



OFFICE OF THE INSPECTOR GENERAL
COMMONWEALTH OF MASSACHUSETTS

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INSPECTOR GENERAL

**Procedures relative to receiving a
Notice to Proceed to use
Construction Management at-Risk
Services**

OCTOBER 2023

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OVERVIEW OF THE CM AT-RISK APPLICATION PROCESS

Prior to using the construction management at-risk (CM at-risk) delivery method to procure a contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost \$5 million or more, an awarding authority must obtain a Notice to Proceed to use the CM at-risk delivery method from the Office of the Inspector General (OIG).

The OIG has developed this CM at-risk application to be completed on a project specific basis. The application process will be important to awarding authorities in assessing the qualifications and commitments that are necessary to the process to ensure construction of a high-quality, cost-effective public building project. Before submitting an application, the public agency must assign or hire an owner's project manager and procure the services of a designer. [M.G.L. c. 149A, § 3]

Under Section 4 of Chapter 149A of the Massachusetts General Laws, the OIG will issue a Notice to Proceed when the public agency has demonstrated that:

- The public agency has authorization from its governing body to enter into a contract with a construction management at-risk firm. The authorization shall include the results of any public vote if applicable.
- The public agency has the capacity, a plan and procedures in place and approved of by the governing body, where appropriate, to effectively procure and manage construction management at-risk services for the specific project and has retained the services of a qualified owner's project manager.
- The public agency has in place procedures to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement process.
- The building project has an estimated construction value of \$5 million or more.
- The public agency has determined that the use of construction management at-risk services is appropriate for the building project and states in writing the reasons for the determination.

The OIG will review an awarding authority's complete application and within 60 days from the date a completed application is received will determine whether the awarding authority meets the requirements necessary to obtain a Notice to Proceed.

Pursuant to M.G.L. c. 149A, if the OIG declines to issue a Notice to Proceed to an awarding authority, the OIG shall provide in writing to the awarding authority the reason(s) for the decision. An awarding authority not receiving a Notice to Proceed may resubmit its application upon correcting or responding to the reason(s) for denial provided to the awarding authority by the OIG. The OIG shall make a timely review of the resubmitted application and, if the awarding authority meets the requirements, the OIG will issue a Notice to Proceed.

The OIG 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 and all other information and

documentation required by the OIG. Providing false, misleading or incomplete information will be considered grounds for denial.

Please submit an electronic copy of the application to IGO-Chapter-149A@mass.gov. We prefer an electronic copy, however a hard copy may be submitted to the following address. Please do not use any bindings or tabs when submitting a hard copy.

Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

If you have any questions regarding the application process, contact Joshua Giles at 617-722-8828 or by e-mail at IGO-Chapter-149A@mass.gov.

SCHEDULE

I. Timetable for Review

The OIG will review an awarding authority's complete application and within 60 days from the date a completed application is received will determine whether the awarding authority meets the requirements necessary to obtain a Notice to Proceed.

| | Event | OIG Task |
|-----------|---|--|
| Day 1 | Awarding Authority submits application to OIG | Date and timestamp application |
| Days 1-15 | OIG contacts applicant acknowledging receipt of application | Review application |
| Days 1-60 | OIG determines whether additional information is necessary and if so, requests awarding authority to send information | Request more information, if necessary |
| Days 1-60 | OIG reviews application to determine whether awarding authority meets requirements and will be issued a Notice to Proceed | Analyze credentials based on evaluation criteria |
| Days 1-60 | OIG sends Notice to Proceed or Denial of Notice to Proceed | Complete review and issue determination |

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APPLICATION

Please submit one electronic application including copies of the signature pages, to the CM at-risk mailbox: IGO-Chapter-149A@mass.gov. A paper copy may also be submitted to the OIG, but is not required. To assist in the evaluation process, please submit and identify information and documents with the item numbers on this application form.

I. General Information

1. Awarding Authority _____
 - a. Awarding Authority Person in Charge of Project _____
 - b. Awarding Authority Address _____
 - c. Phone number of Awarding Authority Person in Charge of Project _____
 - d. E-mail address of Awarding Authority Person in Charge of Project _____
2. Owner's Project Manager (OPM) assigned or hired _____
 - a. Phone number for OPM _____
 - b. E-mail address for OPM _____
3. Design Firm _____
 - a. Principal Designer in Charge of Project _____
 - b. Phone number of Principal Designer _____
 - c. E-mail address of Designer _____
4. Narrative description and brief history of the project:

 - a. Estimated square feet _____
 - b. Program type _____
 - c. Building type _____
 - d. Address of project _____
5. Project schedule elements, including, but not limited to:
 - a. Feasibility study completion date (if any) _____
 - b. Owner's Project Manager contract execution date (if not an employee) _____
 - c. Designer contract execution date _____

- d. Projected procurement milestone dates, including but not limited to the following items:
 - i. Request for prequalification issuance _____
 - ii. Request for proposals issuance _____
 - iii. CM at-risk firm contract execution date _____
 - iv. Other . . . _____
- e. Projected completion date (use and/or occupancy) _____
- 6. Submit an estimated total project budget, including but not limited to line items for the following items:
 - a. Owner's Project Manager contract amount (if not an employee) _____
 - b. Designer contract amount _____
 - c. Estimated construction cost _____
 - d. Other costs _____
 - e. Identify the source of the estimated project budget and estimated construction costs. _____

II. Awarding Authority Authorization Information

- 7. Submit the attached certification form (see last page) regarding the authorization from the awarding authority's governing body that the awarding authority may enter into a contract with a construction management at-risk firm, including the date of authorization. Submit copies of any public vote if applicable.
- 8. Submit the name(s) and title(s) of the individuals authorized to sign the CM at-risk contract on behalf of the awarding authority.
- 9. Submit written evidence of the approval of the governing body of the project plan and procedures, if applicable.
- 10. Submit the written determination by the awarding authority that the use of CM at-risk services is appropriate for the building project and the reasons for the determination.

III. Awarding Authority Capacity Information

- 11. Provide an organizational chart of the project organization showing the roles and responsibilities of each individual or entity participating on the project, including contractors.
- 12. Provide the name, affiliation, and contact information for all key members of the project team. List relevant qualifications and experience, including any public project experience

and any CM at-risk experience (public or private) on project(s) of similar size and complexity or on any other projects, for:

- a. the individual/s within the awarding authority that will make project decisions for the awarding authority and that will supervise the Owner's Project Manager,
 - b. the Owner's Project Manager (OPM),¹
 - c. the Designer,² and
 - d. any other members of the project team or special consultants to be used to support the project (e.g., counsel, accountant, financial advisor), if any.
13. Submit a copy of the scope of services portion of the a) OPM contract and b) designer's contract. If the OPM is an employee, submit the individual's title, job description and scope of work related to the CM at-risk project.

[Note: You do not need to send in copies of the scopes of services if the project is a school building project receiving assistance from the Massachusetts School Building Authority (MSBA) and the OPM and Designer will be signing the MSBA contracts for CM at-risk services in their entirety with no changes. However, submit a copy of the signed signatory pages.]

IV. Awarding Authority Plans and Procedures

The OIG reviews the awarding authority's plan and procedures³ for procuring and managing the CM at-risk services to ascertain whether the awarding authority has in place procedures, in accordance with M.G.L. c. 149A, to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement process. Therefore, provide information regarding each of the following components of a CM at-risk project:

- 14a. The awarding authority's plan and procedures for conducting the two-phase selection process for hiring a construction manager at-risk firm and the methods that will be used to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement.

¹ M.G.L. c. 149A, § 3(a) states that "Before procuring the services of a designer ... and prior to submitting an application to use the construction management at-risk delivery method ... the awarding authority shall procure or otherwise employ the services of an owner's project manager pursuant to section 44A 1/2 of chapter 149. The owner's project manager may assist the awarding authority in the procurement of the designer."

² M.G.L. c. 149A, § 3(b) states that "Before submitting an application to use the construction management at-risk delivery method ... the awarding authority shall procure the services of a designer for the building project. In procuring the services of a designer, the awarding authority shall do so in a manner consistent with sections 38A ½ to 39O, inclusive, of chapter 7 (now sections 44-58, inclusive, of chapter 7C). The designer procured by the awarding authority shall be independent of the owner's project manager and the construction management at-risk firm."

³ The plan and procedures must be approved by the governing body, where appropriate. [M.G.L. c. 149A, § 4(a)(2)].

- 14b. The awarding authority's plan and procedures for developing the cost-plus not to exceed guaranteed maximum price form of contract. Include information on negotiating the contract, including establishing the general condition items, CM at-risk fee, cost of the work and other contract components. Include information on what level of design development the awarding authority plans on establishing the GMP, contingency and other components of the final contract amendment.
- 14c. The awarding authority's plan and procedures for conducting the two-phase selection process for obtaining trade contractors and the methods that will be used to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement.
- 14d. The awarding authority's plan and procedures for obtaining subcontractors [M.G.L. c. 149A, § 8(j)] and the methods that will be used to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement.
- 14e. The awarding authority's plan and procedures relative to administering and coordinating the project and maintaining project communications.
- 14f. The awarding authority's plan and procedures relative to monitoring and auditing all project costs.

Do not submit requests for qualifications (RFQs), requests for proposals (RFPs), draft contracts, or other such documents related to the CM at-risk delivery method procurement.

V. Certification

The undersigned hereby certifies under the pains and penalties of perjury that all answers and all information contained in this application are, to the best of my knowledge, true and correct.

Signature

Date

Title

Awarding Authority

EVALUATION PROCESS

The OIG will review the information submitted by the awarding authority and assess whether the plan and procedures provide an adequate framework for procuring and managing a CM at-risk delivery method project. The following criteria will be used in making a determination whether to issue a Notice to Proceed.

- Is the estimated construction cost \$5 million or more?
- Did the awarding authority receive approval from the appropriate governing body?⁴
- Did the awarding authority's governing body approve the plan and procedures?
- Are the awarding authority's goals and objectives for using the construction manager at-risk method reasonable and designed to maximize competition?
- Has the awarding authority established an experienced and effective project organization structure, including an owner representative as a point of contact, an owner's project manager, and a designer?
- Is the decision-making authority clear?
- Do any project team members have relevant CM at-risk experience for the size and scope of the project?
- Does the plan and do the procedures demonstrate an appropriate assessment of the owner's tasks and responsibilities associated with a CM at-risk contract, including all aspects of coordination and administration of the CM at-risk delivery method?
- Does the plan and do the procedures provide an adequate framework for conducting the two-phase selection process for a construction manager at-risk firm and clearly delineate the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement, and otherwise comply with all statutory requirements?
- Does the plan and do the procedures provide an adequate framework for negotiating the cost-plus not to exceed guaranteed maximum price form of contract?
- Does the plan and do the procedures provide an adequate framework for conducting the two-phase selection process for trade contractors and clearly delineate the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement, and otherwise comply with all statutory requirements?
- Does the plan and do the procedures provide an adequate framework for obtaining subcontractor contracts and clearly delineate the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement?

⁴ The "appropriate governing body" varies, depending on an awarding authority's charter and other factors.

- Does the plan and do the procedures provide an adequate framework for administering and coordinating the project and maintaining project communications?
- Does the plan and do the procedures provide an adequate framework for auditing and monitoring all project costs?
- Is the schedule realistic?

Although the OIG will rely primarily on the information presented in the application to make its determination, the OIG reserves the right to obtain additional information and to verify information.

CERTIFICATE OF AUTHORITY TO USE CM AT-RISK DELIVERY METHOD

I, _____, [legal counsel for the governing body as identified below] do hereby certify to the Office of the Inspector General of the Commonwealth of Massachusetts, in accordance with M.G.L. c. 149A, § 4(a)(1), regarding using construction management at risk services for the following project _____ (“Project”), as follows:

(1) That _____ [name of political subdivision] is a public agency as defined in M.G.L. c. 149, § 44A(1), is duly organized and existing under the laws of the Commonwealth of Massachusetts, and has received the necessary authority and power from _____ [its city council, town meeting or other governing body] to enter into a contract with a construction management at risk firm and to perform all its obligations in connection with the Project.

(2) That the public vote of the governing body, attached hereto (if applicable) was duly adopted and is currently in effect.

Signature

Title

[SEAL]

Date