

Town of Wellfleet Designer Selection Procedures (Adopted: November 13, 2001)

1. These procedures govern the selection of designers for any building project in the Town of Wellfleet subject to the state designer selection law, G.L. c. 7, § 38A1/2-O. Additionally, these procedures will be used in the selection of design and engineering services for public works projects subject to G.L. c. 30, §39B. For the purposes of this policy the use of "designer" also applies to engineers and engineering services.

2. The Board of Selectmen hereinafter referred to as the "approving body" has the authority to conduct the designer selection process for the Town of Wellfleet. The approving body may delegate any duties described herein to the extent that such delegation is permissible by law.

3. The approving body may designate the individual or group of individuals hereinafter referred to as the "Committee". Committee's for Building projects subject to G.L. c. 149 shall consist of the Building Needs and Assessment Committee and two ex officio members from the department subject to the proposed building project. Committee's for Public Works Projects subject to G.L. c. 30, §39B shall consist of the DPW Director, and Assistant DPW Director. The Procurement Officer will oversee all Designer Selection to ensure conformity with this policy and state statute.

No member of the committee will 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 will be advertised in a newspaper of general circulation in the locality of the building project, 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 will contain the following information:

- a. a description of the project, including the specific designer services sought, the estimated construction cost, and the time period within which the project is to be completed;

- 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 will include the Application to Designer Selection Committee Form, (Appendix a). The Application Form may be amended to include additional information on a project-specific basis.
7. The committee will 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;
 - e. Any other criteria that the committee considers appropriate for the project.
8. The committee will 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.
9. The committee will rank the finalists in order of qualification and transmit the list of ranked finalists to the approving body. No person or firm, including the applicants' consultants, debarred pursuant to G.L. c. 149, §44C will 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, will be public records and will be maintained in the contract file.

10. If the fee was set prior to the selection process, the committee will select a designer from the list of finalists. If the committee selects a designer other than the one ranked first, the committee will submit a written justification for the selection to the approving body and maintain a copy in the contract file. The approving body has final approval authority.

11. If the fee is to be negotiated, the committee will review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the approving body and maintained in the contract file. The Chief Procurement Officer will request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Chief Procurement Officer is unable to negotiate a satisfactory fee with the first ranked designer, negotiations will be terminated and undertaken with the remaining designers, one at a time, in 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 Chief Procurement Officer is unable to negotiate a satisfactory fee with any of the finalists, the Chief Procurement Officer will recommend that the committee select additional finalists, so long as they meet the minimum qualifications.

13. The approving body may allow a designer who conducted a feasibility study to continue with the project design, provided that an independent review by a knowledgeable and competent individual or firm doing such work finds the feasibility designers' work to be reasonable and adequate. The approving body must first advertise for the feasibility study. The approving body may include a statement in the advertisement and/or RFQ that the feasibility study designer is eligible to compete for the subsequent design services contract. Once the study is complete, the approving body must publish a second advertisement for the project design. If the feasibility designer is selected, the approving body must commission the independent review prior to allowing the designer to proceed with the work.

14. Every contract for design services will 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 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 G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by G.L. c. 30§39R(d).
- e. all fees will 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 town will not enter into a contract for design services unless the town 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 will at a minimum equal the lesser of one million dollars or 10 percent of the project's estimated cost of construction, or such larger amounts as the town may require, for the applicable portion of limitations. A designer required by the town to obtain all or a portion of such insurance coverage at its own expense will furnish a certificate or certificates of insurance coverage to the town prior to the award of the contract.

16. Every contract for design services will include a provision that the designer or its consultants will 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 will 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. 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 will rank the finalists in order of qualification and select the designer for the emergency work.

18. The town will publish the name of the designer awarded a contract in the Central Register.

19. The following records will be retained by the town and available for inspection by the state

Designer Selection Board and other authorized agencies:

- 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.

20. The town will evaluate the designers' performance on contracts in accordance with G.L. c. 7 §38E(g), (Appendix b).