

## **Designer Select Procedure**

Town of Bolton

Board of Selectmen

Designer Selection Procedures

(Adopted April 26, 2007)

1. These procedures govern the selection of designers for any Town of Bolton public agency building project subject to the state designer selection law, M.G.L. c. 7, §§38A½-O. Any other local law governing the procurement of services will be inapplicable to these procurements.

2. The Board of Selectmen has the authority to conduct the designer selection process and may delegate any duties described herein to the extent such delegation is permissible by law.

3. The Board of Selectmen shall designate the individual or group of individuals (hereinafter referred to as "the Committee") who will conduct the designer selection process.

No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's 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, any applicant;
- c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
- d. has an ownership interest in, or is an officer or director of, any applicant.

4. A Request for Qualifications (RFQ) or Request for Proposals (RFP) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the Central Register published by the Secretary of the Commonwealth, and in any other place required by the Board of Selectmen, at least two weeks before the deadline for filing applications.

5. The advertisement shall contain the following information:

- a. a description of the project, including the specific designer services sought, the time period within which the project is to be completed, and, if available, the estimated construction cost;
- b. if there pertinent documents or studies available relating to the building project, a statement of when and where these documents will be available for inspection by applicants;
- c. when and where a briefing session (if any) will be held;

d. the qualifications required of applicants;

e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;

f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;

g. when and where the RFQ or RFP can be obtained and the applications must be delivered.

6. The RFQ or RFP shall include the current Massachusetts Designer Selection Board "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction." The Application Form may be amended to include additional information on a project-specific basis.

7. The Committee shall evaluate applicants based on the following criteria:

a. prior similar experience;

b. past performance on public and private projects;

c. financial stability;

d. identity and qualifications of the consultants who will work with the applicants on the project; and

e. any other criteria that the Committee considers relevant to the project.

8. The Committee shall select at least three finalists, if available. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so.

9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Board of Selectmen. No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, §44C shall be included as a finalist on the list.

The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation and recorded vote, if any, shall be public records and shall be maintained in the contract file.

10. If the fee was set prior to the selection process, the Board of Selectmen may select a designer from the list of finalists. If the Board of Selectmen selects a designer other than the one ranked first by the Committee, the Board of Selectmen shall file a written justification for the selection with the Committee and maintain a copy in the contract file.

11. If the fee is to be negotiated, the Board of Selectmen shall review the list of finalists and may

exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Board of Selectmen shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Board of Selectmen is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Board of Selectmen prior to selection of finalists.

12. If the Board of Selectmen is unable to negotiate a satisfactory fee with any of the finalists, the board shall recommend that the Committee select additional finalists.

13. The Board of Selectmen may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Board of Selectmen 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, provided the Board of Selectmen otherwise complies with the statutory requirements for selecting a designer under Chapter 7 of the General Laws, including those set forth in M.G.L. c. 7, §38K(a)(1).

14. Every contract for design services shall include the following:

a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of the contract for design services;

b. 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;

c. 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 by the designer or construction manager 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; and

d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

15. The Board of Selectmen shall not enter into a contract for design services unless the designer has obtained professional liability insurance 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 the contract. 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 Board of Selectmen may require, for the applicable period of limitations. A designer required by the Board of Selectmen to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage, naming the Town of Bolton as additional insured and certificate holder to the Board of Selectmen prior to the award of the contract.

16. Every contract for design services shall include a provision that the designer or its consultants shall not 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 individual responsible for administering the design contract.

17. In the event of an emergency that precludes the normal use of these designer selection procedures, the Board of Selectmen may elect to authorize expedited procedures to address the emergency. The Board of Selectmen shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.

The Board of Selectmen may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Board of Selectmen shall rank the finalists in order of qualification and select the designer for the emergency work.

18. The Board of Selectmen shall publish the name of any designer awarded a contract in the Central Register.

19. The following records shall be kept by the Board of Selectmen:

- a. all information supplied by or obtained about each applicant;
- b. all actions taken relating to the project; and
- c. any other records related to designer selection.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

20. The Board of Selectmen shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7, §38E(g), and file completed evaluations with the Designer Selection Board and any other agency named in M.G.L. c. 7, Section 38E(g).

21. Nothing in these Procedures shall be interpreted to require the establishment of a board or waive or

reduce the requirements of any other applicable law or regulation.

22. For any municipal design or construction project that includes funding provided by the Commonwealth, in whole or in part (such as reimbursements, grants and the like), the town must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Board of Selectmen shall take steps to assure that it complies with all State Office of Minority and Women Business Assistance requirements.