverage at his own expense shall furnish a certificate or certificates of insurance coverage to the awarding authority prior to the award of the contract.
- C. The awarding authority may request a copy of the Division of Capital Asset Management's (DCAM) Standard Design Contract to use as is, or to modify. Contracts for design services may include a requirement that the designer be responsible for overseeing the construction phase of the contract.
- D. The awarding authority shall incorporate current applicable minority-owned business enterprise (MBE) and women-owned business enterprise (WBE) participation goals, as determined by DCAM, into any design contract where funding is provided by the Commonwealth, in whole or in part (such as reimbursements, grants and the like).

Reductions or waivers of these goals may be permitted where the size, nature or location of the project makes achieving such levels of MBE or WBE participation unfeasible.

#### **IV. RECORDS**

- A. In the selection of applicants to perform design services the awarding authority will keep the following records:
1. all information supplied by or obtained about each applicant;
  2. all actions taken by the committee relating to any project;
  3. all actions taken by the awarding authority relating to any project;
  4. any other records related to designer selection.
- B. All records will be available for inspection by the State Designer Selection Board.

#### **V. CONFLICT OF INTEREST**

No member of a committee shall participate in the selection of a designer as a finalist for any project if the member or any member of his or her immediate family:

- A. has a direct or indirect financial interest in the award of the design contract to any applicant;
- B. is currently employed by, or is a consultant to or under contract to an applicant;
- C. is negotiating or has an arrangement concerning future employment or contracting with any applicant;
- D. has an ownership interest in, or is an officer or director of, any applicant.

#### **VI. EMERGENCY PROCEDURES**

When an emergency situation exists, the Town may utilize the following:

##### **EXPEDITED PROCEDURE FOR SELECTION OF DESIGNERS WHEN AN EMERGENCY SITUATION EXISTS**

- A. Scope and Purpose These regulations establish a speedy procedure by which the Local Awarding Authority can select a designer, programmer or construction manager, when an emergency situation exists.
- B. Declaration of Emergency
1. The declaration will be made by the Awarding Authority, based upon one of the following criteria:

- a. Danger to health or safety of any persons because of the time required for selection of a designer by the regular statutory process.
  - b. Deadline for action on a project set by a court or federal agency which cannot be met if the regular statutory process is followed.
2. The Awarding Authority will file a memorandum with the committee stating the reasons for the emergency declaration, listing proposed scope of work, estimated cost of construction, the established lump sum fee for designers' services, and any other relevant information.
  3. Upon receipt of the memorandum from the Awarding Authority the Committee may elect to follow the expedited procedures set forth below.

C. Studies, Programs and Design and Administration of Construction Projects

1. If the scope of work involves a study, program or design and administration of a construction project, finalists may be selected from the existing standing list of consultants who have previously applied to the Town for projects of this nature which have been advertised, or from applicants who have filed a master file brochure with the Town, without public advertising.
2. The Chairman of the Committee, upon receipt of the declaration by the Local Awarding authority that an emergency exists, will select at least 3 semi-finalists as described above.

D. Voting by Committee Members for Selection in an Emergency Situation

1. The Chairman of the Committee shall compile the above information into a package for distribution and action by all Committee members. Material shall be mailed if time permits. When possible, selection shall be made at the next scheduled meeting. When time or other circumstances do not permit, members may respond by mail.
2. In those cases where the Chairman determines that immediate action is required on the basis of an immediate threat to health *or* safety, that person shall nominate at least 6 semi-finalists for the specific project to be acted on. The Chairman may cause to have polled all available Committee members by phone and record their vote, tabulate the results, and forward the names of the 3 or more finalists to the Awarding Authority for its appointment in accordance with Chapter 7C, Sections 49 and 50.
3. The tabulation of the vote by committee members for the 3 or more finalists to be submitted to the Awarding Authority shall be accomplished by crediting the designated point count of each member's vote to the firm so selected by each respective member. Every firm ranked 1st will be credited with 3 points, the 2nd ranked firm will be credited with 2 points and the 3rd ranked finalist will obtain point. The firm obtaining the highest cumulative total of points will be ranked



1st, the next highest total will be ranked 2nd and the 3rd highest total point count will be ranked 3rd.

4. In the case of an equal total point count, the Committee shall be re-pollled to determine the final ranking of the 3 or more finalists.

## **VII. GENERAL**

- A. The recommended procedures above may be amended or modified so long as the procedure adopted satisfies the purpose and intent of M.G.L. Chapter 7C, 44 through 57 and requires newspaper and central register advertising, a uniform application form and uniform application procedure.
- B. All meetings of a government body shall be open to the public and any person shall be permitted to attend any meeting except as provided by M.G. L., Chapter 30A Sections 20 and 21.

## **VIII. REGULATORY AUTHORITY**

Guidelines developed for designer selection procedures for cities and towns by the Designer Selection Board of the Executive Office for Administration and Finance of the Commonwealth of Massachusetts, pursuant to the provisions of M.G. L. Chapter 7C, Section 54 and following the procedures outlined in 811 CMR 3.00.