

Town of Dartmouth
Department of Public Works

**Request for Qualifications (RFQ's) for
Engineering Services Related to Development of a Wind Turbine Project**

1.0 INTRODUCTION

1.01 Town of Dartmouth Massachusetts.

The Town of Dartmouth (herein called the Town or Dartmouth) is an incorporated town of the Commonwealth of Massachusetts, established in 1664. It is located in Southeastern Massachusetts in Bristol County, bordered by Fall River and Freetown to the north, New Bedford to the east, Westport to the west, and the Atlantic Ocean to the south. Dartmouth is the fifth largest town in the Commonwealth, covering a total area of 63.95 square miles, with a land area of 61.82 square miles. The population is approximately 33,000, with a density of 443 persons per square mile. Dartmouth is financially sound and enjoys an excellent rating by Standard & Poor's .

1.02 Background

The Dartmouth Select Board established the Alternative Energy Committee (herein called the Committee) in January 2004 with the express intent of exploring the development of alternative energy sources. One of the tasks of the Committee was to explore the possibility of installing wind turbines to offset the cost of electricity for the Town. The Committee coordinated the collection wind data, a MET Tower was in place from March 26, 2005 – July 31, 2006, and a SODAR was in place from November 14, 2007 – January 24, 2008, and March 14 – May 30, 2008. Based on the data collected, it was determined that winds at an 80 meter hub and greater are sufficient to support a commercial-size wind turbine project. The Committee subsequently identified 240 acres of contiguous land owned by the Town off Chase Road. The primary parcel of approximately 120 acres is the site of the Dartmouth Water Divisions' Chase Road Well Site and Water Treatment Facility.

In June of 2008, Dartmouth Town Meeting adopted a Commercial Wind Turbine Bylaw to permit the installation and operation of commercial size wind turbines. Town Meeting also authorized and funded a Feasibility Study in October 2008. In August of 2009, the application for Clean Renewable Energy Bonds (CREB's) was filed, the application was approved by the IRS in October 2009. The Final Feasibility Report was completed in November 2009. The Dartmouth Select Board issued a Special Permit for the project in January 2010. Also in January 2010, Dartmouth Town Meeting appropriated funds for the engineering, design and construction of the wind turbine project.

In addition to the aforementioned, the Town has already filed for various permits and approvals to expedite the schedule for the project implementation (refer to Exhibit B – Permits/Approvals).

The Town currently utilizes over 16 million kilowatt-hours per year on municipal, school and public works facilities. Dartmouth views the development of wind power as a natural extension of its environmental stewardship, and as a means of controlling costs associated with the operation of municipal government. The project will be funded by General Obligation Bonds and the sale of Clean Renewable Energy Bonds as approved by the IRS.

Please refer to the Town of Dartmouth's Web site www.town.dartmouth.ma.us to view all available related project documents under the Alternative Energy Committee heading.

1.03 General Information

This Request for Qualifications ("RFQ") is for engineering services related to permitting, project procurement and construction related services associated with the development of (2)two wind turbine facilities to be located in the Town of Dartmouth.

The Town has sited the proposed wind turbines (2) on land owned by the Town located at the site of the Dartmouth Water Divisions' Chase Road Well Site and Treatment Facility, 687 Chase Road in Dartmouth. The current plans are for installation two 1.65 MW turbines and appurtenant site work to be constructed on the site (see Exhibit A - Site Plans). Wind turbine feasibility studies have been prepared and are available on the Town of Dartmouth's web site, under the Alternative Energy Committee link. It is the responsibility of every bidder who receives this bid, to check for addenda or modification to this solicitation. The Town of Dartmouth accepts no liability to provide accommodation to bidders who submit a response based upon an out-of-date solicitation document.

It is the Town's intention to utilize the design build/procurement process for construction and installation of the wind turbines. Approval for this process will be required by the Inspector General's Office.

1.04 RFQ - Qualifications Submission

Each applicant's qualifications submittal must be received at Office of the Department of Public Works, 759 Russells Mills Road, Dartmouth, MA 02748 by 10:30 AM on June 30, 2010. Dartmouth requires each applicant's qualifications to be sealed and clearly marked "Engineering Services for Dartmouth DPW Wind Project". Incomplete submissions, or submissions received later than the time and date specified will be rejected and discarded. Submissions will not be available for public review until after the proposal is accepted and awarded by the Town.

Qualified firms who plan to submit must include:

- One original submission, unbound.
- Seven (7) hard copies of the submission, bound.
- One complete electronic copy in PDF format with supporting Excel files on CD.

Faxed or emailed submissions will not be accepted.

1.05 Pre-submission Conference, Questions and Inquiries

A pre-submission conference will be held at the Dartmouth Town Hall, 400 Slocum Road, Dartmouth, MA 02747 on June 15, 2010 at 10:00 a.m., applicants are strongly encouraged to attend.

Questions and inquiries concerning this RFQ must be submitted in writing or by electronic mail to the attention of:

David T. Hickox, P.E., Director of Public Works
Department of Public Works
759 Russells Mills Road
Dartmouth, MA 02748

dhickox@town.dartmouth.ma.us

Inquiries may be e-mailed and must be received before June 22, 2010. Telephone or other such inquiries will not be answered directly. Questions and written responses will be posted on the Town of Dartmouth Web site, under the Alternative Energy Committee link by 2:00 p.m. on June 25, 2010.

1.06 Review of Qualifications Submission

This RFQ will be issued, respondents evaluated, project awarded and administrated in accordance with applicable procurement laws, including the Designer Selection Law, G.L. c. 7, §§ 38A1/2-O, and in accordance with the Town's Designer Selection Procedures (see Exhibit D – Designer Selection Procedure). The Town's Designer Selection Procedures are modeled on the

Inspector General's Model Designer Selection Procedures, and in response to specific minimum qualifications and information requested under Section 3.00 Qualifications.

2.00 ENGINEERING SERVICES

2.01 Scope of Services

Professional engineering services to be secured under this RFQ, include, but are not limited to:

a. Coordinating with the Town's Project Manager, Executive Administrator, and the Alternative Energy Committee representative in providing complete project development support to procure a fully operational wind turbine project, including; (i) all necessary permits and approvals; (ii) providing equipment specifications; (iii) preparation of all necessary documents for the public procurement of a fully operational design/build wind energy project in accordance with all local, state and federal laws and requirements; and (iv) providing guidance / recommendations on the award on the design/build construction contract; (v) provide the necessary construction project management and resident engineering services necessary for a fully operational wind turbine facility.

b. Project engineering and construction support, including: (i) review and approval of engineering drawings and specifications associated with procurement of equipment and construction; (ii) monitoring project progress (all-phases); (iii) reviewing interconnection; (iv) facilitating all start up coordination and testing; (v) preparation of operation and maintenance specifications and maintenance contracts for the wind facility.

c. Assisting in preparing necessary documents in connection with the Town's Clean Renewable Energy Bonds (CREB's) funding requirements, including, without limitation, assistance with preparation of National Environmental Policy Act ("NEPA"), and or any other approvals deemed necessary to complete the project, or as may be required.

d. Advise the Town as to any other available funding options for Dartmouth's wind project, including those related to Rural Utilities Service Financing and tax equity. A more detailed description of services is set forth in Exhibit C to this RFQ.

2.02 The Engineering Services Contract

The primary terms of the contract that the successful applicant must enter into with Town are set forth in Exhibit G to this RFQ (the "Contract").

2.03 Fees for Services; Recovery of RFQ Costs

The final fee shall be established in the Contract and may be subject to negotiation if the applicant is designated as a project finalist. Reimbursement related to non-professional services (e.g., reproductions, travel, etc.) shall be set by agreement in the final Contract; rates and charges for such services that will be accepted by the Town will

be established in the final Contract.

Each applicant's proposed fee structure should be submitted in accordance with the phases of work outlined in Exhibit C – Description of Engineering Services.

The Town will pay no costs, fees or other expenses incurred by any applicant in preparing its response to this RFQ. These costs, expenses or other amounts may not be recouped under the Contract.

2.04 Minimum Qualifications

All applicants shall meet the following minimum qualifications: (i) applicants must have prepared at least two wind feasibility studies, wind technical studies or wind permitting studies for land based wind turbines in the northeast; and (ii) applicants must have the capability of staffing the project with Massachusetts licensed professional engineers for relevant disciplines.

3.00 QUALIFICATIONS

3.01 General Requirements

Each applicant's qualifications must be sealed and delivered in hard copy and electronic form in accordance with Section 1.04.

3.02 Specific Requirements

The qualifications submittal shall include the following information in the following order:

a. **Past Similar Experience/Past Performance on Public and Private Projects.** Applicant must provide a list of at least five public projects in Massachusetts used for reference and provide the following for each: (i) name of project and its date of construction, address of site, owner, name of contact person affiliated with the owner who is knowledgeable about the applicant's services and of the construction work, including a telephone number; and (ii) the process for procuring the project (private & municipal entities), the following cost figures for each project: final construction budget estimate, bid award price, final construction cost, gross number and dollar amount of change orders. Applicants must provide a complete listing of all wind turbine projects currently under contract to the applicant, and the applicant's responsibilities for each project.

b. **Financial Stability.** Applicants must demonstrate that they have a track record of financial stability and the means necessary to perform the Contract. Financial statements for the 2009 fiscal year shall be provided.

c. **Identity and Qualifications of the Applicant and its Consultants.**

Applicants must provide resumes detailing the qualifications of individuals designated for service under the proposed project. Massachusetts registration and licensing in all applicable disciplines is required.

d. Proposed Approach to the Wind Projects. Applicants must include a narrative description of its proposed approach to the wind projects, including work process, critical issues, and any special skills proposed to be used.

e. Proposed Schedule. Applicants must provide a proposed schedule for the phases of work outlined in Exhibit C, including estimates of hours required to complete the project tasks, broken down by each specific task as defined in Exhibit C.

f. Fee Proposal. Each applicant must include its fee proposal, broken down by task, contained in sealed envelope clearly labeled with the name of the applicant and "Fee Proposal." This is to be submitted in a separate sealed envelope and tendered at the same time as the submission is due.

g. Contact Persons. Each applicant must provide the name and business address of the principal officer responsible for submission of the RFQ and, if different, the name and principal officer responsible for administration of the Contract.

h. Other Information. Applicants may submit any other information they consider pertinent to this RFQ.

i. Certification of Good Faith and Certificate of Tax Compliance. In accordance with Massachusetts law, applicants must execute and submit the certificates set forth in Exhibit E.

j. Commonwealth of Massachusetts Standard Designer Application Form. Each applicant must submit the Commonwealth of Massachusetts Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction - Exhibit I.

4.00 EVALUATION OF EACH APPLICANT'S QUALIFICATIONS

4.01 General

The Town may interview applicants in advance of selection of finalists. Further interviews by the Town may follow the first interview prior to award of the Contract. During the evaluation and interview process, the Town reserves the right to request additional information or clarification from any applicant, or to allow corrections of errors or omissions. The Town reserves the right to reject any or all of the qualifications submitted by the applicants or to cancel this RFQ at any time.

4.02 Specific Criteria

Each applicant's qualifications will be evaluated in accordance with Town's Designer Selection Procedures - Exhibit D. In addition to the standard evaluation criteria set forth in the procedures (prior similar experience, past performance on public and private projects, financial stability, and identity and qualifications of the consultants who will work with the applicant on the project), the procedures permit the committee established by the Town to conduct the designer selection process to establish project specific criteria as part of the evaluation criteria. For this RFQ, the following will also be taken into account:

- a. proposed approach to the projects as evidenced by the quality and thoroughness of the response to the Town's detailed requirements.
- b. knowledge of Massachusetts permits and regulatory review for large-scale wind turbine projects.
- c. prior experience in working on publicly-financed renewable or non-renewable energy projects, including financing through the Massachusetts Renewable Energy Trust, CREB's, and General Obligation bonds.
- d. knowledge of and familiarity with municipal procurement and public bidding requirements in Massachusetts.
- e. availability of staff to complete the projects within the required deadlines.

5.0 SELECTION OF FINALISTS AND AWARD OF CONTRACT

Finalists will be selected in accordance with the Town's Designer Selection Procedures. The Town is scheduled to award the Contract on or before July 16, 2010.

The successful applicant will be required to sign a binding letter of intent to execute the Contract within 10 business days from award of the Contract or provide verification that it has received all necessary approvals to execute the Contract. Award of the Contract will be subject to approval of the Dartmouth Select Board.

EXHIBIT A

SITE PLANS

Refer to Town of Dartmouth website www.town.dartmouth.ma.us to view all available plans and related project documents.

EXHIBIT B

PERMITS , ENVIRONMENTAL COMPLIANCE, APPLICATIONS & MISC. DOCUMENTS

NSTAR Interconnection Application – Applied for in January 2010

Federal Aviation Administration (FAA) – application for Determination of No Hazard
Massachusetts Aeronautics Commission (MAC)

Glynn Electric Report – April 12, 2010

Refer to Town of Dartmouth website www.town.dartmouth.ma.us to view related project documents.

EXHIBIT C

DESCRIPTION OF ENGINEERING SERVICES

BASIC SERVICES

The services will generally consist of engineering services involved in the permitting, procurement, and construction management of the Town's proposed DPW Wind Project located on Chase Road, as well as acting as the Town's independent engineer for financing purposes.

Please note that the selected applicant will be responsible for developing a detailed work plan, including descriptions of all key tasks and deliverables, project schedule and fee breakdown. Notice-to-proceed will be contingent upon approval of a satisfactory work plan. The schedule may also reference the estimated number of hours of work in each phase, associated with the work to be performed by the principal employees assigned to the project, for billing purposes. Notice-to-proceed will be contingent upon approval of a satisfactory work plan.

PHASES OF WORK – Permitting

Assist the Town in all aspects of permitting for the wind project, including compliance with all environmental permitting, such as: (1) preparation of an Environmental Report under NEPA as part of the CREB's if so required; and (2) review under the Massachusetts Environmental Policy Act ("MEPA"), 300 C.M.R. 11.00 et seq., and (3) Submission of a Notice of Intent under the Wetland Protection Act.

Assist in the preparation of all Special Studies in advance of the NSTAR Interconnection Application. Tasks include, but are not limited to, participating in meetings with NSTAR on any Special Studies required as part of the Interconnection process, participating in NSTAR interconnection meetings as the Town's advocate, facilitating problem solving, and reviewing any/all interconnection studies required by NSTAR.

PHASES OF WORK – Procurement Assistance

Prepare a draft of the scope of services for the design/build contractor RFP for review and consideration by the Town, include discussion and response to the Town's review and comment on the draft design/build RFP. If requested, the applicant shall be available to respond to questions and requests for clarification received from potential bidders on the RFP, to participate in a pre-bid conference, and to prepare addenda to RFP as may be required.

Conduct reviews of bid submittals, make such investigations as may be necessary to gather information concerning certain contractors, and recommend an award of the Construction Contract, if requested by the Town.

PHASES OF WORK – Engineering and Construction Management

Following award of the design/build contractor, the applicant shall be responsible for project engineering and construction support, including, but not limited to, the following tasks:

- (1) Review and approve engineering drawing and specifications associated with procurement of equipment and construction. As needed, provide detail review and comments on all requests for change orders from the design/build contractor.
- (2) Monitor all phases of project progress, including periodic site inspections to ensure compliance with all bid documents.
- (3) Review interconnection documents prepared and submitted by the design/build contractor.
- (4) Punch list and project closeout: Assist the Town in the preparation of final project punch lists and facilitate their timely completion. Ensure commissioning and turnover is complete. Review all warranty documentation, as built documents and operations and maintenance manuals to ensure compliance with project specifications.
- (5) Ensure compliance with regulatory requirements for engineering services in connection with financing of the wind projects, including, to the extent applicable, for CREB financing.

EXHIBIT D

DESIGNER SELECTION PROCEDURES

**TOWN OF DARTMOUTH
Dartmouth Select Board
Designer Selection Procedures
Adopted May 24, 2010**

1. These procedures govern the selection of designers for any municipality or local public agency building project subject to the state designer selection law, M.G.L. c. 7, §§38A½-O. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. The Approving Body (Select Board) has the authority to conduct the designer selection process for the Awarding Authority (Director of Budget & Finance / Treasurer). The Approving Body may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Approving Body shall designate the individual or group of individuals (hereinafter referred to as "the Committee") who will conduct the designer selection process.

No member of the Committee shall 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 shall be advertised in a newspaper of general circulation in the locality of the building project, in 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 shall contain the following information:
 - a. 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;
 - 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 shall include the current "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction," which is available for download from the Massachusetts Designer Selection Board website at [Designer Selection Board \(DSB\) Procedures for Municipalities](#). The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
 - a. prior similar experience,
 - b. knowledge and understanding of the project;
 - c. past performance on public and private projects;
 - d. financial stability;
 - e. identity and qualifications of the consultants who will work with the applicants on the project; and
 - f. any other criteria that the Committee considers relevant to the project.
8. The Committee shall 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 shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Approving Body.³ No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, §44C shall 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, shall be public records and shall be maintained in the contract file.

10. If the fee was set prior to the selection process, the Approving Body shall select a designer from the list of finalists. If the Approving Body selects a designer other than the

one ranked first by the Committee, the Approving Body shall file a written justification for the selection with the Committee and maintain a copy in the contract file.

11. If the fee is to be negotiated, the Approving Body shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Approving Body shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Approving Body is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the 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 Approving Body is unable to negotiate a satisfactory fee with any of the finalists, the Approving Body shall recommend that the Committee select additional finalists.
13. The Approving Authority may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Approving Authority may commission, at its discretion, an independent review, by a knowledgeable and competent individual or business doing such work, of the feasibility of the designer's work to insure its reasonableness and its adequacy before allowing the designer to continue on the project, *provided* the Approving Authority otherwise complies with the statutory requirements for selecting a designer under Chapter 7 of the General Laws, including those set forth in M.G.L. c. 7, §38K(a)(1).
14. Every contract for design services shall 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 other 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 M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).

All fees shall 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 Awarding Authority shall not enter into a contract for design services unless the Awarding Authority 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 shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the Awarding Authority prior to the award of the contract.
16. Every contract for design services shall include a provision that the designer or its consultants 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 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 shall 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 shall rank the finalists in order of qualification and select the designer for the emergency work.

18. The Awarding Authority shall publish the name of any designer awarded a contract in the *Central Register*.
19. The following records shall be kept by the Awarding Authority:

- 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.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

20. The Awarding Authority shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7, §38E(g), and file completed evaluations with the Board and any other agency named in M.G.L. c. 7, Section 38E(g).
21. Nothing in these Procedures shall be interpreted to require the establishment of a board or waive or reduce the requirements of any other applicable law or regulation.
22. For any municipal design or construction project *that includes funding provided by the Commonwealth, in whole or in part* (such as reimbursements, grants and the like), cities and towns must incorporate minority-owned business enterprise and women-owned business enterprise participation goals. If applicable, the Awarding Authority shall take steps to assure that it complies with all State Office of Minority and Women Business Assistance requirements.

EXHIBIT E

CERTIFICATION OF GOOD FAITH

The undersigned certifies under penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

(Signature of individual proposal)

(Name of business)

EXHIBIT F

CERTIFICATE OF TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I,
_____, authorized signatory for
_____, do hereby certify under the pains and penalties of
perjury that said contractor has complied with all laws of the Commonwealth of
Massachusetts relating to taxes, reporting of employees and contractors, and withholding
and remitting child support.

APPLICANT/CONTRACTOR

By: _____ Date: _____, 20__

(Signature of Authorized Representative)

Title: _____

EXHIBIT G

KEY CONTRACT TERMS

DEVIATIONS FROM THESE CONTRACT TERMS WILL NOT BE PERMITTED.

1. All fees to be charged by the designer under the contract will be stated in the Contract as a total dollar amount. Equitable adjustments will be permitted in the event of changes in scope or services.
2. The Contract will provide that 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 Contract.
3. The Contract will require that the designer obtain 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 shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the Town may require, for the applicable period 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.
4. The Contract will include the following certifications:
 - 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;
 - 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 other 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 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; and

d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).

5. The Contract will provide that the town retains ultimate control over the scope of work, choice of subcontractors, equipment installed, design, and specifications.

6. The Town will require the applicant to commit to assignment of designated principals and key sub-consultants in its response to this solicitation. The applicant agrees that the assignment will not change, unless notification is given in advance to the Town prior to selection, and that the Town will have the right to agree to any substitution upon award of a contract of service or any time subsequent thereto.

7. All drawings, reports and materials prepared by the designer specifically in the performance of the Contract will become the exclusive property of the Town and will be delivered to the Town as needed or upon Contract termination.

8. The designer will be required to fully indemnify the Town for all third-party claims related to the designer's performance or failure to perform under the Contract. The Contract will not contain a clause limiting designer's liability under the Contract.

9. The Contract will permit the Town to terminate the Contract for convenience. The designer will be compensated for all satisfactory services rendered prior to the termination date.

10. The Contract will contain terms and provisions dealing with performance standards, record keeping requirements, audit rights and other contract terms that are customary in designer contracts.

11. The Contract will contain an alternative dispute resolution clause. The Contract will be governed by Massachusetts law and venue for any judicial actions relating to the Contract will be Barnstable County Superior Court.

EXHIBIT H

STANDARD DESIGNER APPLICATION FORM
FOR
MUNICIPALITIES AND PUBLIC AGENCIES NOT WITHIN DSB JURISDICTION

http://www.mass.gov/Eoaf/docs/dcam/dlforms/dsb/dsb_app_munic_2005.pdf