

945 CMR: OFFICE OF THE INSPECTOR GENERAL

945 CMR 2.00: NOTICE TO PROCEED TO USE THE CONSTRUCTION MANAGER AT RISK ALTERNATIVE DELIVERY METHOD FOR PUBLIC BUILDING CONSTRUCTION CONTRACTS PURSUANT TO M.G.L. C. 149A, §§1 THROUGH 11

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2.01: Purpose

The purpose of 945 CMR 2.00 is to establish standardized policies and procedures for obtaining a Notice to Proceed to use the construction management at risk delivery method on public building projects.

2.02: Scope and Applicability

945 CMR 2.00 applies to awarding authorities who request from the Office of the Inspector General a Notice to Proceed to use the Construction Management at Risk delivery method for specific projects for the construction, reconstruction, installation, demolition, maintenance, or repair of any public building estimated to cost \$5 million or more.

2.03: Definitions

The following terms used in 945 CMR 2.00 have the meanings given in 945 CMR 2.03, unless the context clearly requires another meaning.

Application to Proceed, the information submitted to the Office of the Inspector General in order to receive a Notice to Proceed to use the construction management at risk delivery method.

Awarding Authority, a public agency as defined in M.G.L. c. 149, § 44A undertaking a Building Project, except exempt agencies as defined by M.G.L. c. 149A, § (4)(d).

Completion, the definition pursuant to 810 CMR 3.01

Notice to Proceed, the written approval issued by the Inspector General based on the Procedures and a review of information submitted in the application to proceed that an awarding authority has met the requirements as prescribed by the Inspector General and may proceed to use the construction management at risk delivery method for a specific building project.

Inspector General, or Office of the Inspector General, independent state agency.

Procedures, the written requirements as may be prescribed by the Inspector General, including standards, policies, and guidelines for receiving a Notice to Proceed to use the construction management at risk delivery method.

Public Agency, shall have the same meaning as found in M.G.L. c. 149, § 44A;

Summary Report, a form to be submitted by the awarding authority to the Office of the Inspector General upon completion of a building project describing the experience of the awarding authority with the construction manager at risk delivery method;

2.03: continued

Written Determination, a written determination by an awarding authority that the awarding authority has determined that the use of construction management at risk services is appropriate for the building project and the reasons for the determination.

2.04: Application to Proceed

(1) Submission of Application to Proceed. An awarding authority requesting to receive a Notice to Proceed to use the construction management at risk (CM at Risk) delivery method for a building project that has an estimated construction value of \$5 million or more must submit a detailed application to proceed to the Office of the Inspector General.

(2) Content of Application. The application to proceed will require the awarding authority to submit a written determination that the awarding authority has determined that the use of construction management at risk services is appropriate for the building project and the reasons for the determination. In addition, the awarding authority will be required to provide information regarding:

- (a) the building project
- (b) the estimated construction cost
- (c) the awarding authority's authorization to enter into a contract with a construction management at risk firm,
- (d) the awarding authority's capacity, plan and procedures to effectively procure and manage the project,
- (e) the owner's project manager retained by the awarding authority,
- (f) the designer retained by the awarding authority, and
- (g) the awarding authority's procedures to ensure fairness in competition, evaluation, selection, and reporting.

Other information may be requested in accordance with the Procedures to assist the Office of the Inspector General in making a determination as to whether an awarding authority will receive a Notice to Proceed.

(3) Form of Submission. An awarding authority must submit the information required by the application to proceed in accordance with the Procedures prescribed by and available from the Office of the Inspector General.

(4) Public Record. All information furnished in any application to proceed is a public record. The Notice to Proceed or Denial of Notice to Proceed is a public record. The Inspector General's records related to a specific application are not a public record until the Notice to Proceed or Denial of Notice to Proceed is issued.

2.05: Procedures

(1) Establishment of Procedures. The Office of the Inspector General shall establish procedures that specify the requirements and conditions that an awarding authority must meet to be issued a Notice to Proceed.

Content of Procedures. The Procedures shall include the standards as prescribed by the Inspector General that an awarding authority must meet to obtain a notice to proceed, the policies that the Office of the Inspector General will use in a review of the application to proceed, and the specific procedures that an awarding authority must follow to obtain a notice to proceed.

(2) General Information. The Procedures shall include general information on the construction management at risk delivery method of public construction.

2.06: Review of Application to Proceed

(1) Initial Review. Upon receipt of an application to proceed, the Office of the Inspector General will review the application to proceed and other information submitted, and will inform the applicant in writing within 15 working days whether the application is complete.

2.06: continued

(2) Review. The Office of the Inspector General will render a decision regarding use of the construction management at risk delivery method within 60 days from the date the complete application is submitted to the Office.

2.07: Notice to Proceed

(1) Issuance of Notice to Proceed. The Inspector General shall issue a Notice to Proceed to use construction management at risk services to an awarding authority once the awarding authority has met the requirements as prescribed by the Inspector General. At a minimum, the awarding authority will be required to demonstrate that it has the authority and capacity to proceed; that it has a plan and procedures to effectively procure and manage the project; that it has retained a qualified owner's project manager; that it has retained a qualified designer; and, that it has procedures to ensure fairness in competition, evaluation, selection, and reporting.

(2) After receiving a notice to proceed, an awarding authority may use the construction management at risk delivery method. The awarding authority shall procure a construction management at risk firm in a manner consistent with M.G.L. c. 149A, § 5 through 11 and 945 CMR 2.00.

2.08: Denial of Notice to Proceed

(1) If an awarding authority fails to meet the requirements prescribed by the Inspector General, the Inspector General shall decline to issue a Notice to Proceed. If the Inspector General declines to issue a Notice to Proceed, the Office of the Inspector General shall provide in writing to the awarding authority the reason(s) for the decision.

(2) An awarding authority not receiving a Notice to Proceed may resubmit a detailed application upon correcting or responding to the reason(s) provided to the awarding authority by the Office of the Inspector General. The Office of the Inspector General shall review the resubmitted application in accordance with the Procedures. If the awarding authority meets the requirements and conditions, the Office shall issue a Notice to Proceed.

(3) The Inspector General shall decline to issue a Notice to Proceed to an awarding authority that has failed to provide complete and accurate answers to all questions in the application to proceed and all other information and documentation required by the Office of the Inspector General. Providing false or misleading information or failure to provide all required information will be considered grounds for denial.

2.09: Reporting Requirements

(1) Summary Report. An awarding authority shall submit to the Office of the Inspector General a summary report on the CM at Risk project within 70 days from completion of the building project or termination of the contractor on the CM at Risk building project.

(2) The summary report shall be completed in a form prescribed by the Inspector General's Office.

(3) The summary report shall be a public record.

REGULATORY AUTHORITY

945 CMR 2.00: M.G.L. c. 149A, § 4.