

Town of Bedford
Designer Selection Proceduresⁱ
(Adopted August 5, 2013)

1. These procedures govern the selection of designers for any Town of Bedford 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 Bedford Selectmen have the authority to conduct the designer selection process for the Town of Bedford. The Bedford Selectmen may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Bedford 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) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in Bedford and in the *Central Register* published by the Secretary of the Commonwealth, at least two weeks before the deadline for filing applications.
5. The advertisement shall contain the following information:
 - a. a description of the building 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 RFQ can be obtained and the applications must be delivered.
- 6. The RFQ shall include the current "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction," which is available for download from the Massachusetts Designer Selection Board website at <http://www.mass.gov/anf/property-mgmt-and-construction/design-and-construction-of-public-bldgs/designer-selection-process/designer-selection-proc-and-evals-for-municipalities/> (Procedures 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. 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 Bedford 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 Bedford Selectmen shall select a designer from the list of finalists. If the Bedford Selectmen select a designer other than the one ranked first by the Committee, the Bedford 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 Bedford 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 Bedford Selectmen shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Approving Body 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 Approving Body prior to selection of finalists.
12. If the Bedford Selectmen are unable to negotiate a satisfactory fee with any of the finalists, the Bedford Selectmen shall recommend that the Committee select additional finalists.
13. The Bedford Selectmen may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Bedford 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 Bedford 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 Town of Bedford shall not enter into a contract for design services unless the Town of Bedford 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 Town of Bedford may require, for the applicable period of limitations. A designer required by the Bedford Selectmen 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 of Bedford 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 Bedford Selectmen may elect to authorize expedited procedures to address the emergency. The Bedford 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 Bedford 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 Bedford Selectmen shall rank the finalists in order of qualification and select the designer for the emergency work.

¹ As of the date of the adoption of the foregoing procedures (August 5, 2013), the designer selection law, M.G.L. c. 7, §§38A½-O ("Designer Selection Law"), requires municipalities and other local public agencies to adopt written designer selection procedures, which must be used when contracting for design services for any building construction, reconstruction, alteration, remodeling or repair project that has an estimated construction cost of more than \$100,000 and an estimated design fee of \$10,000 or more. Design services include the preparation of master plans, feasibility and other studies, surveys, soil tests, cost estimates and programs; preparation of drawings, plans, and specifications, including schematic drawings and preliminary plans and specifications; supervision or administration of a construction contract; and construction management and scheduling. [M.G.L. c. 7, §38A½]. These procedures must comply with the "purposes and intent" of the Designer Selection Law and must include certain required provisions. [M.G.L. c. 7, §38K(a)].

Bedford has adopted procedures based on model procedures drafted by The Office of the Inspector General which assist municipalities and local public agencies in developing their own designer selection procedures. These model procedures closely track the statutory language in the Designer Selection Law, as amended by "An Act Further Regulating Public Construction In the Commonwealth," Chapter 193 of the Acts of 2004, and incorporate recent appellate court opinions.

The Office of the Inspector General recommends that municipalities and local public agencies also consult the Office's manual [<http://www.mass.gov/ig/publications/manuals/dcmanual.pdf>] Designing and Constructing Public Facilities - Legal Requirements, Recommended Practices, Sources of Assistance, 7th Edition [<http://www.mass.gov/ig/publications/manuals/dcmanual.pdf>] for further guidance on how to implement these procedures.

Under M.G.L. c. 149, §44A½ (a), a municipality must hire a Owners Project Manager (OPM) for any building construction project with an estimated construction cost of \$1.5 Million or higher.

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

19. The following records shall be kept by the Town of Bedford:

- 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 Town of Bedford 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 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), cities and towns must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Town of Bedford shall take steps to assure that it complies with all State Supplier Diversity Office requirements.

Approved by the Town of Bedford Selectmen August 5, 2013

The image shows three handwritten signatures, each written over a horizontal line. From left to right, the signatures are: William S. Moon, Margaretta, and Carol Pedich. A fourth signature is written below the other two, also over a horizontal line.