

HOPKINTON SCHOOL COMMITTEE POLICY

DESIGNER SELECTION PROCEDURES

Section 1: General

These procedures apply to the selection of designers on projects for school building construction, reconstruction, renovation, alteration, remodeling and repair projects for which the estimated cost exceeds \$100,000.00. These procedures do not apply to the selection of designers for modular buildings in accordance with G.L. c.149, Sec. 44E; public works projects bid under the provisions of G.L. c.30, Sec. 39M; appurtenant buildings which are required to be constructed as integral parts of the development of sewer, water and highway systems; the procurement of energy management services in accordance with G.L. c. 25A, Sec. 11C; and projects without an estimated construction cost if the cost of the design service is less than \$10,000.

Section 2: Definitions

Except to the extent as hereinafter set forth, all words and terms defined in Sections 38A ½ and 39A of G.L. c.7, which appear herein, shall have the meanings as set forth in said Sections. The words defined in this Section shall have the meanings set forth below unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular section or provision.

- 2.1 Capital Facility: A public improvement such as a building or other structure; a utility, fire protection, and other major system and facility; a power plant facility and appurtenances; a heating, ventilating, air conditioning or other system; initial equipment and furnishings for a new building or building added to or remodeled for some other use; a public parking facility; a water resource improvement such as a waste water treatment and related pollution control facility, solid waste disposal or recovery facility; a recreational improvement such as a facility or development in a park or other recreational facility; or any other facility which, by statute or under standards as they may be prescribed from time to time by the commissioner of capital asset management and maintenance of the Commonwealth of Massachusetts may be defined as such, provided, however that a highway improvement, or bridge or tunnel shall not be considered a capital facility as defined herein.
- 2.2 Capital Facility Project: An undertaking by the School Committee for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of a capital facility.
- 2.3 Building Project: A capital facility project undertaken for the planning, acquisition, design, construction, demolition, installation, repair or maintenance of any building and appurtenant buildings, 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 to these guidelines.

- 2.4 **Modular Building:** A pre-designed building or units of a pre-designed building assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such units are attached to each other and such building is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used for the shelter of persons or property, transportable in one or more sections and affixed to a foundation and connected to external utilities.
- 2.5 **Building Committee:** The committee appointed by the Board of Selectmen to act under the authority of and reporting to the Awarding Authority as a designer selection board for the selection of finalists to provide design services for building projects in the Town of Hopkinton in accordance with the intent of G.L. c7, Sec. 38A ½ to 380.
- 2.6 **Awarding Authority:** The School Committee of the Town of Hopkinton which is responsible for the award and administration of the design contract and which will determine the nature and the extent of the design services required for the project.

Section 3: Procedure

- 3.1 The Awarding Authority will award and administer the design contract and will determine the nature and extent of the design services required for the project and will develop the project criteria required under section 3.4 below.
- 3.2 The Building Committee will evaluate proposals, select the finalists, and report its selections to the Awarding Authority. The Building Committee should include one or more public members, and preferably, professional members (architects and engineers) who may be in-house staff or members of the general public.
- 3.3 Before contracting for design services in connection with a public building contract with an estimated cost of \$1.5 million or more, the Awarding Authority must contract with or assign an owner's project manager.
- 3.4 A Request for Qualifications (RFQ) for each contract for designer services for a project subject to the jurisdiction of the Building Committee shall be publicly advertised by the Building Committee in a newspaper of general circulation in Hopkinton, and in the Central Register established under G.L. c.9, Sec. 20A, and in such places as the Building Committee requires, at least two (2) weeks before the deadline for filing applications. Projects with estimated construction costs of less than \$100,000.00 or with a design fee of less than \$10,000.00 do not require advertising under these guidelines.
- 3.5 The advertisement will provide the following detailed information:

- 3.5.1 A description of the project, the specific designer services sought, the estimated construction cost, and the time allotted for completion, if known;
 - 3.5.2 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 section 3.5.1 above;
 - 3.5.3 When and where a briefing (if any) will be held;
 - 3.5.4 When and where the RFQ can be obtained and applications returned;
 - 3.5.5 The qualifications required of applicants for the project;
 - 3.5.6 The categories of designers' consultants, if any, for which applicants must list names of consultants they intend to use;
 - 3.5.7 Whether the fee has been set or will be negotiated. If the fee has been set, its amount must be stated in the advertisement 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;
 - 3.5.8 The deadline for the submission of proposals;
 - 3.5.9 The person and address to which proposals should be sent; and
 - 3.5.10 Any other pertinent information;
 - 3.5.11 A reference that all respondents must use the "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction" (available at www.mass.gov/cam/dsb) as amended by the Awarding Authority.
- 3.6 The selection of finalists will be based on the following criteria:
- 3.6.1 Prior similar experience;
 - 3.6.2 Past performance on public and private projects;
 - 3.6.3 Financial stability;
 - 3.6.4 Identity and qualifications of the consultants who will work with the applicant on the project, including professional registration when required; and

- 3.6.5 Any other criteria that the Building Committee considers relevant for the project.
- 3.7 Applicants may be required to:
- 3.7.1 Appear for an interview before the Building Committee;
 - 3.7.2 Present a written proposal to the Building Committee; and/or
 - 3.7.3 Participate in a design competition held by the Building Committee.
- 3.8 When the Building Committee has required that the 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 Building Committee with a written statement by the designer or construction manager of the reasons for the change. No person or firm debarred pursuant to G.L. c. 149, Sec. 44C or disqualified pursuant to G.L. c.7, Sec. 38F (c) or Sec. 38H (g) shall be included as a finalist.
- 3.9 The Building Committee will select at least three (3) finalists from among all applicants and transmit the list to the Awarding Authority. If fewer than three (3) applications were received, the Building Committee shall re-advertise for applications in accordance with section 3.4 above. If the Building Committee again receives fewer than three (3) applications, the Building Committee will select the finalists from among all applicants and transmit the list to the Awarding Authority. The list will rank the finalists in order of qualification, provide a record of the final vote of the Building Committee on the selection, and include a written statement explaining the Building Committee's reasons for its choice. The Building Committee shall transmit to the Awarding Authority all material made or received relating to such recommendation. Meetings of the Building Committee are public meetings subject to the provisions of G.L. c.39, Sec. 23A-23C. Minutes of all sessions shall be kept, including the record of all votes. .
- 3.9.1 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 to be awarded the contract from the list submitted by the Building Committee. If a designer other than the one ranked first is selected, the Awarding Authority shall file with the Building Committee, a written justification for such selection.
 - 3.9.2. If the fee is to be negotiated, the Awarding Authority 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 Building Committee and maintained in the contract file. The Awarding Authority shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Awarding Authority 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 Building Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Awarding Authority prior to selection of finalists.

3.9.3. If the Awarding Authority is unable to negotiate a satisfactory fee with any of the finalists, the Awarding Authority shall recommend that the Building Committee select additional finalists.

3.10 The design contract shall state the fee and in any subsequent amendments thereto, as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope of services.

3.11 The Awarding Authority may allow a designer who conducted a feasibility study to continue with the design of a project; and the Awarding Authority may commission, at its discretion, an independent review, by a knowledgeable and competent individual or business doing such work, to conduct a review of the designer's work to insure its reasonableness and adequacy before allowing the designer to continue on the project, *provided* the Awarding Authority otherwise complies with 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).

3.12 Every contract awarded for design services shall include:

3.12.1 Certification that the designer or construction manager has not given, offered, or agreed to any gift, contribution or offer of employment as an inducement for, or in connection with, the award of a contract for design services;

3.12.2 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;

3.12.3 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

- 3.12.4 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).
- 3.12.5 The Awarding Authority shall not enter into a contract for design services unless the Awarding Authority or 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 Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the Awarding Authority prior to the award of the contract.
- 3.12.6 Contracts for design services shall include a provision that the designer or his 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 Awarding Authority.
- 3.12.7 Any person contracting with the Awarding Authority must certify in writing that he or she has complied with State Tax Laws (G.L. c.62C, Sec. 49A), and the name of the designer awarded the contract must be published in the Central Register. Contracts for design services may include a requirement that the designer be responsible for overseeing the construction phase of the project.
- 3.13 In the Selection of applicants to perform design services, the following records will be kept by the Awarding Authority:
- 3.13.1 All information supplied by or obtained about each applicant;
- 3.13.2 All actions taken by the Building Committee relating to the project;
- 3.13.3 All actions taken by the Awarding Authority relating to the project.

These records shall be filed by the Building Committee and shall become a permanent record. All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

All meetings of any body acting under these guidelines shall be open to the public and any person shall be permitted to attend any meeting as otherwise provided by G.L. c.39, Sec. 23A-23C.

- 3.14 The Awarding Authority shall evaluate designers' performance on contracts in accordance with M.G.L. c.7, §38E(g).
- 3.15 No member of the Building 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.
- 3.15.1 Has a direct or indirect financial interest in the award of the design contract to any applicant;
- 3.15.2 Is currently employed by, or is a consultant to or under contract to an applicant;
- 3.15.3 Is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
- 3.15.4 Has ownership interest in, or is an officer or director of, any applicant.
- 3.16 In the event of an emergency that precludes the normal use of these designer selection procedures, the Awarding Authority may elect to authorize expedited procedures to address the emergency. The Awarding Authority 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 Awarding Authority 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 Awarding Authority shall rank the finalists in order of qualification and select the designer for the emergency work.

Adoption Date: February 15, 1996
Amended: November 17, 2005

Hopkinton School Committee
Hopkinton, Massachusetts