

Massachusetts School Building Authority **Designer Selection Procedures**

Section 1: Introduction

The following designer selection process has been adopted by the Massachusetts School Building Authority (MSBA) pursuant to Massachusetts General Laws, Chapter 7C, Sections 44 through 58 for the procurement of designers, and programmers by cities, towns, regional school districts, and independent agricultural and technical schools seeking funding from the MSBA for public school construction projects where the 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 Executive Director of the MSBA), except for the MSBA's model schools program. Designer selection for public school construction projects where the estimated construction cost is less than \$5,000,000.00 (or other such amount as may be determined from time to time by the Executive Director of the MSBA) shall be conducted pursuant to Massachusetts General Laws, Chapter 7C, Section 54, by the respective city, town, regional school district or independent agricultural and technical school and in accordance with the MSBA's Designer Selection Guidelines.

Section 2: Designer Selection Panel

- A. The MSBA Designer Selection Panel (DSP) shall be composed of the following individuals who shall be appointed to the DSP by the MSBA's Executive Director ("Executive Director") in accordance with following procedures:
1. The Executive Director, ex officio, or his/her designee;
 2. Three (3) MSBA staff members associated with project management, design and/or construction oversight selected by the Executive Director;
 3. One (1) public member selected by the Executive Director;
 4. One (1) member who is a Massachusetts registered architect or architect emeritus as recommended by the Boston Society of Architects;
 5. Two (2) members who are Massachusetts registered architects or architect emeritus selected by the 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 selected by the Executive Director;
 8. One (1) member who is a representative of the construction industry as recommended by Associated General Contractors of Massachusetts;

9. One (1) member who is a representative of the construction industry as recommended by the Massachusetts Building Trades Council;
 10. Three (3) members who are proposed by the respective city, town, regional school district, independent agricultural and technical school or other public agency that is the Eligible Applicant, 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, district school committee, or board of trustees of the Eligible Applicant, as the case may be; one (1) of whom shall be the superintendent of schools of the Eligible Applicant, ex officio, or his/her designee; and one (1) of whom shall be the chief executive officer of the city or town that is the Eligible Applicant, ex officio, or his/her/its designee or, in all other cases, a member of the School Building Committee designated by the School Building Committee. The appointment of members pursuant to this Section 2(A)(10) shall be subject to the execution of a certification by each such member that the member has read and understands these procedures and the Designer Selection Guidelines.
- B. Members proposed or recommended by the societies or associations pursuant to subsections 2(A)(4), 2(A)(6), 2(A)(8), and 2(A)(9) above and the members proposed by the Eligible Applicant pursuant to subsection 2(A)(10) above shall be subject to appointment by the Executive Director who reserves the right, within his/her discretion, not to appoint or to disapprove the appointment of said proposed or recommended members. In considering the appointment of members proposed by the Eligible Applicant pursuant to subsection 2(A)(10), the Executive Director may consider, among other things, the extent to which the three (3) proposed members, as a whole, represent the interests of the Eligible Applicant.
 - C. The Executive Director shall appoint a chairperson from one of the members appointed to the DSP pursuant to subsections 2(A)(3) through 2(A)(9) above, who is a registered architect, architect emeritus or registered professional engineer and who shall also serve as chairperson of any subcommittee of the DSP.
 - D. All meetings of the DSP shall be open to the public unless the DSP votes to go into executive session by a roll call vote and announces the purpose of the executive session and whether the DSP will convene in open session at the conclusion of the executive session. Any action taken by the DSP in executive session shall be by a roll call vote.
 - E. The presence of nine (9) members, no less than four (4) of whom shall be registered architects, architects emeritus or registered professional engineers, shall constitute a quorum. The DSP shall not conduct any business without the presence of a quorum. The affirmative vote of a simple majority of the members present and voting shall be necessary and sufficient for any action taken by the DSP. No vacancy in the membership of the DSP shall impair the right of a quorum to exercise all the rights and duties of the DSP. In the absence of a quorum, the Chairperson may recess a meeting to some other time or until a quorum is obtained.
 - F. Subject to the discretion of the Executive Director, each member appointed pursuant to subsections 2(A)(2) through 2(A)(9) shall serve for a two-year term provided that every member that is appointed by the Executive Director shall continue to serve until a successor has been appointed to the DSP by the Executive Director. Members representing the Eligible Applicant who are appointed pursuant to subsection 2(A)(10) shall serve only while the DSP

conducts business directly related to the selection of a designer for the project being proposed by that particular Eligible Applicant.

- G. The MSBA shall give written notice of the names of the appointed members of the DSP to the Commonwealth's Designer Selection Board.
- H. No member of the DSP shall participate in the selection of a designer as a finalist for any project if the member's participation would constitute a conflict of interest or an appearance of conflict in violation of M.G.L. Chapter 268A.

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 is 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 qualifications 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 that may be required by law or deemed appropriate by the MSBA.
- B. The individual designated by the Eligible Applicant to be in charge of procurement for a project who holds the Massachusetts Certified Public Purchasing Official Program certification shall certify that the public notice and all other documents issued pursuant to the selection of a designer, including, but not limited to, program descriptions and request for services, have been prepared and issued in conformance with these procedures and Massachusetts General Laws, Chapter 7C, Sections 44 through 58.

Section 4: Master File Brochure and Application

- 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 7C, Section 44 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. Each designer shall update its Master File Brochure on an annual basis and shall make current the lists of projects required under Section 4(A)(4)-(6) 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.

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. Minimum qualifications shall include:
1. Must be a qualified Designer within the meaning of M.G.L. Chapter 7C, Section 44 employing a Massachusetts registered architect or engineer responsible for and being in control of the services to be provided.
 2. The Massachusetts registered architect or engineer responsible for and being in control of the services to be provided for the Designer must have successfully completed the Massachusetts Certified Public Purchasing Official Program seminar "Certification for

School Project Designers and Owner’s Project Managers,” as administered by the Office of the Inspector General of the Commonwealth of Massachusetts, and must maintain certification by completing the “Recertification for School Project Designers and Owner’s Project Managers” seminar every three years thereafter. Proof of recertification or registration in the next recertification seminar for which space is available must be provided.

3. Pursuant to M.G.L. Chapter 7C, Section 6, the Designer must agree to contract with minority and women-owned businesses as certified by the Supplier Diversity Office (SDO). The amount of participation that shall be reserved for such enterprises shall not be less than seventeen and nine tenths percent (17.9%) of the contract price for combined minority business enterprises (MBE) and women-owned business enterprises (WBE). Applicants must include a reasonable representation of both MBE and WBE firms that meets or exceeds the combined goal.

B. Other 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 qualifications of the personnel to be assigned to the project.
7. 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.
8. Any other criteria that may be required by law or that the DSP considers relevant to the project.

Section 6: Selection Process

- A. Cities, towns, regional school districts, and independent agricultural and technical schools subject to these procedures shall not rank or pre-rank applicants. Rankings shall occur only by vote of the DSP in accordance with these procedures and shall occur only after interviews, if allowed by vote of the DSP, have been concluded by the DSP.
- B. In the event that, upon reaching the deadline for submission of applications, three or fewer designer applications are received for a project, the Eligible Applicant may choose to modify the project description, estimated construction cost, program, desired designer qualifications, fee information, or other project information as necessary to attract interested designer applicants and begin the selection process again, starting with re-advertisement pursuant to Section 3: Public Notice. Should the Eligible Applicant choose to proceed with three or fewer designer applications and not re-advertise, the following procedure shall be followed:
1. The Eligible Applicant designee shall submit a statement that explains why the Eligible Applicant may have received three or less applications for the proposed project, The explanation should include but not necessarily be limited to:
 - a. A description of the public advertisement including the names of the publications in which the advertisement was placed and the date(s) in which the advertisement was published.
 - b. A description of the pre-proposal conference, if any, including the date, time, and location of the conference and names of attendees and the firms they represent.
 2. The Eligible Applicant designee and/or the OPM shall contact those design firms that attended the pre-proposal conference/walkthrough but did not submit an application and summarize why an application was not submitted for the proposed project.
 3. Legal counsel for the Eligible Applicant (i.e. town counsel or city solicitor) and the individual designated by the Eligible Applicant to be in charge of procurement for a project who holds the Massachusetts Certified Public Purchasing Official Program certification shall certify as to the adequacy and completeness of the procurement activity undertaken by the Eligible Applicant.
 4. At the discretion of the chairperson and with the concurrence of the three DSP members representing the Eligible Applicant, the DSP may forego the initial application review and invite all the designer applicants to appear for an interview before the DSP.
- C. The DSP may require any number of applicants 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.
- D. The DSP shall use the following procedures to rank three (3) finalists in order of qualifications from among the applicants for a particular project:

1. Prior to a DSP meeting at which the selection of finalists will be made or discussed, each member of the DSP shall be given a copy of each designer's application for his or her review.
2. At the DSP meeting, the DSP shall consider each application alphabetically or by some other method that may be determined by the chairperson from time to time.
3. When recognized by the chairperson, members of the DSP may comment or ask questions related to the selection process or the applications before the DSP.
4. Any potentially disqualifying deficiencies in an application should be noted in the record of the meeting.
5. After each member of the DSP has been given an opportunity to comment or ask questions, at the direction of the chairperson, each member of the DSP who is present shall utilize a ballot form provided by the MSBA to assign points to his or her top three (3) choices in order of qualifications so that each number one choice shall receive three (3) points, each number two choice shall receive two (2) points, and each number three choice shall receive one (1) point. The completed ballot forms shall be signed by each member and submitted to the DSP Administrator who shall tally the total points awarded to each applicant. The chairperson shall then read aloud the total points awarded to each of the applicants.
6. Once the point totals have been read aloud by the chairperson, the DSP may request interviews of the applicants with the highest point totals by the following procedure: Upon motion of one of the members, duly seconded by one of the other members, the DSP may vote to interview the applicants with the highest point totals.
7. If the DSP does not vote to conduct interviews, the DSP shall then vote to rank three (3) finalists in order of qualifications. If the DSP votes to conduct interviews, the DSP shall defer the ranking of the three (3) finalists until after the interviews have been concluded.
8. If the DSP votes to conduct interviews, the chairperson shall schedule the time and place of the interviews and written notice shall be given to the firms to be interviewed. Interviews shall be conducted in open session except that the chairperson may order competing firms, their agents and employees, to leave the meeting room during the interviews of their competitors. The MSBA may, within its discretion, develop standard questions to be answered or topics to be discussed by the applicants in the interview. Once the interviews have been concluded, at the direction of the chairperson, the DSP shall award points to the each of the firms in accordance with the procedures set forth in subsection 6(C)(5). Once the point totals have been read aloud by the chairperson, the DSP shall then vote to rank three (3) finalists in order of qualifications
9. In the event of a tie for the first, second or third highest point totals awarded to applicants by the DSP under Section 6(C)(5) or 6(C)(8), the chairperson shall determine, in his or her complete discretion, the procedure by which the tie shall be broken. The chairperson shall then read aloud the total points awarded to each of the applicants. Once the point totals have been read aloud by the chairperson, the DSP shall then vote to rank three (3) finalists in order of qualifications.

Once the DSP has voted to rank the top three (3) firms in order of qualifications, the MSBA shall transmit a list of the three (3) finalists ranked in order of qualifications to the Eligible Applicant along with a record of the final vote of the DSP on the selection and a written statement explaining the DSP's reasons for its ranking of the finalists.

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 MSBA to the Eligible Applicant in the order of qualifications as determined by the DSP. If the Eligible Applicant proposes to select any designer other than the one ranked first by the DSP, it shall file a written justification for the proposed appointment with the DSP and shall not proceed until it has obtained written approval to proceed from the Executive Director.
- C. When the fee for designer services is to be negotiated, the Eligible Applicant shall review the list transmitted by the MSBA in the order of qualifications as determined by the DSP and may exclude any designer from the list if a written statement of reasons for the exclusion is filed with the DSP. The Eligible Applicant shall then appoint a designer based upon a successful fee negotiation. 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. 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 in accordance with a procedure to be determined by the chairperson of the DSP that is not inconsistent with the procedures set forth in Section 6(B) above. The Eligible Applicant may require a finalist with whom a fee is being negotiated to submit a fee proposal and 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 that were not contemplated in the original public notice 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;
 - 3. MSBA staff has made a written determination that the request for continued or extended services is otherwise in compliance with the MSBA's regulations, policies, procedures, and guidelines and the provisions of the feasibility study agreement, project scope and budget agreement, and/or project funding agreement, as applicable;

4. 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 7C, Section 53, which has been declared an “emergency” by the Executive Director, 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 annual report.

Section 10: Annual Report

- A. The DSP shall submit an annual report to the Commonwealth’s Designer Selection Board 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 7C, Section 45 through 53, inclusive, and Section 55.