

# Designer selection law Commonwealth of Massachusetts

## When \$

- For local governments, the designer selection law applies to any contract for design services for any building construction, reconstruction, alteration, remodeling, or repair project that has an estimated construction cost of more than \$100,000. (or if the design fee is estimated to cost \$10,000 or more.)

## What?

- Design services subject to the designer selection law include master plans, feasibility and other studies, surveys, soil tests, cost estimates or programs; preparation of drawings, plans, and specifications, including schematic and preliminary designs; supervision or administration of a construction contract; and construction management and scheduling.

## Who?

- Design services generally require the participation of registered architects, landscape architects, or engineers. In such cases, if the designer is an individual, he or she must be registered in the appropriate discipline.

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## The basic steps of the municipal designer selection process are as follows:

1. Adopt written procedures.
2. Develop the RFQ and contract for design services.
3. Advertise the contract.
4. Evaluate applicants and select at least three finalists.
5. Rank the finalists.  
If a board or committee has been set up to evaluate applications, it is subject to the state's open meeting law.  
Local awarding authorities are required to prepare a written explanation of the reasons for selecting the designer that was awarded the contract.
6. Finalize the contract.
7. Award and publicize the contract.

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### Step 1: Adopt written procedures.

Municipalities must adopt written procedures for selecting designers on projects subject to the designer selection law.

### Step 2: Develop the RFQ and contract for design services.

**Define the project scope.** The first step in selecting a designer is to decide what you want the designer to do. Do you simply want the designer to advise you on the repairs your 1910 fire station needs, or do you also want the designer to study the feasibility of renovating it to house administrative offices? Such decisions need to be made before you advertise for design services. The written scope of services you include in the request for qualifications (RFQ) must conform substantially to the contract that you will ultimately sign

**Draft the evaluation criteria.** The RFQ should state all the criteria that will be used to evaluate designers submitting applications for the project. We recommend that you use the following criteria to evaluate applicants for building design contracts:

**Experience** Ensure that the firm and the specific individuals proposed for the job have sufficient and appropriate experience on projects similar to the proposed project.

**Quality of work** Contact the owners of other projects on which the firm has worked and ask them to evaluate the firm's performance as a designer, construction manager, or both. You may use your own jurisdiction as a reference, provided that you have a reasonable basis for evaluating the applicant's past performance.

**Public sector** If the scope of work includes preparation of plans and

**knowledge** specifications and assistance during the bidding and construction stages, ensure that the firm is familiar with Massachusetts public construction laws and procedures.

**Professional** Ensure that the firm has the professional licenses required for **registrations** this project.

**Subconsultants** Review and rate the qualifications of key sub-consultants who will be employed by the designer.

**Capacity** Ensure that the firm has the capacity to undertake your project in a timely manner, based on its size and the number and volume of current projects.

**Include the standard designer application form developed by the DSB..**

**Set the fee or not-to-exceed fee limit.**

**Develop the contract terms.** It is important to develop the design contract before you solicit applications from designers. By making the key decisions concerning the contract scope, terms and conditions, and design fee early in the process, you will increase the likelihood of attracting applicants with the requisite experience. If you do not already have a standard contract for design services, ask your local attorney to develop one. The contract used by DCAM is a good model for local awarding authorities. Model contracts issued by the American Institute of Architects (AIA) are commonly used, but we do not recommend their use for public projects. The AIA contracts are written to protect the designer's interests and contain insufficient protections for your jurisdiction. Moreover, they do not contain some statutorily required provisions for public contracts in Massachusetts.

### **Step 3: Advertise the contract.**

You must publish notices in a newspaper of general circulation in the area in which the project is or will be located and in the Central Register inviting applications from interested designers. The notice must be published at least two weeks before the deadline for receiving applications.