

Administrative Policy #15

RE: Local Designer Selection Procedures

The following procedure is to apply to the selection of designers on building construction, renovation, alteration, remodeling and repair projects, the estimated cost of which exceeds ten thousand dollars.

1. The Board of Selectmen will determine the nature and extent of the design services required for the project and will develop the project criteria required under #3 below.

2. A request for proposals (RFP) for each contract for designer services shall be publicly advertised by the Board of Selectmen in a newspaper of general circulation in the area in which the project is located or to be located, and in the central register established under M.G.L. Chapter 9, section 20A, at least two weeks before the deadline for filing applications.

3. The RFP will provide the following information:
 - a) a description of the project, the specific designer services sought, estimated construction cost, and the time allotted for completion;
 - b) 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;
 - c) the qualifications required of applicants for the project;
 - d) the categories of designers' consultants, if any, for which applicants must list consultants they intend to use;
 - e) whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated in the RFP as a total dollar amount, not a percentage. If the fee is to be negotiated, the awarding authority shall establish a not-to-exceed amount prior to negotiations, but need not publish it in the RFP.
 - f) the deadline for submission of proposals;
 - g) the person and address to which proposals should be sent;
 - h) any other pertinent information.

4. A committee will be appointed by the Board of Selectmen to evaluate proposals and select the finalists. The committee should include one or more public members; and professional members (architects and engineers) who may be in-house or outside people.

5. The selection of the finalists will be 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 applicant on the project; and
 - e) any other criteria that the committee considers relevant for the project.

6. Applicants or finalists may be required to:
 - a) appear for an interview before the committee;
 - b) present a written proposal to the committee; or
 - c) participate in a design competition held by the committee.

7. When the Board has required that applicants 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. No person or firm debarred pursuant to Chapter 149, section 44C or disqualified pursuant to Chapter 7, section 38D shall be so included as a finalist.

8. The committee will select at least three finalists from among all applicants and transmit the list to the Board of Selectmen. The list will rank the finalists in order of qualification, 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. The committee shall transmit to the awarding authority all material made or received relating to such recommendation.

9. If the fee for design services has been set by the Board of Selectmen prior to the selection process, the Board of Selectmen will select the designer to be awarded the contract from the list submitted by the committee. If a designer other than the one ranked first is selected, the Board of Selectmen shall file a written justification with the committee.

If the fee is to be negotiated, the Board of Selectmen shall review the list transmitted by the committee, and may exclude any designer from the list with a written explanation of the exclusion. The Board of Selectmen shall then appoint a designer based on successful fee negotiation among the remaining finalists in order of rank.

10. The design contract shall state the fee as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope of services.
11. The Board of Selectmen may allow a designer who conducted a feasibility study, master plan or program for a project to continue with the design of the project, if the Board of Selectmen commissions an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility designer's work to insure its reasonableness and its adequacy prior to allowing the designer to continue on said project. The review of a state agency with oversight or approval of a project may be sufficient for the purposes of this paragraph.
12. Every contract awarded for design services shall include:
 - 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;
 - 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 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 with respect to contracts which exceed ten thousand dollars or 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:
 - (1) maintain accurate and detailed accounts for a six year period after the final payment;
 - (2) file regular statements of management concerning internal auditing controls;
 - (3) file an annual audited financial statement; and

- (4) submit a statement from an independent certified public accountant that such CPA (or public accountant) 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, Chapter 7, section 38H(e).
- e) 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 Board of Selectmen may require a consultant employed by a 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 Town of Seekonk may require, and shall cover the applicable period of limitations. A designer required by the Town of Seekonk 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 Town of Seekonk prior to the award of the contract.

The Board of Selectmen may request a copy of the Division of Capital Planning and Operations' Standard Design Contract to use as is, or to modify. Contracts for design service may include a requirement that the designer be responsible for overseeing the construction phase of the project.

13. In the selection of applicants to perform design services the following records will be kept by the Board of Selectmen:
- a) all information supplied by or obtained about each applicant;
 - b) all actions taken by the committee relating to any project;
 - c) all actions taken by the Board of Selectmen relating to any project.

These records will be available for inspection by the State Designer Selection Board and other authorized public agencies.

All meetings of a government body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by G.L. 30H, section 11A½.

14. No member of the 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 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; or
- d) has an ownership interest in, or is an officer or director of, any applicant.

15. When an emergency situation exists, Cities and Towns may utilize "Regulation 811 CMR 3.00 Expedited Procedure for Selection of Designers When an Emergency Situation Exists", as adapted to local requirements including the substitution of the terms "Designer Selection Board" and "Deputy Commissioner of DCPO" with "City or Town Selection Committee" and "Local Awarding Authority" respectively.

16. This policy is intended to satisfy the purpose and intent of the Massachusetts General Laws governing selection of designers of public building projects.

Terry L. Proctor

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EXECUTIVE SECRETARY

This policy was adopted by the Board of Selectmen on July 8, 1987.