



City of Fitchburg, Massachusetts
Procurement Department

DESIGNER SELECTION POLICY AND PROCEDURES

These procedures govern the selection of designers for any City of Fitchburg building project subject to the designer selection law. Any other ordinance governing the procurement of services will be inapplicable to these procurements.

1. The Mayor has delegated the duties described herein to the extent such delegation is permissible by law, to the Chief Procurement Officer.

The Chief Procurement Officer shall designate the individual or group ("the Committee") to conduct the designer selection process. No person shall participate if that person, or any of their immediate family, has a direct or indirect financial interest in the award of the design contract to any applicant; is currently employed by, or is a consultant to or under contract to, any applicant; is negotiating or has an arrangement concerning employment or contracts with any applicant; or has an ownership interest in, or is an officer or director of, any applicant.

2. The Request for Qualifications (RFQ) for shall be advertised in the newspaper, *Central Register*, and on the City's website at least two weeks before the application deadline.

Advertisement shall contain: project description, time period to complete project; estimated construction cost, if available; when and where a briefing session (if any) will be held; qualifications required of applicants; categories of designers' consultants, if any, for which applicants must list names of consultants they may use; whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee; how to obtain the RFQ; and where applications must be delivered.

3. The RFQ shall include the current "Standard Designer Application Form."
4. Committee shall evaluate applicants based on the following: prior similar experience; past performance; financial stability; identity and qualifications of consultants to the project; and any other criteria that the Committee considers relevant to the project.
5. The Committee shall select at least three finalists. An interview or additional information may be requested from finalists, so long as they are afforded equal opportunity.
6. The Committee shall rank finalists in order of qualification and transmit the list of ranked finalists to the Chief Procurement Officer. The list must be accompanied by a written explanation of the reasons for selection. The written explanation and recorded vote, if any, shall be public records and maintained in the contract file.

No person or firm, including listed consultants, debarred pursuant to M.G.L. c. 149, § 44C, shall be included as a finalist.

7. If the fee was set prior to the selection process, the Chief Procurement Officer shall select from the list of finalists. If selected designer is not the one ranked first by the Committee, the Chief Procurement Officer shall file a written justification for the selection and maintain a copy in the contract file.
8. If the fee is to be negotiated, the Chief Procurement Officer shall request a fee proposal from the first ranked designer. The contracting department will commence negotiations. If unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, in the order in which they were ranked, until agreement is reached. In no event may a fee be negotiated which is higher than the fee set prior to selection of finalists.

If a satisfactory fee cannot be negotiated with any of the finalists, the Chief Procurement Officer shall recommend that the Committee select additional finalists.

9. The City of Fitchburg may allow a designer who conducted a feasibility study to continue with the design of a project. However, the City may commission, at its discretion, an independent review before allowing the designer to continue on the project, *provided* the City otherwise complies with the statutory requirements for selection under M.G.L. c. 7C, § 54(a)(i).

10. Every contract for design services shall include:

- 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).

11. 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.
12. The City 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 City may require, for the applicable period of limitations. Designer shall furnish a certificate or certificates of insurance coverage to the City prior to the award of the contract.
13. 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.
14. In the event of an emergency that precludes the normal use of these designer selection procedures, the Chief Procurement Officer may elect to authorize expedited procedures to address the emergency. The Chief Procurement Officer shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost, and the established fee. The Chief Procurement Officer may select three finalists from a standing list of designers on projects of a similar nature, or may otherwise select three designers, rank the finalists and select a designer for the emergency work.
15. The Chief Procurement Officer shall publish designer award in the *Central Register*.
16. The contracting department shall evaluate designers' performance using the Designer Selection Board evaluation form, and file accordingly.
17. 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 City of Fitchburg will incorporate minority-owned business enterprise and women-owned business enterprise participation goals.