

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 00-2564

_____)
ROBERT L. MANDELL, et al.)
Plaintiffs,)
v.)
TOWN OF READING,)
Defendant.)
_____)

SUPPLEMENTAL AFFIDAVIT OF HARRY K. HARUTUNIAN

I, Harry K. Harutunian, do hereby depose and state:

1. I have been the Superintendent of Schools in the Town of Reading, Massachusetts ("Reading") since 1995, and I have personal knowledge of the following facts.

2. As Secretary of the School Committee, I am familiar with the Reading School Committee Designer Selection Policy. This Policy is used only by the School Committee and not by the Building Committee. A copy of the Reading School Committee Designer Selection Policy is attached hereto as Exhibit A.

3. In selecting Flansburgh to perform the Feasibility Study, the Building Committee did not act as an Advisory Committee to the School Committee, but rather is an independent entity formed and directed by Town Meeting.

Signed under the penalties of perjury this 26th day of July 2000.



 Harry K. Harutunian

READING SCHOOL COMMITTEE

DESIGNER SELECTION POLICY

The Reading School Committee will have the department staff develop a Request for Proposal (RFP) which will contain a description of the project, specific services sought, and any other information pertinent and available to the project, including deadline for submission, qualifications expected and whether the fee is set or to be negotiated. The RFP shall be publicly advertised in a newspaper of general circulation, and shall be published in the Central Register.

The School Committee will establish an Advisory Committee (hereinafter referred to as the Committee) preferably of non-school committee members, to evaluate and select at least three finalists to be considered by the Committee. The selection of the finalists will be based on: experience, past performance, financial capabilities, qualifications of consultants who are listed as party to the project by the designer, and any other criteria the Committee considers relevant. The Committee shall rank the finalists in order of qualifications or describe them as equally qualified, and provide a record of the final vote of the Committee and may include a written statement explaining the Committee's actions for the ranking or its choice.

The Committee shall be guided by the following conditions:

1. If the fee for design services has been set by the awarding authority prior to the selection process, the awarding authority will select the designer to be awarded the contract from the list submitted by the Committee. If the list ranks the designers in order of qualification, and a designer other than the one ranked first is selected, the awarding authority shall file a written justification with the Committee.
2. If the fee is to be negotiated, the awarding authority shall review the list transmitted by the Committee, and may exclude any designer from the list with a written explanation of the exclusion. The awarding authority shall then appoint a designer based on successful fee negotiation among the remaining finalists in order of rank.
3. The design contract shall state the fee as a total dollar amount. The contract may provide for equitable adjustments in the event of changes in scope or services.
4. The designer who does a feasibility study, master plan or program for a project may continue into the design development stage of a project provided an independent study has been commissioned to verify that the original program is feasible and adequate.

Every contract for design services awarded shall include:

- a. Certification that the designer or construction manager has not given, offered or agreed to give 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 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 with respect to contracts which exceed twenty-five thousand dollars or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that the designer has internal accounting controls as required by Chapter 30, section 39E, and that the designer will:
 - (1) Maintain accurate and detailed accounts for a six year period after the final payment;
 - (2) File regular statements of management concerning internal auditing controls;
 - (3) File an annual audited financial statement; and
 - (4) Submit a statement from an independent certified public accountant that such CPA has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements in (2) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to designer's financial statements.
G.L. Chapter 7 section 30I (e).

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- a. A requirement that on building projects the designer at his/her own expense obtain and maintain a professional liability insurance policy 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 such contracts for design services. The awarding authority may require a consultant employed by a designer subject to this subparagraph to obtain and maintain a liability insurance policy. The designer shall furnish a certificate or certificates of such insurance coverage to the public agency prior to the award of the contract, showing coverage in an adequate amount for the applicable period of limitations and including any added coverage in such amounts as the awarding authority requires. Liability insurance is not required for preparation of studies, surveys, soil testing, cost estimates, or programs.

The awarding authority may request a copy of the Division of Capital Planning and Operations' Standard Design Contract to use as is, or to modify.

In the selection of applicants to perform design services the following records will be kept by the awarding authority:

1. All information supplied by or obtained about each applicant;
2. All actions taken by any committees relating to any project;
3. All actions taken by the awarding authority relating to any project recorded by vote;

These records will be available for inspection by the State Designer Selection Board.

No member of the Committee shall participate in the selection of a designer as a finalist for any project if the member or any member of his or her immediate family:

1. Has a direct or indirect financial interest in the award of the design contract to any applicant;
2. Is currently employed by, or is a consultant to or under contract to an applicant;
3. Is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
4. Has an ownership interest in, or is an officer or director of, any applicant.