



**Hamilton-Wenham Regional School District ("Awarding Authority")**

**Designer Selection Procedures**

**(September 2017 Version)**

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 construction cost of more than \$100,000 and an estimated design fee of \$10,000 or more.<sup>1</sup> 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. 7C, § 44]. These procedures comply with the "purposes and intent" of the Designer Selection Law and include certain required provisions. [M.G.L. c. 7C, § 54(a)]

1. These procedures govern the selection of designers for any municipality or local public agency building project subject to the state designer selection law, M.G.L. c. 7C, §§ 44-57, which includes the Awarding Authority.
2. The Hamilton-Wenham Regional School District School Committee ("Approving Body") has the authority to conduct the designer selection process for the Awarding Authority.
3. The Approving Body has designated the Chief Procurement Officer to conduct the designer selection process on behalf of the Awarding Authority.<sup>2</sup> The Chief Procurement Officer shall identify a group of no fewer than two (2) individuals (hereinafter referred to as "the Committee") to assist him/her in the selection process described herein. 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 Chief Procurement Officer, at least two weeks before the deadline for filing applications.
5. The RFQ 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. when and where a briefing session (if any) will be held;
  - C. the qualifications required of applicants;
  - D. the categories of designers' consultants, if any, for which applicants must list names of consultants they intend to use;
  - E. whether the design fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be provided in the RFQ;

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- F. minority-owned business enterprise (MBE) and/or women-owned business enterprise (WBE) participation goals, if any;
  - G. when and where the RFQ can be obtained;
  - H. the deadline for submission of the RFQ;
  - I. the person(s) to which the RFQ shall be delivered; and
  - J. any other pertinent information.
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 [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 Chief Procurement Officer and 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 on the project; and
    - E. any other criteria that is considered relevant to the project.
  8. The Chief Procurement Officer and Committee shall select at least three finalists, if at least three finalists provided submissions. Finalists may be required to appear for an interview or provide additional information.
  9. The Chief Procurement Officer and Committee shall rank the finalists and choose the top rated firm. The Chief Procurement Officer shall negotiate the fee (if applicable) and transmit a recommendation to the Approving Body. No person or firm who has been debarred pursuant to M.G.L. c. 149, § 44C, shall be included as a finalist on the list.
  10. If the Chief Procurement Officer 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 as finalists by the Chief Procurement Officer and Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set in the RFQ.
  11. If the Chief Procurement Officer is unable to negotiate a satisfactory fee with any of the finalists, the Chief Procurement Officer shall select additional finalists, if available.
  12. 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

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- 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 designer's contracts and in any subsequent amendment thereto as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

13. 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. 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.
14. 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.
15. The Approving Body shall be responsible to enter into any contract for design services on behalf of the Awarding Authority.
16. 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.

## END NOTES

1. In December 2008, the Designer Selection Board revised its "Guidelines for City and Town Building Projects" to clarify that both thresholds must be met.
2. Reference: HWRSD School Committee Policies D4015, D4016, D4017, and D4018.

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The District does not discriminate in its programs, activities or employment practices based on race, color, national origin, religion, gender, gender identity, sexual orientation, age or disability.