

Massachusetts School Building Authority Designer Selection Procedures

Section 1: Introduction

- A. The following designer selection process has been adopted by the Massachusetts School Building Authority (MSBA) pursuant to Massachusetts General Laws, Chapter 7, Sections 38A½ through 38O to serve as the basis for the exemption under Section 38C from the jurisdiction of the Commonwealth's Designer Selection Board for the procurement of designers, programmers and entities providing feasibility studies by cities, towns, regional school districts, and independent agricultural and technical schools seeking funding from the MSBA for public school construction projects whose estimated construction cost is equal to or greater than \$5,000,000.00 (or other such amount as may be determined from time to time by the MSBA). Designer selection for public school construction projects whose estimated construction cost is less than \$5,000,000.00 (or other such amount as may be determined from time to time by the MSBA) will be conducted pursuant to Massachusetts General Laws, Chapter 7, Section 38K by the respective city, town, regional school district or independent agricultural and technical school.

Section 2: Designer Selection Panel

- A. The MSBA Designer Selection Panel (DSP) shall be composed of the following individuals:
1. The MSBA Executive Director, ex officio, or his/her designee;
 2. Three (3) senior MSBA staff members associated with design and/or construction oversight as selected by the MSBA Executive Director;
 3. One (1) public member as selected by the MSBA Executive Director;
 4. One (1) member who is a Massachusetts registered architect as recommended by the Boston Society of Architects;
 5. Two (2) members who are Massachusetts registered architects as selected by the MSBA Executive Director;
 6. One (1) member who is a Massachusetts registered engineer as recommended by the American Council of Engineering Companies of Massachusetts;
 7. Two (2) members who are Massachusetts registered professional engineers as selected by the MSBA Executive Director;
 8. One (1) member who is a representative of the construction industry as recommended by Associated General Contractors of Massachusetts;
 9. Three (3) members who are representative of the respective city, town or public agency (hereinafter called the "Eligible Applicant" and as defined in M.G.L. Chapter

70B, Section 2) for the specific project under consideration one (1) of whom shall be designated by the school committee, one (1) of whom shall be the superintendent of schools, ex officio, or his/her designee and one (1) of whom shall be the chief executive officer of the city or town, ex officio, or his/her designee.

- B. Members proposed or recommended by the societies or associations pursuant to subsections (4), (6), and (8) above and the members proposed by the Eligible Applicant pursuant to subsection (9) above shall be approved by the MSBA Executive Director which approval shall not be unreasonably withheld.
- C. The MSBA Executive Director shall appoint a chairperson from one of the members appointed pursuant to subsection (3) through (8) above, who is a registered architect or engineer and who shall also serve as chairperson of any subcommittee of the DSP.
- D. A quorum shall exist when nine (9) or more members are present and at least four (4) of whom are registered architects or registered professional engineers. The DSP shall not take any action without the presence of a quorum.
- E. Each appointed member, except the members representing the Eligible Applicant, shall serve for a two-year term and shall continue to serve until a successor is selected. No DSP member may serve more than two consecutive terms. A former member may be reappointed after a one-year hiatus. Initial appointments shall be made such that terms will be staggered, which terms shall be determined by the MSBA Executive Director.
- F. The Commonwealth's Designer Selection Board shall be notified of the names of the appointed members of the DSP.

Section 3: Public Notice

- A. Each contract for designer services for a project subject to these procedures shall be publicly advertised in a newspaper of general circulation in the area in which the project is located or to be located and in the Massachusetts Central Register at least two weeks before the deadline for filing applications. The public notice shall contain:
 - 1. 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;
 - 2. If there is a program for the project, a statement of when and where the program will be available for inspection by applicants, and when and where a briefing session will be held for applicants and if there is not a program for the project, a statement to the effect;
 - 3. The qualification required of applicants for the projects;
 - 4. The categories of designers' consultants, if any, for which applicants must list the names of consultants which the applicant may choose to use;

5. Whether the fee has been set or will be negotiated, and if the fee has been set, the amount of the fee;
6. The deadline for submission of applications;
7. The person and address from which application forms may be obtained and, when completed, to whom they may be delivered;
8. Any other pertinent information deemed appropriate by the DSP.

Section 4: Master File Brochure

- A. Prior to filing an application for any project, designers shall first file a Master File Brochure with the DSP containing the following information:
 1. Certification that the applicant, if applying to perform design services other than preparation of studies, surveys, soil testing, cost estimates or programs, is a designer as defined in M.G.L. Chapter 7, Section 38A½ paragraph (b);
 2. The names and addresses of all partners, if a partnership, of all officers, directors and all persons with an ownership interest of more than five per cent in the applicant if not a partnership;
 3. The registration number and status of each such person in every jurisdiction in which such person has ever been registered as an architect, landscape architect or engineer;
 4. A list of all projects for all public agencies within the commonwealth for which the applicant has performed or has entered into a contract to perform design services within the five year period immediately preceding the filing of the information required in this section;
 5. A list of all current projects for which the applicant is performing or is under contract to perform any design services; and
 6. If the applicant is a joint venture, the information required in this section shall be required for each joint venturer, as well as for the joint venture itself.
- B. The DSP shall keep a permanent record of the Master File Brochures and shall require them to be updated on an annual basis, and that the lists of projects requested above be made current with each application filed.
- C. An applicant to perform design, programming or feasibility study services on a project must file, in addition to the Master File Brochure, a written application prescribed by the DSP relating to the applicant's experience, ability, and qualifications.
- D. Every application or Master File Brochure filed shall be sworn to under penalties of perjury. Any applicant who has been determined by the DSP to have filed materially false information shall be disqualified by the DSP from further consideration for any project for such time as the DSP determines is appropriate.

Section 5: Selection Criteria

A. The criteria for selection of finalists shall include:

1. Prior similar experience best illustrating current qualifications for the specific project.
2. Past performance of the firm, if any, with regard to public, private, DOE-funded, and MSBA-funded projects across the Commonwealth, with respect to:
 - a) Quality of project design.
 - b) Quality, clarity, completeness and accuracy of plans and contract documents.
 - c) Ability to meet established program requirements within allotted budget.
 - d) Ability to meet schedules including submission of design and contract documents, processing of shop drawings, contractor requisitions and change orders.
 - e) Coordination and management of consultants.
 - f) Working relationship with contractors, subcontractors, local awarding authority and MSBA staff and local officials.
3. Current workload and ability to undertake the contract based on the number and scope of projects for which the firm is currently under contract.
4. The identity and qualifications of the consultants who will work on the project.
5. The financial stability of the firm.
6. The identity and qualifications of the consultants who will work on the project.
7. The qualifications of the personnel to be assigned to the project.
8. Geographical proximity of the firm to the project site or willingness of the firm to make site visits and attend local meetings as required by the client.
9. Minority and Women-Owned Business status.
10. Any other criteria that the DSP considers relevant to the project.

Section 6: Selection Process

- A. The DSP shall select not more than three from among all the applicants and in doing so may require all the applicants or the finalists to:
 - 1. Appear for an interview before the DSP;
 - 2. Present a written proposal to the DSP through the Eligible Applicant; or
 - 3. Participate in a design competition held by the DSP through the Eligible Applicant.
- B. The DSP shall transmit a list of the chosen finalists ranked in order of qualifications to the Eligible Applicant. No person or firm debarred pursuant to M.G.L. Chapter 149, Section 44C or disqualified pursuant to Section 38D shall be so included as a finalist. The DSP shall transmit to the Eligible Applicant all material made or received relating to such recommendations. The list shall rank the finalists in order of qualifications and include a record of the final vote of the DSP on the selection and a written statement explaining the DSP's reasons for its choice and ranking of the finalists.
- C. For the purposes of M.G.L. Chapter 268A and subject to the penalties contained therein, no member of the DSP 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:
 - 1. Has a direct or indirect financial interest in the award of the design contract to any applicant;
 - 2. Is currently employed by, or is a consultant to or under contract to any applicant;
 - 3. Is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
 - 4. Has ownership interest in, or is an officer or director, of any applicant.

Section 7: Award of Contract

- A. The authority to award a contract for designer services for a project that will receive funding from the MSBA is vested with the Eligible Applicant and subject to the approval of the MSBA.
- B. In the selection of a designer when the fee for designer services has been set prior to advertisement, the Eligible Applicant shall appoint a designer from the ranked list transmitted by the DSP to the Eligible Applicant. If the Eligible Applicant proposes to select any designer other than the one ranked first by the DSP, it shall obtain the written concurrence of the MSBA Executive Director and file a written justification of the proposed selection with the DSP.

- C. When the fee for designer services is to be negotiated, the Eligible Applicant shall review the list transmitted by the DSP and may exclude any designer from the list if a written explanation of the exclusion is filed with the DSP. The Eligible Applicant shall first negotiate with the first ranked designer remaining on the list. Should the Eligible Applicant be unable to negotiate a satisfactory fee with the first ranked designer within thirty (30) days, negotiations shall be terminated and negotiations undertaken with the remaining designers, one at a time, in the order in which they were ranked by the DSP, until an arrangement is reached. In no event may a fee be negotiated which is higher than a maximum fee set by the MSBA prior to the selection of finalists. Should the Eligible Applicant be unable to negotiate a successful fee with any designer initially selected by the DSP, the DSP shall recommend additional finalists. The Eligible Applicant may require a finalist with whom a fee is being negotiated to submit a fee proposal and include such information as the Eligible Applicant requires to provide current cost and pricing data on the basis of which the designer's fee proposal may be evaluated.

Section 8: Continued or Extended Services

- A. The Eligible Applicant may appoint a designer to perform continued or extended services if the following conditions are met:
1. A written statement is filed with the DSP explaining the reasons for the continuation or extension of services;
 2. The program for the design services is filed with the DSP; and
 3. The DSP approves the appointment of the designer for continued or extended services and states the reason therefore.

Section 9: Emergency Designer Selection Process

- A. If a situation arises in accordance with Chapter 7, Section 38J, which has been declared an "emergency" by the Executive Director of MSBA, an Eligible Applicant may request an emergency selection of a designer.
- B. In consultation with the technical staff of the MSBA, the Eligible Applicant shall prepare a proposed scope of work, an estimate of the cost of construction and a lump sum fee for the designer's services, and submit this, and any other relevant information to the Executive Director.
- C. In lieu of public advertisement, the Executive Director or his/her designee will consult with the Eligible Applicant to select three to six qualified firms who have Master File Brochures on file, to solicit to perform this work.
- D. The MSBA staff will poll an ad-hoc committee of three members of the DSP to select at least three qualified finalists and forward the names of the finalists to the Eligible Applicant with a written statement explaining the committee's reasons for its choice(s).

- E. The Eligible Applicant will select one of the three finalists to perform the work and forward the name of the selected firm to the DSP with a written statement explaining the reasons for its choice.
- F. The DSP will immediately notify the Designer Selection Board of the actions taken under the expedited procedures process, in addition to the mandated biannual report.

Section 10: Annual Report

- A. The DSP shall submit an annual report to the Division of Capital Asset Management and Maintenance which must contain:
 - 1. A list of all finalists selected by the DSP and awards made by the Eligible Applicants;
 - 2. A summary of the activities and other actions of the DSP, the Eligible Applicants and the MSBA staff relating to activities undertaken pursuant to these procedures; and
 - 3. Any other items which the MSBA deems appropriate.

Section 11: Statutory Representations by the MSBA

- A. The projects of the MSBA and the Eligible Applicants are not subject to the jurisdiction of the Division of Capital Asset Management and Maintenance.
- B. The DSP procedures substantially incorporate the procedures required of the Commonwealth's Designer Selection Board in M.G.L. Chapter 7, Section 38B through 38J, inclusive, and Section 38M.

Section 12: Effective Dates

- A. The above designer selection procedures will be effective for all applicable MSBA-funded projects advertised after February 1, 2007 (even if funded prior to that date) through January 31, 2009.

Respectfully submitted under the penalties of perjury this ____ day of _____, 2006

Katherine P. Craven, Executive Director
Massachusetts School Building Authority