



Massachusetts School Building Authority

**DESIGNER SELECTION GUIDELINES FOR
PUBLIC SCHOOL PROJECTS
SEEKING FUNDS FROM THE
MASSACHUSETTS SCHOOL BUILDING
AUTHORITY**

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1. INTRODUCTION

Selecting a qualified architect or engineer (Designer) is one of the most important decisions in a successful project. The city, town or regional school district (District) works closely with the selected DESIGNER from the beginning of the feasibility study, through design and the completion of construction. As a result, the quality of the final product rests largely on the skills and abilities of the DESIGNER and on the working relationship between the DESIGNER and the Owner. Although much of the designer selection process is governed by statute, this document offers guidance on how to conduct the designer selection process to ensure selection of the most appropriate DESIGNER firm for your project.

In 1978, the governor of Massachusetts created the Ward Commission to investigate allegations of corruption in the award of state and county building contracts and make recommendations for legislative and administrative reform. As a result of the Commission's findings, the legislature enacted Massachusetts General Law Chapter 7, Section 38A½ through 38O (the Statute) mandating a process for selecting designers for all public building projects in the Commonwealth.

Chapter 7 of the General Laws established the Designer Selection Board (DSB) in the Executive Office for Administration and Finance to ensure an impartial and objective selection process. Chapter 7 also provides an exemption for projects seeking funding from the MSBA, allowing MSBA to establish its own Designer Selection Panel (DSP) with procedures based on rules established and enforced by the Designer Selection Board. MSBA must request this exemption and secure approval from the Designer Selection Board every two years.

The MSBA Designer Selection Panel has jurisdiction over the procurement of designers, programmers and entities providing feasibility studies in connection with 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 anticipated to be \$5,000,000 or greater. Designer selection for public school construction projects whose estimated construction cost is less than \$5,000,000 must 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.

Whether the procurement of the Designer is by the Owner or through the DSP, the goals are the same. They are:

- high quality design services for public building projects;
- application of consistent procedures in the procurement of the design services;
- broad-based participation of all qualified design consultants; and
- integrity of the system for procurement of design services.

2. ROLES AND RESPONSIBILITIES

The primary participants during the selection process are: The Owner, the Owner's Project Manager (OPM), MSBA staff, the MSBA Designer Selection Panel (DSP) for projects \$5 million and greater, and the Owner's designer selection committee for projects estimated to cost less than \$5 million.

The OPM coordinates the activities of the selection process including advertising, establishing a local selection committee where applicable, reviewing applications for completeness, checking minimum qualifications and references of applicants, and representing the Owner before the DSP.

MSBA staff will assist the Owner in developing the Advertisement and Request for Services including the scope of work, fee, project schedule, and a timetable for advertising and in executing a contract with the selected Designer firm. They also provide technical assistance to Owners on procedural questions, DSP meeting dates, and provide general administrative support to the DSP.

The Local Designer Selection Committee (for potential project estimated to cost less than \$5 million) ranks, from among the firms that apply, the three who are most qualified to provide the required services. Selection processes are conducted pursuant to Massachusetts General Laws, Chapter 7, Section 38K.

The MSBA Designer Selection Panel (DSP) (for potential project estimated to cost \$5 million or more) ranks, from among the firms that apply, the three who are most qualified to provide the required services.

The DSP is made up of 12 appointed members who meet regularly at MSBA's offices in Boston and three representatives of the local city, town or regional school district who are selected by the Owner on a project-by-project basis. The 12 appointed members are recruited from professional groups that are interested in the design and construction of public schools in Massachusetts and include:

- The MSBA Executive Director or his/her designee;
- Three (3) MSBA staff members associated with design and/or construction oversight;
- One (1) public member selected by the MSBA Executive Director;
- One (1) member who is a Massachusetts registered architect and recommended by the Boston Society of Architects;
- Two (2) members who are Massachusetts registered architects and selected by the MSBA Executive Director;
- One (1) member who is a Massachusetts registered professional engineer and recommended by the American Council of Engineering Companies of Massachusetts;
- Two (2) members who are Massachusetts registered professional engineers and selected by the MSBA Executive Director;
- One (1) member who is a representative of the construction industry and recommended by Associated General Contractors of Massachusetts

The three members who are representatives of the respective city, town or regional school district for the specific project under consideration includes one member designated by the school committee, the superintendent of schools or his/her designee and the chief executive officer of the city or town or his/her designee.

3. STEPS IN THE DESIGNER SELECTION PHASE – All Projects

Before beginning the designer selection process set forth below, the Owner and the OPM should consult with the MSBA to discuss timing and coordination of the various activities associated with the selection of the designer. Before placing the advertisement, the Owner or OPM must send a copy of the advertisements and a red-lined version of the RFS materials to the MSBA for review and approval before sending the advertisements to publishers. After discussions have been held to the satisfaction of the MSBA, the Owner should proceed with the following steps:

A. Develop a Request for Services

Using the MSBA's model Request for Services (RFS), the Owner should prepare the RFS. The RFS will include a description of the work, qualifications required of applicants, the construction budget, the Designer fee, the project schedule and other administrative requirements important for the Designer.

Scope of Work. This description outlines the scope of the work that the Designer will be required to perform. For example: "the design and construction administration of a replacement HVAC system for a 50,000 square foot elementary school." A good scope of services describes:

- background information and description of needs and existing conditions;
- the types of services (planning, feasibility study, designing, cost estimating, construction administration);
- the magnitude of the project, to the extent it can be defined (number of classrooms, buildings, or square footage of building);
- project characteristics that impact the work (type of construction, new or existing conditions,); and
- project schedule and design and construction phase requirements.

The RFS must include a listing of categories of work (engineering disciplines, specialty consultants, etc.) which are expected to be provided as part of basic services obligations of the Designer. The RFS must specify that the parties to be responsible for these categories of work (whether in-house providers or independent consultants) be identified in the application together with their professional registration (if applicable) and qualification data.

The RFS also should include a description of other ancillary services that may be provided by the Owner or required through the Designer (e.g., topographic surveys, asbestos abatement, educational consultant, etc.).

The more descriptive you make the RFS, the better understanding potential Designers will have of the project and the more likely it will be to attract Designers who have relevant experience.

Criteria for Selection. The RFS should set forth the criteria that will be used in selecting a Designer. Consider the type of consultants who will best perform the scope of work -- is it an architect; an engineer; an environmental hygienist; a landscape architect? Consider whether the project needs any unusual expertise or previous experience such as working with community groups or experience with historic renovation. Any project specific criteria must be stated in the scope of services. Be familiar with the Criteria for Selection of Designers as set out in M.G.L. Chapter 7.

Fee for Services. The RFS should include the Designer fee amount or indicate that the fee is to be negotiated.

MBE/WBE Requirements. Any municipal design or construction project that includes funding provided by the MSBA, must have certified Minority-owned Business Enterprise (MBE) and Women-owned

Business Enterprise (WBE) goals incorporated into both the design and construction procurement. The current applicable MBE and WBE goals developed by the state's Division of Capital Asset Management (DCAM) in consultation with the State Office of Minority and Women Business Assistance (SOMWBA) are 8% MBE and 4% WBE on design contracts. The MSBA's model RFS makes clear that compliance with the MBE and WBE goals is a minimum qualification. Consultants other than those for the specific categories of work identified in the RFS by the Owner may not be used for purposes of meeting M/WBE requirements. For further information about MBE and WBE requirements, contact SOMWBA. SOMWBA has oversight responsibility of the affirmative marketing program for state assisted municipal projects.

Briefing Session. The RFS should indicate whether the Owner will allow for a briefing session at the site or other designated location. For projects where the scope of work includes existing structures or sites, or new construction on a site with difficult topography, a briefing session is recommended. The date of the briefing session should be factored in to the schedule and included in the RFS and the advertisement. While attendance of applicants at a briefing session could be a consideration by the DSP in the selection process, it should not be a mandatory requirement.

Number of Copies. The RFS should state that interested Designers must submit one original and twenty (20) copies of the completed Designer Application (and a copy of the Master File Brochure, if requested) directly to the Owner or the OPM, not to the DSP or MSBA.

Master File Brochure. Prior to filing an application for any project, designers must 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.

Master File Brochures are kept on file at the MSBA and applicants are required to update them on an annual basis. If potential applicants have questions about their Master File Brochures or eligibility, refer them to the MSBA staff.

B. Advertise for Designers.

Because advertising is expensive, most advertisements contain only a brief description of the scope and the particular information required by M.G.L. Chapter 7.

Advertisement. Before placing the advertisement, the Owner or OPM must send a copy of the advertisement with a red-lined version of the RFS materials to the MSBA for review and approval. Allow approximately two weeks for review by the MSBA. Include the following information in the advertisement for Designer services.

- location of the project
- design fee (or a statement indicating that the fee is to be negotiated) and estimated construction cost
- type of services required: architect, engineer, site planner, etc. including all engineering disciplines and other specialty consultant categories of work.
- brief description of the project
- date and time of the briefing session (if applicable)
- where to get an RFS
- deadline for receipt of application
- contact person for the Owner
- MBE/WBE requirements
- request for a copy of the Designer's Master File Brochure that is currently on file with the MSBA (if desired by the School District)

Format. Advertisements for publicly-funded contracts are legal notices and must be sent in writing to newspapers and other media. Some publications will accept transmission of a facsimile (fax).

Where to Place Advertisements. To comply with M.G.L. Chapter 7 and MSBA requirements, Designer advertisements must appear in the following publications:

- **The Central Register.** The Central Register is published weekly on Wednesday. All notices must be received by the Secretary of the Commonwealth by Tuesday by 4:00 P.M. of the week preceding publication. Notices can be filed On-line at <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm>.
- **A Newspaper** of local circulation

For additional outreach, consider placing advertisements in the following additional publications:

- **the Dodge Report**
- newsletters or bulletins of relevant professional associations and SOMWBA

Timing. At a minimum, the advertisement must appear in the newspapers and the **Central Register**, one time at least two weeks before the application dateline. In order to elicit a wide response, consider advertising for at least three consecutive weeks.

C. Prepare the Application Package.

The OPM should prepare an application package that can be distributed to interested Designers who respond to the Advertisement.

Application Package. Include the following items in the application package:

- The detailed Request for Services (RFS) developed using the MSBA's model RFS and as approved by the MSBA. The RFS will include the design fee (or state that the fee will be negotiated), the designer eligibility and experience requirements, the MBE/WBE requirements;

the construction budget; the criteria for selection; insurance requirements and the date of briefing session, if applicable.

- Application for Designer Services (*Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction-2005*); and
- The MSBA's standard Contract for Designer Services.

D. Distribute the Application Package.

The Owner or OPM should distribute the Application Package to all Designers who request it.

Record Keeping. The Owner or OPM must keep a record of the names and addresses of all Designers who request an application package so that all interested Designers can be notified of any changes.

Changes to the RFS. If the Owner decides to make any changes to the application package, the Owner must notify all Designers who requested the application package of the changes.

E. Conduct the Briefing Session (if applicable).

If the Owner decides to hold a briefing session and/or allow interested Designers to inspect the site, the OPM should accompany the Designers during the session to ensure that the Designers see the all areas included in the scope of services. Be sure to have additional Request for Application packages available at the briefing session for Designers who may not have received one. Be cautious about giving out any information that is not included in the RFS package because it could give those in attendance an unfair advantage. The briefing session should be conducted prior to the deadline for submission of an application. While attendance at a briefing session could be a consideration by the DSP in the selection process, it should not be a mandatory requirement.

Record Keeping. The OPM should keep a record of the Designers who attend briefing sessions to include in the presentation to the DSP or the local designer selection committee as applicable. Designer attendance at briefing sessions is information that the DSP or the local designer selection committee may take into consideration when making their selections.

4. PROCESSING APPLICATIONS and SELECTING A DESIGNER – Projects where the Estimated Construction Cost is \$5,000,000 or More

A. Processing Applications

Submission to DSP. For projects where the estimated construction cost is \$5,000,000 or more, the Designer must be selected through the MSBA's Designer Selection Panel. Designers should send their completed Applications directly to the Owner or OPM, as indicated in the RFS. The Owner or OPM, in turn, should keep four copies of each application (one for the OPM and one for each of the District representative to the DSP) and submit the following to the MSBA for distribution to the DSP:

- a list of all applicants in alphabetical order;
- the names of the representatives from the District who will be serving on the DSP;
- thirteen copies (minimum) of each Designer Application, organized alphabetically;
- a copy of the **Central Register** and newspaper advertisements;
- thirteen copies (minimum) of the RFS;
- thirteen copies (minimum) of a letter from the OPM describing any special circumstances or particular needs of the District that might affect the selection of an Designer; and
- the results of the OPM's review of submitted applications including:
 - that all respondents provided the information for each category of work as required in Section F (see attached MSBA standard matrix);
 - that each Respondent met the minimum threshold requirements listed in Section E of the RFS including confirmation that each Respondent addressed the MBE and WBE participation goals (Identify as part of the MSBA standard matrix);
 - a summary of the reference checks for each of the applicants.

Schedule. The MSBA must receive the application packages from the District at least four weeks before the targeted DSP meeting to allow for MSBA staff to process and deliver the packages to DSP members and so that DSP members have time to review the application material before the meeting.

Eligibility. The MSBA staff reviews information submitted by the Owner along with Master File Brochure information for each Respondent to be sure each applicant is eligible to apply for a project in accordance with M.G.L. Chapter 7 and meets any DSP policies on eligibility.

Record Keeping. In accordance with M.G.L. Chapter 7, the District must keep one copy of each application on file for seven years after final payment to the Designer.

References. The OPM should start checking references as soon as an application is received. The OPM must do thorough reference checks on all applicants to ascertain how well they have performed for their other clients. By sharing this information with the DSP the OPM can communicate which firms are best suited for the project.

Content of Reference Checks.

- Check references for projects most similar to your own.

- Check references of other public authorities or public agencies.
- Ask references for information relating to the qualifications and criteria defined in the project scope.
- Ask the same questions of each reference so that the answers about each firm can be compared to one another.

Presentation. The OPM briefly presents the project particulars in person at the DSP meeting. The OPM may advise the DSP of the results of reference checks or previous experience with firm(s), but should not present a ranked list or similar recommendations to the DSP. The DSP looks favorably upon the opinion of the OPM who has done complete and thorough reference checks and who relates the findings to the project requirements.

Questions. Consult with the MSBA if you have questions about reviewing applications or checking references.

B. Selecting the Designer

DSP Meeting. The DSP meeting is a public meeting where the committee members review applications and select qualified firms to work on MSBA-funded projects. Staff from MSBA, other school districts, and interested Designers may also be present as well as members of the press and the general public.

Attendees and Responsibilities.

OPM: Describe the scope of the project, describes particular needs of the district, discusses results of application reviews and reference checks and presents information regarding any previous experience with any of the applicants.

MSBA staff: Confirm eligibility of applicants, present data on previous performance of eligible firms, and record DSP discussion and vote.

DSP members: Review all materials and information presented and ranks the three most qualified applicants based on the requirements of M.G.L. Chapter 7, the policies of the MSBA and the DSP, and the criteria established by the District in the RFS.

Ranking. To evaluate and rank the applicants, the DSP takes into account a variety of information including: the scope of work; project specific criteria; the project-specific information and reference information presented by the OPM; performance of applicants on previous MSBA projects; the applicant's current workload and other information contained in the applications. Upon deliberation of the applications for each project, the DSP will either vote to return a list of three applicants ranked in order of qualifications or return an unranked list of three applicants to be interviewed and ranked at a subsequent DSP meeting.

Interviews. The DSP may, at their discretion, decide to conduct interviews of some or all of the applicants. If conducted, interviews will take place before the DSP. Applicants will be notified by MSBA staff of the date and time of the interview. At the conclusion of the interviews, the DSP takes into account the previously submitted information as supplemented during the interview and votes to rank the applicants in order of their qualifications for the project.

Enter into Contract with Designer. Immediately following the ranking, the District commences negotiations with the first-ranked finalist and awards the contract unless they have evidence that the firm is unqualified to perform the services or the applicant withdraws their application. The selected Designer must sign the MSBA's standard Contract for Designer Services.

Rejection. If the District believes that the first-ranked applicant is unqualified based on M.G.L. Chapter 7 and MSBA requirements as described in the RFS, it may petition the DSP to reject the firm. The petition

should include a written explanation justifying the request. Consult with the MSBA immediately if rejection is considered.

Notify MSBA and Finalists. Upon an award of a contract to the first-ranked applicant, the OPM notifies the other finalists, thanking them for their interest. The OPM also notifies the MSBA and provides a copy of the executed contract.

Central Register Notification. When the contract has been awarded, the OPM completes the Notice of Contract Award and sends it to the **Central Register** to notify the public of the decision.

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5. PROCESSING APPLICATIONS and SELECTING a DESIGNER – Projects Where the Estimated Construction Cost is Less Than \$5,000,000

A local designer selection procedure is used for selecting Designers when the construction estimate is under \$5,000,000. These projects do not fall under the Designer Selection Panel's jurisdiction but, pursuant to MGL Chapter 7, Section 38K, do require a public process for the selection of Designers. Unlike the designer selection process for projects whose estimated construction cost is \$5,000,000 or greater, no Master File Brochure is necessary (although it can be required at the District's option).

Establishing a Local Designer Selection Committee. For potential projects whose construction cost is estimated to be less than \$5,000,000, the School Building Committee as described in MSBA regulations (963 CMR 2.00) can also take on the role of the Designer Selection Committee or a separate committee can be established for the specific role of selecting a designer.

Size of Committee. If a separate designer Selection Committee is established, the committee should be similar in makeup to the MSBA DSP and the School Building Committee. An advantage of having a large committee is a greater variety of perspectives which may result in more detailed interviewing. A disadvantage of a large committee is the complexity of scheduling meetings and achieving consensus. It is useful to have an odd number of committee members to minimize the possibility of tie votes. The following criteria should be employed:

- At least one member should be registered architect, engineer or construction professional;
- At least one member should be the Owner's Project Manager;
- At least one member should be an employee of the school district such as the superintendent or his/her designee or the building principal;
- At least one member should be from the local municipal government (board of selectman, city council, etc.);
- One member should be a member of the district's school committee; and
- At least one member should recruited from the community at-large

Additional members can include school facilities staff, teachers, parents, and community leaders.

After the District and the MSBA have developed the RFS which will include the designer fee (or indicate that the fee will be negotiated), the construction budget and the selection criteria, the District will follow each of the steps below.

- **Step One:** an application package is prepared containing the following:
 - Application for Designer Services (*Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction-2005*)
 - Request for Services which should include:
 - Designer fee (or indicate that the fee will be negotiated) and construction budget;
 - criteria for selection;
 - insurance requirements;
 - date and time for a briefing session, if appropriate;

- -deadline for applications
- The MSBA's standard Contract for Designer Services

Step Two: The District advertises for Designer services in a local newspaper and in the Central Register. The Central Register is published weekly on Wednesday. All notices must be received by the Secretary of the Commonwealth by Tuesday by 4:00 P.M. of the week preceding publication. Notices can be filed On-line at <http://www.sec.state.ma.us/spr/sprcentral/infosubmit.htm>.

The District should also consider advertising in the Dodge Report as well as newsletters or bulletins of relevant professional associations and SOMWBA.

Step Three: The OPM conducts the site visit and keeps a list of all Designers who attend. The District receives applications and checks the references of all applicants.

Step Four: The local designer selection committee reviews the application materials and develops a list of 3 or more firms that meet the qualifications and requirements of the project.

Step Five: The local designer selection committee interviews the finalists and makes a final selection.

Step Six: The District awards a contract to the most qualified firm and executes the MSBA's standard Contract for Designer Services.

6. EMERGENCY DESIGNER SELECTION - Projects Where the Estimated Construction Cost is \$5,000,000 or More

If a situation arises in accordance with Chapter 7, Section 38J, which has been declared an “emergency” by the Executive Director of MSBA, the District may request an emergency selection of a designer.

Step One: In consultation with the MSBA, the District prepares a proposed scope of work, an estimate of the cost of construction and a lump sum fee for the designer’s services, and submits this, and any other relevant information to the Executive Director.

Step Two: 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.

Step Three: 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).

Step Four: The District 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.

7. EMERGENCY DESIGNER SELECTION - Projects Where the Estimated Construction Cost is Less Than \$5,000,000

If a situation arises in accordance with Chapter 7, Section 38J, which has been declared an “emergency” by the Executive Director of MSBA, a District may request an emergency selection of a designer. Emergency designer selection will follow the following steps:

Step One: The OPM submits a request to the MSBA. The MSBA confirms that the condition of the project constitutes an emergency, and requests the MSBA Executive Director to declare the situation an emergency.

Step Two: The OPM and the MSBA develop a proposed scope of work, an estimate of the cost of construction, and a lump sum fee for design services.

Step Three: The OPM and the MSBA select a minimum of three qualified firms who can perform this work from a list of firms that have up-to-date Master File Brochures on file at the MSBA and that fulfill the Criteria for the Selection of Designers pursuant to MGL c.7 §38A ½ *et seq.* and the MSBA Designer Selection Procedures..

Step Four: The District assembles an emergency local designer selection committee comprised of at least three members, one of whom is the superintendent or his/her designee, the school committee chair or his/her designee and one of whom is an employee of the district or municipality responsible for capital maintenance and repair of school buildings, to select one firm to perform the design services.