

# CAPITAL PROJECT PLANNING & THE DESIGNER SELECTION PROCUREMENT PROCESS for COMMONWEALTH CHARTER SCHOOLS

Designer Selection Board Agency Guidance - 2024

Email: [infodsb@mass.gov](mailto:infodsb@mass.gov)

Webpage for Charter Schools: <https://www.mass.gov/info-details/for-commonwealth-charter-schools>

## Introduction

The Designer Selection Board (DSB) is an autonomous eleven-member board that selects designers for state funded projects at Public Agencies and Commonwealth Charter School projects. In addition, the DSB assists Agencies and municipalities with guidelines for their designer selection process.

While the DSB focuses on designer procurement, there are a few steps along the way to get to that point. With that in mind, the DSB has collected information from the MA Department of Elementary and Secondary Education (DESE), MassDevelopment, Charter School Executive Directors, and Owner's Project Managers (OPM) who have worked on design and construction projects over the years, to provide Charter Schools with some helpful tips on the way to Designer Selection.

The guide is a brief overview from capital planning to contracting with your selected designer. For further comprehension and information on each section, the DSB recommends that you talk to your team of professionals: legal counsel, insurance agent, financial institutions, and your OPM.

For specifics and templates for the designer selection process, the DSB staff will be responsible for guiding you through the process outlined in the document. If you need immediate assistance, DSB Staff can be contacted at:

**Shared Email:** [infodsb@mass.gov](mailto:infodsb@mass.gov)

Complete the informational [Survey](#) to get started with designer selection.

**Designer Selection Coordinators:**

Claire Hester (617) 680-3306

Roberto Melendez (617) 680-2931

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[DSB Website](#)

[DSB Website link for Charter Schools](#)

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## CAPITAL PLANNING

Capital planning is critical to maintaining your facility and includes several basic facets:

**DEVELOP OR MAINTAIN YOUR CAPITAL PLAN** by reviewing your facility on a regular basis for repairs, maintenance, regular servicing of equipment, improvements to ADA, energy, and water conservation improvements, anticipated new construction projects, site work modernization, and/or other capital asset improvements that you may need to make at your building or facility to support your programming. If you are planning to purchase capital assets, then that should be in your capital plan as well.

If you own your building, you may want to hire a consultant to create a facilities condition inventory for the building which includes life cycle data of the inventory of the building components so you can budget for replacement and maintenance according to a planned schedule. The capital plan should include an installation and materials cost projection, an end of life disposal/demolition cost, and a process for items which may need special attention, such as items with refrigerant.

**PROJECT A DATE** by which you would like to initiate projects within the next three to five years. Project dates should be reviewed and updated on a regular basis.

**DEVELOP A COST** for the capital projects or hire a consultant to help you assess the costs. The consultant could also help you assess your facilities for capital projects. Your estimate for projects should include a 25-30% soft cost above the construction cost to cover items such as design consultant and other fees associated with doing capital projects. Be sure your construction budget includes labor costs which use [Prevailing Wages Rates](#) from the Department of Labor Standards (DLS) as the basis.

**REVIEW** your capital project on a yearly basis so you can plan with your board when to seek funding or budget your projects.

## INITIATING A PROJECT

Once you have determined that you have a project, or even the wiff of a project, a few **CONCURRENT** steps should take place to facilitate a smooth process:

### ADD YOUR PROJECT TO THE DESE ANNUAL PLAN

When submitting your annual plan to the Department of Elementary and Secondary Education (DESE) there will be a link to a [Capital Project Assessment](#) asking about your ongoing or upcoming capital projects. Click the link to provide all of the information requested to the DSB to inform them of future or projects in process. The link above is available at any time during the year.

### CONTACT MassDEVELOPMENT

MassDevelopment works with Charter Schools to help them get the assistance they need to improve equipment, build new structures, or renovate existing ones.

MassDevelopment can be contacted through the contacts shown on their webpage at <https://www.massdevelopment.com/> or you can contact them directly at (617) 330-2000. They offer the wealth of services listed below, but most of all, they are willing to have a conversation with you about

what will make your project successful. They also have knowledge of other funding opportunities that you may be able to take advantage of, as well as knowledge of financiers who have done capital projects with Charter Schools.

### Financing

- Bond Financing
- Loans & Guarantees - Guarantees and bank underwriting specifically targeting Charter Schools and their chosen banks
- Tax Credits - Tax exempt and taxable
- Grants

### Real Estate

- Planning & Predevelopment
- Development
- Commonwealth Places
- Site Readiness
- Underutilized Properties
- Available Properties

### Key Initiatives

- Transformative Development Initiative
- PACE Massachusetts - to finance energy improvements.

MassDevelopment may finance lease hold improvements, acquisitions, ground up construction, and technical improvements - provided that they are not removable from the school - such as technology that is not is removable from the school, new internet, security, and new conference room infrastructure.

The lead time on approvals for projects which go through MassDevelopment can be upwards of a couple of months, depending on where you are in the process, so it is important that you contact them as soon as you know a project is forthcoming. They will maintain a record of your contact so it is never too soon. They will also have a checklist of requirements that you will need for their process.

You will need to develop a scope and estimate for your project to move forward with MassDevelopment, the bank, or any funding source you will be using. To develop your scope and estimate, you should complete the Study/Investigative phase of your project. See the Section below on Hiring a Design Consultant to complete the Study/Investigative requirement for Designer Selection. If your project will be estimated to exceed \$1,500,000, you will need to hire an Owner's Project Manager (OPM) to assist you with the project.

### **CONTACT YOUR FINANCIAL INSTITUTION**

Once you have a rough scope and estimate in hand, you should contact your Bank. They, like MassDevelopment will have a checklist of items they require.

### **CONTACT YOUR LEGAL COUNSEL**

In all matters of procurement, legal counsel is recommended.

### **CONTACT THE DESIGNER SELECTION BOARD - [infodsb@mass.gov](mailto:infodsb@mass.gov)**

The Designer Selection Board can assist you with procuring a designer to do the Study/Investigation Phase of your project, as well as the procurement of a Designer for the full project. The staff at the Designer Selection Board are knowledgeable about the design process, whether your project rises to the *legislative* level of requiring the Designer Selection Board to select your designer for you, or you

need assistance locating designers in your area for smaller projects or studies for larger projects. The DSB Staff realizes that time is of the essence and will move quickly to assist you in your design consultant needs.

The DSB has developed a [Commonwealth Charter School Webpage](#) resource with information on all your designer selection needs. [Here](#) you can find:

- This **Guidebook**;
- A form to initiate your designer procurement process with the DSB - [Start the Designer Selection Process with the DSB](#). The form will link you to DSB and to templates for writing a design procurement;
- The [Capital Project Assessment](#) discussed above;
- a link to the [Designer Selection Network](#) where you can see the designers doing work on capital projects, complete your procurement, and do your **mandated legislated evaluations** for designers you have used.
- A guide to determining designer fees for public projects;
- **COMING SOON** - The DSB is developing a House Doctor program of prequalified designers to hire directly for projects up to \$1.5M in construction costs and which do not require an Owner's Project Manager. This program will be particularly useful for hiring design consultants to provide studies to develop the scope and construction cost estimate of your projected capital projects; and
- other helpful links such as to MassDevelopment and Model Design Contracts.

## HIRE an OPM if YOUR PROJECT WILL COST OVER \$1.5M

If your project construction cost is expected to exceed \$1.5 million, state law requires that a public agency shall contract for the services of an owner's project manager (OPM) to serve as the public agency's agent and consultant during the planning, design and implementation of a contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building. **The OPM is not your architect. They represent you in the design process. They should not be used to do the study or design the project.**

Per statute, the owner's project manager shall be a person who is registered by the Commonwealth as an architect or professional engineer and who has at least 5 years' experience in the construction and supervision of construction of buildings or a person, if not registered as an architect or professional engineer, who has at least 7 years' experience in the construction and supervision of construction of buildings. The OPM must be competitively selected on the basis of qualifications, without price competition using a request for qualifications (RFQ).

If your project will exceed \$5 million in estimated construction cost, one of the criteria you should use in selecting an OPM should be their knowledge of Chapter 149A, Construction Manager at Risk construction procurement.

## PROCURE A DESIGN CONSULTANT

Procuring a designer for your project can take many different forms.

**CIVIL ENGINEERING PROJECT:** If your project is only site work and does not include any vertical building elements, then you are free to hire any civil engineer or landscape architect you see fit to do the project. Using the best business practice of looking at three designers is suggested for this pursuit. Verify your scope and contract with your legal counsel and use a standardized contract such as an [AIA contract](#) which will give you protections against unforeseen consequences. Horizontal only work is not overseen by the DSB.

**SMALL PROJECTS:** If your project is estimated to be under \$300,000 in construction cost or the fee will be under \$30,000 total, you are not required to advertise through the Designer Selection Board. Other procurement requirements may apply. Using the best business practice of looking at three designers is suggested for this pursuit. Verify your scope and contract with your legal counsel and use a standardized contract such as an [AIA contract](#) which will give you protections against unforeseen consequences.

**UPCOMING DSB HOUSE DOCTOR PROGRAM:** Once this program is established you may choose to use one of the prequalified designers on the list for projects that meet the DSB House Doctor Program criteria. You are not required to use this program for your projects.

**DESIGNER SELECTION BOARD SOLICITATION AND SELECTION OF DESIGN CONSULTANTS:** For projects over \$30,000 in fee or over \$300,000 in construction cost, Mass General Legislation requires that the consultant is solicited and selected through the Designer Selection Board. The Designer Selection Board process is outlined below.

### STEP 1 - CONTACT THE DSB

- Fill out the [survey](#) on line which will notify the DSB Coordinators that you have initiated a project request. You can contact them very early on in the process for informational purposes as well as to alert them that your project is on its way. The DSB coordinator will either:
  - Respond to your questions;
  - Provide a Public Notice template and DSB schedule; or
  - Set up a meeting to discuss you project needs.
- Determine whether your project will be a House Doctor Solicitation for multiple upcoming projects or a Single Project Solicitation.

### STEP 2 - COMPLETE THE PUBLIC NOTICE

- Complete the Public Notice. The template will guide you through the information needed and you can contact the coordinators with any questions. To complete the template, you should know the following information:
  - Estimated Construction Cost and Estimated Design Fee - see the section below on setting the fee.
  - Scope of work
  - Timeline and tasks required for submittal on the project.
  - Phases of the project
  - Evaluation Criteria for the Designer to show in their application and for the Designer Selection Board to use in their review process.
  - Other goals and aspirations for the project such as meeting certain Commonwealth Energy Conservation Goals or Accessibility Goals

- Other considerations:
  - Assess with your board whether you will include affirmative marketing goals of MBE/WBE and/or VBE in your solicitation. These goals can be specific or aspirational.
  - Consider highlighting that you will accept emerging firms to do your projects. These firms are often willing to go the extra mile to make your projects a success, which in turn is also their success.
  - You may want to include a non-mandatory site tour and briefing at your building, either during the application solicitation, or for the selected firms before their interview.
  - If your project will exceed \$5M in construction cost, discuss with your OPM whether to use Ch. 149A construction procurement. Note in the document. You will require permission from the [Office of the Inspector to use M.G.L. ch.149A](#).
- Email the completed draft for review to the DSB and include supporting documents if any.

### **STEP 3 - REVIEW MEETING**

- The DSB Executive Director and the Coordinators will schedule a meeting to discuss the following:
  - DSB Process and next steps
  - Comments and questions on the Public Notice Draft you have submitted
  - Affirmative Market Program (AMP)

### **STEP 4 - ADVERTISING THE PROJECT**

- Submit final Public Notice draft to the DSB
- The DSB Coordinators will advertise Public Notice in the Central Register, Local Newspapers, DSB Website and Designer Selection Network (DSN)
- Designers will submit applications in the Designer Selection Network (DSN)

### **STEP 5 - DESIGNER APPLICATION SUBMISSION**

- Charter School project manager (PM) or OPM for the project will need to register in the [Designer Selection Network](#) (DSN)
- PM/OPM reviews applications for qualifications based only (with no ranking, as the Designer Selection Board is responsible to rank designers), checks references, and submits the written comments in the DSN
- Submit comments no later than the Friday prior to the DSB meeting!

### **STEP 6 - DSB SELECTION MEETING**

- The Charter School will attend the DSB Selection Meeting (DSB Coordinator will provide the date and Zoom info in advance).
- The Charter School will be asked to introduce themselves, and to provide a high-level overview on the Charter School, anticipated project(s), and their designer application feedback.
- The Board will review the applications and rank the design firm in a qualifications-based selection process.
- The DSB may recommend an interview process for the selected designers.

### **STEP 7 - DSB INTERVIEW PROCESS**

- The Charter School will submit questions to the DSB which they would like applicants to respond to and be evaluated on during the interview.
- The applicants will do presentations in response to the interview questions and the project Public Notice
- The Charter School will attend the Interview meeting and will ask follow up questions along with the Designer Selection Board
- The Board will do a final ranking of the design based on the interviews and the applications previously reviewed.

- The Executive Director will distribute a letter to the Charter School and to the applicants with the ranked selection of the board. The designer will be notified that they will be considered a special employee of the Commonwealth for the duration of the project and must take the conflict-of-interest training.

## SETTING THE DESIGN FEE, NEGOTIATING, CONTRACTING, & EVALUATION

**THE PUBLIC NOTICE CAN INDICATE TWO TYPES OF FEES:** a set fee or a negotiated fee. To save time on the Study and to control initial fee costs, Charter Schools typically set the fee on the Public Notice. If the Public Notice indicates a negotiated fee, the Charter school will need to negotiate the contract terms. Per statute, the Charter School will have to determine a not to exceed fee with their board for the work to be done, prior to negotiating. For recommendations on setting a fee, see the [Guidelines for the Calculation of Designer Fees for Charter Schools](#) on the DSB website.

**CONTRACT:** Charter Schools have a number of options for contracts. Some Schools have elected to use the [AIA B101](#) contract for use with the designer. The contract covers all facets of design. Others have elected to use the model contract proposed by the MSBA which includes the required M.G.L. language in the body of the document. Links to the MSBA documents are found here:

- [Designer Services Base Contract for Design/Bid/Build and CM-at-Risk, Revised January 2022](#)
  - [Designer Services Contract Amendment for Design/Bid/Build \(PDF\)](#)
  - [Designer Services Contract Amendment for CM-at-Risk \(PDF\)](#)
  - [Designer Services Base Contract Pages 1-2 and Attachments A, C, D, E and F \(Word\), Revised January 2022](#)

Whichever contract is selected, be sure to review the contract type and content with your legal counsel. [Commonwealth design contract requirements can be found here.](#)

**FINANCIAL STATEMENT: M.G.L. C. 7C, §51** requires that on public design contracts where the total design fee is expected to exceed \$30,000 for the design of a project for which the estimated construction cost is expected to exceed \$300,000 the Designer shall:

1. File its latest independent CPA or PA audited financial statement with the Awarding Charter School, and continue to do so annually throughout the term of the contract. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(d)]; and
2. Submit a Statement of Management on internal controls from a CPA or PA that states that they have examined management's internal auditing controls and expresses their opinion regarding those controls to the Awarding Charter School. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(c)]

**CERTAIN INSURANCE DOCUMENTS** are required from the designer as a condition of contract execution, including, without limitation, evidence of professional liability insurance in an amount equal to the lesser of \$5,000,000 or 10% of the Project's Fixed Limit Construction Cost, but in no event less than \$250,000 per claim (i.e., minimum coverage of \$250,000 up to \$5,000,000 per claim depending on the construction cost). Evidence of pollution liability coverage in compliance with the Contract requirements should be carried by the Hazardous Materials Consultant if used. All other coverage must be carried by the Design Consultant. Have your legal counsel and insurance carrier review the recommended insurance requirements of your contract.

## PROJECT CLOSEOUT

When your project reaches substantial completion, or your study comes to a close, it is time to do a designer (and contractor) evaluation.

**EVALUATIONS:** M.G.L Chapter 7C, legislates that you complete a designer evaluation within 70 days of the completion of the project for all designers you have used on capital projects. You should complete the evaluation by logging on to the [Designer Selection Network](#) and selecting to do an evaluation. The evaluation can also be completed by your OPM with a review by the project lead for the Charter School.

### END of DOCUMENT

ENJOY YOUR MODERNIZED OR NEW BUILDING!

*This Guide, the “Capital Project Planning & The Designer Selection Procurement Process For Commonwealth Charter Schools” is an overview of the process and does not list all requirements and it is not a Policy document. It is not a substitute for the legislation, or MCPPO Charter School Certification, nor legal advice from the Charter School’s own legal counsel. If you have questions, please feel free to contact the DSB at [infodsb@mass.gov](mailto:infodsb@mass.gov).*