

NEW BUSINESS

3-28-11



Timothy P. Cahill
Chairman, State Treasurer

Katherine P. Craven
Executive Director

INITIAL COMPLIANCE CERTIFICATION

Mary K. Goode Elementary School

This Initial Compliance Certification must be completed by all Eligible Applicants who have submitted a Statement of Interest to the Massachusetts School Building Authority (the "MSBA") and have been invited to participate in the MSBA's Green Repair Program. The MSBA will not consider a district to be eligible for a school building renovation or construction grant until the district has properly submitted an Initial Compliance Certification in the form and manner prescribed by the MSBA. Each District shall exercise due diligence in ascertaining and certifying the truth, completeness and accuracy of each of following statements, acknowledgements, agreements and representations. The Eligible Applicant shall also have a continuing duty throughout a Proposed or Approved Project to inform the MSBA in writing when it becomes aware of information that impairs the truth, completeness or accuracy of any of the following statements, acknowledgements, agreements or representations. The MSBA's reference to certain regulations, policies, procedures, guidelines and standards, or portions thereof, in this ICC shall not be construed in any way as a waiver of any other regulations, policies, procedures, guidelines, or standards and the MSBA's reference to a portion of a regulation, policy, guideline, or standard shall not be construed as a waiver of the remainder.

Unless otherwise specified, all capitalized terms shall have the meanings ascribed to such terms in M.G.L. c. 70B or 963 CMR 2.00 et seq.

1. The Town of Middleborough ("District") hereby certifies that it shall remain in compliance with the provisions of (a) M.G.L. c. 70B, (b) chapter 208 of the Acts of 2004, (c) 963 CMR 2.00 *et seq.*, and (d) all other applicable statutes, rules, policies, procedures, guidelines and standards of the MSBA, including, without limitation, the rules of the MSBA's Green Repair Program for Roofs, Windows and Boilers ("Green Repair Program") set forth in the attached Exhibit A.
2. The District hereby acknowledges and agrees that the Green Repair Program is a discretionary program based on need, as determined by the MSBA. The District hereby further acknowledges and agrees that it shall have no entitlement to receive approval or funding for a proposed Green Repair project or any other purpose except at the sole discretion of the MSBA.

3. The District hereby acknowledges and agrees that the eligible scope of Projects funded through the Green Repair Program shall be determined by the MSBA.
4. The District hereby acknowledges and agrees that the MSBA will not award any incentive reimbursement points for Green Repair Projects, and the reimbursement rate for any Green Repair Projects approved by the MSBA will be the District's base reimbursement rate as determined by M.G.L. c. 70B § 10.
5. The District hereby acknowledges and agrees that, to the extent required by law, the District shall take all steps necessary to comply with the federal Davis Bacon prevailing wage rates and/or state prevailing wage requirements.
6. The District hereby acknowledges and agrees that it has demonstrated and shall continue to demonstrate a commitment to maintaining its existing educational facilities with the existence of (1) a capital maintenance program, (2) an ongoing financial commitment towards maintenance, and (3) dedicated professional staff to manage and direct the District's participation in the Green Repair Program;
7. The District hereby agrees to comply with M.G.L. c. 70B and 963 CMR 2.00 et seq. and work in collaboration with the MSBA in all phases of the process, including: (a) identifying perceived deficiencies with school buildings, (b) validating those deficiencies, (c) identifying educationally and financially sound solutions to validated deficiencies, (d) agreeing on a project scope(s) and budget(s), (e) implementing a solution(s) as agreed upon, and (f) the final project audit(s) and close-out(s). The District hereby further acknowledges and agrees that, to remain eligible for project approval and potential funding from the MSBA, the District must work with the MSBA through all phases of the MSBA's process including, at a minimum, the phases described above, to the satisfaction of the MSBA. The District hereby further acknowledges and agrees that any actions taken, costs incurred or agreements entered into for the repair of school facilities without the explicit prior written approval of the MSBA shall not be eligible for grant funding.
8. The District hereby certifies, and can demonstrate, that it has expended at least the minimum amount of the District's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses and extraordinary maintenance allotment as defined in M.G.L. c. 70 and as required by the provisions of M.G.L. c. 70B, § 8 and 963 CMR 2.10(2)(c) & 2.17, and hereby further acknowledges and agrees that the MSBA may not approve any project for any school district that fails to meet such minimum maintenance expenditure requirements.
9. The District hereby certifies that the perceived deficiencies, as set forth in the Statements of Interest submitted to the MSBA for the school facilities that are part of the Green Repair Program, are not the result of negligence; are not under warranty with material suppliers or installers; are not the subject of, nor could be the subject of, ongoing litigation by the District; are not the result of lack of adequate routine or capital maintenance by the District; and, are not covered by available insurance proceeds.

10. The District hereby acknowledges and agrees that, before the MSBA can grant final approval of a Project, the District must vote to authorize and appropriate the full amount of funding for the potential project(s) that is necessary to meet the total project budget(s) for the school facilities that are part of the Green Repair Program, as agreed to by the MSBA and as described in 963 CMR 2.10 (10)(c) and shall use any standard language established or developed by the MSBA to draft local warrant articles, motions, orders, votes and ballot questions related to the funding for the proposed Green Repair projects.
11. The District hereby acknowledges and agrees that, in connection with a proposed Green Repair project or an Approved Project, it shall use any standard forms, standard formats for local votes and approvals, standard contract documents, and any standard contract language and clauses that may be established or developed by the MSBA and as may be amended by the MSBA from time to time.
12. The District hereby acknowledges and agrees that it shall submit to the MSBA, and comply with the terms of, any certifications, statements, forms and affidavits that the MSBA may require for a proposed Green Repair project(s) or an Approved Project that is part of the Green Repair Program, and that any such certifications, statements, forms, and affidavits shall be prepared, executed and submitted in a form and manner prescribed by or otherwise acceptable to the MSBA.
13. The District hereby acknowledges and agrees that no Total Facilities Grant, or any portion thereof, shall be disbursed by the MSBA for a proposed Green Repair project or Approved Project until after a Project Funding Agreement have been fully executed by duly authorized representatives of both the District and the MSBA.
14. The District hereby certifies that it has provided or will provide the MSBA with all audit materials requested by the MSBA in connection with any Assisted Facility including, but not limited to, Prior Grant Projects, Waiting List Projects, and any other school building projects for which the District has received or will receive funding from the MSBA. The District hereby further acknowledges and agrees that it shall continue to cooperate with the MSBA and provide any additional documentation or information that may be requested by the MSBA in connection with any Assisted Facility.
15. The District hereby certifies that the school building(s) for which it has submitted a Statement of Interest for consideration under the Green Repair Program is/are not school(s) that has/have been the site of an approved school project pursuant to M.G.L. c. 70B or chapter 645 of the Acts of 1948 within the ten (10) years prior to the submission of the Statement of Interest, respectively, or that the proposed Green Repair project(s) would be unrelated to such previously approved project in the same school building. The District acknowledges and agrees that only the MSBA in its sole discretion shall make the final determination as to whether a proposed Green Repair

project is unrelated to a previously approved project in the same school building and that any such determination shall be in writing.

16. The District hereby certifies that prior to submitting its Statement of Interest for the school(s) that is the subject of the proposed Green Repair project, it has not sold, leased, closed, or otherwise removed from service any school building or facility, or portion thereof, within the last ten (10) years, or that, if it has done so, the MSBA has determined in writing, pursuant to M.G.L. c. 70B, § 15(c): (1) that the grant sought by the District is not for the purpose of replacing such schoolhouse, or (2) that the need for the proposed Green Repair project could not have been reasonably anticipated at the time that such schoolhouse was sold, leased, or otherwise removed from service. Further, the District acknowledges and agrees that the MSBA in its sole discretion shall make the final determination about whether a proposed Green Repair project or Approved Project replaces a school facility that was sold, leased, closed, or otherwise removed from service.
17. The District hereby acknowledges and agrees that, if it sells, leases, closes, or otherwise removes from service an Assisted Facility, or portion thereof, that the MSBA may stop making grant payments associated with the Assisted Facility, may recapture the financial assistance that the Assisted Facility has received from the MSBA, and may decline to approve any future grants.
18. The District hereby acknowledges and agrees that throughout the planning and construction of an Approved Project, if such final approval is received from the MSBA, the District shall follow procedures and practices satisfactory to the MSBA such as will assure maximum attention to the operating and capital cost effects of program and design decisions, materials and systems selections.
19. The District hereby certifies that it is current on any payments that it may owe to the MSBA and does not have any outstanding amounts past due to the MSBA.
20. The District hereby certifies that it is unaware of any lawsuit pending against the MSBA to which the District is a party and further certifies that it is unaware of any other lawsuits pending against either the District or the MSBA in relation to the District's Statement(s) of Interest, proposed Green Repair project, or Approved Project
21. The District hereby certifies that it has specifically read the provisions of 963 CMR 2:03 (2)(a)-(q) and certifies that it has met or will meet each of the requirements described therein and further acknowledges and agrees that the District's failure to comply with each requirement, as determined by the MSBA, may result in the MSBA rescinding its Total Facilities Grant or the suspension, termination, or recoupment of reimbursement payments made by the MSBA to the District.

22. The District hereby acknowledges and agrees that if the District and the MSBA execute a Project Funding Agreement, the District shall promptly develop, implement and actively pursue a fraud, waste and abuse detection and prevention program in connection with any proposed Green Repair project or Approved Project, if any, and develop written procedures to detect and prevent fraud, waste and abuse.
23. The District hereby certifies that the Eligible Applicant or its designee who will be in charge of the procurement for the proposed Green Repair project(s) or Approved Project is, or will be, designated as a Massachusetts Certified Public Purchasing Official ("MCPPO") for design and construction contracting in the MCPPO Program as administered by the Inspector General of the Commonwealth of Massachusetts.
24. The District hereby acknowledges and agrees that any Approved Green Repair Project for which the District is seeking partial funding from the MSBA shall have an anticipated useful life of fifty (50) years as a public school in the District, as required by 963 CMR 2.03 (2)(b).
25. The District hereby certifies that it has read and understands the provisions of 963 CMR 2.19 and acknowledges and agrees that if the MSBA determines that any false or intentionally misleading information or documentation is submitted to the MSBA by or on behalf of the District either in relation to this Initial Compliance Certification or in support of any effort to influence any action by the MSBA or if the District or its agents do any other act affecting the integrity of the MSBA's Program, the MSBA may permanently revoke any and all grant payments due to the District; may recover any previous payments made to the District; and, may prohibit the District from receiving a Total Facilities Grant for a period of time to be determined by the MSBA.
26. The District hereby acknowledges and agrees that the MSBA shall have free access to, and open communication with, any Owner's Project Manager hired by and/or assigned to Projects under the Green Repair Program by the District and that the MSBA shall have full and complete access to all information and documentation relating to the Projects to the same extent that the District has such access. The District agrees that it shall require any such Owner's Project Manager to fully cooperate with the MSBA in all matters related to the Projects; to promptly communicate, transmit, and/or make available for inspection and copying any and all information and documentation requested by the MSBA; to fully, accurately and promptly complete all forms and writings requested by the MSBA; and to give complete, accurate, and prompt responses to any and all questions, inquiries and requests for information posed by the MSBA. The District agrees that it shall not in any way, directly or indirectly, limit, obstruct, censor, hinder or otherwise interfere with the free flow of communication and information between the Owner's Project Manager and the MSBA in all matters related to the Project and as provided herein; that it shall not suffer the same to occur by the act or omission of any other person or entity; and that it shall not retaliate against the Owner's Project Manager for communicating information to the MSBA as provided herein. The District agrees to execute, deliver and/or communicate to the Owner's Project Manager any and all authorizations, approvals, waivers, agreements,

directives, and actions that are necessary to fulfill its obligations under this paragraph. The District further agrees that the MSBA shall bear no liability whatsoever arising out of the MSBA's knowledge or receipt of information communicated to the MSBA by the Owner's Project Manager and that the District shall remain responsible for the management and completion of the Projects.

27. The District has exercised due diligence in ascertaining and certifying the truth, completeness, and accuracy of each of the statements, acknowledgements, agreements and representations contained in this Initial Compliance Certification

28. The District hereby acknowledges and agrees that the MSBA reserves the right to modify and supplement the Initial Compliance Certification form at any time and may require the District to complete a revised Initial Compliance Certification.

By signing this Initial Compliance Certification, I hereby certify that I have read and understand the terms of this Initial Compliance Certification and further certify on behalf of the Eligible Applicant that each of the above statements is true, complete and accurate.

By:
Title: Chief Executive Officer
Date:

By signing this Initial Compliance Certification, I hereby certify that I have read and understand the terms of this Initial Compliance Certification and further certify on behalf of the Eligible Applicant that each of the above statements is true, complete and accurate.

By:
Title: Superintendent of Schools
Date:

By signing this Initial Compliance Certification, I hereby certify that I have read and understand the terms of this Initial Compliance Certification and further certify on behalf of the Eligible Applicant that each of the above statements is true, complete and accurate.

By:
Title: Chair of the School Committee
Date:

[Letterhead of City/Town/Regional School District]

Selection Criteria Form
Designer
Green Repair Program

1) District Selection Committee

In accordance with "Selection and Assignment of Designers – Green Repair Program," assembled for your review and approval is the membership of the Selection Committee for _____ . Committee Members include the following:

(Please provide name, title, address and phone number of each member.)

Designation	Name and Title	E-Mail Address and Phone Number
School Committee Member*		
Superintendent of schools or his/her designee*		
Local Chief Executive Officer or his/her designee*		
Other members (Please add lines, if necessary, to indicate additional members of selection committee)		

*Required members

2) District Selection Criteria

In accordance with "Selection and Assignment of Designers – Green Repair Program," assembled for your review and approval is the Selection Criteria that the District intends to use as noted by a check below for selecting a designer from the applicants pre-selected through the Green Repair Program for (NAME OF SCHOOL). Selection Criteria include the following:

a.) Selection Criteria	Criteria selected
Prior Similar Experience	X
Personnel Qualifications	X
Current Workload and Capacity	X

Experience with Stretch Energy Code	
Knowledge of Energy Efficiency Programs	
Financial Stability	
Additional Criteria	

(Bold selection criteria must be utilized by the District in its evaluation.)

b) Description of rating system to be used for the Selection Criteria:

(NOTE: The MSBA recommends use of a numerical rating rather than least/advantageous and highly advantageous.)

3) District Interviews

If the District chooses to conduct interviews after review of the applications, the District will notify the MSBA of the time and submit the interview questions for acceptance by the MSBA. The MSBA may choose to participate in the interview process.

The (NAME OF DISTRICT) recommends as outlined in steps 1 and 2 above the District Selection Committee Members and the Selection Criteria and agrees to notify the MSBA before conducting interviews, if any.

Sincerely,

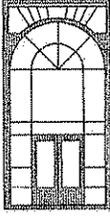
By: _____
 Authorized signature for District

Title: _____

Date: _____

 Accepted by MSBA Date

Window
to the World



Middleborough Public Library
102 North Main St., Middleborough, MA 02346

Danielle M. Bowker
Director

March 18, 2011

Board of Selectmen
Town of Middleborough
10 Nickerson Ave.
Middleborough, MA 02346

Dear Honorable Board,

The Library is requesting to use the Town Hall auditorium for two children's programs during the week of April Vacation on the 19th and the 22nd. We have an interactive play and a puppet show planned. Over the February Vacation week, we had so many children show up for our Science shows that we could not fit everyone into our program room. We even added an extra show each day and we still had to turn people away.

We are very excited that these programs are so popular and want to give everyone a chance to participate. Using the auditorium will give us that opportunity. We also ask that the fee be waived.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Danielle Bowker".

Danielle Bowker
Library Director

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL
MIDDLEBOROUGH, MASSACHUSETTS

PLEASE SUBMIT PAYMENT WITH APPLICATION

DATE OF APPLICATION_ 3/16/11

ORGANIZATION/INDIVIDUAL_ Middleborough Public Library

ADDRESS_ 102 North Main St

CITY, STATE, ZIP_ Middleborough, MA 02346 TEL #_ 508-946-2470

CO-APPLICANT (BARTENDING SERVICE) _____

OWNER NAME _____

ADDRESS _____

CITY, STATE, ZIP _____ TEL _____

DATE(S) OF EVENT_ Apr 19 & Apr 21 _ APPROXIMATE NUMBER OF PARTICIPANTS_ 200 each day
(ATTACH SEPARATE SHEET IF NECESSARY)

TIME OF DAY(S) REQUIRED_ 12 Noon TO_ 3 PM

Be sure to include any set-up or dismantling day(s)/time requirements.

BRIEFLY DESCRIBE TYPE OF ACTIVITY_ Children's Programs -- 1 puppet show and 1 interactive play

ASSIGNED SPACE _____ MEETING ROOM _____ GRAND BALLROOM _____ GROUNDS If using
grounds, will building access be required for sanitary facilities? _____

*Note -- There is no air conditioning available in the Grand Ballroom

Are you requesting a one-day alcoholic beverage license? _____ Licensing fee of \$ _____ plus \$100.00 required at
time of application. This will be refunded if license denied prior to event or activity.

Food will be served _____ Name of Caterer _____ Telephone # _____

***If food is to be served, please contact the Health Department for the appropriate permits.**

We expect to bring in the following additional equipment/furnishings _____

Any required insurance policy/indemnification agreement must be attached to application.

Rental Deposit (Bond) \$500.00 Check # _____ (must be tendered with application and will be returned within two-
weeks if no damage to building, grounds or equipment has been reported).

Rental Cost _____ One-day alcoholic beverage license fee _____ Personnel Cost _____ Total Cost _____

Name of Designated Town Official volunteering to perform security service _____

Signature of Volunteer _____

Application Approved by Board of Selectmen (date) _____ Fees Waived _____ Fees Due _____

I/we _____ hereby acknowledge return of our \$500.00 bond payment.

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL

In connection with my/our planned use of the Town Hall and/or grounds, I/we hereby agree to the following:

I/we agree to abide by all conditions as set forth in this application and the rules and regulations as established by the Board of Selectmen.

I/we agree that no activities unrelated to this purpose will be conducted on the premises.

I/we agree to hold harmless and indemnify and defend the Town of Middleborough, its agents, servants, employees and volunteers from and against any and all claims for injury to any person and/or damage to or loss of any personnel property of any nature arising out of my/our contracted use of the property or facilities of the Town for this function and that which may occur outside of the Town Hall premises or arise from activities which occur on or about the Town Hall premises.

I/we agree to assume total responsibility for assuring that:

- a. the participants at the meeting/event will conduct themselves in a safe and orderly fashion;
- b. no dangerous or unlawful activities will take place on the premises or grounds;
- c. no Town or other property will be removed from the building or grounds;
- d. participants will confine themselves to the specified areas of the building and grounds designated for the event;
- e. participants will leave the building and grounds in a clean and orderly condition;
- f. the participants will promptly leave the premises at the time scheduled for their departure.
- g. participants will abide by all rules and regulations as established by the Board of Selectmen

I/we agree to refrain from placing signs or decorations anywhere on the premises except as specified below. And if allowed will not place or cause to be placed in contradiction to the rules and regulations.

I/we understand that Town employees and/or designated volunteers in attendance at the scheduled event/meeting, except as specified below, are there for the sole purpose of providing participants with access to the portion of the building and grounds that have been set aside for their use. If payment for custodial services has been made, please note here.

I/we agree to abide by all requests of Town employees and designated volunteers who are present at the event pertaining to the use of the building and grounds.

I/we hereby certify that no alcoholic beverages of any type will be consumed at the event/activity, unless authorized and appropriate licensing has been obtained in advance and as established by the rules and regulations.

I/we agree to provide a security deposit in the amount of \$500.00 refundable to me/us within two weeks after the event if, in the sole judgement of the Board of Selectmen, I/we have fully complied with the terms of this Agreement and the Rules and Regulations.

I/we require/request use of the following

Chair set up PA system/Podium set up Piano _____

I/we agree to the following additional conditions:

The governing body of the renting organization named below met on _____ 201__ and, a quorum being present, authorized the individual named below to sign this agreement. The minutes of that meeting, or a letter of authorization from the President of the renting organization, are attached to this agreement.

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL

By signing below I/we acknowledge receipt of a copy of the rules and regulations and agree to abide by them and any other conditions established in this application.



Authorized Signature of Organization

Danielle Bowker
Name ---Please Print

Individual Signature

Name--Please Print

Signature of Owner - Co-Applicant (Bartending Service)

Business Name--Please Print

Original to be kept with security bond/deposit in the Selectmen's office. Two copies given to applicant (one for your records and the other given to the custodian/security personnel in charge of the event/activity.)



Eileen S. Gates, CMC
Town Clerk

Town of Middleborough
Office of the Town Clerk
Savings Bank Building 20 Centre Street
Middleborough, Massachusetts 02346-2250
508-946-2415
508-946-2308 fax

March 23, 2011

Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346

Honorable Board:

On August 29, 2005 the Board voted to accept the Middleborough/Lakeville Herring Fishery Committee's donation of \$2,300.00 to the Town Clerk's office to offset the cost of issuing and maintaining the records of the herring permits for both residents and non-residents.

However, in November 2005, the MA Marine Fisheries Advisory Commission placed a three year moratorium on the harvest, possession and sale of river herring; then in October of 2008 extended the moratorium for another three years. Therefore no permits have been issued since the donation has been made.

As the ban on the harvest, possession and sale of river herring is still in place, and will probably remain in place for the foreseeable future, I wish to re-transfer the donation back in to the Middleborough/Lakeville Herring Fishery Commission's revolving fund and thank them for their willingness to assist the Clerk's office with the cost of issuing of these permits.

I have enclosed a copy of the Board's August 29, 2005, vote for your convenience. If any further information is required, please let me know.

Very truly yours,

Eileen S. Gates
Town Clerk

cc Middleborough/Lakeville Herring Fishery Commission
Town Manager

Enc. 1

Request to Approve Donation from Herring Fisheries Commission – Town Clerk

Town Counsel provided an opinion to the Board in regards to the request to allow the Town Clerk to accept a donation of \$2,300 from the Herring Fisheries Commission to compensate for expenses incurred in the issuance of herring permits.

Upon motion by Selectman Bond and seconded by Selectwoman Brunelle, the Board
VOTED: To accept the donation of \$2,300 from the revolving fund for the specific purpose of compensating the Town Clerk for expenses incurred in the issuance of herring permits; to place the donation in a separate donation account to be drawn on by the Town Clerk from time to time in payroll warrants to supplement the salary of the clerk who handles the permit administration in the Town Clerk's Office.
Unanimous Vote.

Selectman Bond thanked the Herring Commission for their donation.

Request to Increase Storage on Fuel License – Belben's Auto Repair, Inc.

Upon motion by Selectwoman Brunelle and seconded by Selectman Bond, the Board
VOTED: To approve the request of Belben's Auto Repair, 760 Center Street, to increase the waste oil storage permit from 500 gallons to 2,500 gallons, increasing the total storage from 16,000 gallons to 18,500 gallons.
Unanimous Vote.

Request for Second Hand License – 'The Copper Tree' – 370 Center Street

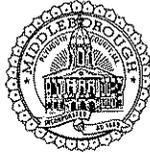
Upon motion by Selectwoman Brunelle and seconded by Selectman Andrews, the Board
VOTED: To approve the request of Ellen Tasho, Margaretha Ryan, and Laurie Carey d/b/a 'The Copper Tree' for a second hand license for property located at 370 Center Street, hours Monday through Saturday, 10AM to 5PM, and Sunday 12:00 Noon to 4PM.
Unanimous Vote.

Request for Second Hand License – 'Bluefish Auction & Antiques Co.' – 19 South Main Street

Upon motion by Selectwoman Brunelle and seconded by Selectman Bond, the Board
VOTED: To approve the request of Robert Palmerino d/b/a 'Bluefish Auction & Antiques Co.' for a second hand license for property located at 19 South Main Street, hours 10AM to 5PM, seven days per week.
Unanimous Vote.

Request to Set Special Town Meeting

Incorporated 1669
335 Years of Progress



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough
Massachusetts

Town Manager

508-947-0928
FAX 508-946-2320

MEMORANDUM

To: Board of Selectmen
From: Charles J. Cristello, Town Manager 
Date: March 25, 2011
Subject: **Draft Designer Selection Procedures**

Enclosed please find a draft set of procedures based on those recommended by the Massachusetts Office of the Inspector General. We need to adopt procedures for selecting the designer of the Town Hall cupola repair project since the cost is over \$100,000.

DRAFT

**Town of Middleborough
Designer Selection Procedures**

The Board of Selectmen has adopted the following procedures in connection with the selection of design services for building construction, renovation, alteration, remodeling and repair projects, subject to the state designer selection law, M.G.L. c. 7, §§38A½-O, the estimated cost of which exceeds \$100,000.

1. The department that will award and administer the design contract (Henceforth "Awarding Authority") will determine the nature and extent of the design services and develop the criteria required for the project. A copy of the Request for Proposals (RFP) shall be provided to the Town Manager for review prior to public advertisement.
2. A committee may be appointed by the Awarding Authority to evaluate proposals and select the finalists. The evaluation of proposals and the selection of finalists may also be delegated to professional staff. (Henceforth "Committee" may also indicate the Awarding Authority or its professional staff.)

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.
3. 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 Awarding Authority, at least two weeks before the deadline for filing applications.
 4. 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.
5. 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.
6. 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.
7. 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.
8. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Awarding Authority. 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.

9. If the fee was set prior to the selection process, the Awarding Authority shall select a designer from the list of finalists. If the Awarding Authority selects a designer other than the one ranked first by the Committee, it shall file a written justification for the selection and maintain a copy in the contract file.
10. If the fee is to be negotiated, the Awarding Authority shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed and maintained in the contract file. The Awarding Authority shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Awarding Authority 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 Awarding Authority prior to selection of finalists.
11. If the Awarding Authority is unable to negotiate a satisfactory fee with any of the finalists, it shall recommend that the Committee select additional finalists.
12. The Awarding Authority may allow a designer who conducted a feasibility study to continue with the design of a project. However, the Awarding 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 Awarding 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).
13. 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.

- 14. 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.
- 15. 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.
- 16. In the event of an emergency that precludes the normal use of these designer selection procedures, the Awarding Authority may elect to authorize expedited procedures to address the emergency. The Awarding Authority 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 Awarding Authority 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 Awarding Authority shall rank the finalists in order of qualification and select the designer for the emergency work.

17. The Awarding Authority shall publish the name of any designer awarded a contract in the *Central Register*.
18. 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.

19. 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).

(Adopted [date])