

**Town of Douglas**

# Memo



To: Board of Selectmen  
From: Building Facilities Construction Committee  
CC: Michael J. Guzinski, Town Administrator  
Date: 1/18/2011  
Re: Written Designer Selection Procedures.

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The Building Facilities Construction Committee (BFCC) met on January 5, 2011 and as part of that meeting held a discussion on adopting written Designer Selection Procedures in accordance with the requirements of the designer selection law, M.G.L. c. 7, §§38A½-O ("Designer Selection Law"). The Designer Selection Law requires municipalities and other local public agencies to adopt written designer selection procedures, which must be used when contracting for design services for any building construction, reconstruction, alteration, remodeling or repair project that has an estimated construction cost of more than \$100,000 and an estimated design fee of \$10,000 or more. Design services include the preparation of master plans, feasibility and other studies, surveys, soil tests, cost estimates and programs; preparation of drawings, plans, and specifications, including schematic drawings and preliminary plans and specifications; supervision or administration of a construction contract; and construction management and scheduling. [M.G.L. c. 7, §38A½]. These procedures must comply with the "purposes and intent" of the Designer Selection Law and must include certain required provisions. [M.G.L. c. 7, §38K(a)].

The BFCC prepared the attached written designer selection procedures for your consideration on adoption. These procedures are consistent with the Designer Selection Law requirements and are essentially the model procedures provided by the Massachusetts Inspector General Office. It is the BFCC's recommendation that the Board of Selectmen adopt these written procedures.

## Suzanne Kane

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**From:** Michael Guzinski [mguzinski@douglasma.org]  
**Sent:** Tuesday, January 18, 2011 10:55 AM  
**To:** 'Suzanne Kane'  
**Cc:** 'Bill Cundiff'  
**Subject:** FW: Designer Selection Procedures  
**Attachments:** writtendesignerselection.pdf; 110114-memo.doc

Hi Suzanne,

Could you please put this on the BOS agenda for February 1st?

Thanks.

Mike

*Michael J. Guzinski*  
Town Administrator  
Douglas Municipal Center  
29 Depot Street  
Douglas, MA 01516

508-476-4000 ext. 101  
[mguzinski@douglasma.org](mailto:mguzinski@douglasma.org)

-----Original Message-----

**From:** William Cundiff [<mailto:wcundiff@douglasma.org>]  
**Sent:** Friday, January 14, 2011 11:22 AM  
**To:** 'Suzanne Kane'  
**Cc:** 'Michael Guzinski'  
**Subject:** Designer Selection Procedures

Hi Mike & Suzanne:

The BFCC is recommending that the BOS adopt the attached procedures.

-Bill

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*William J. Cundiff, P.E.*  
*Town Engineer*  
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*Douglas, MA 01516*  
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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 Board of Selectmen has the authority to conduct the designer selection process for the Town of Douglas. The Board of Selectmen may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Board of Selectmen 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 Board of Selectmen, 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. 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; and
  - e. 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 Board of Selectmen.<sup>3</sup> 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 Board of Selectmen shall select a designer from the list of finalists. If the Board of Selectmen selects a designer other than the one ranked first by the Committee, the Board of Selectmen 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 Board of Selectmen 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 Board of Selectmen shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Board of Selectmen 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 Board of Selectmen prior to selection of finalists.
12. If the Board of Selectmen is unable to negotiate a satisfactory fee with any of the finalists, the Board of Selectmen 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 Town of Douglas shall not enter into a contract for design services unless the Town of Douglas 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 Town of Douglas may require, for the applicable period of limitations. A designer required by the Town of Douglas 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 Town of Douglas 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 Board of Selectmen may elect to authorize expedited procedures to address the emergency. The Board of Selectmen 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 Board of Selectmen 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 Board of Selectmen shall rank the finalists in order of qualification and select the designer for the emergency work.
18. The Town of Douglas shall publish the name of any designer awarded a contract in the *Central Register*.
19. The following records shall be kept by the Town of Douglas:

- 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 Town of Douglas 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 Town of Douglas shall take steps to assure that it complies with all State Office of Minority and Women Business Assistance requirements.

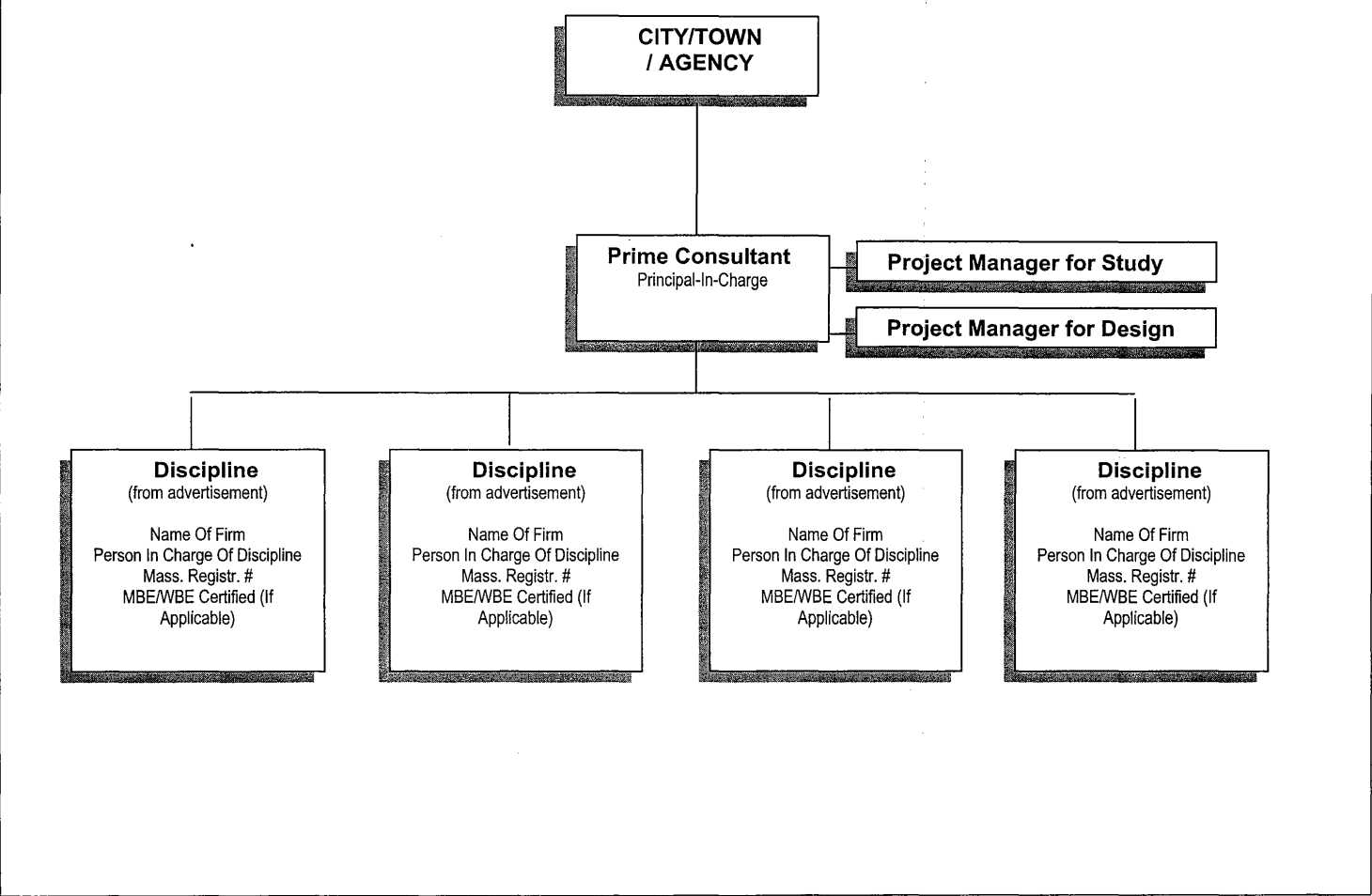
#### ENDNOTES

1. In December 2008, the Designer Selection Board revised its "Guidelines for City and Town Building Projects" to clarify that both thresholds must be met.
2. *LeClair v. Norwell*, 430 Mass. 328 (1999); *Cape Ann Citizens Assn. v. Gloucester*, 47 Mass. App. Ct. 17 (1999).
3. Alternatively, local procedures could require that the Committee select the designer and negotiate the fee, if necessary, and transmit its recommendation to the Board of Selectmen.

<b>Commonwealth of Massachusetts</b>  <b>Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction 2005</b> <b>(Updated May 2009)</b>	1. Project Name/Location For Which Firm Is Filing:	2. Project #					
		This space for use by Awarding Authority only.					
3a. Firm (Or Joint-Venture) - Name And Address Of Primary Office To Perform The Work:	3e. Name Of Proposed Project Manager: For Study: (if applicable) For Design: (if applicable)						
3b. Date Present And Predecessor Firms Were Established:	3f. Name And Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:						
3c. Federal ID #:	3g. Name And Address Of Parent Company, If Any:						
3d. Name And Title Of Principal-In-Charge Of The Project (MA Registration Required):	3h. Check Below If Your Firm Is Either:						
Email Address:	(1) SOMWBA Certified Minority Business Enterprise (MBE) <input type="checkbox"/>						
Telephone No:	(2) SOMWBA Certified Woman Business Enterprise (WBE) <input type="checkbox"/>						
Fax No.:	(3) SOMWBA Certified Minority Woman Business Enterprise (MWBE) <input type="checkbox"/>						
4. Personnel From Prime Firm Included In Question #3a Above By Discipline (List Each Person Only Once, By Primary Function -- Average Number Employed Throughout The Preceding 6 Month Period. Indicate Both The Total Number In Each Discipline And, Within Brackets, The Total Number Holding Massachusetts Registrations):							
Admin. Personnel	_____ ( _____ )	Ecologists	_____ ( _____ )	Licensed Site Profs.	_____ ( _____ )	Other	_____ ( _____ )
Architects	_____ ( _____ )	Electrical Engrs.	_____ ( _____ )	Mechanical Engrs.	_____ ( _____ )		_____ ( _____ )
Acoustical Engrs.	_____ ( _____ )	Environmental Engrs.	_____ ( _____ )	Planners: Urban./Reg.	_____ ( _____ )		_____ ( _____ )
Civil Engrs.	_____ ( _____ )	Fire Protection Engrs.	_____ ( _____ )	Specification Writers	_____ ( _____ )		_____ ( _____ )
Code Specialists	_____ ( _____ )	Geotech. Engrs.	_____ ( _____ )	Structural Engrs.	_____ ( _____ )		_____ ( _____ )
Construction Inspectors	_____ ( _____ )	Industrial Hygienists	_____ ( _____ )	Surveyors	_____ ( _____ )		_____ ( _____ )
Cost Estimators	_____ ( _____ )	Interior Designers	_____ ( _____ )		_____ ( _____ )		_____ ( _____ )
Drafters	_____ ( _____ )	Landscape Architects	_____ ( _____ )		_____ ( _____ )	Total	_____ ( _____ )
5. Has this Joint-Venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No							



6. List ONLY Those Prime And Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm And Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable:



7. Brief Resume Of <b>ONLY</b> Those Prime Applicant And Sub-Consultant Personnel Requested In The Advertisement. Confine Responses To The Space Provided On The Form And Limit Resumes To <b>ONE</b> Person Per Discipline Requested In The Advertisement. Resumes Should Be Consistent With The Persons Listed On The Organizational Chart In Question # 6. Additional Sheets Should Be Provided Only As Required For The Number Of Key Personnel Requested In The Advertisement And They Must Be In The Format Provided. By Including A Firm As A Sub-Consultant, The Prime Applicant Certifies That The Listed Firm Has Agreed To Work On This Project, Should The Team Be Selected.	
a. Name And Title Within Firm:	a. Name And Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name And Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;">           MBE <input type="checkbox"/>            WBE <input type="checkbox"/> </div>	c. Name And Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;">           MBE <input type="checkbox"/>            WBE <input type="checkbox"/> </div>
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number
g. Current Work Assignments And Availability For This Project:	g. Current Work Assignments And Availability For This Project:
h. Other Experience And Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience And Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):

8a. Current And Relevant Work By Prime Applicant Or Joint-Venture Members. Include <b>ONLY</b> Work Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement. (List Up To But Not More Than 5 Projects).					
a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	c. Client's Name, Address And Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

8b. List Current And Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (Up To But Not More Than 5 Projects For Each Sub-Consultant). Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The Advertisement.

Sub-Consultant Name:					
a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience	c. Client's Name, Address And Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

9. List ... Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within the Commonwealth.

Role P, C, JV	Phases St., Sch., D.D., C.D., A.C.*	Project Name, Location And Principal-In-Charge	Awarding Authority (Include Contact Name And Phone Number)	Construction Costs (Actual, Or Estimated If Not Completed)	Completion Date (Actual or Estimated) (R)Renovation or (N)New
		1.			
		2.			
		3.			
		4.			
		5.			
		6.			
		7.			
		8.			
		9.			
		10.			
		11.			
		12.			

\* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; A.C. = Administration of Contract

10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 1/2" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE REQUIRED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED IN THE ADVERTISEMENT.**

11. Professional Liability Insurance:

Name of Company	Aggregate Amount	Policy Number	Expiration Date
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12. Provide A List Of All Projects On Which Monies Were Paid By You, Or On Your Behalf, As A Result Of Professional Liability Claims Occurring Within The Last 5 Years And In Excess Of \$50,000 Per Incident. Please Include Project, Client Names And Explanation. (Attach Separate Sheet If Necessary): **PLEASE ANSWER "YES" or "NO". IF "YES" PLEASE GIVE DETAILS.**

13. Name Of Sole Proprietor Or Names Of All Firm Partners And Officers:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

14. If Corporation, Provide Names Of All Members Of The Board Of Directors:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

15. Names Of All Owners (Stocks Or Other Ownership):

Name And Title	% Ownership	MA. Reg.#	Status/Discipline	Name And Title	% Ownership	MA. Reg.#	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A1/2 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted by \_\_\_\_\_ Printed Name and Title \_\_\_\_\_ Date \_\_\_\_\_  
 (Signature)