



POLICY NO.: L-8  
DATE ADOPTED: 10-1-06

## TOWN OF WEST BOYLSTON BOARD OF SELECTMEN POLICY

### Designer Selection Policy

**Policy:** The Town of West Boylston (the “Town”) has adopted the following procedures pursuant to the Massachusetts designer selection law, M.G.L. c. 7, §§38A½-O (the “Designer Selection Law”).

1. **Applicability.** These procedures shall govern the procurement of “design services” (as such phrase is defined by G.L. c.7, §38A½) for all public building projects where (1) the design fee for the project is estimated to cost \$10,000 or more; or (2) the construction of the project is estimated to cost \$100,000 or more. See G.L. c.7, §38C(e).
2. **Exempt Projects.** Notwithstanding paragraph 1, above, these procedures do not apply to the following public building projects: (1) projects for which the estimated design fee is less than \$10,000 and the estimated cost of construction is less than \$100,000; (2) projects consisting of the fabrication or installation of modular buildings procured in accordance with the provisions of G.L. c.149, §44E; and (3) projects consisting of energy management services procured in accordance with the provisions of G.L. 25A, §11C. See G.L. c.7, §38C(e).
3. The Board of Selectmen has the authority to conduct the designer selection process for the Town. The Board of Selectmen may delegate any duties described herein to the extent such delegation is permissible by law.
4. 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.
5. 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.
6. At least two weeks before the deadline for filing applications, a Request for Proposals (RFP) for each contract subject to these procedures shall be advertised (1) in a newspaper of general circulation in the locality of the building project; (2) in the *Central Register* published by the

Secretary of the Commonwealth; (3) and in any other place required by the Board of Selectmen.

7. 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 is a program for the building project, a statement of when and where the program 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 RFP can be obtained and the applications must be delivered.

8. The 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.

9. 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.

10. The Committee shall select at least three finalists. Finalists may, in the discretion of the Committee, be required to appear for an interview or provide additional information to the Committee, and if any finalist is required so to appear, all other finalists will be afforded an equal opportunity to do so.

11. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Board of Selectmen. An applicant shall not be eligible to be selected as a finalist if that applicant, or if any of that applicant's consultants identified in the application, is debarred pursuant to M.G.L. c.149, §44C.

12. The list of finalists submitted to Board of Selectmen will 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 Town's contract file.

13. If the design fee was fixed by the Town prior to the advertisement of the project and the designer selection process, the Board of Selectmen shall select a designer from the list of finalists submitted by the Committee. 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 of such justification in the Town's contract file.

14. If the design fee is to be negotiated, however, the Board of Selectmen shall review the list of finalists submitted by the Committee and may exclude from such list any designer if a written explanation of any such exclusion is filed with the Committee and maintained in the Town's contract file. The Board of Selectmen shall request a fee proposal from the first-ranked designer remaining on the list and begin fee 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 on a fee is reached. If the Board of Selectmen is unable to negotiate a satisfactory fee with any of the finalists, the Board of Selectmen shall recommend that the Committee select additional finalists.

15. The Town may, in its sole discretion, allow a designer who conducted a feasibility study to continue with the design of a project. The Town may, also in its sole discretion, commission 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 that the Town otherwise complies with the statutory requirements for selecting a designer under the Designer Selection Law.

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

(a) certification that the applicant 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 applicant has given, offered, or agreed to give any gift, contribution, or offer of employment to the applicant, 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 applicant;

(c) certification that no person, corporation, or other entity, other than a bona fide full-time employee of the applicant, has been retained or hired by the applicant to solicit for or in any way assist the applicant 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 applicant has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the applicant has filed and will continue to file an audited

financial statement as required by M.G.L. c. 30, §39R(d).

18. 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.

19. The Town shall not enter into a contract for design services unless the Town 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 10 percent of the project's estimated cost of construction, or such larger amounts as the Town may require, for the applicable period of limitations. A designer required by the Town 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 Town prior to the award of the contract.

20. 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.

21. 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. In such event, 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.

22. The Town shall publish the name of any designer awarded a contract in the *Central Register*.

23. The following records shall be kept by the Town:

- (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.

24. The Town shall evaluate designers' performance on contracts in accordance with M.G.L. c. 7, §38E(g).

25. These procedures are intended to be consistent with, and are subject to, the Designer Selection Law. In the event of any inconsistency among these procedures and the provisions of the Designer Selection Law, as existing as of the date of the adoption of these procedures or as subsequently amended by the Legislature, the provisions of the Designer Selection Law shall control.
26. 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), cities and towns must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Awarding Authority shall take steps to assure that it complies with all State Office of Minority and Women Business Assistance requirements.