Town of Fairhaven

Model Designer Selection Procedures

The Office of the Inspector General has drafted model procedures to assist municipalities in developing their own Designer Selection Procedures. The designer selection law, ***M.G.L. c. 7C, §§ 44-57*** *(formerly 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 design fee of $30,000 or more and an estimated construction cost of $300,000 or more. These procedures must comply with the "purposes and intent" of the Designer Selection Law and must include certain required provisions. [M.G.L. c. 7C, § 54(a)]*

Town of Fairhaven
Select Board

Designer Selection Procedures

Adopted: November 9, 2026

1. These procedures govern the selection of designers for any municipality subject to the state designer selection law, M.G.L. c. 7C, §§ 44-57. Any other local law governing the procurement of services will be inapplicable to these procurements.

2. The Select Board ("Approving Body") has the authority to conduct the designer selection process for the Awarding Authority in accordance with these procedures and with the General Bylaws of the Town of Fairhaven. The Approving Body may delegate any duties described herein to the extent such delegation is permissible by law.

3. The Approving Body shall either conduct the designer selection process itself or designate an individual or group of individuals to conduct the process. References to 'the Committee' in these procedures shall mean the Approving Body when conducting the process itself, or its designated individual or group. 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 the locality of the building project, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Approving Body, at least two weeks before the deadline for filing applications.

5. 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 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 .** The Application Form may be amended to include additional information on a project-specific basis.

a) 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.

7. 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.

8. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Approving Body. Alternatively, the Committee may select the designer and negotiate the fee, if necessary, and transmit its recommendation to the Approving Body.

9. 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 Approving Body shall select a designer from the list of finalists. If the Approving Body selects a designer other than the one ranked first by the Committee, the Approving Body 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 Approving Body 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 Approving Body 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 Approving Body is unable to negotiate a satisfactory fee with any of the finalists, the Approving Body shall recommend that the Committee select additional finalists.

13. The Approving Authority may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Approving Authority 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 ensure its reasonableness and its adequacy before allowing the designer to continue on the project, *provided* the Approving Authority otherwise complies with the statutory requirements for selecting a designer under Chapter 7C of the General Laws, including those set forth in M.G.L. c. 7C, § 54(a)(i).

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 Awarding Authority shall not enter into a contract for design services unless the Awarding Authority 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 Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority 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 Awarding Authority 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 Approving Body may elect to authorize expedited procedures to address the emergency. The Approving Body 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.

18. The Approving Body 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 Approving Body shall rank the finalists in order of qualification and select the designer for the emergency work.

19. The Awarding Authority shall publish the name of any designer awarded a contract in the *Central Register*.

20. The following records shall be kept by the Awarding Authority:

    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.

21. All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

22. The Awarding Authority shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7C, § 48(h), and file completed evaluations with the Board and any other agency named in M.G.L. c. 7C, § 48(h).

23. 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.

24. 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 Town shall incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Awarding Authority shall take steps to ensure that it complies with all applicable **requirements.**

Adopted by Select Board vote on November 9, 2026