REQUEST FOR PROPOSAL
CITY OF NEW BEDFORD
Department of Public Facilities and Fleet Management

Designer Services New Bedford Art Museum/ArtWorks
New Bedford, Massachusetts

#19192053

May 22, 2019

Jonathan F. Mitchell
Mayor.

DFFM
294 Liberty St
New Bedford, MA 02740
RFQ# 19192053
Designer Services
New Bedford Art Museum/ArtWorks

Documents Available: Wednesday, May 22, 2019 at 9:00 am
Site Visit: Tuesday, June 4, 2019 at 10:00 am
Questions Due: Thursday June 6, 2019 by 12:00 pm
Questions Answered Monday, June 10, 2019 by 11:00 am
RFQ Due: Thursday, June 13, 2019 @ 11:00 am
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REQUEST FOR QUALIFICATIONS
#19192053

Designer Services New Bedford Art Museum/ArtWorks

The City of New Bedford is seeking proposals for Designer Services for a feasibility study for the expansion and renovation of the New Bedford Art Museum/ArtWorks within its current 1917 building.

Design Services will be negotiated up to a fee of $40,000.00

The selected firm shall have demonstrated previous experience in providing specified services to Massachusetts municipal governments and knowledge and experience in the needs of museum facilities. Electronic copies of bid specifications may be obtained by email to purchasing @newbedford-ma.gov or by downloading the documents at www.newbedford-ma.gov/purchasing. Documents will be available after Wednesday May 22, 2019. It is recommended that respondents to this request familiarize themselves with the detailed RFP.

It is the intent of the Awarding Authority to award contract within thirty (30) business days after receiving the proposals.

The deadline for submitting proposals to the City of New Bedford Purchasing Department, 133 William Street, New Bedford, MA 02740 is Thursday, June 13, 2019 at 11:00 am. Proposals shall be delivered to: Susan Bruce, Director of Purchasing, City of New Bedford, 133 William Street, Room 208, New Bedford, MA 02740.

The City has scheduled a site visit on Tuesday, June 4, 2019 at 10:00 am. Please meet in the lobby of the building located at 608 Pleasant Street, New Bedford, MA, 02740.

SUBMISSION GUIDELINES: An original and four (4) copies of the of the Statement of Qualifications must be submitted on an envelope clearly marked "QUALIFICATIONS FOR DESIGNER SERVICES NEW BEDFORD ART MUSEUM" RFQ# 19192053 with the name, address and telephone number of the Respondent clearly marked. All Statement of Qualifications received after the submission date and time will be returned unopened to the sender.

Statements of Qualifications must include ALL DOCUMENTS required by the RFQ and strictly follow its instructions. The Awarding Authority reserves the right to waive any informality, reject any and all Statements of Qualifications, or accept other than the highest ranked Statement of Qualifications, if it deems it to be in the best interest of the City.

AWARDING AUTHORITY
CITY OF NEW BEDFORD, MASSACHUSETTS
Susan Bruce, Director of Purchasing
133 William Street
New Bedford, MA 02740
I. PROJECT PARAMETERS

The City of New Bedford is seeking proposals from qualified Massachusetts registered architectural firms/individuals to provide professional architectural services associated a feasibility study for the renovation expansion and renovation of the New Bedford Art Museum/ArtWorks within its current 1917 building.

II. CURRENT PROJECT SCOPE AND STATUS

The City of New Bedford owns a significant art collection which is not currently displayed. The second floor of the New Bedford Art Museum currently houses city offices, which the Mayor has offered to relocate if the art collection can be permanently exhibited in this location. The second floor of the Museum building has great potential as permanent gallery space for the collection, but it involves some technical challenges in terms of access and accessibility and other potential spatial challenges.

The proposed scope for Architectural Services for a feasibility study include; an existing building assessment and code analysis, programming and conceptual design and budget development.

The firm selected will execute the attached designer services agreement.

III. REQUEST FOR PROPOSAL INSTRUCTIONS

Proposal Instruction

The requirements set forth in these “RFP Instructions” shall become an integral part of a subsequent contractual arrangement.

Receipt of Proposals

The City of New Bedford will receive sealed proposals for furnishing “Designer Services” at the Purchasing Department, 113 William Street, Room 208, New Bedford, MA 02740 Thursday, June 13, 2019 at 11:00 am.

No proposal received after the time established for receiving said proposals will be considered regardless of the cause for delay in the receipt of any such proposal(s).

There is a site visit scheduled for Tuesday, June 4, 2019 at 10:00 am. Please meet in in the lobby of the building located at 608 Pleasant Street, New Bedford, MA 02740.
Marking of Envelopes

One original and three (3) copies of the proposal to:

City of New Bedford
Purchasing Department
133 William Street
New Bedford, MA  02740

No later than:  **Thursday, June 13, 2019 at 11:00 am.**

Postmarks will not be considered.  It is the sole responsibility of the applicant to be sure that the proposal arrives on time.
Proposals should be clearly marked “PROPOSAL FOR DESIGNER SERVICES NEW BEDFORD ART MUSEUM”.

Proposal Form

All proposals shall be received and evaluated in conformance with the requirements of Applicable Law.

After the finalists have been ranked, the City will enter in price negotiations with the offeror(s).  Note that the City intends to aggressively negotiate low overhead and no mark-up costs for sub-consultants particularly when the work primarily involves only the sub-consultant.

The Purchasing Director will refer each Technical Proposal to the Committee which will determine whether it meets the minimum evaluation criteria set herein.  Failure of a proposal to meet a minimum criterion will disqualify the proposal from further consideration.  The Committee shall state in writing its reason for disqualifying any proposal.

Each proposer shall complete the attached minimum evaluation criteria form identified as Attachment A.

Plan of Services

A statement and outline of the scope of the firm’s services are to be provided.
**Interpretation of Contract Documents**

All interpretations and supplemental instructions will be in the form of written addenda to the specifications, which, if issued, will be emailed to all proposers on record as having requested the RFP. Addenda shall be made available to proposers not later than three days prior to the date fixed for the receipt of proposals at the Purchasing Department. Failure of any proposer to receive any such addendum or interpretation shall not relieve any proposer from any obligation under his submission. All addenda as issued shall become part of the contract documents.

**Modification of Proposals**

A proposer may correct or modify a proposal by written notice received by the awarding authority prior to the receipt deadline. Modifications must be submitted in a sealed envelope clearly labeled “Modification No.____.” Each modification must be numbered in sequence and must reference the original RFP.

After the receipt deadline, a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the City of New Bedford or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them. If a mistake and the intended proposal are clearly evident on the face of the document the mistake will be corrected to reflect the intended correct proposal, and the proposer will be notified in writing; the proposer may not withdraw the proposal. A proposer may withdraw a proposal if a mistake is clearly evident on the face of the document, but the intended correct proposal is not similarly evident.

**Withdrawal of Proposals**

Proposals may be withdrawn prior to the time of receipt of proposals, only on written request to the awarding authority. No proposer shall withdraw his proposal within a period of sixty (60) days after the date set for the receipt of proposals.

**Unexpected Closures**

If at the time of the scheduled receipt deadline, the Purchasing Department is closed due to uncontrolled events such as fire, snow, ice, wind, building evacuation, etc. the receipt of proposals will be postponed to the next normal business day at the time posted in the request for proposals. Proposals will be accepted until that date and time.

**References and Company Background**

Must complete FORM RCB-1 and include with RFP.
Rule for Award of Contract

The City of New Bedford will award a contract to the proposer offering the most advantageous proposal, taking into consideration all evaluation criteria. The City of New Bedford reserves the right upon the basis of such evaluations to reject the proposal of any and all proposers who do not in its estimation pass under such evaluations if the evaluations or other investigations indicate that such action is in the best interests of the City.

Action on the award will be taken within thirty (30) days, excluding Saturdays, Sundays and legal holidays, after receiving the proposals. The Purchasing Director has awarding authority upon recommendation of the Evaluation Committee, and all awards will be made in the best interest of the City.

Licensing

The contractor shall possess and comply with all required and necessary licenses as may be specified by Federal, State and/or Local authorities, related to the delivery of services referred to in this RFPQ.

Insurance Coverage

Within (5) days after award of this contract, and prior to the commencement of any work activity, the contractor shall deposit with the City of New Bedford; certificates from insurers clearly stating that the insurance policies required in the following paragraphs have been issued to the contractor. The certificate must be in a form satisfactory to the City. For the duration of this contract evidence of said coverage shall be filed with the Purchasing Director. Liability policies shall name the City of New Bedford, as an additional insured.

Worker’s Compensation

The contractor shall, before commencing the contract, provide by insurance for the payment of compensation, and the furnishing of other benefits under Chapter 152 of the General Laws to all persons employed under the contract, and shall continue such insurance in force and effect during the term thereof. Statutory limits shall apply.

Comprehensive General Liability Insurance

The contractor shall carry Public Liability Insurance with an insurance company satisfactory to the City so as to save the City harmless from any and all claims for damages arising out of bodily injury or destruction of property caused by accident resulting from the use of implements, equipment, or labor used in the performance of the contract or from any neglect, default, or omission or want of proper care, or misconduct on the part of the contractor or for anyone in his employ during the execution of the work. Minimum coverage shall be as follows:

- Liability for bodily injury, including accidental death: $500,000 for any one person and subject to the same limit for each person: $1,000,000 on account of one accident.
- Liability for property damage: $1,000,000 on account of any one accident and $1,000,000 on account of all accidents.

Automobile Liability Insurance: Procure and maintain during the life of this Contract Comprehensive Automobile Liability Insurance, including all owned, non-owned, and hired automobiles, covering bodily injury, including accidental death, with limits of $1,000,000 per person, $1,000,000 per occurrence and property damage insurance with limits of $1,000,000 per occurrence.

The contractor shall not cancel, change or revise any insurance relating to this contract without at least 15 days prior notice. Prior to the effective date of any such cancellation, the contractor shall take out new insurance to cover the policies so canceled and shall provide certificates stating that such insurance is in effect.
The Contractor agrees to save, defend, indemnify and hold harmless the City of New Bedford, against any and all suits, claims or liabilities of every name, nature or description arising out of or in consequence of the acts of its agents, servants or employees, in the performance of the obligations under this contract or by reason of its failure to fully comply with the terms of this contract, such indemnity to run to the Mayor, Agents and employees of the City of New Bedford.

**Termination**

**Awarding Authority's Right to Terminate.** By written notice to the Designer, the Awarding Authority may terminate this Contract, in whole or in part, at any time for either the Awarding Authority's convenience or for the failure of the Designer to fulfill its obligations under this Contract.

**Termination by Awarding Authority for Convenience.** If any such termination shall occur without the fault of the Designer, all compensation and reimbursable expenses due to the Designer up to the date of termination, in accordance with all Contract terms, including proportionate payment for partially completed work, shall be paid to the Designer by the Awarding Authority. The payments to the Designer shall not exceed the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.

**Termination by Awarding Authority for Cause.** If this Contract is terminated due to the failure of the Designer to fulfill the Designer's obligations under this Contract, the Awarding Authority may assume the design work and replace it and/or prosecute the same to completion by contract or otherwise. In such case, the Designer shall be liable to the Awarding Authority for any additional cost incurred by the Awarding Authority thereby. These rights and remedies of the Awarding Authority are in addition to any rights and remedies provided by law or under this Contract.

**Termination by Designer.** By written notice to the Awarding Authority, the Designer may terminate this Contract (i) if the Awarding Authority, within sixty (60) days following written notice to the Awarding Authority from the Designer of any default by the Awarding Authority hereunder, shall have failed to remove such default, or (ii) if, after the Designer shall have performed all services required of the Designer in any Phase, of the Project as described in this Contract, at least six months shall have elapsed without receipt by the Designer of a Notice to Proceed with the next phase of the Designer's services. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with this Contract up to and including the date of termination shall be paid to the Designer by the Awarding Authority. The payments to the Designer shall not exceed the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.

**Designer's Duties upon Termination.** Upon any termination of this Contract the Designer shall deliver to the Awarding Authority all data, drawings, specifications, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the Designer in performing this Contract.

**Contractual Liability**

Failure to perform when such failure is due to an act of God, public enemy, fire, strikes, labor difficulties, transportation embargoes, or other similar causes beyond the control of the contractor, shall be good and sufficient reason for excuse from contractual liability.
Good Faith, Fraud and Collusion

The proposer hereby certifies that no officer, agent or employee of the City of New Bedford has a special interest in the RFQ; that the proposer is competing solely on their own behalf without connection with, or obligation to, any undisclosed person or firm; that this proposal is made in good faith without fraud, collusion or connection of any kind with any other bidder for the same work (See Non-Collusion form). Form must be executed and returned with proposal.

Acknowledgement of ADA and Section 504

The City of New Bedford acknowledges the existence of the Americans with Disabilities Act (ADA) of 1990, and Section 504 of the Rehabilitation Act of 1973. The rights guaranteed within these Acts shall apply to this contract.

IV. QUALIFICATIONS

All firms must possess the following minimum qualifications:

1. Massachusetts registration and licensing in all applicable disciplines.

2. Thorough knowledge of procedures, requirements, and practices of the Commonwealth of Massachusetts, and other agencies related to the design and construction of public buildings.

2. Thorough knowledge of Massachusetts State Building Code and regulations of the Architectural Barriers Board.


4. Sufficient levels of staff to complete the project.

5. Must have prior to signing of the contract:
   A. Professional Liability Insurance (errors and omissions) $1,000,000.00 with a $100,000.00 deductible.
   B. Workers Compensation Insurance in accordance with all applicable state laws.
   C. Liability Insurance with at least $1,000,000.00 to $2,000,000.00 coverage.

6. Proposer must have a minimum of three (3) years of satisfactory performance under at least three (3) different contracts similar to the proposed contract.
V. SELECTION PROCEDURES

The Evaluation Committee will review all proposals and select firms for a short list. The selection of the finalist will be based on the following criteria:

1. Prior similar experience of the firm and the experience and qualifications of the personnel assigned to the project.
2. Past performance on public projects.
5. Identity and qualifications of the consultants who will work with the applicant on the project.
6. Any other criteria that the Evaluation Committee considers relevant for the project.
7. Scope of services offered and the appropriateness to the needs of the City of New Bedford.
8. Quality of past work and evaluation of past clients.
9. All other criteria as listed in Attachment B.

VI. SCOPE OF WORK

The City of New Bedford is seeking Designer Services for a Feasibility Study for the expansion and renovation of the New Bedford Art Museum/ArtWorks located at 608 Pleasant Street, New Bedford, MA. The Plan needs to include an assessment and code analysis, programming and pre-design/sketch design and planning and a preconstruction assessment and a cost matrix.

The City of New Bedford reserves the right to negotiate a Plan of Services.
VI. GENERAL AND SPECIAL PROVISIONS

1. The Evaluation Committee reserves the right to cancel this Request for Qualifications, or to accept or reject any and all proposals, waive informalities, and to award contracts as may be in the best public interest of the City of New Bedford.

2. All proposals become the property of the City of New Bedford.

3. The firm selected shall be expected to comply with all applicable federal, state and local laws in the performance of services.

4. The consideration of all proposals and subsequent selection of an architectural firm shall be made without regard to race, color, sex, age, handicap, religion, political affiliation, or national origin.


6. The provisions relating to non-discrimination and affirmative action in employment shall flow through all contracts and sub-contracts that the successful firm may award as a result of this contract.

7. Firms and/or individuals preparing proposals may be asked to provide additional information and/or may be requested to make a presentation of their proposal.

8. Proposals must be unconditional.

9. Selection shall be subject to additional discussions and/or negotiations based on proposals received.

10. The City of New Bedford is an EEO/AA/MBE employer. Women and minority owned businesses are encouraged to apply.
Attachment A

MINIMUM EVALUATION CRITERIA

Each applicant shall indicate his/her agreement with each of the following questions as part of their submission.

To merit further consideration of a proposal by the Evaluation Committee the applicant must indicate “yes” and comply, where appropriate, with each statement below.

1. Has the Designer conformed in all material respects to the submission requirements as set forth in the RFQ?  
   YES____ NO____

2. Has the Designer the experience to prepare studies, project cost estimates, bid documents and provide project administrative services?  YES____ NO____

3. Has the Designer read this Request for Qualifications and understood their role? YES____ NO____

4. Has the Designer a minimum of five years experience in the design and renovation of public buildings in Massachusetts?  
   YES____ NO____

5. Has the Designer knowledge of, and experience in, legal and administrative requirements, procedures, and practices related to the design, funding, and construction of Massachusetts public building projects including the State Building Code, regulations of the Architectural Barriers Board, and Massachusetts public bidding and procurement laws? YES____ NO____

6. Does the Designer possess all necessary current licenses and registrations within the firm, to qualify under Massachusetts law to perform the function of the architect? YES____ NO____

7. Has the Designer provided a detailed description of at least two (2) recent similar projects on which the designer has performed similar services? YES____ NO____

8. Has the Designer not been debarred under M.G.L., chapter 149, Section 44C? YES____ NO____

After evaluating the minimum criteria the remaining proposals shall be evaluated by the Evaluation Committee based on the comparative evaluation criteria specified in Attachment B. In analyzing responses to the evaluative criteria, the Committee shall consider the qualifications of the applicant and make any investigations deemed relevant to the selection process. Attributes of services proposed, investigations into qualifications, project team, prior relevant experience, past performance, ability to meet project time schedules, and responsibility of the applicant may also be considered. The Committee will confirm claims of past experience and may request finalists to attend an interview to further explain or clarify their summary statement of qualifications or other elements of their proposal.
Attachment B

COMPARATIVE CRITERIA

Proposals will be evaluated by the Evaluation Committee on the basis of submission requirements and the following ranking criteria in addition to those listed in “Selection Procedure”:

1. Relevant experience of proposer and/or proposed project staff:
   **Highly Advantageous:** The proposer has at least five (5) years of experience consulting/designing with municipalities on projects of similar size and scope to this project.
   
   **Advantageous:** The proposer has at least three (3) years of experience consulting/designing with Municipalities on projects of similar size and scope to this project.
   
   **Not Advantageous:** The proposer has less than three (3) years of experience consulting/designing with municipalities on projects of similar size and scope to this project.

2. Proposer's demonstrated ability to complete projects on a timely basis:
   **Highly Advantageous:** All four of the proposer's references indicate that the projects were completed on schedule or with minimal, insignificant delays.
   
   **Advantageous:** Only one of the proposer's references indicates that the project was completed with substantial delays attributable to the proposer.
   
   **Not Advantageous:** Two or more of the proposer's references indicate that the project was completed with substantial delays attributable to the proposer or the proposer did not include references.

3. Evaluation of the proposed plan:
   **Highly Advantageous:** The proposal contains a clear and comprehensive plan that addresses all of the project objectives stated in the RFP.
   
   **Advantageous:** The proposal contains a clear plan that addresses most of the project objectives stated in the RFP.
   
   **Not Advantageous:** The proposal does not contain a clear plan that addresses most of the project objectives stated in the RFP.

4. Prior Experience with City:
   **Highly Advantageous:** Awarded contracts by the City of New Bedford to provide architectural services during the past five years.
   
   **Advantageous:** Familiar with the City through third party agreements to provide services.
   
   **Not Advantageous:** Has not visited project sites and reviewed work areas.
5. Proposals will be rated on these criteria as follows:

- **Highly Advantageous** - Proposal excels on specified criteria.
- **Advantageous** - Proposal fully meets the evaluation standard, which has been specified.
- **Not Advantageous** - Proposal does not fully meet the evaluation standard, is incomplete or unclear, or both.
- **Unacceptable** - Proposal does not meet the specified criteria.

**COMPARATIVE EVALUATION CRITERIA**

The City of New Bedford places a premium on the applicants’ approach to the project and the ability to present a program of services, which complies with the required Project Scope in a manner which is clear, concise and complete with respect to required activities. The City of New Bedford, will find it unacceptable if such a program of services is not included, or is included in an incomplete manner. Proposals that address required items, but only in general or vague terms that do not adequately represent tasks to be performed will be given the rating of not advantageous. Proposals which address all required items in an adequate manner but are unclear in some respects which leave questions on the part of the City of New Bedford as to key aspects of the manner in which tasks will be performed will be given the rating of advantageous. Proposals, which excel in all respects in clearly and concisely addressing all required elements of the Scope of Services shall be given the rating of highly advantageous.
CITY OF NEW BEDFORD
MASSACHUSETTS

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

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

________________________________________
Signature of individual submitting bid

________________________________________
Name of business/organization

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes reporting of employees and contractor, and withholding and remitting child support.

________________________________________
Signature of person submitting bid

________________________________________
Name of business
CITY OF NEW BEDFORD
MASSACHUSETTS

VOTE OF CORPORATION AUTHORIZING
EXECUTION OF CORPORATE AGREEMENTS

At a meeting of the Board of Directors of ________________ duly called and held on ________________,

20____ at which a quorum was present and acting throughout, the following vote was duly adopted.

VOTED: That ________________, the______________ of the corporation, be and hereby is authorized to affix the Corporate Seal, sign and deliver in the name and behalf of the corporation contract documents with the City of New Bedford, the above mentioned documents to include but not be limited to Bids, Proposals, Deeds, Purchase and Sales Agreements, Agreements, Contracts, Leases, Licenses, Releases and Indemnifications; and also to seal and execute, as above, surety company bonds to secure bids and proposals and the performance of said contract and payment for labor and materials, all in such form and on such terms and conditions as he/she, by the execution thereof, shall deem proper. A true copy

ATTEST:

________________________  (Affix Corporate Seal)

________________________

Signature

________________________  ________________

Title  Date
Form RCB-1

References and Company Background

Name and Address of Proposer ____________________________________________

_____________________________________________________________________

Indicate the number of years the firm has been in business. ______

Indicate the number of years the firm has been providing services to municipalities. ______

Provide at least four references of persons who are familiar with your work. The City of New Bedford is to have express permission to contact either in person, by phone/or correspondence as to past performance. Include Name, Address, and Telephone Number with area code and email address.

1. ____________________________________________
   ___________________________________________________________________
   ___________________________________________________________________
   ___________________________________________________________________

2. ____________________________________________
   ___________________________________________________________________
   ___________________________________________________________________
   ___________________________________________________________________

3. ____________________________________________
   ___________________________________________________________________
   ___________________________________________________________________
   ___________________________________________________________________

4. ____________________________________________
   ___________________________________________________________________
   ___________________________________________________________________
   ___________________________________________________________________
Signature for Individual

Name of Company

Telephone Number

Address

City, State, Zip Code

Email Address

Name and Title of Individual Authorized to Sign

Fax Number

Signature

Date

Signature for Partnerships (must be signed by ALL general partners)
Use additional sheet if necessary

Name of Partnership

Date

Name and Title of Partner

Signature

Name and Title of Partner

Signature

Telephone Number of Company Offices

Fax Number of Company

Address

City, State, Zip Code

Email Address of Person Submitting Bid
SIGNATURES PAGE CONTINUED

Signatures for Corporation

Name of Corporation ___________________________ Date ___________________________

Printed Name and Title of Duly Authorized Company Officer ___________________________ Signature ___________________________

Corporate Seal (affix below)

Telephone Number ___________________________

Fax Number ___________________________

E-Mail Address ___________________________ Address ___________________________

City, State, Zip Code ___________________________

FID Number ___________________________ Signature of Clerk ___________________________

Please furnish the following additional information:

Incorporated in what state? ___________________________

President: ___________________________

Treasurer: ___________________________

Secretary: ___________________________

If you are a foreign (out of state) corporation, are you registered with the Secretary of the Commonwealth in accordance with the provisions of M.G.L. Chapter 156D § 15.03? ______________

If you are selected for this work, you are required, under M.G.L. Chapter 30 §391, to obtain from the Secretary of State, Foreign Corporation Section, a certificate stating that your corporation is registered, and to furnish said certificate to the City of New Bedford before award.
CITY OF NEW BEDFORD

DESIGNER’S/ENGINEER’S OR CONSTRUCTION MANAGER’S
TRUTH-IN-NEGOTIATIONS CERTIFICATE

For Negotiated Fees

The undersigned hereby certifies under the penalties of perjury that the wage rates and other costs used to support its compensation are accurate, complete and current at the time of contracting.

The undersigned agrees that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amounts if the City determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

BY: __________________________

Name and Title: __________________________

Project: __________________________

Date: __________________________

Reference: M.G.L. c. 7, §38H(b)

Return this form with your proposal in a separate sealed envelope along with your list of rates, rate not included in this document will not be included in the contract and there for will not be paid.
CITY OF NEW BEDFORD
Contract #_____________________

Contract for Design/Engineering Services

PROJECT TITLE: DESIGN SERVICES NEW BEDFORD ART MUSEUM

PROJECT COST: NEGOTIATED RATES

This AGREEMENT is made under seal the _____ day of _____ in the year Two Thousand and Nineteen between the City of New Bedford hereinafter, the AWARDING AUTHORITY, and ___, with an address of _ acting as PROJECT ARCHITECT/ENGINEER.

ARTICLE 1: DEFINITION OF TERMS

1.1 GENERAL LAWS -- the General Laws of the Commonwealth of Massachusetts as amended, including any rules, regulations and administrative procedures implementing said laws.

1.2 DESIGNER -- the individual or firm performing professional services under this AGREEMENT.

1.3 PRINCIPALS -- the registered professional Architects or Engineers listed in ARTICLE 16.

1.4 NOTICE TO PROCEED -- written communication from the Awarding Authority, constituting an essential condition of this AGREEMENT, authorizing the Designer to perform services for the project phase to which such Notice shall relate. The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, if any, and may include the time of submittal. Subsequent written communications amending the Notice to proceed are required to change either a submittal date or the fixed limit construction cost. Proceeding with various phases of contract work is contingent upon the Awarding Authority or its designees' satisfaction with and acceptance of services performed for each phase.

1.5 SUBMITTAL DATES -- those dates referred to in the Notice to Proceed or any subsequent amendment thereto.

1.6 CONSTRUCTION CONTRACT -- contract for construction of a whole or part of the project, including all change orders.

1.7 TOTAL CONSTRUCTION COST -- the sum of the actual construction contract award price and each authorized change order revising the construction contract award price. The construction contract award price shall be the same as the construction price of the lowest responsible and eligible bidder.
AWARDING AUTHORITY -- The board, commission, agency or department of the City having authority to award design and construction contracts in connection with the Project.

PROJECT -- the project for which designer services have been procured under this AGREEMENT, and which is identified on Page 1 (Project Title).

ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNS

2.1 The Designer shall not employ additional consultants, not named in the proposal(s) nor sublet, assign or transfer any part of his services or obligations under this AGREEMENT without the prior approval and written consent of the Awarding Authority. The Awarding Authority shall not unreasonably withhold such approval. Written consent shall not in any way relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.

2.2 Except as otherwise provided in this AGREEMENT or authorized by the Awarding Authority, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Architect, Structural Engineer, Civil Engineer, Sanitary Engineer, Mechanical Engineer, Landscape Architect, Cost Estimator, and Electrical Engineer, or any other consultant specifically listed in the proposal. Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.

2.3 When the Designer receives payment from the Awarding Authority, the Designer shall promptly make payment to each consultant whose work was included in the work for which payment was made by the City. The Awarding Authority shall have the contractual right, but not the obligation, to require corrective measures necessary for the best interests of the City.

ARTICLE 3: SURVEYS, BORINGS, TESTS, LABORATORIES, PHOTOGRAPHS

3.1 The Awarding Authority shall furnish to the Designer available surveys of the project site, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and controls of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.

3.2 The Awarding Authority does not guarantee the accuracy of information furnished and the Designer must satisfy himself as to the correctness of data,
except in instances where written exception to the contrary is specifically indicated by the Awarding Authority. If the above data are not available or they are in the opinion of the Designer insufficient, the Designer, upon request, may be given authorization to obtain the services of a consultant or perform the work with his own employees. In no case shall the Designer commence such work without prior written authorization of the Awarding Authority.

3.3 During the construction phase of this contract, the Designer may retain the services of a photographer, a qualified testing laboratory, and special field inspectors when required by the project, subject to the prior approval of the Awarding Authority or its designee.

3.4 If a consultant's services estimated to cost more than $25,000 are required, including the services of a qualified testing laboratory functioning under the jurisdiction of both a Massachusetts registered Engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and approved by the Awarding Authority. Consultant fee proposals shall be received by the Designer and accompanied with recommendations of approval submitted to the Awarding Authority before any work is authorized. Such consultants shall carry adequate Liability Insurance. When a consultant's services are estimated to cost $25,000 or less, the Designer shall use established standard rates for such services.

3.5 The Awarding Authority will compensate and reimburse the Designer as provided in ARTICLE 9 for the cost of consultant services performed under this Article. For responsibility, coordination inspection, analysis and evaluation of consultant services retained under this ARTICLE, the Designer shall similarly be compensated as provided by ARTICLE 9.

ARTICLE 4: COMPLIANCE WITH LAWS

4.1 The Designer shall perform the work required under this AGREEMENT in conformity with all requirements and standards of the Awarding Authority, all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders of the Commonwealth and its political subdivisions, and the Federal Government. The Construction Documents shall comply with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders. The Designer, including all approved consultants and subcontractors, shall comply with all applicable provisions of the rules and regulations of the President's Committee on Equal Employment Opportunity and Procedures promulgated by the Governor of Massachusetts or his designees, insuring equal opportunity for employees and minority and women-owned business enterprises.
ARTICLE 5: PROFESSIONAL RESPONSIBILITY

5.1 The Designer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates, construction services, and other work furnished by him or his consultants and subcontractors as specified in:

ATTACHMENT A- SCOPE OF WORK:

The Designer shall staff his office with sufficient personnel to complete the services required under this contract in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this AGREEMENT.
The Designer shall commence work under this AGREEMENT upon notice to proceed or by issuance of a purchase order and fully signed contract issued by the Awarding Authority in conformance with the provisions of Section 1.4 of this AGREEMENT. The Designer shall complete the services required under this AGREEMENT in a prompt and continuous manner, and to meet such time limits as are established during the course of the AGREEMENT. If the completion of the scope of work is delayed through no fault of the Designer, the time limit may be extended upon written approval of the Awarding Authority.

5.2 The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary. Any changes, corrections, additions or deletions made by the Awarding Authority shall be incorporated in the design of the Project unless detailed objections thereto are received from the Designer and approved by the Awarding Authority.

5.3 The Designer shall thoroughly acquaint his employees and consultants with all provisions of the General Laws governing the conduct of public construction projects, including but not limited to M.G.L. c.149, and c.30, and in particular, M.G.L. c.30, §39M, wherein the description of material specifications and proprietary items in construction bid documents is governed.

5.4 Neither the Awarding Authority's review, approval or acceptance of, nor payment for any of the services furnished shall be construed to operate as a waiver of any rights under the AGREEMENT or any cause of action arising out of the performance of the AGREEMENT.

5.5 The Designer shall indemnify, and hold harmless the City, officers, and all employees from and against any and all claims, demands, liabilities, actions, causes of action, costs and expenses arising out of the Designer’s breach of the Agreement or the negligence or misconduct of the Designer or the Designer’s agents or employees to the extent that they arise directly or indirectly from the contract. The designer shall be solely responsible for all taxes or contributions.
imposed or required under the Social Security, Workers compensation, and income tax laws. This shall not be construed as a limitation on the Contractors liability under the Agreement or as otherwise provided by law.

ARTICLE 6: DESIGNER SERVICES

6.1 DESIGN AND CONSTRUCTION

1. Phase 1. – Definition Phase

The Designer shall submit to the Awarding Authority for approval a memo of project understanding.

Estimated construction cost and fee as set forth in the original Notice to Proceed will not be changed by the Awarding Authority without the agreement of the Designer.

2. Phase 2. - Bidding Documents

Upon receipt of a Notice to Proceed from the Awarding Authority for Phase 3 of the Project, the Designer shall meet as necessary with the Awarding Authority, and shall prepare and submit to the Awarding Authority complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the project, and a detailed cost estimate. Such working plans and specifications and cost estimates shall be subject to the written approval of the Awarding Authority. The Designer shall furnish to the Awarding Authority for approval three (3) sets of the said plans, specifications and construction cost estimates.

Following the approval of the plans, specifications and construction cost estimates, the Designer shall incorporate all changes required by the Awarding Authority in the working drawings and specifications and shall prepare and transmit to the Awarding Authority one set of Construction Contract Documents for approval.

Upon written approval of Construction Contract Documents, and a Notice to Proceed, the Designer shall prepare the final Construction Contract Documents, and shall prepare all addenda. An electronic copy of prints & specs shall be provided to the City at no additional charge. All services shall be in accordance with the requirements of the General Laws relating to public construction projects.

If the bid of the lowest responsible and eligible bidder exceeds the Fixed Limit of Construction Cost as defined during the design phase, if any, the Awarding Authority shall have the option to (a) give written approval of an increase in such
Fixed Limit, or (b) re-bid the Contract within a reasonable period of time. In the case of (b), the Designer may in connection with such revisions make reasonable adjustments in the scope of the Construction Contract or quality of the work allowed therein subject to the written approval of the Awarding Authority, which approval shall not be unreasonably withheld, the Designer shall be entitled to a pre-negotiated and approved additional compensation for such services.

The Designer shall review all construction bids for the purpose of advising the Owner on whether the bids are based upon the payment of the prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The Designer shall inform the Owner of any bid which, because of its amount, does not realistically appear to contemplate the actual payment of said prevailing wage rates to laborers to be employed on the project.

3. Phase 3 - Designer's Services During Construction

Upon the award of the construction contract the Designer and his consultants shall, for the purpose of protecting the Awarding Authority against defects and deficiencies in the work of the Project: (1) be charged with general administration of the construction contract, including review and processing of the General Contractor’s applications for payment and change order proposals, preparation of a monetized “punch list” of remaining work following substantial completion of the project work and subsequent inspection to determine completion of such punch list work, review and processing of the General Contractor’s final completion and close out documentation and assistance to the Awarding Authority in the close out process; (2) furnish the General Contractor with information for establishing lines and grades and such large scale drawings and full sized detailed drawings as the Awarding Authority may require; (3) promptly check and approve samples, schedules, shop drawings and other submissions by the General Contractor; (4) make weekly visits to the site or sites of the Project; (5) conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Awarding Authority; (6) require each consultant employed in accordance with ARTICLE 2 above to make visits when necessary, and more often if requested by the Awarding Authority, for the same purposes during the progress of that portion of the said construction to which the consultant’s services relate and to report in writing thereon to the Designer; (7) report to the Awarding Authority weekly in writing on the progress of construction including whether or not the contractor is keeping record drawings; (8) recommend rejection of all project work observed by the Designer which fails to conform to the Contract Documents; (9) decide all questions regarding interpretation of or compliance with the Contract Documents, except as the Awarding Authority may in writing otherwise determine; (10) review and act on all requests for change in plans, specifications, or contracts for
the Project; and (11) upon written instructions from the Awarding Authority, furnish working plans and specifications for any such change.

The Designer shall be familiar with the provisions of the General Laws for payment to contractors and shall submit to the Awarding Authority all requisitions for payment submitted by the general contractor. With respect to each such requisition, he or she shall certify to the best of the Designer's knowledge that the percentage of work included in the requisition is accurate and the work performed conforms to the contract documents. In the event the Designer does not approve the requisition exactly as submitted by the General Contractor, said Designer shall forward it for payment to the Awarding Authority dated but unsigned with an accompanying letter of explanation setting forth objections and recommended changes. The Designer shall coordinate the required weekly visit to the construction site in such a manner to be able to return to his office with the contractor's payment bearing the Designer's approval or letter of exceptions. Timely payments of general contractors is required by General Laws Chapter 30, section 39K; therefore, the Designer shall establish office procedures assuring either immediate mail or messenger delivery of the requisition for payment to the Awarding Authority, and shall process requisition for payment within forty-eight hours of receipt.

The Designer shall receive and review, in connection with its review of the Contractor's applications for payment, the weekly payroll records required to be submitted by the Contractor pursuant to G.L. c.149, §27B. Such review shall be for the purpose of determining that the amount of wages paid to laborers employed on the project is no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The Designer shall maintain, as part of the project records, one complete copy of all such payroll records, and shall transmit to the Owner, upon completion of the review provided for herein, the original weekly records as submitted by the Contractor. The Designer shall promptly notify the Owner if (1) any payroll records submitted by the Contractor do not represent payment of at least the applicable prevailing wage rates established for the project or (2) the Designer knows or has reason to believe that the weekly payroll records submitted by the Contractor do not accurately represent the wages actually paid to laborers employed on the project and that the Contractor is not paying said laborers at least the amount of said prevailing wage rates.

The Designer's responsibility to provide basic services for the construction phase under this agreement commences with the award of the contract for construction and terminates upon the issuance to the Awarding Authority of the final certificate of payment and the Awarding Authority's acceptance of the completed project.

The Designer will exercise the utmost care and diligence in discovering and promptly reporting to the Awarding Authority any defects or deficiencies in the
work of the General Contractor or any of its subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. The Designer represents that it will follow the accepted professional standards in performing all architectural services under this Agreement. Any defective Designs or Specifications furnished by the Engineer will be promptly corrected by the Designer at no cost to the Awarding Authority, and the Designer will promptly reimburse the Awarding Authority for all damages, if any, resulting from the use of such defective Designs or Specifications. The Awarding Authority's approval, acceptance, use of or payment for all or any part of the Designer's services hereunder or of the Project itself shall in no way alter the Designer's obligations or the Awarding Authority's rights hereunder.

ARTICLE 7: DESIGNER'S BASIC FEE

7.1 For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLES 8, 9 and 10, the Designer shall be compensated by the Awarding Authority in accordance with the lump sum fee for this project. The fee for this project is:  

_____________________ per ATTACHMENT B.

7.2 If there is a material change in the scope of services provided in this agreement, the Designer and the Awarding Authority will mutually agree to an adjustment in the Designer's Basic Fee. Delay of one year or more by the Awarding Authority plus a significant change in the estimated construction cost of the project will be considered a material change in scope of services.

7.3 The basic fee shall be paid to the Designer in accordance with Attachment B to this agreement. Billings for services shall be made monthly and shall be in proportion to the amount of work completed.

ARTICLE 8: ADDITIONAL COMPENSATION

8.1. With the formal written approval of the Awarding Authority, the Designer shall perform all or any of the following services in addition to the services performed pursuant to ARTICLE 6 above: (1) making measured drawings of existing construction facilities when required for planning additions, or alterations thereto; (2) revising previously approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority, and preparation of change orders related thereto; (3) preparing documents for alternate bids requested by the Awarding Authority except alternates prepared by the Designer to adjust the fixed limit construction cost, if any; (4) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in ARTICLE 6 as may be required in connection with the replacement of such work;
(5) providing services after final payment to the contractor; (6) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission; (7) making studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal and/or state aid; (8) preparing operating and maintenance manuals; (9) assisting the Awarding Authority in litigation arising out of the construction contract; and (10) performing any other professional services not otherwise required under this Contract.

8.2 For the services provided pursuant to paragraph 1 of this ARTICLE, the Designer shall be compensated by the Awarding Authority at the rates set forth in Attachment B.

ARTICLE 9: REIMBURSEMENT

9.1 The Designer shall be reimbursed by the Awarding Authority: (a) at one and one tenth (1.1) times the actual cost to the Designer of consultants hired to obtain any data in accordance with ARTICLE 3 above, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services have been approved by the Awarding Authority or its designee, which may approve a lump sum fee; (b) at one and one tenth (1.1) times the actual cost to the Designer of special consultants not specified in ARTICLE 2, and approved by the Awarding Authority or its designee, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been approved in writing by the Awarding Authority or its designee, which may approve a lump sum fee; (c) any other specially authorized reimbursement, including special printing; and (d) for all printing and reproduction costs.

ARTICLE 10: DESIGN FEES AND RESPONSIBILITY FOR MODIFICATIONS, CHANGE ORDERS

10.1 The Designer shall be compensated in accordance with the rates specified in ARTICLE 8 for the services of its employees or any consultant listed in ARTICLE 2 for services associated with changes and change orders described in ARTICLE 8. The Designer shall not be compensated for any services involved in preparing change orders required to make unit price adjustments due to existing conditions. Changes for which the Designer receives no compensation under this ARTICLE shall be "no fee modifications" or "no fee change orders." The fact that the Designer receives no fee shall not limit the City's legal remedies regarding such changes.

Any services in connection with change orders and change directives which are necessitated by a lack of reasonable clarity, deficiencies or conflicts in the
Construction Documents or other errors or omissions of the Designer, or which result from existing conditions encountered in the building which should have been anticipated by the Designer based on reasonable investigation of said building as required herein, shall not qualify as additional services and shall be performed within the scope of Basic Services.

10.2 Payments for modifications or change orders to the Designer shall be made upon completion of the Designer's work under such modifications or change orders.

ARTICLE 11: TERMINATION, NO AWARD

11.1 By written notice to the Designer, the Awarding Authority may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the Awarding Authority. Such payment shall not exceed the fair value of the work, as the Awarding Authority shall determine.

11.2 By written notice to the Awarding Authority, the Designer may terminate this contract (1) if the Awarding Authority, within sixty (60) days following written notice from the Designer of any default by the Awarding Authority under the AGREEMENT, shall have failed to remove such default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1, Phase 2, or Phase 3 of the Project, if applicable, at least six (6) months shall have lapsed without receipt by the Designer of Notice to Proceed with the next phase of the Project. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the AGREEMENT up to and including the date of termination shall be paid to the Designer by the Awarding Authority.

ARTICLE 12: RELEASE AND DISCHARGE

12.1 The acceptance by the Designer of the last payment for services paid under the provisions of ARTICLES 11 and 12 in the event of contract termination shall in each instance operate as and be a release to the Awarding Authority, and every member or agent thereof, from all claims and liability to the Designer for payment on account of services performed or reimbursable expenses incurred under this AGREEMENT, except for those written claims submitted by the Designer to the Awarding Authority with the last payment requisition.

ARTICLE 13: NOTICES, APPROVALS, INVOICES

13.1 Any notice required under this contract to be given by the Awarding Authority to the Designer, or by the Designer to the Awarding Authority, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by,
respectively, the Awarding Authority to the Designer at the address specified for
the Designer on Page 1, or the Designer to the Awarding Authority.

13.2 Written approval by the Awarding Authority for Extra compensation as provided
under ARTICLES 8 and 9, Reimbursements, shall be in the form of a letter issued
by the Awarding Authority.

13.3 All invoices may be submitted monthly and subject to contract terms and proper
documentation will be promptly processed by the Awarding Authority or returned
to the Designer. No invoice, however, shall be required to be submitted or
processed when the net amount due is less than $100.00.

13.4 Invoices for services under ARTICLE 6 where such invoices pertain to design
services during construction shall also describe the names, payroll titles, and dates
of site visits required for construction-phase services.

13.5 Invoices submitted for services which have not been previously authorized in
writing shall be returned to the Designer.

13.6 Requests for previously authorized expenses of any nature must be accompanied
by a billing or receipt from the source of the expense.

ARTICLE 14: INSURANCE

14.1 The Designer shall at his own expense obtain and maintain a Professional
Liability Insurance policy for negligence based on Engineer’s failure to act with
professional care. The professional liability insurance shall be limited to
$3,000,000. Additionally, the Designer shall carry General Liability Insurance in
the amount of: $1,000,000 per occurrence for General Liability which includes:
bodily injury liability and property damage, or combined single limit of
$1,000,000 for General Liability. The Designer shall carry Auto Liability in the
amount of $1,000,000 per occurrence which includes: bodily injury liability,
property damage liability, or a combined single limit of $1,000,000 for Auto
Liability.

14.2 The coverage shall be in force from the time of the agreement to the date when all
construction work designed under the contract is completed and accepted by the
Awarding Authority. If, however, the policy is a claims made policy, it shall
remain in force for a period of six (6) years after substantial completion.

Since this insurance is normally written on a year-to-year basis, the Designer shall
notify the Awarding Authority should coverage become unavailable.

14.3 The Designer shall, before commencing performance of this contract, provide by
insurance for the payment of compensation and the furnishing of other benefits in
accordance with M.G.L. c.152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract. The Designer shall also maintain broad form public liability insurance to protect against damage or injury to persons or property.

14.4 The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data are turned over to the Awarding Authority.

14.5 Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the City at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

14.6 Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

ARTICLE 15: SUPPLEMENTAL CONTRACT DATA: LEGAL REQUIREMENTS

15.1 The Designer hereby certifies:

(i) if an individual, the individual is a registered engineer;

(ii) if a partnership, a majority of all the partners are persons who are registered engineer;

(iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered engineers, and the person to have the project in his or her charge is a registered engineer;

(iv) if a joint venture, each joint venturer satisfies the requirements of this section. (Statutory reference: M.G.L. c.7, §38A½)

15.2 The Designer hereby certifies that it 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 this Agreement. (Statutory reference: M.G.L. c.7, §38H(e)(i))

15.3 The Designer hereby certifies that no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, 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. (Statutory reference: M.G.L. c.7, 
§38H(e)(ii))

15.4 The Designer hereby certifies that no person, corporation or other entity, other 
than a bona fide full-time employee of the Designer, has been retained or hired by 
the Designer to solicit for or in any way assist the Designer in obtaining this 
Agreement upon an agreement or understanding that such person, corporation or 
other entity be paid a fee or other consideration contingent upon the award of this 
Agreement to the Designer. (Statutory reference: M.G.L. c.7 §38H(e)(iii))

15.5 The Designer hereby certifies that it has internal accounting controls as required 
by subsection (c) of section thirty-nine R of chapter thirty and that the 
Designer filed and will continue to file an audited financial statement as required 
by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c.7, 
§38H(e)(iv))

15.6 The Designer shall maintain all books, records, and accounts related to the Project 
in compliance with applicable laws.

15.7 The Designer and 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 bid documents, as 
reasonably determined by the Awarding Authority. (Statutory reference: M.G.L. 
c.7, §38H(J))

15.8 The Designer hereby certifies under penalties of perjury that the Designer has 
complied with all laws of the Commonwealth of Massachusetts relating to taxes, 
reporting of employees and contractors, and withholding and remitting child 
support. (Statutory reference: M.G.L. c.62C, §49A)

For agreements not in excess of $100,000, Section 15.5 and subsections 15.6.3 
to 15.6.8 do not apply.

**ARTICLE 16: MISCELLANEOUS PROVISIONS**

16.1 One (1) reproducible copy of all Drawings and Specifications furnished by the 
Designer and all other documents prepared by the Designer shall become the 
property of the Awarding Authority. Ownership of the stamped drawings and 
specifications shall not include the Designer's certification or stamp. Any re-use 
of such Drawings and/or Specifications without the Designer's written verification 
of suitability for the specific purpose intended shall be without liability or legal 
exposure to the Designer or to the Designer's independent professional associates, 
subcontractors or consultants. Distribution or submission to meet official
regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the Designer's rights under this AGREEMENT.

16.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.

16.3 This Agreement represents the entire agreement between the Awarding Authority and the Designer and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the Awarding Authority and the Designer.

16.4 The Designer agrees that neither the Awarding Authority nor any of its officers or employees assumes any personal liability under this Agreement.

16.5 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

16.6 In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.
In witness whereof, the parties hereto have caused this instrument to be executed in triplicate under seal as of the date set forth above.

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<tr>
<th>Contractor:</th>
<th>CITY OF NEW BEDFORD, MASSACHUSETTS</th>
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<tbody>
<tr>
<td>By:</td>
<td>By: Jonathan F. Mitchell</td>
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<td>Title:</td>
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CERTIFIED that funds are available

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<td>By: Robert Ekstrom</td>
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<td>Title: City Auditor</td>
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APPROVED as to Form and Legality

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<th>Chief Financial Office</th>
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<tr>
<td>By: Eric Cohen</td>
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<td>Title: Associate City Solicitor</td>
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Purchasing Department

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<tr>
<td>By: Susan Bruce</td>
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