

Considerations for the Dr. Martin Luther King, Jr. Memorial Commission when selecting a design for the Emancipation Proclamation/Freedom Monument:

- I. Selection of design proposal – When reviewing proposals, it is in the Commission’s best interest to have a “turnkey” solution, whereby the contracted party takes care of designing, constructing, and installing the monument. If the designer does not wish to go beyond finalizing the design, the Commission will need to conduct another procurement to implement the design.
  - a) Review scope of proposal carefully. For example, does it include desired landscaping around monument? Have lighting and accessibility been considered? What is expected of the Commission?
  - b) Review budget carefully. Is the proposed budget within budget anticipated by Commission? Are there options which must be decided upon by the Commission? Does the budget include all necessary work, such as site work to prepare for installation (if applicable)? Is there any language indicating the budget is not firm or that there may be additional costs (such as travel)?
  
- II. Selection of site - Is an easement, property transfer, or other property action required prior to building on the identified site?
  
- III. The contract and the parties – Many times the artist does not wish to be the prime contractor on the overall project, or there may be more than one artist involved in the design. In addition, if the Commission creates a Foundation, the Commission may wish for the Foundation to handle the purchase and later gift the memorial to the Commonwealth. It is important for both sides to identify who the contracting party will be before negotiations begin.
  - a) Who will negotiate on behalf of the purchaser- commission member(s), commission’s counsel, outside counsel, Foundation? Who will be available to respond to questions raised during negotiations?
  - b) How will contract be approved - Does entire Commission need to meet to approve language of contract, or is an executive committee desired?
  - c) Consider any additional entities which must approve design, for example, building official, environmental, historical. Is the contractor responsible for seeking approvals and applying for permits? Are there entities which should be brought in sooner rather than later, to ensure design concept is acceptable?
  - d) How will contract be structured – Commission cannot obligate itself prior to having funds available, so consider how to address contract deliverables in parallel with anticipated fundraising schedule. Can work be done in phases? Can phases be split so that if there is a gap in time due to fundraising, the Commission will still be able to use previously-acquired deliverables (for example, drawings)? Phases should anticipate what would happen if delay causes contractor to become unavailable or request additional compensation

- e) Ability of Commission/Foundation to terminate or not move forward with original contractor
    - i) Can design still be used if designer terminated
    - ii) Are contract deliverables such that another contractor would be able to continue
    - iii) Does contract minimize risks to Commission if Commission wishes to terminate for any reason
  - f) Replicas
    - i) Does the Commission envision replicas being desired, either by other localities or smaller replicas to be sold to the public? If so, ensure that contract allows for this and addresses whether any prior approval or commission is to be given to the designer
    - ii) If the work is original for the Commission, consider language which prevents the contractor/designer from duplicating the design or deliverables for any other commercial or revenue-generating purpose, but allows use for educational or historical purposes (if the Commission wishes to allow such use).
- IV. Contract administration – During the course of the contract, there are likely to be unforeseen issues, and the point of contact and potential decision-maker for the Commission should be identified.
- a) Who will accept deliverables and approve invoices?
  - b) Who must approve change orders (including changes in price or timeline)?
  - c) Who will agree to final acceptance, when all work is complete?
- V. Maintenance – The contract should include a requirement that the designer set forth maintenance requirements, and should require a cost estimate of annual maintenance. The Commission should consider who will be responsible for maintenance.
- a) If on City property, will the City maintain and if so, will City charge a fee? Another option would be to enter into a maintenance contract with a private party or the designer/contractor, but this should not be the first choice.