

945 CMR: OFFICE OF THE INSPECTOR GENERAL

945 CMR 3.00: NOTICE TO PROCEED TO USE DESIGN BUILD FOR PUBLIC WORKS CONSTRUCTION CONTRACTS PURSUANT TO M.G.L. c. 149A, §§ 15 THROUGH 21

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3.01: Purpose

The purpose of 945 CMR 3.00 is to establish standardized policies and procedures for obtaining a Notice to Proceed to use the design build delivery method on public works projects.

3.02: Scope and Applicability

945 CMR 3.00 applies to awarding authorities who request from the Office of the Inspector General a Notice to Proceed to use the Design Build delivery method for specific projects for the construction, reconstruction, alteration, remodeling or repair of a public works project by an awarding authority and estimated by the awarding authority to cost \$5 million or more.

3.03: Definitions

The following terms used in 945 CMR 3.00 have the meanings given in 945 CMR 3.03, unless the context clearly requires another meaning.

Application to Proceed, the notification and information submitted to the Office of the Inspector General in order to receive a Notice to Proceed to use the design build delivery method.

Awarding Authority, as defined by M.G.L. c. 149A, § 15, except exempt agencies as defined by M.G.L. c. 149A, § 16(d).

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 design build delivery method for a specific public works 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 procedures for receiving a Notice to Proceed to use the design build delivery method.

Written Determination, a written determination by an awarding authority that the awarding authority has determined that the use of design build is appropriate for the public works project and the reasons for the determination.

3.04: Application to Proceed

(1) Submission of Application to Proceed. An awarding authority requesting to receive a Notice to Proceed to use the Design Build delivery method for a public works project that has an estimated construction value of \$5 million or more must submit a detailed application to proceed.

3.04: continued

(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 design build is appropriate for the public works project and the reasons for the determination. In addition, the awarding authority will be required to provide information regarding:

- (a) the public works project;
- (b) the estimated construction cost;
- (c) the awarding authority's authorization to enter into a contract for a design build;
- (d) the awarding authority's capacity, plan and procedures to effectively procure and manage a design build entity for the specific project;
- (e) the design professional retained to provide technical assistance and consulting services; and
- (f) 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.

3.05: 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 design build delivery method of public construction.

3.06: 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) Review. The Office of the Inspector General will render a decision regarding using design build within 60 days from the date the complete application is submitted to the Office.

3.07: Notice to Proceed

(1) Issuance of Notice to Proceed. The Inspector General shall issue a Notice to Proceed to use design build 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 designer; and, that it has procedures to ensure fairness in competition, evaluation, selection, and reporting.

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(2) After receiving a notice to proceed, an awarding authority may use design build for the specific public works project. The awarding authority shall procure a design build firm in a manner consistent with M.G.L. c. 149A, §§ 17 through 20 and 945 CMR 3.00.

3.08: 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.

REGULATORY AUTHORITY

945 CMR 3.00: M.G.L. c. 149A, § 16.