

MASSACHUSETTS CONVENTION CENTER AUTHORITY
Designer Selection Procedures¹

When the Authority is exempted, under G.L. c.7C, §46, from the jurisdiction of the Designer Selection Board, the following procedures shall apply to the award of all contracts for design services, as defined in G.L. c.7C, §44. These procedures do not apply to contracts for design services in connection with any building project whose estimated cost is less than \$300,000 or where the design fee under the contract is less than \$30,000.

Unless the context otherwise requires, "Authority" as used herein means the Massachusetts Convention Center Authority acting by and through its Members. Where the power or duty to act on behalf of the Authority is delegated to the Executive Director by statute, by law, or vote of the Members, the "Authority" as used herein shall mean the Executive Director.

The procedures are as follows:

1. Designer Selection Panel.
 - (a) The Authority's designer selection procedures shall be administered by a six (6) member designer selection panel.
 - (b) The Authority's designer selection panel shall consist of:
 - (1) an engineer registered in Massachusetts;
 - (2) two architects registered in Massachusetts;
 - (3) a person experienced in building construction;
 - (4) the executive director or the deputy director of the Authority, who shall chair the panel;
 - (5) a public member appointed after consultation with one or more citizen groups in the area in which the project is situated.
 - (c) The panel shall be appointed by vote of the Members of the Authority. The members of the panel appointed pursuant to clauses (1), (2), (3) or (5) of paragraph (b) shall not be employees of the Authority.

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- (d) Each appointed member of the panel shall serve for a term of two years, and will continue to serve until a successor is appointed. No member may serve more than two terms consecutively. In order to provide continuity, the terms shall be staggered, and to this end, two of the appointed members shall, for their initial term only, be appointed for a term of one year, and one of the appointed members shall, for his or her initial term only, be appointed for a term of three years.
- (e) The Designer Selection Board shall be notified of the names of the members appointed to the panel.
- (f) Upon the expiration of the term of a member appointed pursuant to clauses (1), (2), or (3) of paragraph (b), the Authority shall, in its consideration of candidates, solicit recommendations from one or more professional organizations representing, respectively, engineers, architects' or construction contractors, provided that the Authority need not solicit recommendations if the Authority votes to reappoint an incumbent for a second term.
- (g) Four (4) members of the Designer Selection Panel including at least one architect, an engineer, and the executive director or the deputy director of the Authority, must be present to have a quorum.

2. Request for Proposals.

- (a) A request for proposals (RFP) for each contract for design services will be advertised in a newspaper of general circulation in the area in which the project is situated, and in the Central Register at least two weeks before the deadline for filing applications and in compliance with G. L. c. 4 § 13. The RFP will provide the following information:
 - (1) a description of the project, the specific design services sought, the estimated construction cost and time allotted for completion;
 - (2) when and where the program prepared for the project will be available for inspection, or a statement that there is no program beyond the information in (1) above;
 - (3) the qualifications required of applicants;
 - (4) the categories of designers' subconsultants, if any, for which applicants must list subconsultants they intend to use;

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- (5) whether the fee has been set or will be negotiated, and if the fee has been set, the amount of the fee as a total dollar amount;
 - (6) the deadline for submission of proposals;
 - (7) the person and address to which proposals should be sent; and
 - (8) such other information as the panel deems pertinent.
- (b) If the fee is to be negotiated, the panel will establish a not-to-exceed amount prior to negotiations, but need not publish such amount in the RFP.

3. Applications.

- (a) No application may be accepted by the Authority from any designer, programmer or construction manager for any project subject to these procedures unless the applicant has first registered and provided a disclosure with the Designer Selection Board through the AUTOCENE Enterprise Automation Platform that can be accessed at <https://www.mass.gov/service-details/new-online-registration-process> or filed (or files concurrently with the application) a written statement containing the following information:
- (1) certification that the applicant legal entity, if applying to perform design services other than preparation of studies, surveys, soil testing, cost estimates or programs, is a designer or construction manager as defined in G.L. c.7C, §44(b);
 - (2) the names and addresses of all partners if the applicant is a partnership, or of all officers, directors and all persons with an ownership interest of more than five percent (5%) if the applicant is 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 (5) year period immediately preceding the filing of the information required by this section;

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- (5) a list of all current projects for which the applicant is performing or is under contract to perform any design service; 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 panel shall keep a permanent record of the statements filed. In the event that an applicant has filed and seeks to rely on an earlier statement, the panel shall require that the information required under (5) and (6), above, must be current with each application.
 - (c) An applicant to perform design, programming or construction management services must file a written application as prescribed by the panel relating to the applicant's experience, ability and qualifications as submitted through the AUTOCENE Enterprise Automation Platform or written application provided by the Designer Selection Board.
 - (d) Every application or statement filed pursuant to this section shall be sworn to under penalties of perjury. Anyone who has been determined to have filed materially false information under this section shall be disqualified by the panel, and the information upon which such finding is based shall be provided to the Designer Selection Board.

4. Selection Criteria.

- (a) The panel shall select finalists for recommendation to the Authority based on the following criteria:
 - (1) prior similar experience;
 - (2) past performance on public and private projects;
 - (3) financial stability;
 - (4) qualifications of the subconsultants who will work with the applicant on the contract; and
 - (5) any other criteria that the panel deems relevant.
- (b) To facilitate application of the selection criteria, the panel may require applicants to (1) present a written proposal, (2) appear for an interview

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before the panel, or (3) participate in a design competition held by the panel.

5. Selection of Finalists.

- (a) The panel shall select at least three finalists and submit their names to the Authority. The finalists shall be ranked in order of qualification, as determined by the panel, and such report shall include the final vote of the panel establishing the ranking and by a written statement setting forth the panel's reasons for the selection and ranking of the finalists.
- (b) No person or firm suspended or debarred pursuant to G.L. c.29, §29F, or c.149, §44C, or disqualified pursuant to c.7C, §47, shall be included as a finalist. An applicant shall not be selected as a finalist if the applicant lists on its application a subconsultant which is suspended or debarred pursuant to G.L. c.29, §29F, or c.149, §44C, or disqualified pursuant to c.7C, §47, provided that the applicant may, with the written approval of the panel, substitute an eligible subconsultant and may then be included as a finalist.
- (c) No finalists may be chosen without at least two (2) votes from the Authority's Designer Selection Panel.

6. Award of the Contract.

- (a) The Authority shall select from the list of finalists the designer to whom the contract for design services shall be awarded, subject to the following conditions:
 - (1) If the fee has been specified in the RFP, the contract shall be awarded to one of the finalists and, if a finalist other than the first-ranked finalist is selected, the Authority shall file with the panel a written statement of the basis for its selection.
 - (2) If the fee is to be negotiated, the Authority may exclude any finalist from the list with a written explanation of the exclusion. The Authority shall then award the contract after negotiation of a satisfactory fee, such negotiation to be carried out by the executive director, who shall negotiate with the first-ranked finalist, and with other finalists in the order of rank only if a satisfactory fee cannot be negotiated with a higher-ranked finalist. In no event may a fee be negotiated which is higher than a maximum fee set by the panel prior to selection of finalists.

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- (b) If the Finalist's fee is negotiated, the designer or construction manager must file a truth-in-negotiations certificate prior to being awarded the contract by the Authority, which certificate must be incorporated into the contract. The certificate must contain:
 - (1) a statement that the wage rates and other costs used to support the designer's compensation are accurate, complete, and current at the time of contracting; and
 - (2) an agreement that the original contract price and any additions to the contract may be adjusted within one (1) year of completion of the contract to exclude any significant amounts if the Authority determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.
- (c) The panel may specify other special conditions or requirements in selecting a particular applicant as a finalist. If any change is made by the applicant after appointment relating to such special conditions or requirements, the change must be approved by the Authority and reported to the panel along with a written statement by the appointee of the reasons for the change.
- (d) When the panel has required that applicants list their proposed subconsultants and has relied upon the qualifications of the proposed subconsultants in the selection of any finalists, any changes in, or addition to, subconsultants named in a finalist's application must be approved by the Authority and reported to the panel with a written statement by the designer or construction manager of the reasons for the change.
- (e) A designer or programmer selected to do a feasibility study, master plan, or program for a project shall be ineligible for appointment to perform the design services for that project, unless the study, master plan, or program is limited to the repair, renovation, or the identification and correction of deficiencies in an already existing building or its equipment, and the fee for the combined study and design of repairs is less than one hundred thousand dollars.

7. Contract Terms.

- (a) Every contract awarded for design services shall include the following provisions:

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- (1) Certification that the designer or construction manager has not given, offered, or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services.
- (2) 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.
- (3) 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 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.
- (4) Certification with respect to contracts which exceed thirty thousand dollars (\$30,000) and which are for the design of a building for which the budgeted or estimated construction costs exceed three hundred thousand dollars (\$300,000), that the designer has internal accounting controls as required by G.L. c.30, §39R(c), and that the designer will, in compliance with paragraphs (b), (c), and (d) of said §39R:
 - (i) maintain accurate and detailed accounts for a six (6) year period after the final payment;
 - (ii) file a statement of management concerning internal auditing controls;
 - (iii) file an annual audited financial statement; and
 - (iv) submit a statement from an independent certified public accountant that such CPA has examined management's internal accounting controls and expressing an opinion as to their consistency with management's statements in (ii) above and whether such statements are reasonable with

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respect to transactions and assets that are substantial in relation to the designer's financial statements.

(5) A requirement that the designer at his or her own expense obtain and maintain a professional liability insurance policy 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 such contract for design services. The Authority may require a consultant employed by a designer subject to this subparagraph to obtain and maintain a similar liability insurance policy. The total amount of such insurance shall at a minimum equal the lesser of one million dollars (\$1,000,000) or ten percent (10%) of the project's estimated cost of construction, or such larger amounts as the Authority may require, and shall cover the applicable period of limitations. A designer required by the Authority to obtain all or a portion of such insurance coverage at his own expense shall furnish a certificate or certificates of insurance coverage to the Authority prior to the award of the contract.

(6) A provision that the designer or his consultant 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 bid documents, as reasonably determined by the executive director.

(b) The design contract shall state the fee as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in the scope of services.

(c) The contract shall identify the subconsultants. The contract shall provide that any change in the named subconsultants is subject to prior approval by the Authority based on the recommendation of the panel and a written statement by the Finalist of the reasons for the change.

8. Records.

(a) The following records will be kept by the Authority in connection with the selection of applicants to perform design services:

(1) all information supplied by or obtained about each applicant;

(2) all actions taken by the panel relating to any contract;

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(3) all actions taken by the Authority relating to any contract.

(b) Records required to be kept under (a), above, shall be available for inspection by the Designer Selection Board or the Division of Capital Asset Management and Maintenance. The executive director shall file with the Designer Selection Board the semi-annual report required by G.L. c.7C, §46(d)(iii).

9. Conflict of Interest.

No member of the panel shall participate in the selection of a designer as a finalist for any design contract if the member or any member of his or her immediate family:

- (1) has a direct or indirect financial interest in the award of the design contract to any applicant;
- (2) is currently employed by, or is a consultant to or under contract to, an applicant;
- (3) is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
- (4) has an ownership interest in, or is an officer or director of, any applicant.

10. Continued or Extended Services.

The Authority may appoint a designer to perform continued or extended services if the following conditions are met:

- (i) a written statement is filed with the panel explaining the reasons for the continuation or extension of services;
- (ii) the program for the design services is filed with the panel if one has been required by the Authority or applicable law or regulation; and
- (iii) the panel approves the appointment of the designer for continued or extended services and states the reason therefor.

11. Emergency Situations.

- (a) Whenever the health or safety of any persons will be endangered because of the time required for the selection of a Finalist by the procedures prescribed by Section 1 to 10, or whenever a deadline for action is set on a project by any court or federal agency which cannot be met if those selection procedures are followed, the executive director may declare that an emergency situation exists.
- (b) If the executive director declares that an emergency situation exists, finalist selection may be made by the Authority by expedited procedures as provided herein.
- (c) The executive director will provide members of the panel in writing a statement of the reasons for declaring an emergency, the proposed scope of work, the estimated cost of construction, the lump sum fee for design services, and any other relevant information. The executive director shall compile and distribute to members of the panel information on not fewer than six (6) semifinalists who have previously applied to the Authority for work of this nature, or who have provided a disclosure with the Designer Selection Board through the AUTOCENE Enterprise Platform.
- (d) The panel shall, by meeting or telephone conference call, determine whether to make an emergency selection and, if the panel so determines, select and rank three finalists.
- (e) The Authority shall award the contract to one (1) of the finalists, and, if a finalist other than the first-ranked finalist is awarded the contract, shall file with the panel a written explanation.

12. Participation of Minority and Women Owned Businesses

- (a) In connection with any project where application of these procedures is required by law (including the project defined in Section 2 of chapter 152, St. 1997), and any other project or portion thereof when the Authority so determines, selections and contracts shall be consistent with the requirements of Executive Order 565.
- (b) With respect to any project or portion thereof to which paragraph (a) applies, the RFP and/or the contract, as appropriate, shall specify (i) the applicable M/WBE participation goals established by the Secretary of Administration and Finance; (ii) the procedures established by the Secretary by which the goals for an individual contract may be adjusted

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based on actual availability, geographic location, the contractual scope of the work, or other relevant factors; (iii) the good faith efforts waiver procedure established by the Secretary for determining, at any time prior to the award of the contract, that compliance with the goals is not feasible and by which the goals may be reduced or waived for that contract; and (iv) the guidelines and procedures established by the Secretary for contracting with joint ventures and partnerships involving M/WBEs.

- (c) For purposes of these procedures, an MBE or WBE shall mean a business certified as such by the Commonwealth of Massachusetts' Supplier Diversity Office or another agency of the Commonwealth of Massachusetts.