

Your Options for Procuring Designer Services - An Overview of Municipal Options

MMA Workshop - January 21, 2012

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[Some slides courtesy of the Massachusetts Association of Public Purchasing Officials and resource information used from the Office of the Inspector General's Design & Construction Manual.]

INTRODUCTION



Chapter 30B – Design-related public contracts are subject to c.30B procurement



Chapter 149 – DSL applies to design services for public building construction, reconstruction, alteration, remodeling or repair projects estimated to cost over \$100,000.



Chapter 30, 39m – Best practices applies for procuring design services in connection with public works (or non-building) contracts



Chapter 7 – The Designer Selection Law for public building projects

Design-Related Contracts

- Contracts for architectural, engineering, or other professional services that do not related to a public construction project are subject to the competitive requirements of M.G.L. c.30B.
- For example, selecting an engineering firm to conduct traffic counts at major intersections if the traffic counts are not being conducted in connection with a public road construction or repair contract.
- A contract with an engineering firm to operate and maintain a public facility such as a wastewater or water treatment plant.

Designer Selection Law & Applicability

- M.G.L. c.7, §§38A1/2-0 contains procedures for selecting designers for public building projects through an advertised, competitive, qualifications-based selection (or QBS) process.
- Cities and towns are required to adopt their own procedures for selection of designers for public building projects which conform to the purposes and intent of the designer selection process outlined in M.G.L. c.7.
- ECC \$100,000 or less or Estimated Design Fee less than \$10,000. – Recommend soliciting qualifications and prices from at least 3 designers.
- ECC more than \$100,000 & Estimated Design Fee \$10,000 or more (both ECC and design fee thresholds must be met before the designer selection procedure is required.) – Use qualifications-based selection process.

Non-Building or Public Works Contracts

For non-building or public works contracts, the selection of designers is not subject to the designer selection law.

Contracts for the design of a building that is appurtenant to a sewer, water or highway system and is required as an integral part of that system, are exempt from the designer selection law. [MGL c.7, §39A(g1/2)]



Non Building or Public Works Design

- DSL does not apply to contracts for the design of non-building, or public works projects such as highway and sewer projects.
- Municipalities have discretion to decide how to select designers for public works projects.
- Although not legally required to solicit competition for public works design contracts, municipalities should follow best practices and solicit competition for construction projects estimated to cost more than \$100,000.

Design Services

- Define the project scope to be included in the request for qualifications.
- RFQ should state all the criteria that will be used to evaluate qualifications of designer's submitting applications for the project.
- Set the fee or not-to-exceed fee limit based on project budget appropriation.
- Municipalities should use a standard contract for design services approved by your local counsel. American Institute of Architects (AIA) contracts are not recommended for public projects.

What are “qualifications evaluated on?”

- Experience – sufficient and appropriate experience on projects similar to the proposed project.
- Quality of Work – Contact owners of other projects on which the firm has worked. You may use your own jurisdiction as a reference, provided that you have a reasonable basis for evaluation the designer’s past performance.
- Public Sector Knowledge – familiar with MA public construction laws and procedures.
- Professional Registrations – has professional licenses required for the project.



What are “qualifications evaluated on?”

- Subconsultants –review and rate the qualifications of key sub-consultants who will be employed by the designer.
- Capacity – has the capacity to undertake your project in a timely manner, based on its size and the number and volume of current projects.
- Municipalities should consider Designers who have participated in the Office of the Inspector General’s Procurement Trainings for Design and Construction or other related training specific to public construction or public works projects.



Emergency Designer Services

- The law permits expedited designer selection in case of emergency. [M.G.L. c. 7, §38J]
- An emergency is defined as a situation where expedited action is necessary to protect the health or safety of people or to meet deadlines imposed by a court of law or a federal agency.
- Specify emergency designer selection procedures to be used, and provide for such competition as is reasonably possible under the emergency circumstances.

