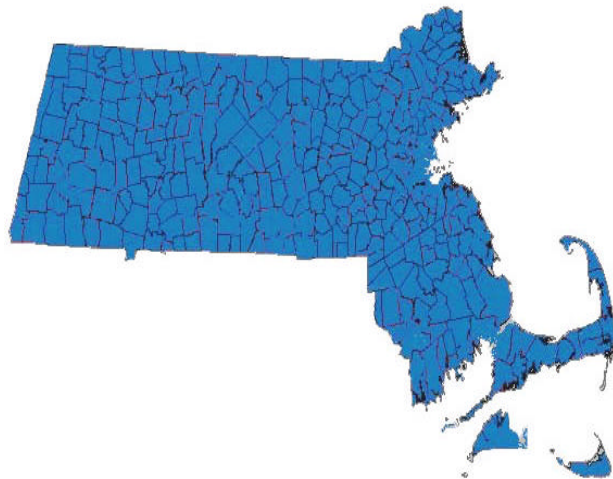




Recommended Practices For Hiring Owner's Project Managers

A Guide for Municipal Construction Projects

Edition I



The following design, construction and association professionals including staff of MMA (MA Municipal Association) and AGC (Associated General Contractors of MA) participated in the development of this guide to assist municipalities in choosing the most experienced Owner's Project Manager for their particular community and project needs.

This document is merely a guide and in no way negates the careful scrutiny that is necessary when undertaking public capital projects.

About the Authors

Steven Farrell, Farrell Consulting Group, Inc.

Matthew Feher, MMA www.mma.org

Mary Gately, AGC of MA www.agcmass.org

Max Jordan, Fluor Corp.

Robert Petrucelli, AGC of MA

Jennifer Pinck, Pinck & Co., Inc.

Stephen Rusteika, PMA Construction Services, Inc.

Patrick Saitta, Municipal Building Consultants, Inc.

Blaire Townsend, Casali Group, Inc.

Table of Contents

	Page
Introduction	3
I. Construction Reform Legislation	4
A. Overview of Chapter 193	
B. Owners Project Manager for public buildings	
C. Project Manager (PM) for school building projects	
D. New Construction Management at Risk Alternative Delivery Method	
II. The Owner's Project Manager	7
A. Overview	
B. OPM on Chapter 149 Projects	
C. OPM on CM at Risk Projects	
D. OPM on School Building Projects	
III. The Value an OPM Brings to Your Building Project	10
A. Beyond the Legislative	
B. Testimonials from Municipalities	
IV. Duties of All the Project Stakeholders	16
A. Roles/Responsibilities	
B. How Do You Avoid Redundancies in Services	
V. OPM Scope of Services for Chapter 149 Projects	18
A. Pre-design Phase	
B. Preconstruction Phase	
C. Construction Phase	

	Page
VI. OPM Scope of Services for CM at Risk Projects	21
A. Pre-design Phase	
B. Preconstruction Phase	
C. Construction Phase	
VII. Municipality's Responsibilities	24
A. Overview	
B. Responsibilities	
C. Developing OPM contracts	
D. School projects – When to notify the MSBA	
VIII. Developing an OPM RFQ or OPM RFP	30
A. Considerations	
B. Evaluation Criteria	
IX. Compensating OPM Professionals	32
Appendix	
A. Relevant Web sites	33
B. Local Mandate Opinion	34
C. OPM Regulations for School Building	38
D. Sample Matrix of Responsibility	41
E. OPM RFP Sample	42
F. Sample Evaluation Criteria	55

Table of Contents (cont)

The Guide

This Guide is intended to provide the reader with a set of recommended “best practices” for the procurement and administration of Owner’s Project Managers (OPM), as required by Chapter 193 of the Acts of 2004, the Public Construction Reform Law, for any building project over \$1.5 million.

Also included is the Project Manager (PM) requirement from the Massachusetts School Building Authority for school building projects. Separate legislation creating the new School Building Authority in 2004 included the requirement for a “Project Manager” (PM). For practical purposes, the definitions and roles of the Owner’s Project Manager on public building projects are similar for the Project Manager on school building projects.

Introduction

The reform legislation is designed to provide state and local awarding authorities greater accountability for design and construction services and greater flexibility over how they procure their construction projects. The aim is to ensure that public construction projects are cost effective, maximize the value of the taxpayers’ dollars and develop better quality projects.

This Guide defines the roles and responsibilities of the OPM for Chapter 149 procurement, as well as the OPM roles and responsibilities for the new Construction Management (CM) at Risk alternative construction method.

NOTE:

There is a Local Mandate opinion issued by the State Auditor concerning the mandatory hiring of the OPM. See Appendix B for a copy of the opinion. For more information on the status of this opinion, contact the Division on Local Mandates, Office of the State Auditor.

I. Construction Reform Legislation

A. Overview of Chapter 193

Chapter 193 of the Acts of 2004 introduced some of the most sweeping changes to the Massachusetts public construction bidding statutes in 50 years. The changes were developed as part of the public construction reform to assist municipalities in the building and renovation of public facilities in the Commonwealth.

Key changes included in Chapter 193 are as follows:

- Increases filed sub-bidding thresholds [and all 44F thresholds](#)
- Enhances access to general contractor and subcontractor evaluations
- Eliminates the two-step designer selection requirement at the municipal level
- Allows for CM at Risk delivery method on building projects as an alternative to Chapter 149
- Allows for Design-Build delivery method on highway projects as an alternative to Chapter 30
- Requires the use of an Owner's Project Manager (OPM) for all public building projects – state or municipal - with an estimated value of \$1.5 million and over
- Requires DCAM certification of filed sub-bidders
- Applies stricter DCAM certification standards for general contractors
- Authorizes project by project prequalification of general contractors and filed sub bidders by all public awarding authorities state or municipal – before bidding and awarding stage

B. Owner's Project Manager (OPM) for Public Buildings

The requirement to utilize an Owner's Project Manager (OPM) is designed to assist the Commonwealth and its municipalities with the management and oversight of building projects. The concept was borrowed from the private sector where owners routinely hire project managers as their advisor on building projects. The OPM serves as the owner's representative and is not at risk.

Prior to the enactment of this requirement, municipalities had always been able to voluntarily elect to utilize the services of an OPM and many have previously done so (See testimonials in Section IIIB.)

Municipalities can use an in-house employee as the OPM or outsource to an independent consultant or firm. Both the in-house employee and

the independent firm or individual must meet the following minimum criteria: be a registered architect or professional engineer with at least 5 years experience in the construction and supervision of construction of buildings or, if not registered, have at least 7 years experience in the construction and supervision of construction of buildings of similar size and scope of complexity. The OPM must be independent of both the architect and construction firm and be selected prior to the architect or construction firm.

C. Project Manager (PM) for School Buildings

Six weeks after the passage of Chapter 193, the Public Construction Reform Law, another major reform law - Chapter 70B of the General Laws (Chapters 208 and 210 of the Acts of 2004) - was enacted creating the new Massachusetts School Building Authority (MSBA). This legislation creates an entirely new funding mechanism for reimbursing municipalities for school construction.

As stated in the Introduction, for all practical purposes, the definitions and roles of the Owner's Project Manager on public building projects and the Project Manager on school building projects are the same.

The primary procedural difference is that while municipalities have autonomy to select OPM's for their building projects, the MSBA must **approve** all PM's for any school building project over a cost of \$1.5m.

D. New Construction Manager at Risk Alternative Delivery Method

Chapter 193 of the Acts of 2004 also allows state and municipal awarding authorities the ability to use Construction Management (CM) at Risk as an alternative to Chapter 149 for all building projects with an estimated value over \$5 million. In addition, the CM at Risk allows for a guaranteed maximum price (GMP) for the project to be provided when design documents are at least 60% complete.

An OPM is also required for the CM at Risk process as in the Chapter 149 process. The OPM still remains as the "advisor" to the client while the Construction Manager serves as the "at risk" manager during the pre-construction and the contractor during the construction phase.

Because the CM at Risk delivery process is new and will be unfamiliar to many, municipalities should ensure that the OPM has specific prior experience with the CM at Risk delivery process. The bulk of this

experience will undoubtedly come from private sector projects or from a handful of recent state agency projects.

E. Feasibility Studies

The law allows for municipalities to hire a designer to perform feasibility studies before hiring an OPM. Should the project move forward, the designer may continue in the capacity of designer for the project.

A. Overview

Owner's Project Manager (OPM) is a member of the project team under separate contract to a municipality with responsibility to provide design and construction phase oversight on behalf of the municipality for the entire planning, design, construction, commissioning and closeout process without assuming any of the responsibilities or professional liability of the various parties under separate contract with the municipality. The OPM is liable for his/her own negligence based upon the prescribed scope of work agreed upon.

II. The Owner's Project Manager (OPM)

A professional OPM can augment the municipality's staff by providing pre-planning design, construction, engineering and management expertise. The OPM is directly responsible to the municipality and acts in the municipality's interest and at the municipality's direction at every stage of the project. The OPM offers advice, uncolored by any conflicting interest, on such critical matters as:

- Optimum use of available funds
- Architect selection
- Oversight of the programming phase and development of the scope of the work
- Contractor/Subcontractor prequalification
- Contractor procurement
- Project schedule control
- Value engineering and cost estimating
- Avoidance of delays, effective management of changes during construction and effective dispute resolution
- Payment procedures
- Construction risk assessment and allocation

Because each project and every project team will vary, the application of the process should be tailored to the specific requirements and constraints presented by the project.

B. Owner's Project Manager on Chapter 149 Projects

Chapter 193 of the Acts of 2004 Section 13 describes the OPM on Chapter 149 projects in this way:

- A new Section 44A ½ is added after Section 44A of Chapter 149 that requires a public agency, before entering into a contract for design services, to **first** contract for the services of an OPM.
- The OPM serves as the municipality's agent and consultant during the planning, design, construction and startup of all contracts with a construction cost over \$1,500,000.
- The duties of the OPM may include providing advice and consultation with respect to design, value engineering, scope of the work, cost estimating, general contractor and subcontractor prequalification, scheduling, construction, and the selection, negotiation with and oversight of a designer and a general contractor and ensure the preparation of time schedules.
- In addition, the OPM shall assist in project evaluations including written evaluations of the designers, contractors, and subcontractors.
- The term "Owner's project manager" shall mean an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of providing project management.
- The OPM must be registered by the Commonwealth as an architect or professional engineer and have at least 5 years experience in the construction and supervision of construction of buildings, or if not registered as an architect or professional engineer, has at least 7 years experience in the construction and supervision of construction of buildings.
- As written in the statutes, the OPM shall be independent of the designer, general contractor or any subcontractor involved in the building project.
- A public agency may assign an existing employee to serve as the OPM, if that employee meets or exceeds the 5- or 7-year requirements and has experience in the construction and supervision of construction of buildings of similar size and scope of complexity.
- The public agency shall use a qualifications-based selection process to procure the services of an OPM.

(See web site for statutory language
www.mass.gov/legis/)

C. Owner’s Project Manager (OPM) on CM at Risk Projects

The requirements for the OPM under a CM at Risk process are similar to those described in Section IIB. Because CM at Risk may be an unfamiliar process to the municipality, the OPM chosen should have experience in the CM at Risk method of project delivery.

D. Owner’s Project Manager on School Building Projects

Chapter 70B of the Acts of 2004 – the Massachusetts School Building Authority Law describes the PM as follows:

Owner’s Project manager, a person designated or assigned by an eligible applicant (owner official), and approved by the **authority (MSBA)**, to manage and coordinate daily administration of a school facility or building project to completion including, but not limited to, school district or municipal staff person or a volunteer with appropriate experience and expertise. Information concerning the OPM on school projects is available in Appendix C. For complete regulations, go to the MSBA website.

Visit MSBA website for current regulations:
www.massschoolbuildings.org

III. The Value an OPM Brings to Your Building Project

OPMs can assist municipalities in better understanding the entire process and the critical decision points.

A. Beyond the legislative requirement

Design and construction is a multi-faceted process with cost, time and quality sensitivities. Issues may arise in which the designer and the contractor are at odds and a skilled advisor such as an OPM must be able to translate the options for the municipality and provide experienced and objective advice on how best to proceed. Some key points to consider in understanding the value an OPM can bring to your project include the following:

Leadership

Every project has its own set of challenges, its own unique cast of characters and its own opportunities for success or failure. A key role of the OPM is to provide a positive influence on the dynamic tension that is inherent in undertakings involving multiple stakeholders. The OPM must work with the municipality and the various project stakeholders to identify the challenges, facilitate solutions and maintain focus on the project objectives.

Independent and Objective Advice

Because the OPM is responsible directly to the municipality and is not contractually bound to the designer, contractor or any other stakeholder, the OPM is able to weigh all recommendations, conduct fact finding, coordinate and listen to various solutions and provide independent opinions and recommendations to the municipality. This role of independent advisor is not intended to diminish or assume the contractual responsibilities of any of the project stakeholders but to provide the best, most complete information possible for the decision making by the municipality.

Cost and Schedule Outcome

An experienced professional OPM can introduce best practices in designing to cost and programming regulations, adding value engineering and life-cycle cost analyses and monitoring schedule performance. Two critical areas with which the OPM can assist are setting realistic budgets and controlling scope additions. These two important areas along with forecasting schedule completion will keep the project moving forward.

Protecting the Municipality's Interests

As the authorized representative of the municipality, the OPM is the point person in preconstruction, construction and startup oversight. Since the statute requires that the OPM be hired first, in most instances (See page 7, paragraph E. Feasibility Studies), the OPM can assist in the procuring of additional stakeholders for the project. As the eyes and ears of the municipality, the OPM brings an experienced view and vigilance in managing change, controlling competing interests, assessing project risk and avoiding cost and schedule overruns and claims.

B. Testimonials from Municipalities

Testimonial - Jeff Nutting, Town Administrator, Town of Franklin - May 2006

I started using an OPM in the late 90's while building a police station. I had been through too many public construction projects where the architect, building committee or contractor created problems and all blamed each other. In the end the taxpayer usually footed the bill regardless of who was at fault.

Architects want to build showcases, many building committees lack the knowledge to deal with complex projects, review plans, or understand the world of public construction and the contractors' goal is to make as much money as possible.

Further, it always seemed that no matter how hard they tried the architect would miss something and the specifications and the plans did not always agree - all resulting in expensive change orders. While everyone came to the table with great intent, something would go amiss. It doesn't take much of a mistake, delay, disagreement, etc, to quickly spend a lot more money while everyone is asking how could this happen?

Enter the OPM. - The OPM is an independent set of eyes to watch over the architect, guide the building committee and oversee the contractor's work. The OPM is an expert in reviewing plans, providing an independent cost estimate, working with the building committee to keep the architect on track, suggesting (less costly) alternatives, understanding public construction, materials and timelines. The OPM knows that time is money and court is the worst alternative to resolving disputes.

Read why some municipalities have used OPMs in the past without statutory requirements.

The OPM assists the committee in choosing an architect, works closely with the committee during design phase, provides background checks of the architect and contractor, and finally serves as your eyes and ears at the site during construction. The OPM provides a great deal of wisdom, judgment, insight, knowledge and expertise with the goal of completing a project on time and within the budget. The small fee (a little over 3% of project costs) is offset by the savings we receive in getting the project done right the first time or if things don't go right keeping everyone moving in the same direction.

Since the 90s I have used an OPM on five other projects. Two school construction projects (completed), a DPW facility, Senior Center and Fire Station (all are ongoing). Even if the new public construction law did not require an OPM, we would still hire an OPM for public construction jobs. "An ounce of prevention is worth a pound of cure."

Jeff Nutting

Testimonial - Louis P. Minicucci, Jr, Chairman, School Building Committee, Town of North Andover, MA

Having been the Chairperson for the North Andover School Building Committee during the development of four new schools since 1993, we have been committed to hiring a Project Manager.

I believe the benefits of having a professional Project Manager are as follows:

- 1.) Pre-construction Services: Project managers help insure realistic budgets and timelines that can adequately be presented to the community. They perform a detailed review of the proper separation of sub-contractors work, advice and coordination of things such as sequencing and phasing. For example, at the recommendation of our Project Manager, we divided the work into two separate contracts: one for site work, which took advantage of the seasonal weather conditions advantageous to certain aspects of the project, included site preparation and insulation of the foundations while the Committee finalized the building construction drawings which was then awarded as a second contract. This process greatly accelerated the project schedule and saved us considerable money during a period of rapidly accelerating construction costs.*
- 2.) Construction Services: Having a professional who is involved with day to day interfacing with the architect and general contractor in a*

technical and unbiased manner is one of the greatest advantages of hiring a Project Manager. The Project Manager also hires and provides guidance to field supervisors such as the Clerk of Works and provides a much better mechanism and reporting system to the Building Committee. Equally as important as interfacing with the contractor is the Manager's review of change orders and requisitions to insure the reasonableness of all costs and plan changes. This provides the Building Committee with a high level of comfort in knowing that there are adequate checks and balances between the architect and the contractor relative to all payments and changes.

-
- 3.) *Preparation of Closeout Documents: A Project Manager insures thoroughness in the preparation and completion of the punch list items; secures warranty and guarantee documents; he also works with the architect and clerk of works to assure that the "As Built" drawings are complete and accurate. Additionally, he advises and oversees the commissioning of the completed building.*

In conclusion, it is my opinion that hiring a project manager adds a level of expertise and technical knowledge that members of a community school building committee may lack. Without the guidance and time commitment of a professional project manager, I believe it is extremely difficult for part-time school building committee members to make timely decisions for the many technical issues that come up on a daily basis in any construction project. I believe the same areas must be addressed in the private as well as the public sector, however, when you add the complexities of Chapter 149 to the process I believe it is more important to have one individual who understands all facets of the building and administration process.

Louis P. Minicucci, Jr.,

Testimonial – K. Roy Robblee, Director of Building Facilities, City of Woburn Public Schools - April 10, 2006

In the past eight years, the City of Woburn has had three different Mayors, three different building committees, and numerous changes in the City Council and school Committee. During this same period, the City was building three new elementary schools, a new High School, undertook substantial renovations to three schools, and withstood a major flood in a middle school and a significant fire in an elementary school. The reason the City was able to do all these projects successfully, on time and on budget, was because of the guidance we received from the project management firm that we had chosen.

OPMs can offer solutions to minimize cost and schedule increases

Public construction is a very difficult process for any community but it is especially difficult for a community that undergoes change in the positions of leadership. Many communities rely on their architectural firm to guide them through the entire process. Quite often however, architects have a conflict of interest because of design interests and/or financial considerations. A good project manager can operate as an overseer of the city/town's best interest in the areas of construction, design and finance with no conflict of interest. This oversight of all three functions gives valuable information to city/town officials for sound decision-making.

During the preconstruction/planning phase the project manager can educate city/town officials and offer guidance on how the process will work. Most building committee members do not understand things like the filed sub bid process and certainly need guidance through things like the prequalification process. Architects may have strong design teams and public relations groups but often seem to be weak in contract administration. The project manager fills this gap to ensure the city/town officials make informed, educated decisions, which avoid conflicts that could lead to litigation. This is one of the most important contributions a project manager can make as litigation can be costly and often is avoidable. If it is not avoidable, it is important for the city/town to know what their options may be and what type of financial exposure they may have.

Members of building committees are volunteers who often are not experienced or knowledgeable concerning public construction. The project manager educates them on how the process works and how to evaluate decisions placed before them. A good project manager will have oversight on all phases of construction (including finance) and will communicate that to the committee. As construction moves from design to bid to construction to closeout, the project manager will educate the committee on what to expect and how to deal with unknown or unforeseen situations. The day-to-day oversight and month-to-month requisition review done by the project management team is critical for financial decision making by the building committee. The negotiation of change orders often becomes areas of conflict. This process, usually done between architect and general contractor, often has less negative impact on a job when the project manager is involved to mediate and represent the interests of the city/town. If

there is a negative impact, whether financial or job delay, the project manager can help city/town officials on how to handle it appropriately.

The city of Woburn has spent over \$100,000,000 on construction of new and renovated schools in the past eight years. All projects have been on time and on budget. There has been a minimal amount of litigation. We owe our success to the tremendous leadership we have received from our project manager.

K. Roy Robblee

A. Roles/Responsibilities

A municipal construction project has many stakeholders including the municipality (which may have several entities), the design team, contractor/CM, OPM and clerk of the works. Each stakeholder may also have several key components or individuals.

The **municipality** may entail a Building Committee, one or more user groups, municipal groups and a financial or funding source. It is critical to the success of the project that all parties are recognized, represented and remain informed throughout the project. A clear hierarchy and communication process needs to be established for all municipality entities at the outset of the project. It is the municipality's responsibility to establish the project goals and parameters to which the other team members must strive.

IV. Duties of All the Project Stakeholders

Clear and concise definitions of roles and responsibilities should be communicated early in the project to avoid unnecessary disputes and overlaps.

The **OPM** is a firm or individual that is hired by the municipality to provide advice and expertise throughout the project from inception through design and construction to occupancy and closeout. The OPM assists the municipality in managing the other project team members and consultants and can provide assistance in the procurement of the numerous municipality's consultants and vendors. According to the statute, the OPM must be hired first before the architect and the contractor and shall be independent of the architect and the contractor. The OPM may be an inhouse employee so long as he/she meets the statutory requirements as detailed in Section IIB.

A **clerk of the works** is typically an individual hired by the Municipality, the OPM or the architect for the duration of construction to provide on-site monitoring of the construction process. The clerk provides daily monitoring and record keeping to ensure that work in place meets the established project design criteria. The clerk also records contractor and subcontractor daily work force levels as well as site conditions.

The **design team** will encompass several disciplines, which will likely be a combination of firms. Typically the **architect** is contracted directly with the municipality and then will hire other firms as necessary to facilitate and complete the project design. Typical design consultants to the architect will include the following engineers: civil, structural, fire protection, plumbing, HVAC and electrical. Depending on the complexity of a project, additional consultants such as acoustical, lighting, sound and communications may be brought on by the architect. The architect and their design team are solely responsible for the design of the project.

The **contractor** will be a construction firm that may use varying degrees of self performed work with their own employees or subcontractors to construct the project. The main point of contact with the other project team members will be a project manager and superintendent from the construction firm. The contractor's project manager is typically responsible for overall project administration, while the superintendent is in charge of the daily operations of the construction site. The timing at which the contractor is brought into the process will depend on the contract delivery method being used. A construction management form of contract will bring the contractor into the process early on during the design phase to provide cost estimating, scheduling, constructability analysis and other pre-construction services. Under Chapter 149 filed sub-bidding laws, the contractor is brought on board after the subcontractors and after design is 100% complete through a bidding process.

With the complexity of a construction project and the large number of stakeholders involved, it is critical that clear lines of communication are established and redundancy in scopes of services avoided. Although avoiding redundancy does not mean eliminating requisite and prudent review among project team members. From a project's inception a clear set of goals should be established as well as an organizational chart that outlines the project team and its hierarchy. A matrix of services is a useful tool for delineating each project team member's responsibilities and their services to be performed.

B. How Do You Avoid Redundancies in Service

Tightly written and delineated RFPs and scopes of work for the project team members will assist in alleviating redundant services. Your OPM should be working with you to develop these for the other members of the team.

Standard form agreements such as AIA owner/architect and owner/contractor agreements do not contemplate the use of an OPM. It is important that these agreements be carefully coordinated with the owner/OPM agreements to avoid duplication of services and to maintain clear lines of professional services and liability.

The matrix of responsibilities is an excellent checklist to help avoid unnecessary overlap of services. See Appendix D for a sample matrix.

Since the OPM is, by law, brought on board prior to all outside stakeholders in a project, the OPM can assist the municipality in hiring ~~the architect~~. (See Section I E for an exception to the statute.) This advice can be offered in both the Chapter 149 delivery as well as the CM at Risk method. The OPM can also assist the municipality in the best delivery method for the project.

The Chapter 149 method of construction delivery entails the completion of 100% construction documents by the design team, then putting them out to bid to prequalified subcontractors and then general contractors. This construction delivery method requires that a well-coordinated and complete set of construction documents be developed to limit cost changes during construction. Since the contractor is not brought into the project during pre-construction (design phase), these services need to be provided by others. OPM services in this scenario are different from the services in a CM approach to delivery, particularly during pre-construction. OPM services may include the following:

V. The OPM Scope of Services for Chapter 149 Projects

Chapter 193, Acts of 2004 -new provision in MGL c. 149, s 44 lists minimal required duties of the OPM as follows:

The duties of the owner's project manager 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 1/2 or 44 D 3/4 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.

A. Predesign Phase

- Assist the Municipality in the preparation of the designer's RFQ/P
- Work with the Municipality to assist in the development of criteria for selection, interview candidates, select and negotiate the contract.

B. Preconstruction Phase

- Programming and Design Assistance
Assist and facilitate Owner and Architect with the programming process to include meeting with building users, reviewing space and adjacency requirements and review of conceptual design to ensure compliance.
- Cost Estimating Review and Evaluation
Services may include reconciliation of existing conceptual estimates, value engineering suggestions and resource prioritization, cost review at schematic design, design development, 50% construction document cost estimates, and 100% construction documents.
- Assist in the division of subcontractor trade contractors.

- **Document Review**
Provide constructability and coordination review of the documents at the following stages of design:
 - 100% Design Development Documents
 - 90% Construction Documents
 - **Construction risk assessment and mitigation planning and site logistics planning**
 - **Scheduling**
Prepare a Project Master Schedule and preliminary Construction Schedule. The Critical Path Method (CPM) schedule is recommended for most projects. Prepare schedule Control Specification for inclusion in the contract documents.
 - **Quality Control Program**
Work with municipality and architect to develop a detailed project specific quality control program that provides for the achievement of the highest quality building possible.
 - **Contractor Selection/Bidding**
Assist in the prequalification of contractors, development of a contractor bid list, procurement and review contractor bids and assist in final selection.
 - **Subcontractor Selection/Bidding**
Assist in the prequalification of subcontractors and bid review and procurement.
-

C. Construction Phase

- **Project Meetings**
Participate in construction meetings as the municipality's advocate; facilitate problem solving and communication among all team members.
- **Submittals**
Provide oversight, implementation and expediting of the construction submittal process on the municipality's behalf to ensure compliance with project requirements and coordination of products. Identify and facilitate the resolution of required information or selections such as colors, sizes and finishes.
- **Evaluate the contractor's baseline schedule and progress submittals**
- **Provide oversight of the Request for Information process and take necessary action to resolve issues.**

- **Contractor and Architect Change Order Review**
Provide detailed review of contractor and architect requests for change orders as well as recommendations for their disposition.
 - **Contractor and Architect Progress Payment Review**
Review and approve monthly contractor and architect applications for progress payments.
 - **Construction Quality Control**
Coordinate owner-provided materials testing services, review ongoing construction means and methods and quality, and facilitate the resolution of construction questions and issues.
 - **Punch list and Project Closeout**
Assist architect and municipality in the preparation of final project punch lists and facilitate their timely completion. Ensure all building commissioning and turnover is complete. Review all warranty documentation, as-built documents and operations and maintenance manuals to ensure compliance with project specifications.
 - **Municipality's Vendors**
Assist municipality with the procurement, coordination and management of all municipality supplied vendors such as materials testing, building signage, furniture, fixtures and equipment.
-

VI. The OPM Scope of Services for CM at Risk Projects

Statutory requirements for the OPM in a CM at Risk project are the same for those listed on page 18 as a side bar.

OPM services will vary depending upon the type of delivery method chosen for the project.

The CM at Risk delivery method brings the builder into the process during the design phase to provide preconstruction services to include cost estimating, document review, mitigation and logistics planning and scheduling. There are several advantages to this popular method of construction delivery including, contractor “ownership” of initial cost estimates, contractor familiarity and buy-in with design documents and concepts, contractor assistance and input with constructability issues. Depending on the municipality’s expertise and time availability, risk management objectives, budget constraints and CM relationship, this method of construction delivery can reduce the scope of services required of the OPM during the pre-construction phase. The OPM role during pre-construction then becomes one of facilitation and peer review. The typical scope of services provided when working within this structure include the following:

A. Pre-design Phase

- Assist the Municipality in the preparation of the designer’s RFQ/P
- Work with the Municipality to assist in the development of criteria for selection, interview candidates, select and negotiate the contract.

B. Preconstruction Phase

- Construction Manager Selection
Assist municipality and architect with the CM selection process including the prequalification process, CM proposal review, CM interviews and final selection.
- Programming and Design Assistance
Assist and facilitate municipality and architect with the programming process to include meeting with building users, reviewing space and adjacency requirements and review of conceptual design to ensure compliance.
- Cost Estimating
Review Construction Manager’s cost estimates
Assist in evaluation of Value Engineering/Resource Prioritization
- Design Review
Review documents for achievement of design intent, municipality’s goals and priorities.
- Construction mitigation and site logistics planning
Provide oversight in the formulation of the CM’s preparation of construction mitigation plans and site logistics.

- Scheduling
Prepare a master schedule and review CM's construction schedules. Draft schedule control specifications for inclusion in contract documents.
- Develop Quality Control Program
Work with the municipality, architect and CM to develop a detailed project-specific quality control program that provides for the achievement of the highest quality building possible.
- Final Cost Review
Review and assist in the development of subcontractor bid lists
Review and approve subcontractor award/selection.
Review interim and final GMP cost proposals.

C. Construction Phase

- Project Meetings
Participate in construction meetings as municipality's advocate
Facilitate problem solving and communication among all the project team members.
- Request for Information (RFI's)
Track and facilitate the timely resolution of CM RFIs to avoid construction delays or unnecessary expenditures.
- Submittals
Provide oversight, implementation and expediting of the construction submittal process on the municipality's behalf to ensure compliance with project requirements and coordination of products. Identify and facilitate the resolution of required information or selections such as colors, sizes and finishes.
- Schedule Control
Review CM baseline and progress schedule submittals.
- CM and Architect Change Order Review
Provide detailed review of CM and architect requests for change orders as well as recommendations for their disposition.
- CM and Architect Progress Payment Review
Review and approve monthly CM and architect applications for progress payments.
- CM Contract Compliance
Provide ongoing overview of CM's reporting process and technical execution of the work.
- Construction Quality Control
Ensure CM compliance with project quality control program.
- Punch list and Project Closeout
Assist architect and municipality in the preparation of final project punch lists and facilitate their timely completion. Ensure all building commissioning and turn over is completed. Review all warranty documentation, as-built documents and operations and

Keeping the project on schedule is a key component of the OPM's tasks

maintenance manuals to ensure compliance with project specifications

- **Municipality's Vendors**

Assist municipality with the procurement, coordination and management of all municipality-supplied vendors such as material testing, building signage, furniture, fixtures and equipment.

VII. Municipality's Responsibilities

Refer to page 18 sidebar for statutory requirements concerning the OPM duties. Appendix C contains OPM regulations for school buildings.

Constant and clear communication with the project team should clarify misunderstandings quickly.

A. Overview

The design and construction processes, particularly in terms of quality, cost and schedule control, can be challenging due to the number and diversity of the stakeholders involved and the need for concurrent and timely decision making on a multitude of issues. This is why the advice and services of an experienced OPM are helpful. However, to ensure that the facility is built to its satisfaction, the municipality must be vigilant in overseeing and reviewing the information that the OPM is forwarding to it.

OPMs are held to a professional standard of care consistent with the standard of care exercised by similar professionals. Guided by this standard of care, municipalities can rely on the advice given them by the OPM.

The list below provides some guidelines as to responsibilities of the municipality with respect to getting the most out of working with an OPM.

B. Responsibilities

- Establish a building committee led by a consensus-style manager.
- Establish the construction delivery method.
- If the municipality chooses to procure CM at risk construction services for a project with the estimated cost of \$5M or more, it must first file an application form for a notice to proceed with the Office of the Inspector General. For more information of this procedure visit their website at www.mass.gov/ig.
- Understand the differences and responsibilities surrounding the various stakeholders – how an OPM is different from the construction manager, clerk of the works and the architect. (See Section III)
- Develop the RFQ/P for the OPM (See Sections V & VI for OPM services and the Appendix for samples.)
- Select the OPM on a qualifications-based selection process, as opposed to lowest price, similar to a designer selection process, per the law.
- If you choose to select CM at Risk, ensure that the OPM has the necessary expertise to handle the duties.
- Coordinate the contract responsibilities of the architect and OPM noting some necessary overlap.

- Recognize the relationship of the architect's contract to the ultimate construction contract choice.
- Commission the architect to design to a budget.
- Establish clear communication channels recognizing the need to clarify roles, responsibilities, and level of authority (See Matrix Appendix B)
- Know the project risks and which of the stakeholders are best able to control them.
- Use partnering agreements and alternative dispute resolution should disputes arise.
- Establish the OPM as the authorized representative of the municipality in all project contracts.
- Establish the limits of authority of the OPM to act on its behalf. It is not the intention of this primer to list all or typical OPM contract provisions. The governing statute provides for certain qualifications and any resulting OPM contract should contain a representation by the OPM concerning its capability to meet the requirements. Beyond that, the basic ingredients of any contract are scope of services, period of performance and cost. The simpler the contract, the clearer the responsibilities and tasks should be.
- Utilize the abilities of the OPM to further successful project completion.
- Recognize and be responsive to the municipality's duty to enforce the project schedule.
- Recognize the limitations of bar chart scheduling and require a Critical Path Method (CPM) based project scheduling.
- Develop a CPM-based project master schedule and include identification of all milestones and restraints.
- Recognize the need to provide timely and unrestricted site access.
- Recognize the need for timely decision making.
- Know the comparative costs for similar projects prior to start of budgeting and commit sufficient funds to cost estimating and cost engineering during design.

Because the CM at Risk delivery method for public projects is a new alternative procurement method, there could be a scarcity of OPMs experienced in both public construction knowledge and CM at Risk expertise. Municipalities might consider giving equal weight to different project types, delivery methods and construction cost and schedule control problem solving rather than placing heavy weight on similar project type experience and public sector knowledge.

C. Developing OPM Contracts

Keep in mind that the OPM is being hired to offer advice and building expertise to the municipality and to look after the municipality's best interests.

It is not the intention of this primer to list all or typical OPM contract provisions. The governing statute provides for certain qualifications and any resulting OPM contract should contain a brief representation by the OPM concerning its capability to meet the requirements. Beyond that, the basic ingredients of any contract are scope of services, period of performance and cost. The simpler the contract, the clearer the responsibilities and tasks should be.

Indemnification

The Municipality will want to be indemnified from negligent acts of the OPM and that is a fair expectation. It should be understood that the burden of proof of negligence rests with the municipality. The OPM contract is separate and distinct from those of the architect and contractor. OPMs have no contractual responsibility for the acts of others and many contracts provide for indemnification of the OPM from negligent acts of third parties or limit the indemnity to the value of their own contract.

In the structuring of Owner/OPM contracts, municipalities should be aware of the relationship between contract indemnification provisions and the underlying professional liability insurance which backs it up. Professional liability policy language can limit the basis for indemnity claims against the PL insurer. These limitations usually include proof of sole negligence of the insured.

The OPM professional on public projects in MA is new. Non-traditional roles and responsibilities and their impacts on professional liability insurance underwriting are evolving. The structuring and use of indemnification provisions in Owner/OPM contracts needs to be done in an informed and fair basis and the municipality would be well advised to seek experienced legal counsel when developing these contract provisions.

Termination

Either party should have the right to terminate with reasonable notice. The OPM should be paid for services to date. Some fair contracts provide for a fee stipend for lost business opportunities.

Additional Contract Considerations

- Coordinate the municipality/architect, municipality/OPM agreement to avoid redundancy of responsibility. Use the matrix of roles and responsibilities (Appendix B) to assist in crafting these agreements.
- Consult with counsel knowledgeable in construction contracts
- Use partnering agreements and alternative resolution methodologies in contracts to build teams that work together.
- Use fair practices in risk allocation. A risk should be allocated to the entity best able to control it. To transfer risk to someone who has not control over it is a serious disservice to all project participants and can foster project delays and adversity among the stakeholders.

D. School Projects - When to Notify MSBA

The Massachusetts School Building Authority has developed a process for municipalities to express their intent to apply for grant funding for potential school projects through a Statement of Interest. The first deadline for submitting a Statement of interest is July 31, 2007. The MSBA Board will not authorize funding for new projects before the moratorium is lifted on July 1, 2007.

The MSBA Board will fund grants for projects through a competitive process based upon the eight statutory funding criteria establishing a potential project's priority and need, as expressed by the community and validated by the MSBA. School projects will require a feasibility study prior to any funding being authorized. The municipality and MSBA will jointly hire a designer to perform this task. As mentioned in Section I, if the project moves forward, the designer may continue as the designer of record for the project. The OPM should be hired as soon as possible after the project is approved.

Information on the multi-step process, regulations and guidelines are available on the MSBA website at www.mass.schoolbuildings.org

When the process has been completed, MSBA will issue a letter of project approval. Once the municipality has accepted this letter they may submit their choice of OPM to MSBA for approval and final contract signing. After the OPM is on board, the municipality may procure the remaining project team members.

Consider various types of building experience when making your final OPM selections. Solutions can translate from one type of project to another.

E. When to use in-house vs. outsourced OPM

The law is clear regarding the qualifications of individuals that are allowed to serve as in house personnel in the capacity of OPM. (See section I B) These qualifications do not, however, guide the municipality or school administration in the value or risk aspects of the decision.

Project development can be a complex and risky proposition. There are many aspects of project management that require a wide range of skills and can also require a major commitment of time to deal with the project and its team. The OPM role is to represent the municipality in all aspects of the development from planning, financing, contracts, design, construction, close out, occupancy, furnishing, commissioning and warranty administration.

Some municipalities have long-standing facility development programs and an organization that is experienced in the planning and administration of projects for the entity. There is an assumption that the municipality's building department can serve as OPM or that the architect can represent the issues of the municipality in all aspects of the program. Each entity has its responsibility in protecting the municipality but each also has the responsibility to protect its own interests as well. The only group that can protect the interests of the municipality is the municipality itself or their delegated representative, an OPM.

The municipality or school administration that drives the decision process for securing OPM services needs to evaluate several factors in the deliberations.

- Have the results of past building programs using in-house personnel been as expected and planned? If not what were the shortcomings of the program?
- Is the project large, complex or different from past projects that were self-managed?
- Does your organization have personnel that have the specialized skills for overseeing an entire development process? Do these personnel have time and resources to take on the added responsibility of the program? What personnel will have to be hired

to backfill the responsibilities of the people dedicated to the new task? Will the organization be able to reduce staff at the conclusion of the project to avoid creating a permanent overhead? What organization be able to reduce staff at the conclusion of the project to avoid creating a permanent overhead?

- Can in-house personnel be funded from the project funds and be part of the overall reimbursement of the project from the Commonwealth?

The preceding issues deal with funding and existing resources but a larger issue is securing the right resources for managing the complex components of the development process.

VIII. Developing an OPM RFQ or OPM RFP

A. Considerations

The law requires that the OPM be selected by a “qualifications-based” selection process, similar to a designer selection process that focuses on qualifications as opposed to lowest price. The law sets forth minimum qualifications standards for the OPM as stated in Section II B, bullet 6. These are truly minimal requirements and municipalities will want to ensure they retain a highly qualified and experienced OPM to serve as their agent and consultant.

If not utilizing qualified in-house staff to provide OPM services, municipalities should carefully review OPM applicants to ensure they have significant relevant experience in the supervision of construction of the type and complexity necessary for the project. It is critical that the selected OPM meets, and preferably exceeds, the minimum qualifications.

In evaluating applicants, due consideration should be given to the potential OPM’s personal experience, skills, existing work load, personnel resources available for back-up and assistance, and prior direct experience providing services in both the mandatory tasks and any other additional tasks the municipality requires. In particular if the project is undertaken as a CM at Risk project, the OPM should have prior experience with the unique aspects of CM at Risk projects including, but not limited to, GMP negotiation and “open book” cost review. The selected OPM will be intimately involved in the project and bears the ultimate responsibility of providing the required OPM services to the municipality as delineated in the OPM scope of work and contract terms.

(See the Appendix for sample RFQs and RFPs)

B. Evaluation Criteria

You may wish to create checklists or scoring forms for your committee to use in selecting an OPM. The criteria you choose to list will depend entirely on your own unique project. Examples include:

- Experience with project type
- Knowledge of the community, context, location
- Understanding of the scope of work
- Knowledge of cost estimating, scheduling, quality control and management capabilities
- Demonstrated project management ability
- Use of appropriate technological tools for efficiency and effectiveness
- Ability to present concepts clearly (communication skills)

- Sensitivity to budget; past performance
 - Personnel resources available for the undertaking
 - Level of experience of those actually doing the work (as opposed to leading the team)
 - Availability, both time and location
 - Level of interest shown. Did this individual or firm ask questions? Visit the site?
 - Sense of personal chemistry with your team
 - Quality of response: tailored or boilerplate?
 - Appropriate personalities (i.e., leader vs. follower)
 - Financial stability
 - Perceived ability to add or produce value
 - References, reputation
-

OPM services can vary widely in cost depending upon the scope of services, duration of the project and complexity. The cost to a project is, among other things, a function of the duties spelled out in the OPM's RFP.

As a rule of thumb, OPM service costs can range anywhere from 1% to about 4% of the project construction cost. OPMs normally use a time and materials basis for their professional services fee. Individuals assigned to the project should be clearly delineated as to their expertise, level of responsibility and hourly rate. Reimbursable expenses such as extraordinary travel, special reports and the like should be clearly delineated in the OPM's proposal.

IX. Compensating OPM Professionals

Common practice shows that the hourly cost for professional service personnel is typically 2 to 3 times the direct payroll cost including FICA and other taxes of an individual. It is not recommended to price OPM services based on a multiplier but to ask for proposals based on all-inclusive rates for the proposed positions plus any extraordinary reimbursable as discussed above.

Occasionally, a municipality may want to hire an OPM based upon a lump sum agreement for services. This process could conceivably change the dynamic of the relationship from that of an extension of the municipality's staff to that of another vendor who must watch its interests over that of the municipality.

In the private sector, the owner/OPM relationship in common practice today is built on trust and strong communication between the parties. This relationship should translate to the public sector where the professional OPM can assist the municipality in managing project risk, offering solutions to problems through advice and counsel and keeping the project within the budgetary constraints and the scheduled turnover date.

Associated General Contractors of MA

www.agcmass.org

Massachusetts Municipal Association

www.mma.org

Massachusetts School Building Authority

www.massschoolbuildings.org

Division of Capital Asset Management and Maintenance

www.mass.gov/dcam

Office of the Inspector General

www.mass.gov/ig

MA General Laws

Chapter 193 of the Acts of 2004

(An Act Further Regulating Public Construction in the Commonwealth)

www.mass.gov/legis

Chapter 70B

(School Building Assistance Program)

www.mass.gov/legis/laws/mgl/gl-70b-toc.htm

Chapter 208 of the Acts of 2004

(An Act Relative to School Building Assistance)

www.mass.gov/legis/laws/mgl

Chapter 210 of the Acts of 2004

(An Act Relative to School Building Funds)

www.mass.gov/legis/laws/mgl

Appendix A
Relevant Websites of Interest

Appendix B - Local Mandate Opinion



AUDITOR OF THE COMMONWEALTH

ONE ASHBURTON PLACE, ROOM 1819
BOSTON, MASSACHUSETTS 02108

TEL (617) 727-6200
FAX (617) 727-5891

March 14, 2006

Gerald M. Moody, Town Counsel
Town of Milford
Town Hall
52 Main Street
Milford, Massachusetts 01757-2622

Dear Mr. Moody:

Auditor DeNucci asked that I respond to your request on behalf of the Milford Board of Selectmen relative to G. L. c. 149, s. 44A1/2, added by St. 2004, c. 193, AN ACT FURTHER REGULATING PUBLIC CONSTRUCTION IN THE COMMONWEALTH. In your letter, you note that section 44A1/2 now requires that public agencies “contract for the services of an owner’s project manager” to perform various consulting and oversight functions for projects estimated to cost \$1.5 million or more. You ask for an opinion as to whether the Local Mandate Law, G. L. c. 29, s. 27C, applies to this requirement, and request that the Office of the State Auditor declare that this provision is not effective in the Town of Milford.

After reviewing your argument and the input from relevant state agencies, the State Auditor’s Division of Local Mandates (DLM) has reached the opinion that, for certain projects, the owner’s project manager requirement imposed by G. L. c. 149, s. 44A1/2 falls within the scope of G. L. c. 29, s. 27C. However, in a given case, there may be factors that would lead to a different result, such as conditions imposed in exchange for state financial assistance.

Nonetheless, as explained in earlier correspondence, the Office of the State Auditor does not have the authority to suspend operation of state law. G. L. c. 29, s. 27C provides that a community aggrieved by an unfunded state mandate may petition superior court for an exemption from compliance until the Commonwealth assumes the cost. The following discussion explains this conclusion.

In general terms, the Local Mandate Law provides that any post-1980 law imposing additional costs upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance. In *City of Worcester v. the Governor*, 416 Mass. 751 (1994), the Supreme Judicial Court further defined the elements of an “unfunded state mandate.” Clearly, the law must take effect on or after January 1, 1981. Additionally, it must effect a genuine change in law, and be more than a clarification of existing

obligations. It must also result in direct service or cost obligations that are imposed upon the municipality by the Commonwealth, not voluntarily undertaken at the local level. Finally, it must impose more than “incidental local administration expenses,” as these are explicitly exempted from the Local Mandate Law. *Worcester* at 754 – 755.

As noted above, a 2004 act of the Legislature added the owner’s project manager (OPM) requirement to the Massachusetts General Laws at section 44A1/2 of Chapter 149. As this provision took effect on July 19, 2004, it is a law taking effect on or after January 1, 1981. Moreover, this amendment was not a mere clarification of pre-existing legal requirements. As your letter demonstrates, this requirement is “completely new to the statute and to the system of statutory and regulatory control of the public building construction process.” Under prior law, the first significant, mandatory financial commitment was for the services of an architect, who typically would not only design the project, but also would advise and assist through all phases to completion. Now, in addition to a project designer, the law requires that an individual that meets prescribed standards be hired through a “qualifications based” selections process to perform specific duties. Although the law allows that an existing municipal employee who meets the prescribed standards may perform this role, you accurately point out that few, if any, small or mid-sized communities retain personnel with the precise qualifications and experience required on a regular basis. The OPM selection process and duties are defined in more detail in the Division of Capital Asset Management’s *Owner’s Project Manager Guidelines* issued in December 2004.

Additionally, Chapter 149, section 44A1/2 is not a local option law that takes effect only in cities and towns that vote to accept it. The OPM requirement is imposed by state law that applies uniformly throughout the Commonwealth. Hiring an OPM is not a voluntary local undertaking. We note that cities and towns may engage in construction projects related to activity that is authorized, but not strictly required by state law. For example, there is no state law that requires communities to provide public libraries for their residents. It has been suggested that case law holds that the Local Mandate Law would not apply to a state requirement that increases the cost of an underlying activity that is not strictly required by law, such as construction or renovation of a library or senior center. See *Town of Norfolk v. Department of Environmental Engineering*, 407 Mass. 233 (1990). However, the *Norfolk* conclusion does not turn solely on the voluntary nature of the underlying activity, in that case, operation of a sanitary landfill. Rather, the *Norfolk* court primarily focused on the fact that the regulations at issue were generally applicable to public and private sector landfill operators. The court ruled that the Mandate Law did not apply to the landfill regulations because they were “...generally applicable environmental regulations which result in indirect costs to those municipalities engaging in voluntary activity.” *Norfolk* at 241.

In contrast, Chapter 149, section 44A1/2 is not a generally applicable regulation of the construction industry. It applies strictly to public sector construction projects.

Given these material differences, the *Norfolk* rationale does not control the determination on the matter at hand, and does not support a conclusion that the Local Mandate Law would not apply to a mandate that increases the cost of an underlying activity that is not also mandated by law. Such a reading would restrict application of the Local Mandate Law so that it would hold significance in only limited aspects of municipal business — those fields that are strictly required by law, such as education of pupils, election of public officials, and some public health functions. Such an interpretation would defeat “the fiscal protection of local government that Proposition 2 ½ was designed to achieve.” *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 701 (1985).

Finally, the cost of procuring OPM services is not an incidental administration expense. Precedent indicates that such expenses are relatively minor, and in the nature of paperwork activities. *Worcester* at 758. The OPM requirement is a clearly identifiable, direct consequence of the law, that will increase the number of and cost of personnel needed to complete a project of \$1.5 million or more. We note that this requirement is part of an omnibus public construction reform act, that some suggest is contemplated to streamline, and in some aspects, reduce the cost of construction projects. It is suggested that the additional cost of hiring an OPM should be offset by cost savings made possible by other provisions of the act, as well as by potential savings attributable to the presence of the OPM. There is no precedent under the Local Mandate Law to support this approach. In any event, this office solicited evidence to support this argument from its proponents, including the Division of Capital Asset Management; no evidence to quantify potential cost savings was provided. Even if DLM were to adopt this approach to mandate cost analysis, we would not rely on unsupported predictions of future savings to offset a concrete, identifiable cost increase. However, this argument would likely be raised at the time a community seeks mandate relief in court.

Accordingly, DLM concludes that – on its face — the OPM requirement imposed by G. L. c. 149, s. 44A1/2 is subject to the provisions of Local Mandate Law, G. L. c. 29, s. 27C. As mentioned above, however, as applied in certain contexts, this requirement might fall beyond the scope of the Local Mandate Law. For example, such result may occur in the context of a state-assisted construction project, where a community agrees to certain compliances in exchange for state financial aid. In a case where this or other requirements may be imposed as a condition precedent to the distribution or award of state assistance, the Local Mandate Law would not apply. See *School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593, 596 (1986).

As you know, this opinion does not relieve the Town of Milford of the duty to comply with G. L. c. 149, s. 44A1/2. The remedy under the Local Mandate Law is to seek an exemption from compliance in superior court. G. L. c. 29, s. 27C(e). Should the Milford Board of Selectmen wish, this office will prepare a determination of the amount of the cost imposed by the OPM requirement in relation to a specific construction project. Please contact DLM Director, Emily Cousens, should you have questions or comments regarding this opinion.

Sincerely,

John W. Parson, Esq.
Deputy Auditor

cc: Barbara Hansberry, General Counsel, Office of the Inspector General
Mary Kaitlin McSally, Deputy General Counsel, Div. of Capital Asset Management

Appendix C - OPM Regulations for School Building

Owner's Project Manager – excerpted from 963 CMR 2.00 SCHOOL BUILDING GRANT PROGRAM

963 CMR 2.00 is promulgated by the Massachusetts School Building Authority (MSBA) established by M.G.L. c. 70B pursuant to rule-making authority conferred by M.G.L. c. 70B and St. 2004, c. 208 for the implementation of that statute and the school building grant program it establishes, all is consistent with M.G.L. c. 30 and 30A. For the complete regulations dated September 22, 2006, as approved by the MSBA Board of Directors, go to www.massschoolbuildings.org

2.11: Owner's Project Manager

(1) If the estimated construction, renovation, reconstruction or repair cost of the Approved Project is estimated to be \$1,500,000 or greater, or if so required by the Authority as a condition to qualify for a funding from the Authority, the Eligible Applicant shall procure the services of an Owner's Project Manager pursuant to the provisions of M.G.L. c. 149, § 44A½, 963 CMR 2.00 and any guidelines established by the Authority, and shall use standard contract forms established by the Authority. All costs associated with the Owner's Project Manager that are incurred prior to the execution of a Project Funding Agreement shall be borne exclusively by the Eligible Applicant, unless otherwise determined in writing by the Authority.

(2) Prior to executing a contract with the Owner's Project Manager, the Eligible Applicant shall request in writing the Authority's approval of the Owner's Project Manager. The Authority shall, in its sole discretion, approve or disapprove of the selection of the Owner's Project Manager. As part of the approval process, Owner's Project Managers shall be required to be certified pursuant to a certification process that will be developed by the Authority. The Authority may collect and maintain performance evaluation data relative to Owner's Project Managers that have been approved by the Authority on school projects and such performance evaluation data may be utilized in the Owner's Project Manager approval process. In the event that the Authority determines that an Owner's Project Manager is not performing to the satisfaction of the Authority, the Authority retains the right to rescind its approval of an Owner's Project Manager at any time or withhold initial approval based on the performance evaluation data that has been collected by the Authority. The Authority may determine that expenditures or project costs related to an Owner's Project Manager whose approval has been rescinded are ineligible costs and not reimbursable.

(3) Prior to executing a contract with the Owner's Project Manager, the Eligible Applicant shall submit documentation to the Authority describing in sufficient

detail the selection process utilized in procuring the Owner's Project Manager and certifying in writing to the Authority that the Applicant used a qualifications-based selection process pursuant to M.G.L. c. 149, § 44A½.

(4) In the event that the Eligible Applicant elects to change the Owner's Project Manager during the course of the Approved Project, the Eligible Applicant shall notify the Authority in writing, 30 calendar days prior to the effective date of any such change. The Authority shall, in its sole discretion, approve or disapprove of the change of the Owner's Project Manager prior to said change becoming effective which approval shall not be unreasonably withheld.

(5) The duties of the Owner's Project Manager shall include, but not necessarily be limited to:

(a) managing and coordinating the daily administration of the Approved Project to completion;

(b) monitoring and reporting on the project schedule, total project budget and cash-flow;

(c) conducting a build-ability review of the project designs;

(d) monitoring and reporting on the Requests for Information from the general contractor to the designer or to anyone else on the project team;

(e) monitoring and reporting on the performance of the general contractor and providing administration of the contract between the Eligible Applicant and the general contractor;

(f) monitoring and reporting on the performance of the designer and providing administration of the contract between the Eligible Applicant and the designer;

(g) assisting the Eligible Applicant in the procurement of other vendors and contractors and execution of other contracts and agreements associated with the Approved Project;

(h) maintaining all records and reports related to the project;

(i) assisting the Eligible Applicant in preparation of requests for reimbursements and other documentation required to be submitted to the Authority;

(j) providing representation at meetings related to the project and at the construction site;

(k) notifying, in a timely fashion, the Authority and the Eligible Applicant of defective work; and

(l) any other requirements pursuant to 963 CMR 2.00 guidelines, policies or the standard contract as developed by the Authority.

(6) During the course of the Approved Project, the Eligible Applicant shall require the Owner's Project Manager to submit a monthly report of the progress of the Approved Project, including cash flow projections and a project schedule, to the Authority. The monthly reports shall be in writing in a form acceptable to the Authority.

(7) During the course of the Approved Project, the Eligible Applicant shall investigate and review, and shall require the Owner's Project Manager to investigate and review the progress and quality of construction.

(8) The Authority maintains the right to direct the Eligible Applicant to remove the Owner's Project Manager for noncompliance with any applicable provisions of federal, state or local laws, 963 CMR 2.00, any other regulations, the terms and conditions of the Project Funding Agreement between the Eligible Applicant and the Authority, or any administrative directives issued by the Authority now in effect or hereafter promulgated and/or any guidelines, policies or rules established by the Authority.

(9) In the event that a dispute arises between the general contractor, and/or any sub-contractors, and/or the designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Approved Project or the requirements of the designer's contract or the contractors' construction contract(s), the Eligible Applicant shall cause the Owner's Project Manager to report any such claims, disputes, or other matters in question relating to the performance by the general contractor, sub-contractor, designer or vendor to the Authority in writing as soon as reasonably possible. The Eligible Applicant shall require the Owner's Project Manager to take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

(10) The Eligible Applicant shall provide the Authority and the Owner's Project Manager with unrestricted access to the premises of the project at all reasonable times and to examine all agreements, construction contract documents, books, records and all other documents and materials related to the project, for the purpose of determining compliance with 963 CRM 2.00, the Project Funding Agreement and assessing the progress of the project.

(11) Nothing in 963 CMR 2.00 shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the vendors, contractors or designer. The Owner's Project Manager's services shall be rendered based on industry standards and in coordination with the services provided by the designer. It is not intended that the services of the Owner's Project Manager and designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be able to rely upon the vendors, designers and contractors for the proper performance of their obligations pursuant to their respective contracts with the Eligible Applicant.

(12) The Owner's Project Manager shall certify to the Authority, in a format and manner prescribed by the Authority, that the project director for the Owner's Project Manager is certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

Appendix D - Sample Matrix of Responsibilities	City/Town	OPM	Designers	Contractor
Pre-Design & Construction				
Master Project Schedule	A	I		
Site Investigation/Selection/Preparation	I, A	R		
Develop Design & Construction Procurement Plan	A	I		
Design & Third Party Support Consultant Procurement	I, A	R		
Project Construction Risks Assessment	A	I		
Budgeting	A	I		
Alternative Funding Sourcing	I, A	R		
Project Approval Processes	I, A	R		
Project Permitting				
Design				
Design Professional Contract Formation	I, A	R		
Schematic Design, Design Development, Construction Documents	A	R	I	
Commercial Bid and Construction Document Preparation	A	I, R	R	
Design Oversight	A	I	R	
Schematic, DD and CD Cost Estimating	A	R	I	
Cost/Value Engineering	A	I	R	
Construction Procurement				
Prepare Advertisement	A	I	R	
Coordinate Pre-Qualification Process	A	I	R	
Coordinate Bid Solicitation	A	I	R	
Pre-Bid Meeting		I		
Pre-Bid Meeting Notes	A	R	I	
Bid Document Technical Addenda	R	R	I, A	
Bid Document Commercial Addenda	A	I		
Receive Bids	A	I	R	
Evaluate Bids	A	I	R	
Pre-Award Meeting		I		
Pre-Award Meeting Notes	A		I	
Prepare Notice To Proceed	A	I		
Issue Notice To Proceed		I		
Cost Commitment Monitoring		I	R	
Construction Administration				
Construction Startup Meeting		I		
Chair Weekly Job Meeting	A	R		
Job Meeting Minutes	A, R	R	I	
Prepare Submittals List		R	I	A
Prepare/Maintain Project Submittals Log		R	R	I
Contractor Commercial Submittals	R	R	A	I
Contractor Technical Submittals		R	A	I
Request for Information (RFI)	A	R	R	I
Baseline CPM Schedule Per Spec	A	R	A	I, A
Monthly Report/Progress Schedule Update	A	A, R	A	I
Construction Change Directive or Bulletin	A	R	I	R
Proposed Change Order (PCO)	A	R	R	I
Change Order Negotiation	A	R	A	R
Change Order Preparation & Signoff	A	R	R	I
Contractor Draft Progress Invoice	A	R	R	I
Contractor Final Progress Invoice	A	R	R	I
Cost Commitment Monitoring	A	I	R	R
Punchlist Preparation		R	I, A	I
Final Construction Phase Inspection		R	I, A	I
Certification of Substantial Completion	A	R	A	I
Time Extension Entitlement	A	R	I, A	I
Disputes Resolution	A	I	R	A

Legend

- Initiate = I
- Review = R
- Approve = A

This sample indicates duties and responsibilities associated with a project. These roles may vary based upon the project and make up of the project team.

Appendix E - Sample OPM RFP for a School Project

The [Municipality] through the [Committee Name] is seeking proposals for OPM Services for the construction of a [Name of Project].

Qualified persons or firms are requested to submit proposals to the [Name and Address] no later than [Date and Time Proposals are Required]. The [Municipality] through the Town Manager or Administrator is the awarding authority and reserves the right to reject any and all proposals or parts of proposals; to waive any defects, information, and minor irregularities; to accept exceptions to these specifications; to award contracts or to cancel this Request for Proposal if it is in the Town's best interest to do so.

A Pre-Proposal Meeting or Briefing Session will be held on [Date, Time, Location and Location Address].

Proposals shall examine all information and materials contained in and with this RFP. Failure to do so shall be at the proposer's risk.

The [Municipality] is an affirmative action/equal opportunity employer.

I. PROJECT DESCRIPTION

[General Project Description including estimated construction cost if known.]

II. SCOPE OF SERVICES

Working on behalf of the [Municipality], the person or firm shall be consistent with State and Federal statutes, be an advocate for the [Municipality] through the Design and Construction Phases of the project to insure that the quality of design meets all standards that are specified, as detailed in Massachusetts General Law Chapter 149 s 44A1/2.

1.1 PHASE I – PRE-DESIGN

During this phase, the OPM shall gather information required to become familiar with the project and the people that must be communicated with during the

design process. The OPM shall provide advice, consultation, and guidance to the Owner relative to:

- a. Preparation of the project scope, budget and schedule;
- b. Preparation of designer selection materials;
- c. Preparation of designer services contracts;
- d. Selection of designers and other consultants in accordance with MGL c.7 s38A1/2 including execution of contracts and maintenance and tracking of insurance certificates;
- e. Establishment of design criteria.

1.1.2 The (designer? Or OPM?) will assist in the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, boring etc.).

1.1.3 The OPM shall meet with the Owner, designer and other stakeholders as necessary.

1.1.4 Owner's Project Management services are expected to commence on or before [Date]. Phase I will consist of attending all necessary meetings and providing advice to the [Municipality] with the development of the project design by the Architect through the completion of the bid phase.

1.1.5 Upon successful and satisfactory completion of Phase I for preliminary design services, the [Municipality] may continue to engage services from the successful individual or firm for the remaining phases of the [Name of Project] subject to funding appropriation at future Town Meetings.

2.2 PHASE II – DESIGN & CONSTRUCTION

2.2.1 Design Phase

- a) Represent and assist the Owner and architect in programming process
- b) Meet with building users, reviewing space and adjacency requirements
- c) Review of conceptual design to ensure compliance document cost estimates,
- d) Reconcile existing conceptual estimates, design

- development, 50% construction documents, value engineering suggestions and resource prioritization
- e) Scheduling – prepare a master project schedule and preliminary construction schedule
 - f) Work with owner and architect to develop detailed project-specific quality control program.
 - g) Assist in the prequalification of contractors, review bids and assist in final selection.
 - h) Assist in the prequalification of subcontractors and bid review.

2.2.2 Construction Phase

- a) Prior to start of construction, in consultation with the Architect, represent the Owner and monitor the preconstruction meetings.
- b) Attend meetings of the [Name of Committee(s)] from the preconstruction period to the completion of the project.
- c) Review and comment on the schedule of Values for payments as prepared by the contractor to ensure conformance with the expected flow of work as stated in the Contract Documents.
- d) Assist in the development of contingency plans for corrective action, recommend to the owner and with the Owner's approval; implement such plans as required.
- e) Participate in weekly construction and progress meetings with the Architect and the Contractor to discuss such matters as procedures progress, construction problems and scheduling.
- f) Review the contractors' construction schedule to determine if the schedule is consistent with milestones. Review project correspondence and logs maintained by the Architect's supplemental instructions, proposal request, change orders and construction change directives. Review the contractors shop drawing schedule. Advise the Owner on all of the above items.
- g) Expedite and participate in the Owner's review of data and samples when such review is requested by the Architect.
- h) Advise the owner of necessary or desirable changes in the project. Assist in negotiation of the Contractor's proposals for these changes, and submit recommendations to the Architect and the Owner. Establish and implement a change order monitoring system and report on job cost events,

including approved change orders, spending change orders, and anticipated change orders. Establish a time line for the change order process that does not interfere with the progress of the work.

- i) Develop and implement procedures for prompt review and processing of applications for payment from the Contractor for progress and final payments, including certification requirements by the Architect. Make recommendations to the Owner for payment. Maintain a computerized spreadsheet recording all project expenditures.
 - j) Advise the [Name of Committee] on an ongoing basis of all project developments, including conditions and circumstances that may cause delay in the project schedule, increase costs, or otherwise may be inconsistent with the Owner's expectations.
 - k) In conjunction with the Architect, review the Contractor's submittal of Notice of Substantial Completion, for a phase or the entire project, and make a recommendation to the Owner.
 - l) Prepare monthly reports to the [Name of Committee] summarizing the progress of the construction and the financial status of the project. The reports should highlight important events and identifying pending issues that must be addressed.
 - m) Maintain regular contact with the Town Manager or Administrator and the Superintendent of Schools regarding the progress of the project and issues to be addressed.
 - n) As requested, coordinate with other municipals officials in [Municipality] concerning project related issues.
 - o) Assist the Town Manager or Administrator or his designated representative and the Architect in the procurement of furnishing and equipment and technology equipment. This effort is to include scheduling and monitoring of delivery, storage and installation. Assist the [Name of Committee] in the procurement of testing and other services, consultants or materials required on the project.
 - p) Maintain a complete project file, including but not limited to, a master list of permits, certificates of insurance, licenses and approvals, correspondence, monthly reports, daily reports and payment records.
 - q) Oversee the performance of the clerk of works assigned to the project to ensure that she is competently performing the required duties.
 - r) Assist the [Name of Committee] in obtaining
-

reimbursement from the Massachusetts School Building Authority.

- s) At the conclusion to the project, assist the [Name of Committee] in obtaining as-build drawings and all the other construction-related documents and all materials required for building occupancy, and project closeout.

2.2.3 Scope of Services for the Clerk of Works

- a) Perform on site observation of the progress and quality of the contraction to determine in general if the work is being performed in conformance with the contract documents. Notify the Architect and OPM immediately if the work does not conform to the contract documents or require special inspection or testing.
- b) Monitor Contractor's schedules on an ongoing basis and alert the OPM and the Architect to conditions that may lead to delays in the completion of the work.
- c) Participate in weekly construction and progress meetings with the Architect and the Contractors to discuss such matters as procedures, progress, construction problems and scheduling.
- d) Observe tests required by the Contract Documents and reports to the Architect on the procedures and test results. Verify testing invoices to be paid by the Owner.
- e) Maintain records at the construction site in an orderly manner. The records shall include correspondence, Contract Documents, change order, change directives, reports of site meetings, shop drawings, products data, color samples and request for payment.
- f) Maintain a logbook of daily activities at the site, including weather conditions, nature and location of work being performed, verbal interpretations given to the Contractor and specific observations. Record any occurrence that might result in a claim for a change in contract compensation or time.
- g) Notify the Architect if a portion of the work requiring shop drawings, product data samples, is commenced before such submittals have been approved by the Architect.
- h) Observe the contractor's record copy of the Contract Documents at intervals appropriate to the stage of construction and notify the Architect of any apparent failure by the contractor to maintain up to date records.
- i) Review applications for Payment and provide the Architect with recommendations for disposition.

- j) Assist the Architect in conducting inspections to determine the dates of Substantial Completion of Various phases and the date of final completion.
- k) The Clerk of Works will not authorize deviations from the Contract Documents, approve substitute materials or equipment unless authorized in writing by the Architect, or assume any responsibilities of the Contractors superintendent of subcontractors. The Clerk will not have control of, or be responsible for construction means, methods, techniques, sequences, procedures or safety. The Clerk will not order the Contractor to stop the work, or any portion thereof.

2.2.4 Time Schedule and compensation

The OPM shall be prepared to become fully engaged in the Project immediately upon award of this contract. The Clerk of Works shall be prepared to become fully engaged in this project upon issuance of a Notice to Proceed to the Construction Contractor.

The OPM and Clerk of Works are expected to be under contract until the Project is complete.

Upon selection of OPM and Clerk of Works the Town Manager or Administrator and the [Name of Committee] will negotiate the amount of compensation and the method of payment. The Owner expects that the OPM will devote an average of ___ per week to the project during the construction period, although the number of hours may vary above and below this average for a particular week, depending on the Project needs. The Owner expects the Clerk of Works to be at the site ___ hours per day, ___ days per week, excluding official holidays and coincident with the time of the contractors operations.

The individuals or firm filling these positions will be considered as independent contractors in all contractual arrangements.

III. EXPERIENCE

- 3.1 Pursuant to M.G. c. 149, s. 44A1/2, the OPM shall be a person and/or firm who is registered by the Commonwealth as an Architect or Professional Engineer and who has at least five (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 seven (7) years experience in construction and supervision of construction of buildings. The OPM shall be independent of the designer, general contractor, and/or any subcontractor involved in the school building project.

- 3.2 Proposers must provide all of the services described in Section II: Scope of Service and comply with Section V: Proposal Submission Procedures/Criteria.
- 3.3 The OPM must have excellent presentation and communication skills.
- 3.4 The individual or firm must be able to demonstrate financial adequacy and managerial stability.
- 3.5 Each person and/or firm must submit 1) the Project Manager Qualification Statement 2) a certificate of non-collusion; 3) a certification of tax compliance.

IV. REQUEST FOR SERVICES

Qualified persons and/or firms interested in submitting proposals must submit [Number of Copies Required] of proposal requirements on or before [Day, Date and Time].

A Pre-Proposal Meeting or Briefing Session will be held on [Date, Time, Location and Location Address].

- 4.1 Project: Preliminary Design Services, Design and Construction for a [Name of Project].
- 4.2 Proposals Submitted by: Qualified persons or firms with demonstrated successful OPM experience on similar projects.
- 4.3 Service: OPM to provide technical assistance to the [Municipality] during the course of the project.
- 4.4 Proposals Due: No later than [Day, Date and Time]
- 4.5 The Fee for services will be negotiated.
- 4.6 Payment: The selected individual or firm will enter into a contract with the [Municipality] whereby progress payments will be made to complete the scope of work within established timeframes.
- 4.7 Work to Begin: On or before [Date].
- 4.8 Work To Be Completed By: [Date].
- 4.9 Contact: [Name of Contact and Contact Information].

V. SUBMISSION PROCEDURES CRITERIA

[Number of Copies] of the proposal must be submitted in an envelope clearly marked

REQUEST FOR PROPOSALS, [NAME OF PROJECT]

Interested individuals and firms are required to clearly tab the proposals in order to identify the minimum and comparative criteria. Tabbing the criteria will allow for the [Name of Committee] to effectively evaluate prospective individuals and/or firms. Proposals without the criteria tabbed will be deemed non-responsive and not considered.

Fee proposals are to be submitted in sealed separately marked envelope. Fee proposals will not be opened prior to the final technical service proposal rankings assigned by the [Municipality]. The Fee shall be subject to negotiation. All fees shall be expressed as a lump sum not to exceed cost, including the costs of all sub-consultants and reimbursable expenses. Hourly rates for architects, engineers, clerk of the works and other applicable professionals assigned to the project should be indicated on the Fee Proposals.

The following schedule is anticipated for the proposal review and award of this contract:

Proposal Due Date: [Insert Date]

Proposal Award Date: [Insert Date]

Fax or electronic submissions will not be accepted. Late delivery of materials due to any type of delivery system shall be cause for rejection. In the event the school office are closed due to emergency or weather conditions on the proposal due date, proposals will be due at 1:00 am on the next business day during which offices are open.

VI. SALES TAX EXEMPTION

All materials purchased for this project shall be exempt from Massachusetts sales tax.

The [Municipality] exemptions forms may be obtained from the office of the School Business Manager.

VII. EVALUATION & MINIMUM CRITERIA.

Proposals will be uniformly evaluated by the [Name of Committee]. Based on the review of the proposals up to three finalists will be short-listed and interviewed by the [Name of Committee]. All firms or individuals short-listed will be notified at least three business days prior to their scheduled interview. All interviews will be conducted as part of a posted public meeting.

All firms or individuals submitting proposals will be notified of the [Name of Committee].

The [Name of Committee] will rate the firm as submitting a responsible and responsive proposal if it fulfills the following minimum criteria:

- a) Firm/Individual Name, Contact Name, Address, Telephone and Fax Numbers.
- b) Firm/Individual History including length of time the firm/individual has been in business.
- c) Names and Titles of firm partners and/or officers.
- d) Key personnel that will be employed as part of the Owner's Project Management team including: applicable registration numbers, resumes, professional designations, licenses held, information on experience with similar projects, and each person's level of involvement in, and the organizational structure of the staffing for this school building project.
- e) A listing of current and past public and private projects of a similar nature with the names and telephone numbers of references to contact. Photos may be provided.
- f) Submission of 1) the Project Manager Qualification Statement; 2) a Certificate of Non-Collusion; 3) a Certification of Tax Compliance.
- g) Any other information that the applicant considers relevant for the purpose of evaluating its qualifications for the project.
- h) Adequate financial stability and proof of professional liability insurance. The [Municipality] must also be able to be named an "additional insured". Other town insurance

requirements for comprehensive, etc. will be included in the contract for services.

VIII. EVALUATION OF NON-PRICE PROPOSALS COMPARATIVE CRITERIA

The [Name of Committee] will evaluate proposals and assign the rank of “highly advantageous,” “advantageous,” “not advantageous,” or “unacceptable.” Any proposal that receives an “unacceptable” rating for any of the criteria may be rejected. In addition to the material submitted within the proposal for all firms deemed to have submitted responsive and responsible proposals, the [Name of Committee] will likely contact the listed references and may ask for additional information or a clarification of any responses.

Ability to demonstrate a high degree of qualifications and experience in performance of services on projects of a similar nature.

Thorough knowledge of the Massachusetts State Building Code, Massachusetts public construction laws and all other pertinent codes and regulations related to the successful completion of the project.

Ability to work with architects, contractors, subcontractors, consultants, school officials, municipal officials, state officials, and committee members on behalf of the Owner in providing relevant information and facilitating decisions and actions of the various participants with the goal of advancing the progress of the Project on a timely basis.

Ability to commit the resources necessary to complete the services outlined in this RFP and the ability to sustain that commitment for the entire duration of the Project.

Evaluation of references for similar projects.

The qualifications and educational backgrounds of those assigned to the project, including past relevant experience in all phases of this design and construction work. Identification of the primary contact is required, and the primary contact shall not be changed during the engagement without permission of the [Name of Committee].

Experience in actual School Building Projects that included site development, new school construction, access road development and/or suitable school projects that may relate, to this project. List references by community, relevant project, contact name, and daytime telephone number. List and contact information for all Massachusetts design projects within the past five years would be beneficial.

Capabilities of firm's public building management experience, including:

- Cost and budget controls
- Timeliness, construction completion to client's satisfaction
- Contractor supervision
- Contract administration
- Working knowledge of current School Building Authority
- Legislation
- Familiarity and experience of firm with public bidding, including history of previous and successful experiences with general and sub-bid challenges under MGL Chapter 149.
- List all experiences with public contracts in the past ten years that required some form of arbitration or legal action in the state or federal court systems to complete the contract work and the role your firm played in the resolution of these disputes, if any.

IX. FEE PROPOSALS

Fee proposals are to be submitted in sealed separately marked envelope. Fee proposals will not be opened prior to the final technical service proposal rankings assigned by the Town. All Fees shall be subject to negotiation. All Fees shall be expressed as a lump sum not to exceed cost, including the costs of all sub-consultants and reimbursable expenses. Hourly rates for OPMs, clerk of the works, and other applicable professionals assigned to the project should be indicated on the Fee Proposal.

The [Municipality] reserves the right to contact any firm in order to clarify any aspect of a submitted proposal. The overall goal of the evaluation process shall be to recommend award of the contract to the person or firm whose proposal best meets the requirements of the RFP in the opinion of the [Name of

[Committee] and is at the same time cost-effective and within the budget allocated for the project.

X. AWARD SELECTION

The [Name of Committee] will determine the most responsive, responsible, and advantageous proposal. A contract for the OPM services awarded by the [Municipality] to the person or firm submitting the proposal of qualifications most beneficial to the [Municipality] and [Name of Project].

XI. PUBLIC RECORD

All documents submitted in response to this RFP shall become property of [Municipality] when received and are deemed public records under M. G. L.

Chapter 30B, s. 3 and are open to public inspection; however, all proposals shall

remain confidential until the completion of all evaluations pursuant to this RFP.

XII. GENERAL AND SPECIAL PROVISIONS

The [Municipality] reserves the right to reject any and all proposals, waive informalities, and to award contracts as may be in the best interest of the [Municipality].

The applicant selected shall be expected to comply with all applicable federal and state laws in performance of services.

The consideration of all proposals and subsequent selection of the successful applicants shall be made without regard to race, color, sex, age, handicap, religion, political affiliation or national origin.

Services provided by the successful applicant shall be rendered through a professional services contract.

The OPM Services will require full compliance of all aspects of the New Construction Reform Law, M. G. L. c. 193 Acts of 2004, and

the SOMWBA (State Office of Minority and Women Business Assistance) guideline. A copy of the New Construction Reform Law, M. G. L. c. 193 act of 2004, and the SOMWBA (State Office of Minority and Women Business Assistance) guideline is included as part of the RFP information packet.

Prospective applicants who have any questions regarding the Request for Proposal may contact [\[Name of Contact and Contact Information\]](#).

Appendix F - Sample Evaluation Criteria

The Committee will evaluate responses based upon the following minimum and comparative criteria. After evaluating the responses, the Committee will schedule interviews with at least the three (3) highest scoring individual or firms. A list of interview questions and format will be provided prior to the interview.

The Committee will rank the finalists based on total scores and on consideration of the specific minimum and comparative evaluation criteria and the interview. The Committee will discuss the results and select the successful respondents from that list of finalist and commence the fee negotiations. The Committee selection will almost always be the top ranked finalists.

In rare cases there may be a valid reason to skip the top ranked finalists and choose one of the other finalists for negotiation; in such cases the Committee shall clearly document the reason for such a decision in the procurement file. (Mass. General Laws chapter 7 Sec. 38G[a]).

If unsuccessful in the negotiations, the municipality may attempt to negotiate with the next higher scoring respondent (and if necessary repeat that process) until successful. If negotiations with one or more of the finalist prove unsuccessful, the municipality may reject all responses and may choose to re-advertise for services if deemed in its best interest to do so.

1. Minimum Criteria: Each response must meet all of the following criteria in order to be considered for further evaluation:

- ___ Eight (8) copies of the proposal were included.
- ___ If a registered architect or professional engineer, must have at least five (5) year of relevant experience in the construction and supervision of construction of buildings. If not a registered architect or engineer must have at least seven (7) years of relevant experience in the construction and supervision of construction of building.
- ___ Demonstrated experience with and understanding of public construction regulation and demonstrated capacity and experience to evaluate plans and evaluate cost estimates.

2. Rating System: The following rating system will be used by the Committee to evaluate the responses received that have been determined to meet the minimum evaluation criteria listed above. Any responses that do not meet any of the minimum evaluation criteria will be judged unacceptable and not reviewed further. The Committee will utilize the following point schedule:

Highly advantageous: (5 points) response excels on the specific criterion

Advantageous: (3 points) response meets evaluation standard for the criterion

Least Advantageous: (1 point) response does not fully meet the evaluation criterion or leaves a question or issue not fully addressed

Does Not Meet: (0 points) Does not address the elements – **response is automatically eliminated from further consideration if a 0 is received in any category.**

3. Four Comparative Criteria:

- A. Project Management Experience
- B. Project Design and Construction Oversight and Timetable
- C. Quality of references
- D. Quality of written documents

A. Project Management Experience

The Response will be evaluated in conjunction with examples of municipal construction projects with similar size and scope submitted, the references, and description of all experience working on municipal building construction projects.

Evaluation Criteria

1. Individuals/Firms that clearly demonstrate experience working on similar renovations and/or construction projects, understand the particular needs of a municipality of similar size and project scope of work, demonstrate in their work plan that they understand the particular needs and challenges of the project, and clearly have the experience and building construction project management background and have at least three (3) renovations and additional projects with the total project costs estimated to be at least \$_____ within the last _____ years and have successfully completed most projects on- time and on budget will be judged as *highly advantageous* (5 points).

2. Individuals/Firms that clearly demonstrate experience working on similar municipal school renovation and/or construction projects, understand the particular needs of a municipality of similar size and project scope of work, demonstrate in their work plan that they understand the particular needs and challenges of the project, and clearly have the experience and building construction management background and have less than three (3) but at least one (1) renovation and addition project that is estimated to cost \$_____ or more and have successfully completed at least one municipal renovation and

addition project on-time and within budget within the last ____ years will be considered *advantageous* (3 points).

3. Individuals/Firms that demonstrate an understanding of the RFP and have completed at least three (3) construction and renovation projects with the estimated cost of construction of more than \$____ but less than \$____ within the last ____ years will be considered *least advantageous* (1 point).
4. Individuals/Firms with no clear understanding of the project or the community, or who have no ____ renovation or construction experience and who make no attempt to provide similar project experience to the municipality for this project throughout their response will be considered to have no advantage to the project and *do not meet the criterion* (0 points = eliminated).

SCORE FOR THIS CRITERION (A)

B. Project Design and Construction Oversight and Project Timetable

A key consideration for the Committee is the ability of the individual/firm to begin work immediately, maintain an intensive schedule to meet the municipality's timetable, and oversee the architect's work as it relates to the quality of design, efficiency of design, cost effectiveness, bidding, and construction oversight.

Evaluation Criteria

1. Individuals/Firms that can develop presentation materials for this project and are able to devote sufficient resources to complete the project in accordance with the municipality's timetable, and are available by ____ for the work will be considered *highly advantageous* (5 points).
2. If the Individual/Firm has some experience in these areas ~~but~~ information provided leaves the Committee unsure of the Individual/Firm's ability to meet the project deadlines or if, in the Committee's opinion, the Individual/Firm has not demonstrated the ability to make clearly articulated public presentations, then the Individual/Firm will be considered *advantageous* (3 points).
3. Individuals/Firms that demonstrate limited construction management or limited design oversight ability, but may be able to devote sufficient resources to complete the project in accordance with the municipality's timetable, will be considered *least advantageous* (1 point).

4. Individuals/Firms that have not overseen a designer's work as it relates to the quality of design, efficiency of design and cost effectiveness or are unable to devote sufficient human resources to complete the project in accordance with the municipality's timetable will *not meet the criterion* (0 points = eliminated).

_____ **SCORE FOR THIS CRITERION (B)**

C. Quality of References

References will be evaluated to identify the ability and quality of previous work as an OPM on _____ projects with similar size and scope.

Evaluation Criteria

1. The Committee will consider strong recommendations from all references highly advantageous, particularly if the projects involve similar municipal building construction projects. If the firm provides thorough, written, positive references from clients the response will be considered highly advantageous. When the Committee contacts the references or reviews the written references and they are positive, and some indicate that the individual/firm had direct experience with \$_____ projects, the individual/firm met the project goals, maintained the timetable, met the budget, and successfully managed the construction phase of the project, then the Committee will determine that the response is highly advantageous (5 points).
2. If the majority or recommendations are positive, but indicate that the individual/firm has qualified experience or success with \$_____ projects or that the individuals contacted have reservation about the quality of the overall project management ability or reservations about the ability to manage a project of this size and scope, then the Committee will consider the response advantageous (3 points).
3. If only one recommendation is positive, or the individual/firm is subject to litigation on no more than one construction project, or the individual/firm has no experience in a \$_____ project, then the response will be considered least advantageous (1 point). If the Committee, when contacting references for over 4 business days, is unsuccessful in receiving the minimum of three (3) recommendations or return phone calls from the list of references provided by the firm, the Committee will interpret this as no recommendations for the firm and the response will be determined to be least advantageous and the firm will receive a 1.

4. If none of the recommendations is positive or if, in the opinion of the interviewer, any reference has strong concerns about the ability or quality of work of the proposer, or if the individual/firm has no experience with similar projects or projects that the Committee considers to be similar, or if the individual/firm is subject to litigation on more than one construction project, then the response does not meet this criterion (0 points = eliminated).

SCORE FOR THIS CRITERION (C)

D. Quality of written materials

Evaluators will review the responses in conjunction with any materials provided by the individual/firm to determine relative quality, readability, responsiveness to the RFP, and understanding of the project and the role of the project manager and/or clerk of the works.

Evaluation Criteria

1. Individuals/Firms that organize their response according to the minimum and comparative criteria in the RFP, make it easy for the Committee to evaluate the response, demonstrate a clear ability to communicate the elements of a publicly designed and funded project, and communicate a work plan that demonstrates the manner in which a project manager oversees the designer's work as it relates to the quality, efficiency, and cost effectiveness of design, and demonstrate an understanding of the project, will be considered highly advantageous (5 points).
2. Responses that demonstrate an understanding of the role of a project manager in similar municipal building projects, or other construction projects the Committee deems similar, and that demonstrate an understanding of this project but do not organize their response according to the minimum and comparative criteria in this RFQ will be considered advantageous (3 points).
3. Responses that demonstrate an understanding of the role of a project manager in similar municipal building projects but do not demonstrate an understanding of this project, and have multiple spelling and/or grammatical errors will be considered least advantageous (1 point).
4. Responses that simply reiterate the scope of services or do not demonstrate an understanding of the role of OPM for this project and have multiple spelling and/or grammatical errors do not meet this criterion (0 points = eliminated).

_____ **SCORE FOR THIS CRITERION (D)**

COMMITTEE RECOMMENDATION: Must have a minimum of 1 point in each criterion. 0 score in any category results in elimination.

Score for Criterion A

Score for Criterion B

Score for Criterion C

Score for Criterion D

=====

____ Total Score on A, B, C, and D

CHECK ONE:

Recommend for interview

Not recommended for an interview

Signed by Individual(s) Completing the Evaluation:

Name

Interview. After reviewing responses and at its sole discretion, the Committee may interview individuals/firms that meet the minimum and comparative criteria. The interview will:

1. Determine the direct professional experience of the individual/firm (up to 5 points).
2. Explore the specific details of the presented work plan (up to 5 points).
3. Discuss previous work relationships with designers, contractors, and municipalities during the design phase and the construction phase (up to 5 points).
4. Rate overall presentation/communication skills (up to 5 points).

SCORING OF RESPONSES:

_____ Response Meets the Minimum Criteria (check if yes)

_____ Points Received from Comparative Criteria

_____ Points Received from Interview

=====

Total Points for this Individual/firm

Final Recommendation:

Recommend that the City award the contract and begin fee negotiation with this individual/firm

Do not recommend this individual/firm

Signed:

Name

A production of
Massachusetts Municipal Association
And
AGC of Massachusetts