



# Massachusetts School Building Authority

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## OWNER'S PROJECT MANAGER SELECTION

### INTRODUCTION

An Owner's Project Manager ("OPM") provides project management guidance to an Owner throughout the life of the Owner's Public School Project. As a consequence, an Owner will work closely with its OPM from the earliest stages of the project through the completion of construction and building occupancy and the selection of a qualified OPM is one of the most important decisions an Owner will make to the project. Under MGL c. 70B, Sec. 1, the Massachusetts School Building Authority (the "MSBA") must approve the OPM for any project for which the Owner is seeking funding from the MSBA. This document offers guidance on how to select an appropriate OPM for a project.

MGL c. 149, Sec. 44A1/2 requires the Owner of a proposed public building construction, reconstruction, demolition, or repair project to contract for the services of an OPM if the estimated cost of the proposed contract for that construction, reconstruction, installation, demolition, maintenance or repair is \$1.5 million or more.\* The duties of an OPM and the manner in which an OPM must be selected and retained by an Owner for a Project that is being funded by the MSBA are prescribed, generally, in MGL c. 149, Sec. 44A1/2 and, more specifically, under MGL c. 70B, Sec. 1, et seq, and various MSBA Regulations and Guidelines. MGL c. 149, Sec. 44A1/2 provides:

The duties of the OPM shall include, but need not be limited to, providing advice and consultation with respect to design, value engineering, scope of the work, cost estimating, general contractor and subcontractor prequalification pursuant to section 44D ½ or 44D ¾ when applicable, scheduling, construction and the selection, negotiation with and oversight of a designer and a general contractor for the project, ensuring the preparation of time schedules which shall serve as control standards for monitoring performance of the building project, and assisting in project evaluation including, but not limited to, written evaluation of the performance of the design professional, contractors, and subcontractors.

The OPM does not act as a designer or a contractor. Rather, the OPM monitors and documents all Project Tasks in accordance with the MSBA's Standard OPM Contract

*\*The law allows an Owner to assign an existing employee to serve as its OPM provided that the designated employee meets or exceeds the minimum qualifications set forth for retaining a private sector project manager and "has experience in the construction and supervision of construction of building of similar size and scope of complexity as the project" to which the existing employee would be assigned. If an Owner exercises this option, the Owner must be sure that sufficient qualified staff resources are available to perform the necessary control and oversight.*

while simultaneously providing the Owner with ongoing project management advice and consultation. Depending upon the nature of the Project and the Owner's chosen method of Project Delivery, this will include, but may not be limited to, advice regarding Designer selection, Site Selection, Choice of Project Delivery Method, Coordination of Participating Stakeholders, Prequalification of General Contractors, Construction Managers, Trade Contractors and/or Subcontractors, Procurement of the General Contractor, Construction Manager, Trade Contractors and/or Subcontractors, Contract negotiations, Budget and Constructability reviews, Management of Site Meetings and Procurement of all other necessary consultants and Owner supplied materials.

MGL c. 149, Sec. 44A1/2, states that an OPM can be an *“individual ... or other entity [who is] engaged in the practice of providing project management services for the construction and supervision of construction of buildings”*. However, the statute specifies that all actual OPM services must be provided to an Owner by *“a person who is registered by the commonwealth as an architect or professional engineer and who has at least 5 years' experience in the construction and supervision of construction of buildings or a person, if not registered as an architect or professional engineer, who has at least 7 years' experience in the construction and supervision of construction of buildings”*. In conformance with this requirement, a firm that is providing OPM services to an Owner on an MSBA funded project must provide those services using a designated *“Project Director”* who meets those statutory qualifications.

MGL c. 149, Sec. 44A1/2 states that *“before entering into a contract for design services ... an Owner shall contract for the services of an owner's project manager [using] a qualifications based selection process ...”* (Emphasis supplied). As the name indicates, a “qualifications based” selection process centers on the qualifications of the Applicants rather than the price. While Chapter 193 does not provide guidance on the selection process, it is reasonable to assume that utilizing a qualifications-based selection process that is similar to the process set out in Chapter 7C of the General Laws for the procurement of design services is an acceptable process and the procedures outlined in this document generally track those procedures.

The goal for the procurement of an OPM is to contract with an entity that has the skills and abilities to provide a comprehensive scope of services, which will result in:

- Selection of an experienced entity to achieve the oversight requirements of the Owner and the MSBA as well as the timely and cost-effective completion of the project;
- Effective monitoring and management of the project and the various consultants, vendors, and contractors from the feasibility study through completion of construction, building occupancy, and the warranty period; and
- Selection of a respondent that meets the minimum requirements pursuant to Chapter 193 and has the broad range of skills required for the project, including the ability to monitor and manage several participants and stakeholders, provide the Owner with timely recommendations relative to the successful implementation and execution of the various aspects of the project, monitor field operations, perform cost estimating and control, perform schedule analyses, perform value engineering analyses, perform constructability analyses, monitor

quality control processes, monitor safety, and monitor the timely resolution of issues impacting schedule and costs.

## **STEPS IN THE SELECTION OF AN OPM**

*The information contained in this document is intended to provide information about the MSBA's requirements and general guidance about the procurement of an OPM. Cities, towns and regional school districts should consult their local counsel to ensure that they are in compliance with all procurement and public bidding laws and all federal, state and local requirements.*

Because M.G.L. c. 70B requires that the OPM be approved by the MSBA, the MSBA will require the Owner to submit documentation regarding the procurement and selection process in accordance with Attachment A. **Please review Attachment A prior to beginning the procurement process and take note of the documentation that is required for the MSBA's approval process.** The MSBA reserves the right to request additional documentation or information as it deems necessary to conduct its review of the Owner's recommendation for selection and to monitor or participate in the selection process as it may deem necessary.

Prior to advertising and selecting an OPM, the Owner must:

- Review these OPM Selection Guidelines and Attachment A for more information about the Narrative of the OPM Selection Process and accompanying information that the Owner will need to submit to the MSBA;
- Designate a full-time employee of the municipality or school district (who also must be a Massachusetts Certified Purchasing Public Official ("MCPPO") as described in 963 CMR 2.03(2)(o)) as the procurement administrator to be responsible for the procurement of an OPM;
- Form an OPM Selection Committee. The composition of the Selection Committee should be authorized by the School Building Committee. Also, the Selection Committee should obtain any required local approvals in connection with drafting and advertising the Request for Services (the "RFS"). The procurement administrator should be a member (voting or non-voting) of the OPM Selection Committee. *Please note, the Owner will need to provide documentation of any locally required approvals to the MSBA along with information about the make-up of the Selection Committee and information regarding the background of the members;*
- Confer with the MSBA to determine the types and scope of services that will be required and submit for review the scope of services, and procurement schedule for the MSBA's concurrence;
- Prepare an RFS using the MSBA's template OPM RFS; and
- Concur with the MSBA before advertising OPM RFS.

## Request for Services

Using the MSBA's template OPM RFS, the Selection Committee should prepare an RFS for review by the MSBA that includes:

- A description of the problems and issues to be addressed including any relevant background information and a description of existing conditions;
- A description of circumstances and/or characteristics that may impact the work (e.g., limited site access, occupied building, etc.);
- The project schedule along with design and construction phase requirements (provide an estimated duration and schedule associated with a range of options to be studied); and
- The project budget (provide the estimated costs associated with the range of options to be studied).

The more descriptive the project objectives, the better understanding potential OPM's will have of the project and the more likely it will be to attract candidates who have relevant experience.

## Criteria for Selection

The responses to the RFS for an OPM must designate an individual as the Project Director who is MCPPO certified, as administered by the Inspector General of the Commonwealth of Massachusetts, and who meets the following minimum requirements:

- The Project Director must be a person who is registered with the Commonwealth as an architect or professional engineer and has at least five years' experience in managing the design and construction processes of public buildings;

or

- If the Project Director is not registered with the Commonwealth as an architect or professional engineer, the Project Manager must be a person who has at least seven years' experience in managing the design and construction processes of public buildings.

The selection process should include weighted evaluation criteria, as set forth in section four of the template OPM RFS, that ensure that finalists have significant, relevant experience in the supervision of construction of several projects, that have been successfully completed and/or are in process, and that are **similar in type, size, dollar value, and complexity to the project being considered**. The Owner should consider the respondent's expertise, performance record (i.e., statistics on number of projects managed, project dollar value, number and percentage completed on time, etc.), capacity and in-house skills (i.e., staff available for back-up and assistance), existing work load, financial stability, and prior direct experience providing services in both the mandatory

tasks and any other additional tasks the Owner requires, as well as the personal experience of the assigned Project Director. Consider whether the project requires any unusual expertise or previous experience, such as: experience working with local boards, commissions and/or community groups; experience with major renovations or new construction; experience with project delivery method; experience with particular building systems; experience with high performance green schools; or experience with historic renovation. Any project specific criteria **must** be stated in the scope of services. Please see section four of the template OPM RFS for more information regarding Evaluation Criteria.

The RFS should clearly identify the process that will be used by the Selection Committee in evaluating the responses. The process should include an evaluation by the Selection Committee as to whether the response has met the minimum threshold requirements, an explanation of the weight assigned to the criteria, and the ranking process at each step (responses and interviews).

### **Fee for Services**

After utilizing a qualifications-based selection process and conferring with the MSBA, the Owner will select a respondent and then negotiate the fee for services dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. A final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for an increased OPM fee. Depending on the project and as defined in the RFS, the Owner may negotiate a combination of cost plus fixed profit, unit price, and lump sum dependent upon the services. The initial fee structure will be negotiated through the Feasibility Study/Schematic Design Phase. The respondents will be required to include proposed staffing plans for potential projects for future phases and to provide pricing information, including hourly rates by job classification, for all phases specified in the contract at the time of the initial fee negotiation. The Owner and the selected respondent must finalize their negotiations, and the respondent must sign the MSBA standard Contract for Project Management Services, before the Owner seeks final approval of the selected respondent from the MSBA.

### **Advertising for an OPM**

The advertisement should include the following information:

- Specific site location of the project;
- Estimated total project cost;
- Brief description of the project;
- Date and time of informational meeting and site inspection (if applicable);
- Where to obtain an RFS;
- Deadline for the receipt of a response to the RFS; and
- Contact person for the Owner

To help interested OPMs understand the full scope of the work and the contractual requirements, the RFS shall include:

- The contract (attach the MSBA's standard OPM Base Contract for Design Bid

- Build and Construction Manager at Risk, as applicable);
- The criteria that will be used for selection;
- Any performance expectations so a prospective OPM can determine if he/she has the appropriate qualifications and is willing to provide the services outlined for the established fee;
- The project budget (estimated total project costs for the range of options to be studied); and,
- The preliminary project schedule (estimated duration for range of options to be studied).

The Owner must send a copy of the RFS to the MSBA for review at least two weeks prior to the preferred posting date. The Owner should not advertise the OPM RFS until the MSBA has approved of the form of the RFS, unless agreed to in writing by the MSBA.

**Where to Place Advertisements.** Advertisements must appear in the Central Register and a newspaper of general circulation in the area in which the project is located or to be located. The Owner may also consider advertising in the Dodge Report, on COMMBUYS, in newsletters or bulletins of relevant professional associations and at the Supplier Diversity Office (“SDO”).

**Timing.** At a minimum, the advertisement shall appear in the newspapers, the Central Register, and any other publications selected by the Owner one time at least two weeks before the RFS deadline. In order to solicit a wide response, Owners should consider advertising at least three or four weeks in advance of the RFS deadline.

When posting in the Central Register, all notices must be received by the Secretary of the Commonwealth by 4:00 P.M. on the Thursday of the week preceding publication. The Central Register is published weekly on Wednesday. It is the Owner’s responsibility to assure timely filing so that the two week minimum notice is met. Also, all notices published in the Central Register shall be submitted to the Secretary on forms provided by the Secretary.

**Informational Meeting and Site Inspection.** An informational meeting and site inspection is recommended, particularly for projects where the scope of work includes existing structures or sites, or new construction on a site with difficult topography. An informational meeting and site inspection should be factored into the schedule and the date should be included in the advertisement.

Be sure to have copies of the RFS at the site inspection for applicants who may not have received one but be cautious about providing any information that is not included in the RFS to avoid giving those in attendance an unfair advantage.

**Record Keeping.** The Owner’s procurement administrator should keep a record of names and addresses of all those who request an RFS so that all interested parties can be notified of any changes.

## **Processing Responses to the OPM RFS**

**Ranking.** To evaluate the responses and make a selection, take into account all available

information including: the scope of work; project specific criteria; project-specific information; performance record of respondents on previous public and private work; and the information contained in the response. The Selection Committee should complete a scoring sheet (see suggested format in Attachment B) evaluating each response in accordance with the procedure outlined in the RFS and the weighted criteria. Copies of the scoring sheets should be retained by the Owner and they may be requested by the MSBA. A “short list” of three to five respondents should be selected for an interview.

**Interviews.** Each of the short-listed respondents should be invited for a presentation and an interview by the Owner. Key personnel listed in the response should be at the interview. Be sure to ask the same questions of all respondents to be able to consistently compare the quality and content of the answers. Interviewee responses to interview questions should be documented and provided to the MSBA in the OPM Narrative.

At the interview, participants should:

- Confirm the respondent's qualifications to do the job;
- Confirm the respondent's ability to meet the schedule;
- Confirm the respondent's identification of key personnel and their time commitment to the project by phase; and
- Review the MSBA standard Contract for Project Management Services to confirm an understanding of the content.

**References.** Reference checks are required for all short-listed respondents. For each short-listed respondent, the MSBA recommends that the Owner conduct at least three reference checks and that the same questions be asked of each reference. The Owner should use the MSBA OPM Reference Checks Matrix to document the reference checks. The reference checks should meet the following guidelines, and be done in accordance with the Owner's published OPM RFS:

- Check references for each short-listed respondent's work on projects most similar in type, size, dollar value, and complexity to the Owner's proposed project;
- Check references from other public awarding authorities; and
- Ask references for information relating to the qualifications and criteria defined in the project scope.

This information will help determine which respondents are best suited for the project.

**Selection.** Following the interviews, the short-listed candidates should be ranked in order of preference. The ranking should be recorded on a scoring sheet separate from the first scoring sheet used. Copies of the scoring sheets should be retained by the Owner and may be requested by the MSBA at a later date. The rationale for the selection must be well documented. The Owner must forward a summary of the procurement and selection process to the MSBA for its review. Please see Attachment A for more information about the information that the Owner will need to provide to the MSBA.

## **MSBA Approval**

M.G.L. c. 70B requires that the OPM be approved by the MSBA.<sup>1</sup> Prior to awarding a contract to the selected respondent, the Owner should submit to the MSBA copies of all applicable materials indicated in the Confirmation of Required Information contained in Attachment A –Part 2.

As part of the approval process, the MSBA may require the Owner and the selected OPM to make a brief presentation to the MSBA’s Owner’s Project Manager Review Panel.

## **Contract Execution**

Upon (1) the Owner’s successful negotiation with the selected respondent, (2) the selected respondent signing the MSBA’s standard Contract for Project Management Services, and (3) the MSBA approving the selected respondent, the Owner should award a contract to the OPM and execute the contract. The Owner should prepare at least two (2) originals of the MSBA’s standard Contract for Project Management Services for execution. The OPM and the person authorized by the Owner in accordance with applicable law must execute the contracts. The Owner should provide one original copy to the OPM and one original copy should be kept for the Owner’s records. One copy of the executed contract shall be forwarded to the MSBA electronically and in hard copy for its records.

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<sup>1</sup> *Notwithstanding the rights of the MSBA to approve owner’s project managers, the MSBA shall not be held liable for: (1) the selection of the Owner’s Project Manager, (2) any occurrences arising out of the selection of the Owner’s Project Manager, (3) any acts or omissions of the Owner’s Project Manager, or (4) the performance of the Owner’s Project Manager. The MSBA is not responsible for the selection of the Owner’s Project Manager; rather the MSBA only approves or disapproves the Owner’s selection of the Owner’s Project Manager. The MSBA shall have no liability whatsoever for the Owner’s Project Manager’s performance, actions, or omissions.*