



# **Office of the Inspector General**

Commonwealth of Massachusetts

**Glenn A. Cunha**  
Inspector General

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Procedures relative to receiving a  
Notice to Proceed to Use  
Design-Build Services

**April 2013**

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**Attachment:**    **CERTIFICATION OF AUTHORITY TO USE THE DESIGN-BUILD DELIVERY METHOD**

**Massachusetts Office of the Inspector General**

**Address:**  
Room 1311  
John McCormack State Office Building  
One Ashburton Place  
Boston, MA 02108

**Contact Information:**  
(617) 727 - 9140  
(617) 523 - 1205 (MCPPO Program)  
(800) 322 - 1323 (Confidential 24-hour Hotline)  
(617) 723 - 2334 (FAX)  
(617) 722 - 8809 (Design-build application)  
[www.mass.gov/ig](http://www.mass.gov/ig)

## ***Introduction***

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### **Office of the Inspector General Design-Build Application to Proceed**

Prior to using the design-build delivery method to procure a contract for the construction, reconstruction, alteration, remodeling, or repair of any public works project estimated to cost \$5 million or more, an awarding authority must obtain a Notice to Proceed to use the design-build delivery method from the Office of the Inspector General (OIG).

The OIG has developed this design-build 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 ensure construction of a high-quality, cost-effective public works project.

Under M.G.L. c. 149A, § 4, the OIG will issue a Notice to Proceed when the awarding authority has demonstrated that:

- a. The awarding authority has authorization from its governing body to enter into a contract for design-build. The authorization shall include the results of any public vote if applicable.
- b. The awarding authority has the capacity, a plan and procedures in place and approved of by the governing body, where appropriate, to effectively procure and manage a design-build entity for the specific project.
- c. The awarding authority has in place procedures to ensure fairness in competition, evaluation and reporting of results at every stage in the procurement process.
- d. The public works project has an estimated construction value of \$5,000,000 or more.
- e. The awarding authority has determined that the use of design-build is appropriate for the public works 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, § 16(b), if the OIG declines to issue a Notice to Proceed to an awarding authority, the Inspector General 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 Inspector General will issue a Notice to Proceed.

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

Applications must be submitted to: Office of the Inspector General, Room 1311, One Ashburton Place, Boston, MA 02108.

If you have any questions regarding the application process or would like to receive an electronic file version of the application, contact Mary Kolesar, Senior Policy Analyst, Policy and Government Division, at 617-722-8809 or by e-mail at [Mary.Kolesar@massmail.state.ma.us](mailto:Mary.Kolesar@massmail.state.ma.us).

## Schedule

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	Event	Task
Day 1	Awarding Authority Submits Application to Proceed (by mail) to:  Office of the Inspector General One Ashburton Place, Room 1311 Boston, MA 02108	Date stamp application.
Day 1 – 15	<ol style="list-style-type: none"><li>1. OIG reviews application in a timely manner.</li><li>2. OIG contacts applicant acknowledging receipt of the application.</li></ol>	Review application.
Day 1-60	<ol style="list-style-type: none"><li>1. OIG determines whether additional information is necessary and if so, requests awarding authority to send information.</li><li>2. OIG reviews application to determine whether awarding authority meets requirements and will be issued a Notice to Proceed.</li><li>3. OIG sends Notice to Proceed or Denial of Notice to Proceed.</li></ol>	<ul style="list-style-type: none"><li>• Verify information.</li><li>• Request more information, if necessary.</li><li>• Analyze credentials based on evaluation criteria.</li><li>• Complete review and issue determination.</li></ul>

# ***Application***

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Please submit one original with signature pages and one copy of the following information. Use additional sheets where necessary. To assist the evaluation process, please submit information and documents in accordance with the item numbers on this application form.

## **Part A: General Information**

1. Awarding Authority \_\_\_\_\_
2. Awarding Authority Person in Charge of Project \_\_\_\_\_
  - a. Awarding Authority Address \_\_\_\_\_
  - b. Phone number of Awarding Authority Person in Charge of Project \_\_\_\_\_
  - c. Fax number of Awarding Authority Person in Charge of Project \_\_\_\_\_
3. E-mail address of Awarding Authority Person in Charge of Project \_\_\_\_\_
4. Narrative description and brief history of the project:  
\_\_\_\_\_  
\_\_\_\_\_
5. Project schedule elements, including but not limited to:
  - a. Letters of interest solicitation date;
  - b. Selection date of the design professional to provide technical advice and professional expertise to the awarding authority, if not an employee of the awarding authority;
  - c. Request for qualifications (RFQ) and draft RFP(if any) distribution date;
  - d. Request for proposals (RFP) issue date;
  - e. Design-build entity<sup>1</sup> selection date;
  - f. Design-build entity contract date;
  - g. Project completion date.
6. Submit an estimated total project budget, including but not limited to line items for the following items:
  - a. Design professional contract amount (if not an employee of the awarding authority);
  - b. Stipend, if any;
  - c. Design-build entity contract amount;

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<sup>1</sup> "Design-build entity", is an individual, sole proprietorship, firm, partnership, joint venture, corporation, or other entity that provides design-build services. [M.G.L. c. 149A, §15]

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- d. Other costs
  - e. Identify the source of the estimated public works project budget and estimated construction costs.
7. Submit the attached form (see last page) regarding the authorization from the awarding authority's governing body that the awarding authority may enter into a contract for design-build, 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 design-build entity 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 design-build is appropriate for the public works project and the reasons for the determination.

**Part B. 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 known key members of the project team. List all relevant qualifications and experience, including any public project experience and any design-build 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 design professional and the design-build entity,
  - b. the design professional, if known, and
  - c. 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 proposed scope of services for the design professional contract or, if the design professional is an employee, submit the individual's title, job description, and scope of work related to the design-build project.

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The OIG reviews the awarding authority's plan and procedures<sup>2</sup> for procuring and managing the design-build 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 design-build:

- 14a. The awarding authority's plan and procedures for acquiring appropriate expertise to assist where the team may not have the necessary experience to meet anticipated challenges.
- 14b. The awarding authority's plan and procedures for conducting phase one of the two-phase selection process, and the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement. Please specify whether the awarding authority plans on issuing a draft RFP at the same time it issues the RFQ. Please specify how many design-build firms the awarding authority plans on selecting to receive an RFP in phase two.
- 14c. The awarding authority's plan and procedures for conducting phase two of the two-phase selection process. Please specify whether the awarding authority plans on using a best value process with separate technical and price proposals or a low bid process and the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement. Please specify whether the awarding authority plans on reviewing conceptual technical submittals before full proposal submittal. Please specify whether the awarding authority plans on providing for a stipend.
- 14d. The awarding authority's plan and procedures relative to administering and coordinating the project and maintaining project communications.
- 14e. The awarding authority's plan and procedures relative to monitoring and auditing all project costs.
- 14f. The awarding authority's plan and procedures relative to controlling risks, including but not limited to design risks and construction warranties and guarantees.

Please do not submit requests for qualifications (RFQs), requests for proposals (RFPs), draft contracts, or other such documents related to the design-build delivery method procurement.

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<sup>2</sup> The plan and procedures must be approved by the governing body, where appropriate. [M.G.L. c. 149A, §16(a)(2)]

## ***Evaluation Process***

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### **Office of the Inspector General's 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 design-build 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?<sup>3</sup>

Did the awarding authority's governing body approve the plan and procedures?

Are the awarding authority's goals and objectives for using the design-build method reasonable and designed to maximize competition?

Has the awarding authority established a plan for developing an effective project organization, including identifying a point of contact, establishing decision-making rules, and addressing other components of managing a design-build project?

Do any project team members have relevant design-build experience for the size and scope of the project?

Does the plan and do the procedures and the proposed scope of services for the design professional contract, or if an employee, the job description, demonstrate an appropriate assessment of the awarding authority's tasks and responsibilities associated with a design-build contract, including all aspects of coordination and administration of the design-build delivery method?

Has the awarding authority established a plan for acquiring appropriate expertise to assist where the team may not have the necessary experience to meet anticipated challenges?

Does the plan and do the procedures provide an adequate framework for conducting the two-phase selection process for a design-build entity? Does the plan and do the procedures specify whether the awarding authority will be using a best value process with separate technical and price proposals or a low bid process and do they clearly delineate the methods that will be used to ensure fairness in competition, evaluation, and reporting of results at every stage in the procurement? Do the phase one components comply with statutory requirements? Do the phase two components comply with statutory requirements?

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<sup>3</sup> The "appropriate governing body" varies, depending on an awarding authority's charter and other factors.

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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?

Does the plan and do the procedures demonstrate an appropriate assessment of the design-build delivery method risks and include appropriate safeguards?

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.

**Certification**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Awarding Authority

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If the OIG's review results in a determination that an awarding authority appears to lack sufficient capacity to effectively procure and manage a design-build project, the OIG will provide in writing to the awarding authority the reason(s) for the determination. An awarding authority may resubmit a detailed application, correcting or responding to the reason(s) identified by the OIG. The OIG shall review the resubmitted application.

If the OIG review results in a determination that an awarding authority has demonstrated sufficient capacity to effectively procure and manage a design-build public works project, the OIG shall 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.

CERTIFICATION OF AUTHORITY TO USE THE DESIGN-BUILD  
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, §16(a)(1), regarding using Design-build services for the following project \_\_\_\_\_ (“Project”), as follows:

(1) That \_\_\_\_\_ [name of political subdivision] is an awarding authority as defined in M.G.L. c. 149, §15, 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 for Design-build 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

[SEAL]

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date