

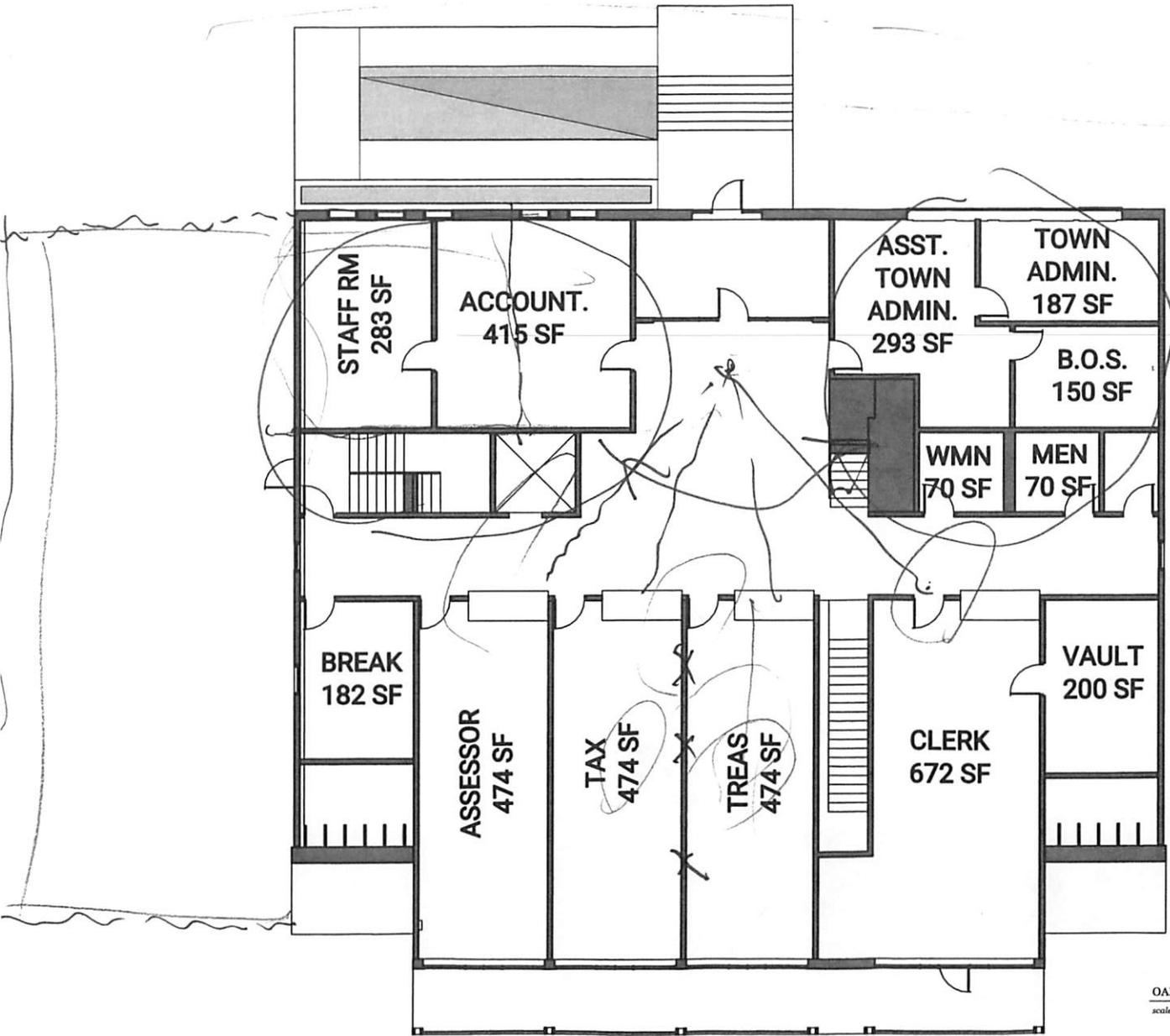
Town Administrator Report
December 10, 2019

The following is a summary of the major activities of the Office of the Town Administrator for the previous week.

- 1. Town Hall Update-**We had a very productive Town Hall day on Wednesday, December 4. Architects for ICON, Stephen Moore and Ned Collier, were on site to meet with Departments regarding their space needs. Departments have participated strongly throughout our Town Hall study period, and we have good detail from the programming studies and surveys we have previously performed. Departments had a great opportunity to meet directly with the designers to update all information and to review their specific needs. Obviously, this is critical information in putting together a workable design. Honing down their initial concepts, ICON has developed a program that can be fully met in the existing building envelope with minor modifications. Completing the step of finalizing the Department space needs allows them to prepare a plan to present to the Town that is fully vetted. In discussing our steps moving forward, the design team made the recommendation to pursue an alternative procurement concept to avoid the problems we have faced with completing the design and having bids come in higher than expected. Through the process outlined in MGL, Chapter 149A, the Town is permitted to bring in a construction manager at-risk with whom we may negotiate a maximum project cost that will be a not-to-exceed cost for the project. I think this would be a breath of fresh air to have greater communication between the designers and the construction community and I support the concept. While both the design and procurement fronts look promising, there is precious little time to fully prepare for Town Meeting, and we need a workshop of the Board of Selectmen next week to review the concept and give the team direction if we are to be ready for April.
- 2. North Bluff Beach Nourishment Project** -There has been great progress on the North Bluff Beach Project with our contractor, Dig-It Construction, working well with the Edgartown Dredge team to rebuild our Beach. As of last Friday, 9,850 cubic yards of high-quality sand have been delivered and placed on site. Under the initial contract that leaves an additional 6,150 cubic yards remaining. Due to the wave action at the site, it has become clear that more material will be needed to achieve the desired beach profile than the initial estimate of 16,500 cubic yards. Our budget is fine to increase the overall volume placed on the beach and both Edgartown and Dig-It are willing to place more material at the present unit costs. Our only limiting factor is to follow all of our permits so that we do not exceed the desired beach profile for project completion. Our design and engineering firm, Foth, is reviewing all of the quantities and will be conducting a survey to determine the finished grades. We will additionally seek to stockpile some sand to assist in the groin construction which will be starting after the first of the year to further stabilize the beach. My special thanks go to the officials of the Town of Edgartown for their participation and support on this project.
- 3. Budget Process Update.** Monday, December 2 was the deadline for Departments to submit their budget requests, which kicks off the budget season for FY 2021. Last Thursday I met with the Finance Committee to review our projected revenues and to

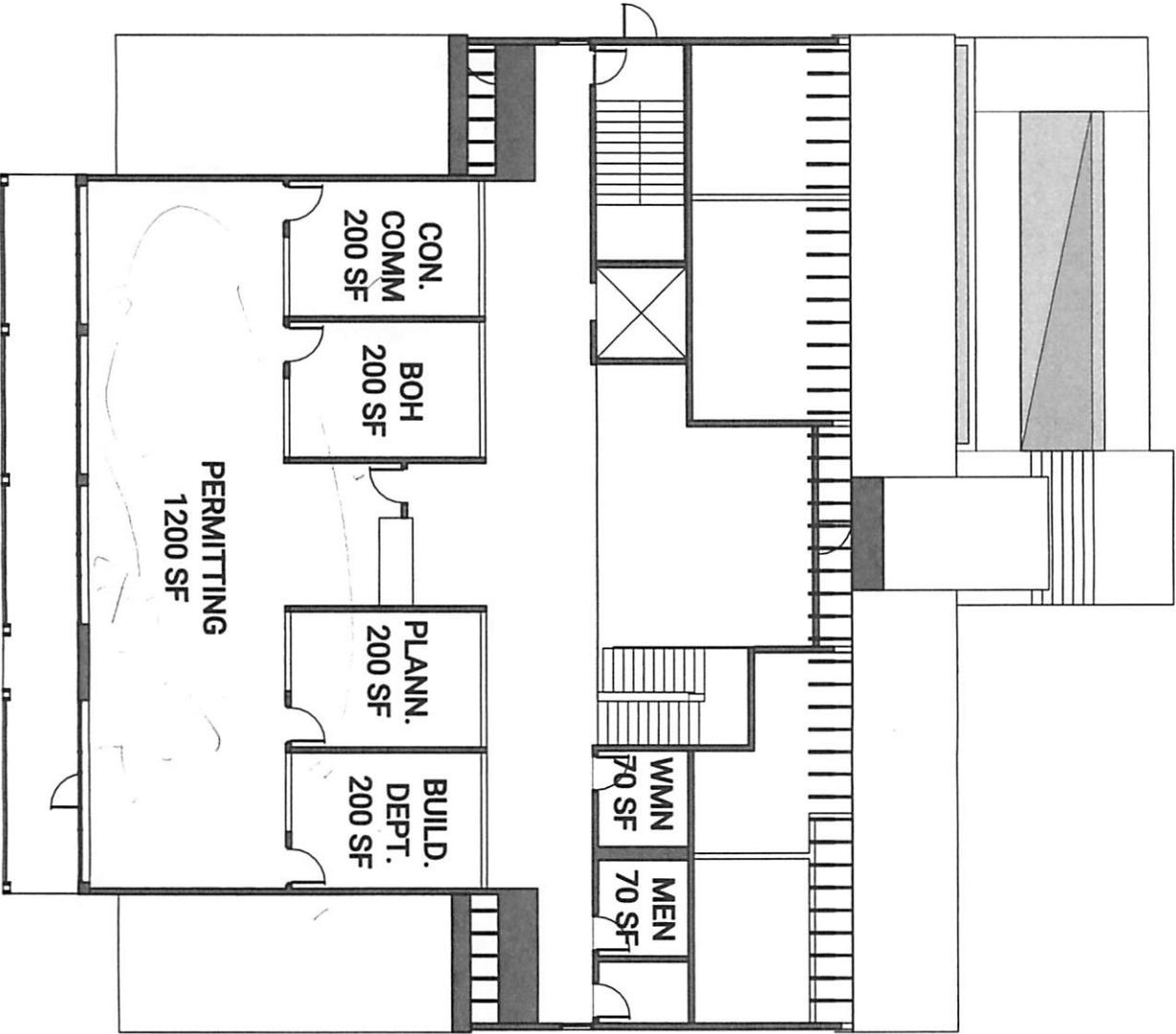
discuss the schedule of events for moving through the budget process right up through Town Meeting. Over the next several weeks I will be conducting detailed meetings with every single Department to review goals and plans for the year and to evaluate our funding needs. Overall revenues are up less than three percent, and I will be trying to bring in a total budget with growth in the 2.5 percent range, which will be a very difficult task this year given our many growing costs. My schedule is to have budget recommendations completed and submitted to the Board of Selectmen by January 6, 2020. The proposed date for a Selectmen's Budget Workshop is January 14, 2020, with an anticipated submission of the budget by the Selectmen to the Finance Committee on January 16. Town Meeting Articles will be due no later than February 17 and by mid-March the Town Meeting warrant will be finalized for our Town Meeting on April 14, about a week later than usual. I appreciate the Board's support and understanding for my busy schedule before the holidays as I push through to involve every Department in our budget discussion and develop recommendations that work for the Town as a whole.

- 4. Landfill and School Solar Projects-** We have completed the necessary agreements to take advantage of the bids and move forward with the construction for the solar energy facilities for the landfill and the Oak Bluffs School. Due to the size of these projects and our limit to generating energy, we are holding off on the Police Station project until we get these two in place and we can evaluate any growth in our usage/generation capacity. Now that the contracts are in place, the focus is on the permitting that will be required for the landfill project. Under the Town's Solar Energy Systems Zoning Bylaw, this project will require a special permit from the Zoning Board of Appeals. Prior to consideration by the ZBA, the project is required to go before the Site Plan Review Committee consisting of the Planning Board, ZBA, Energy Committee and the Conservation Committee. The Site Plan Review Committee will evaluate and potential visual impacts and any grading and/or vegetative clearing. The project will benefit from this review process. To date we have conducted a preliminary review of the permitting steps through a conference call with the contractor who will be responsible for all permitting. We are awaiting our first look at the completed site plan.
- 5. East Chop Bluff Grant Application-**I have been working with our Conservation Administrator, Liz Durkee, and our design engineers from Foth to prepare a grant application under the FEMA Hazzard Mitigation Grant Program for improvements to the revetment at the East Chop Bluff. With the total project estimated to cost over \$20 million, there are not many programs that will allow such a large project to move forward. This program is the largest that covers coastal resiliency, and funding may be available up to \$15 million to improve the most impacted sections. This will be the second time that we have applied for these funds as we lost out to a project in Boston's Seaport district last year. Our major challenge is to demonstrate a cost-benefit analysis justifying this expenditure under the program guidelines.
- 6. Moped Legislation.** House Bill 1783 regarding the regulation of mopeds in Oak Bluffs has recently come up for hearing again, and I have prepared correspondence for the Board's approval in support of the Bill. I would like to get the letter signed and up to the State House to demonstrate the Town's strong support for this legislation.

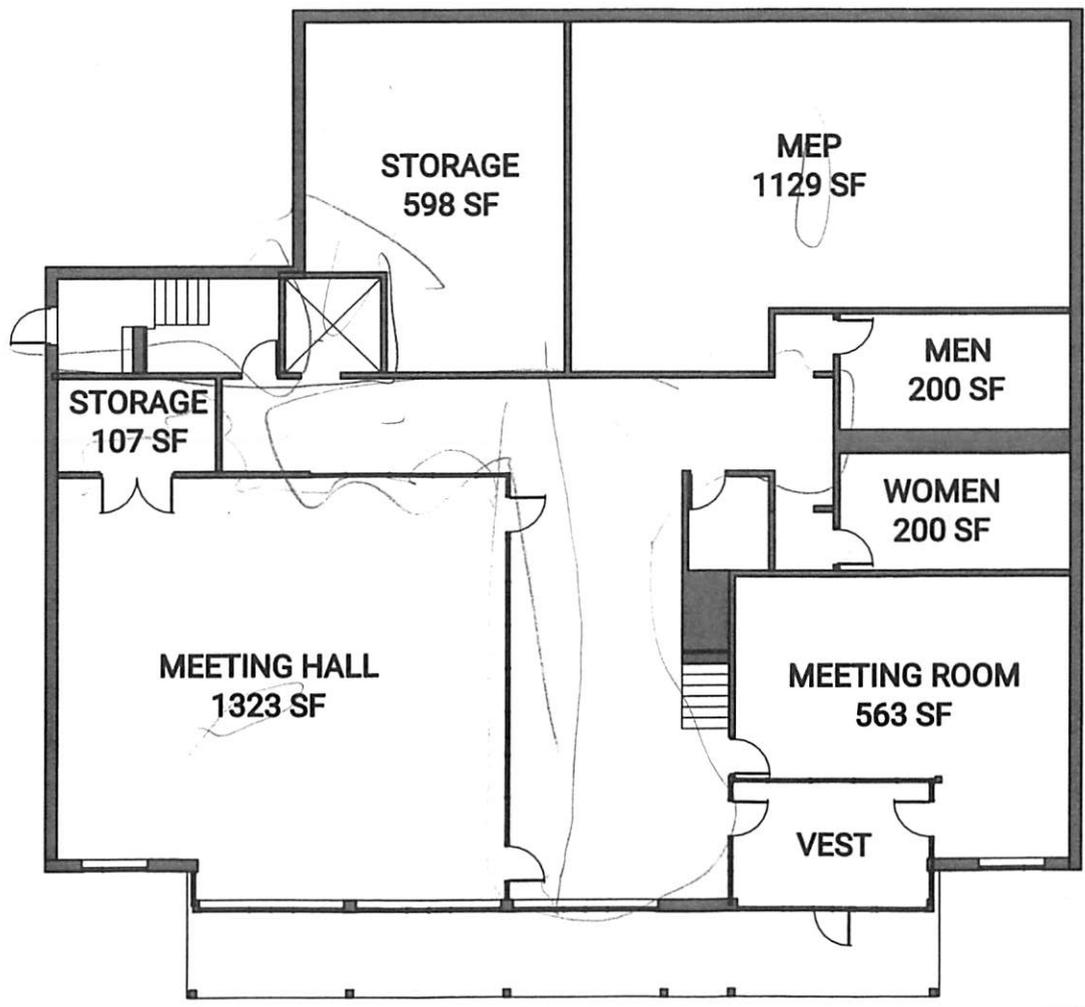


OAK BLUFFS TOWN HALL - SCHEME 2 - FIRST FLOOR PLAN

scale: 3/32"=1'



OAK BLUFFS TOWN HALL - SCHEME 2 - UPPER FLOOR PLAN
 scale: 3/8" = 1'-0"



IX. Using Alternative Project Delivery Methods Under M.G.L. c. 149A

Construction projects typically involve three phases: planning, design and construction. On a design-bid-build project, these phases run sequentially: first, a designer prepares a fully detailed design for the project, then construction bids are solicited on the 100 percent complete bidding documents, and finally, the selected contractor – the lowest eligible and responsible bidder – begins construction. The contractor has no involvement in the process until the construction stage.

M.G.L. c. 149A, enacted in July 2004, permits Massachusetts awarding authorities to use two alternative delivery methods that differ substantially from the design-bid-build process, subject to specific conditions. For building construction contracts estimated to cost \$5 million or more, awarding authorities have the option of using the construction management at-risk (CM at-risk) delivery method. For public works construction contracts estimated to cost \$5 million or more, awarding authorities have the option of using the design-build delivery method. This chapter summarizes the requirements for using these alternative delivery methods under M.G.L. c. 149A.

Optional CM At-Risk Delivery Method for Building Construction Contracts Estimated to Cost \$5 Million or More

On a CM at-risk project undertaken pursuant to the requirements of M.G.L. c. 149A, a CM at-risk firm is hired early in the design stage of the project. During the preconstruction period, the CM at-risk firm acts as a construction manager, advising the owner on issues such as the project budget, the project schedule and development of the project design. At a predetermined point during design development, the owner and the CM at-risk firm agree on a guaranteed maximum price (GMP) for the construction work. During the construction stage of a CM at-risk project, the CM at-risk firm – which has until this point acted as a construction manager – takes on the role of the project's general contractor and assumes the risk of constructing the project in accordance with the owner's specifications for an amount not to exceed the GMP. Because of the dual construction manager and general contractor roles assumed by the CM at-risk firm, the CM at-risk delivery method is sometimes called CM/GC.

The CM at-risk contract is structured as a cost-plus contract with a GMP. In other words, the awarding authority pays the CM at-risk firm the actual cost of the agreed-upon work plus an agreed-upon construction management fee. The sum of these payments cannot exceed the GMP. However, the GMP may be increased by change orders if there are changes to the project scope or requirements, or if unforeseen conditions are encountered on the project. The awarding authority is responsible for monitoring and auditing all project costs.

As in the case of a design-bid-build project, on a CM at-risk project the owner holds separate contracts with the designer and the CM at-risk firm. The CM at-risk firm holds the subcontracts and is responsible for ensuring that all construction work is completed on schedule and in accordance with the specifications. CM at-risk projects are sometimes fast-tracked so that portions of the design that are completed early, such as the site work, can be bid and built and items with long lead times can be purchased while the rest of the design is being completed. The CM at-risk firm assumes the role of general contractor on the construction work for the fast-tracked package while continuing to provide construction management input on the design work that is still underway.

It is important to keep in mind that the role of the CM at-risk firm on a CM at-risk project is very different from the role of a construction manager hired for a fee to serve as your jurisdiction's agent, helping to manage the project budget, schedule and quality on a design-bid-build project. A CM at-risk firm does not represent the owner and has no obligation to protect the owner's interests on a CM at-risk project.

Obtaining Approval to Use CM at Risk

Public awarding authorities are required to obtain the prior approval of the Office of the Inspector General (Office) before using CM at risk for a public building project. The Division of Capital Asset Management and Maintenance (DCAMM), the Massachusetts Port Authority (Massport), the Massachusetts Bay Transportation Authority (MBTA), the Massachusetts Water Resources Authority (MWRA), the Massachusetts State College Building Authority (MSCBA) and the University of Massachusetts Building Authority (UMBA) are exempt from the requirement to obtain prior approval from our Office for

each CM at-risk project. However, these exempt agencies are required to submit their CM at-risk procedures to our Office for review and approval on an annual basis.

Before submitting an application to our Office, you are required to procure or otherwise employ the services of an owner's project manager (OPM) who will assist you in procuring the design contract. Under M.G.L. c. 149A, the individual assigned by the OPM to provide the project management services for the project must either be a registered architect or professional engineer with at least five years of experience in the construction and supervision of construction of buildings of similar size and complexity, or have at least seven years of experience in the construction and supervision of construction of buildings of similar size and complexity.⁷⁶ A member of your staff may serve as the OPM if that person meets these required qualifications. If you elect to contract for the services of the OPM, you are required to use a qualifications-based selection (QBS) process. This means that the OPM must be competitively selected on the basis of qualifications, without price competition. The Office of the Attorney General and our Office recommend that you procure OPM services by following the designer selection law, which also requires a QBS process.⁷⁷ The designer selection law is discussed in Chapter II.

You are also required to procure the services of a designer in accordance with the requirements of the designer selection law before submitting an application to the Office. Under M.G.L. c.149A, the OPM, the designer and the CM at-risk firm must be independent of one another.

To receive approval from our Office, your application must demonstrate the following:

- The public agency has authorization from its governing body to contract with a CM at-risk firm;

⁷⁶ These experience requirements differ slightly from those that apply to an OPM hired or assigned to a M.G.L. c. 149 building project with an estimated construction cost of \$1.5 million or more.

⁷⁷ For projects seeking funding from the MSBA, OPM services must be procured in accordance with the MSBA's OPM selection guidelines, which are available at the MSBA's website, www.massschoolbuildings.org.

- The public agency has the capacity, a plan and procedures to effectively procure and manage a CM at-risk contract for the specific project and has retained the services of a qualified OPM;
- The public agency has in place procedures to ensure fairness in competition, evaluation and reporting of results at every stage of the procurement process;
- The building project has an estimated construction value of \$5 million or more; and
- The public agency has determined that the use of CM at-risk services is appropriate for the building project and has stated in writing the reasons for the determination.

M.G.L. c. 149A, § 4(a).

Our Office has issued *Procedures Relative to Receiving a Notice to Proceed to Use Construction Management at Risk Services*. This document, which is available at www.mass.gov/ig, contains the Construction Management at Risk Application to Proceed as well as detailed instructions for completing the application.

Procuring the CM at-Risk Contract

M.G.L. c. 149A requires a two-phase process to select the CM at-risk firm. The major steps in the selection and contracting process are as follows:

1. Establish a prequalification committee.
2. Prepare and advertise the request for qualifications (RFQ) for CM at-risk services.
3. Evaluate the statements of qualifications (SOQs) and prequalify at least three CM at-risk firms.
4. Establish a selection committee.
5. Prepare the request for proposals (RFP) and distribute it to prequalified CM at-risk firms.
6. Receive, evaluate and rank the CM at-risk proposals.
7. Negotiate non-fee contract terms with the selected proposer and award the CM at-risk contract.

Step 1: Establish a prequalification committee.

The prequalification committee's role will be to review and evaluate responses to the RFQ that you will issue for CM at-risk services. The prequalification committee must be

comprised of a representative of the designer, the OPM and at least two representatives of your jurisdiction.

Step 2: Prepare and advertise the RFQ for CM at-risk services.

You will prepare the RFQ and advertise for SOQs from CM at-risk firms, following the procedures set forth in M.G.L. c. 149A. The RFQ and public notice must include the following information:⁷⁸

- the time and date for receipt of RFQ responses, the address of the office to which the responses must be delivered and the time frame in which the public agency will respond to the responses;
- a general description of the project, including preliminary concept designs and key factors important to the final selection;
- the evaluation procedure and criteria for selection, including any rating system;
- a specific description of the scope of services expected of the selected CM at-risk firm during the design, preconstruction and construction phases of the project;
- a general description of the anticipated schedule and estimated construction cost for the building project;
- a listing of the project team, including the public agency, the designer and the public agency's OPM;
- the criteria for the selection of the CM at-risk firm, including minimum experience, requirements for presentations and the schedule for the selection process;
- a prohibition against any unauthorized communication or contact with the public agency outside of official preproposal meetings;
- if desired by the public agency, a limitation on the size and number of pages to be included in the response to the RFQ; and
- a statement indicating that the RFQ will be used to prequalify CM at-risk firms that will be invited to submit proposals in response to a request for proposals issued pursuant M.G.L. c. 149A, § 6.

M.G.L. c. 149A, § 5(c).

If space considerations make it difficult to include the evaluation procedures and criteria in the public notice, we recommend that you reference this information in the public

⁷⁸ As will be discussed, this information must also be included in the RFP.

notice. However, essential information such as the submission requirements, scope of services and project description must be included in the public notice as well as the RFQ.

Your RFQ must inform interested CM at-risk firms of the required contents of their statements of qualifications. M.G.L. c. 149A requires the following information to be included in each SOQ submitted by a CM at-risk firm:

- a cover letter or executive summary detailing the key elements and factors that differentiate the firm from other responders;
- a completed qualifications application similar in form to AIA Document A305, 1986 edition, listing general business information and financial capacity;
- a list of lawsuits and arbitrations to which the firm is a party in regard to construction contracts within the past three years, including a list of all convictions or fines for violations of state or federal law;
- a project organization chart with specific information on key project personnel or consultants;
- an audited financial statement for the most recent fiscal year⁷⁹ and a letter from the firm's surety company confirming its ability to provide performance and payment bonds for the building project under consideration;
- information on the firm's safety record, including its workers' compensation experience modifier, for the past three years;
- information on and evidence of the firm's compliance record with respect to minority and women business enterprise (MBE/WBE) inclusion and workforce inclusion goals, if applicable;
- information regarding the firm's experience on similar building projects, including references from the owners and architects of those projects;
- information regarding the firm's experience on similar projects that used the CM at-risk delivery method, including references from the owners and architects of those projects;
- information on any projects where the firm was terminated, failed to complete the work or paid liquidated damages;
- specific examples of the firm's project management reports or other illustrations of the company's operating philosophy;
- a Certificate of Eligibility issued by DCAMM, showing a capacity rating sufficient for the project, and an Update Statement;⁸⁰ and

⁷⁹ "[T]he financial information submitted shall remain confidential and shall not be a public record to the fullest extent permissible under the law." M.G.L. c. 149A, § 5(d)(5).

- any other relevant information that the public agency deems desirable.

M.G.L. c. 149A, § 5(d).

The CM at-risk firms responding to the RFQ must sign their SOQs under the pains and penalties of perjury.

The RFQ must be advertised at least two weeks before the deadline for submitting responses to the RFQ in a newspaper of general circulation in the area in which the building project is located, in the *Central Register* and on COMMBUYS.⁸¹

Step 3: Evaluate the statements of qualifications and prequalify at least three CM at-risk firms.

The prequalification committee will evaluate the statements of qualifications received from CM at-risk firms on the basis of the evaluation criteria set forth in the RFQ. The prequalification committee is required to select at least three qualified CM at-risk firms to receive the RFP. If the prequalification committee is unable to identify at least three qualified CM at-risk firms, you are required to readvertise the RFQ following the procedures outlined above. Alternatively, you may elect to procure the construction work in accordance with the bidding requirements of M.G.L. c. 149 (discussed in Chapter V of this manual). The decision of the prequalification committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion. M.G.L. c. 149A, § 5(f).

Step 4: Establish a selection committee.

Before issuing the RFP for CM at-risk services to the prequalified CM at-risk firms, you are required to establish a selection committee that will review and evaluate responses to the RFP. The membership requirements for this committee are identical to those for the prequalification committee, and you may appoint the same individuals to both committees.

⁸⁰ Your RFQ should require CM at-risk firms to be certified in the category of General Building Construction.

⁸¹ COMMBUYS is the Commonwealth's electronic procurement system. Any public agency in Massachusetts can post solicitations on COMMBUYS free of charge. For additional information, visit www.commbuys.com.

Step 5: Prepare the RFP and distribute it to prequalified CM at-risk firms.

The following information must be included in the RFP:

- all information required by M.G.L. c. 149A to be included in the RFQ and public notice (listed under the previous Step 2);
- the date, time and place for submission of proposals;
- a clear description of the submission requirements, including separate price and technical components;
- detailed information concerning the project scope, including any preliminary design information, geotechnical reports, existing conditions surveys, and specifications;
- specific information on the project schedule, including the schedule for design deliverables, site availability and occupancy expectations;
- a detailed description of the scope of work and deliverables expected from the CM at-risk firm during the preconstruction phase;
- the MBE/WBE inclusion goals and workforce inclusion goals for the building project;
- a clear description of the communication guidelines to be followed during the procurement process, including any measures to ensure that the selection process will be open and fair;
- the form of the contract and general and supplemental conditions, including any incentive provisions and any damages for delay provisions;
- the project budget;
- a fully developed schedule of cost items listing the public agency's determination of what will be considered fee, cost of the work and general conditions items;
- specific information on the evaluation criteria, including any point scale or measurement system;
- the timetable and process for establishing a guaranteed maximum price, including the status of design and limitations on the amount and use of contingency; and
- a list of the trade contractor classes of work to be required in the trade contractor prequalification plan.⁸²

M.G.L. c. 149A, § 6(b).

⁸² On a CM at-risk contract, trade contractors are subcontractors that perform work in subtrade categories that are subject to filed sub-bidding on a M.G.L. c. 149 contract. The required procedures for procuring trade contracts are discussed later in this chapter.

Each CM at-risk proposal must contain a price component and a technical component. M.G.L. c. 149A prescribes the contents of these proposal components, and these requirements should be incorporated into the RFP.

The price component of each CM at-risk proposal must include:

- the fee for preconstruction services with appropriate detail;
- the fee for construction services with explanation of the basis; and
- the estimated cost of general conditions with appropriate detail.

M.G.L. c. 149A, § 6(c)(1).

The technical component of each CM at-risk proposal must include:

- a detailed project approach, including preconstruction services;
- supplemental, relevant project references;
- a listing of the project team members with position descriptions and relevant time commitments of these team members during the project;
- the construction management plan indicating approach to control of cost, schedule, quality, documents and claims;
- preliminary definition of trade contractor and subcontractor bid packages and scopes of work;
- an affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, §§ 26-27;
- a commitment letter from a surety licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the building contract in the full sum of the contract at 110 percent of the budget for the building project;
- a technical challenges and solutions plan; and
- any qualifications or exceptions to the terms of the form of contract or supplemental conditions as included in the RFP.

M.G.L. c. 149A, § 6(c)(2).

If your jurisdiction has received a notice to proceed from our Office, each proposal must also contain a Certificate of Eligibility issued by DCAMM and a completed Update Statement.

Step 6: Receive, evaluate and rank the CM at-risk proposals.

The selection committee is required to evaluate the CM at-risk proposals in accordance with the evaluation criteria contained in the RFP. The selection committee may conduct interviews as long as all firms submitting proposals are interviewed. Based on the evaluations, the selection committee must rank the CM at-risk proposals.

Step 7: Negotiate non-fee contract terms with the selected proposer and award the CM at-risk contract.

The selection committee will begin non-fee negotiations with the highest-ranked CM at-risk firm. If the selection committee determines that these negotiations will not result in an acceptable contract for your jurisdiction, it will terminate these negotiations and begin non-fee negotiations with the next highest-ranked CM at-risk firm. This process will continue until the selection committee reaches agreement on an acceptable contract with and awards the contract to one of the prequalified CM at-risk firms. The list of prequalified CM at-risk firms and the selection committee's rankings of the firms' proposals will be public records after the contract award. M.G.L. c. 149A, § 6(e). M.G.L. c. 149A provides that the decision of the selection committee shall be final and shall not be subject to appeal except on grounds of fraud or collusion. M.G.L. c. 149A, § 6(d).

Negotiating the GMP

The agreed-upon GMP for the construction work will be an amendment to your contract with the CM at-risk firm. You will negotiate the GMP with the CM at-risk firm when the design reaches the level of completion specified in your RFP. The design documents must be no less developed than 60 percent construction documents. M.G.L. c. 149A, § 7(b)(1).

The GMP amendment to the contract is required to include:

- a detailed line-item cost breakdown by trade, including cost of pre-GMP work;
- dollar amounts for the CM at-risk firm's contingency;
- dollar amounts for the CM at-risk firm's general conditions and fees, including for pre-GMP work;
- a list of all drawings, specifications and other information on which the GMP is based;

- a list of allowances and statement of their basis;
- a list of any assumptions or clarifications on which the GMP is based;
- the dates for substantial and final completion on which the GMP is based; and
- a schedule of applicable alternates and unit prices.

M.G.L. c. 149A, § 7(b)(4).

Within five business days of the date on which the GMP amendment is executed, the CM at-risk firm is required to furnish you with performance and payment bonds in the full amount of the GMP.

If you are unable to negotiate an acceptable GMP at this point, the selection committee may begin negotiations with the next highest-ranked proposer. If a contract and GMP cannot be successfully negotiated with the second CM at-risk firm, you must terminate the procurement process and procure the construction work in accordance with the requirements of M.G.L. c. 149. After terminating a CM at-risk procurement process, a public agency may not reapply for approval to use the CM at-risk delivery method on this same building project unless the building project has been materially changed in form or function. M.G.L. c. 149A, § 7(c).

Procuring Trade Contracts Estimated to Cost More Than \$25,000

There will be two types of subcontractors on a CM at-risk project: (1) trade contractors, which perform subtrade work that would be subject to filed sub-bidding on a M.G.L. c. 149 contract, and (2) other subcontractors. Based on information provided by the CM at-risk firm regarding scope of each trade contract, your jurisdiction will conduct a two-phase trade contractor selection process for all sub-bid classes of work that meet or exceed \$25,000. The steps of the trade contractor selection process are summarized below:

1. Establish a trade contractor prequalification committee.
2. Prepare and advertise the RFQ for trade contractor services for each trade contract.
3. Evaluate responses and prequalify trade contractors receiving a point score of 70 or higher.
4. Prepare the request for bids (RFB) and distribute it to prequalified trade contractors.

5. Receive, open and review trade contract bids.
6. The CM at-risk firm executes the trade contractor agreement.

Step 1: Establish a trade contractor prequalification committee.

The trade contractor prequalification committee must be comprised of a representative of the designer, a representative of the CM at-risk firm and two representatives of your jurisdiction.

Step 2: Prepare and advertise the RFQ for trade contractor services for each trade contract.

M.G.L. c. 149A contains detailed provisions governing the RFQ evaluation criteria, information requirements and point rating system to be used in prequalifying trade contractors. You are required to advertise the RFQ in a newspaper of general circulation in the area in which the building project is located, in the *Central Register* and on COMMBUYS not less than two weeks prior to the deadline for responses to the RFQ. The following information must be included in the trade contractor RFQ and the public notice of the RFQ:

- the date, time and place for submission of responses to the RFQ;
- relevant information about the project and the bidding process;⁸³
- the specific criteria for trade contractor prequalification and selection;⁸⁴
- a statement indicating that the RFQ will be used to prequalify trade contractors that will be invited to submit bids on subtrade work; and
- a statement indicating that the responders' names are to be posted but that the responses will not be opened publicly. M.G.L. c. 149A, § 8(c).

M.G.L. c. 149A, § 8(c).

⁸³ We recommend that you include the estimated value of the subcontract because, as will be discussed, trade contractors responding to the RFQ are required to submit a commitment letter for performance and payment bonds in the amount of 110 percent of the estimated trade contract value.

⁸⁴ If space considerations make it difficult to include this information in the public notice, we recommend that you reference this information instead. However, essential information such as the submission requirements and project description should be included in the public notice as well as the RFQ.

The RFQ must require only the specific information prescribed by M.G.L. c. 149A and must identify the specific point allocation for each category and subcategory of information. Within each category, the public agency may use its discretion in allocating points among subcategories, consistent with the total points for each category. The evaluation criteria and corresponding point ratings required by M.G.L. c. 149A are as follows:

1. Management experience (50 points; minimum of 25 points required for approval).

- Business owners: Name, title and years with firm of the owner(s) of the business.
- Management personnel: Names, title, education and construction experience, years with firm and list of projects completed by all management personnel.
- Similar project experience: Project name(s), description of scope, original trade contract sum, final trade contract sum with explanation and date completed of similar projects.
- Terminations: A list of any projects on which the trade contractor was terminated or failed to complete the work.
- Lawsuits: A list of commercial lawsuits in which the trade contractor is a defendant or defendant-in-counterclaim with regard to construction contracts within the last three years. The lawsuits shall not include any actions that primarily involve personal injury or workers' compensation claims, or where the sole cause of action involves the trade contractor's exercise of its rights for direct payment under M.G.L. c. 30, § 39F.
- Safety record: The three-year history of the trade contractor's workers' compensation experience modifier.

2. References (30 points; minimum of 15 points required for approval).

- Client references: A list of client references for all projects listed under "similar project experience" (as described in the third bullet under "management experience"), including the project name, client's name, address, telephone and fax numbers, and contact person.
- Credit references: A list of a minimum of five credit references, including the telephone and fax numbers of contact persons from key suppliers, vendors and banks.
- Public project record: A list of all public building construction projects subject to M.G.L. c. 149 completed during the past three years, including the client's name, address, telephone and fax numbers, and contact person for each project.

3. Capacity to complete projects (20 points; minimum of 10 points required for approval).

- Annual revenue for the prior three fiscal years. (Note that the RFQ may not require trade contractors to submit financial statements.)
- Revenue under contract for the next three fiscal years.

4. Mandatory commitment letter (no points are assigned). The trade contractor must submit a mandatory commitment letter for payment and performance bonds in the amount of 110 percent of the estimated trade contract value, issued by a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570.

M.G.L. c. 149A, § 8(e).

If your jurisdiction has received a notice to proceed from our Office, each response must contain a Certificate of Eligibility issued by DCAMM and a completed Update Statement.

Each response to the RFQ must be signed under pains and penalties of perjury.

Step 3: Evaluate responses and prequalify trade contractors receiving a point score of 70 or higher.

The trade contractor prequalification committee will review and score the responses using the evaluation criteria listed above. All trade contractors receiving a point score of 70 or higher must be prequalified to bid. M.G.L. c. 149A permits five points to be added to the total score of each minority business enterprise and women business enterprise, consistent with your jurisdiction's MBE/WBE participation goals for the project. M.G.L. c. 149A, § 8(a).

After the trade contractor prequalification process has been completed, you are required to notify all prequalified trade contractors that they have received approval to bid and to inform them of the schedule for the request for bids (RFB) process, discussed below. You must make each trade contractor's score available to the trade contractor itself, but M.G.L. c. 149A states that the score will not be a public record and will not be open to public inspection "to the fullest extent possible under the law." M.G.L. c. 149A also provides that the decision of the trade contractor prequalification committee shall be final and not subject to appeal except on the grounds of fraud or collusion. M.G.L. c. 149A, § 8(f).

Step 4: Prepare the RFB and distribute it to prequalified trade contractors.

The next step is to send each prequalified trade contractor the RFB, which must include the following information:

- the date, time and place for submission of bids;
- fully detailed drawings and specifications by class of work in accordance with the filed sub-bid categories set forth in M.G.L. c. 149, § 44F(1);⁸⁵
- a detailed definition of the trade contractor's scope of work, including alternates and allowances, if any, within that scope of work;
- a project schedule indicating the planned sequence and duration of each trade contractor's work;
- a list of prequalified trade contractors;
- a trade contractor bid form requiring a listing of price, addenda, alternates and allowances, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on its own payroll except for work customarily performed by sub-trade subcontractors within the trade; and the names of all sub-trade subcontractors to be used if awarded the trade contract and each sub-trade contract sum;
- an affidavit stating that all sub-trade subcontractors named on the bid form have been prequalified by the trade contractor using criteria similar to the criteria for the prequalification of trade contractors;
- an affidavit of tax compliance;
- an affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, §§ 26-27;
- an affidavit of non-collusion;
- a requirement for the bidder to furnish a five percent bid bond from a surety company licensed to do business in the Commonwealth and whose name appears on U.S. Treasury Department Circular 570;⁸⁶
- the budget for the project and the budget amount for the trade contract scope of work as provided in the project GMP, if available, or as provided in the most recent project budget;
- a trade contractor agreement form as set forth in M.G.L. c. 149A, including all exhibits; and

⁸⁵ The materials specifications must conform to the requirements for full competition contained in M.G.L. c. 30, § 39M (discussed in Chapter IV of this manual in the section entitled "Material Specifications").

⁸⁶ The bid bond must be returned to the bidder if the bidder is not selected for the trade contract. M.G.L. c. 149A, § 8(g)(11).

- a statement that the bidder must furnish a Certificate of Eligibility in the appropriate trade and a completed Update Statement.

M.G.L. c. 149A, § 8(g); 801 CMR 8.11.

Step 5: Receive, open, and review trade contract bids.

Trade contractors must submit their bids in accordance with the requirements contained in the RFB package. The bids must be opened publicly by your jurisdiction. Any bid that does not include the required bid bond or affidavits or that is incomplete, conditional, obscure or contains additions not required in the RFB must be rejected. In addition, DCAMM regulations require you to review the information in the Update Statements and the contents of the DCAMM certification files for all trade contractors under consideration. 801 CMR 8.11. You have the right to reject the bid of a trade contractor based on your determination that the trade contractor is not a responsible bidder.⁸⁷

Step 6: The CM at-risk firm executes the trade contractor agreement.

Each trade contract must be awarded to the lowest prequalified bidder in that category whose bid has not been rejected under Step 5 above. However, if your jurisdiction receives fewer than three responsive bids and the lowest bid exceeds the estimated cost of the trade contract work, the CM at-risk firm must attempt to negotiate an acceptable price with the lowest prequalified bidder. If the CM at-risk firm is unsuccessful in doing so, the CM at-risk firm must terminate negotiations with the lowest prequalified bidder and initiate negotiations with the second-lowest prequalified bidder. If the CM at-risk firm is unable to negotiate an acceptable price for the trade contract with either the lowest or the second-lowest prequalified bidder, the CM at-risk firm must then solicit additional bids for the work on behalf of and with the consent of your jurisdiction. In soliciting these additional bids, the CM at-risk firm must use the procedures required by M.G.L. c. 149A for selecting subcontractors that are not trade contractors on the CM at-risk project. These subcontractor selection procedures are discussed later in this section.

⁸⁷ See, for example, *In re: Middle and High School Project, Town of Rockland*, AGO BLB Op. 3/23/11. www.bpd.ago.state.ma.us/

The selected trade contractor must return the signed trade contractor agreement to the CM at-risk firm within ten business days of receiving the trade contractor agreement from the CM at-risk firm. Along with the executed trade contractor agreement, the trade contractor must provide the CM at-risk firm with performance and payment bonds in the full amount of the contract and insurance certificates required by the trade contractor agreement.⁸⁸ M.G.L. c. 149A, § 8(i).

Procuring Other Subcontracts Estimated to Cost More Than \$25,000

The CM at-risk firm is responsible for managing the procurement of subcontracts that are not trade contracts, in collaboration with your jurisdiction, when those subcontracts are estimated to cost more than \$25,000. The CM at-risk firm is first required to draw up a list of the required qualifications for each subcontract and to select three subcontractors that meet the qualifications. The CM at-risk firm then submits the required qualifications and list of three subcontractors to your jurisdiction for approval. You are allowed to eliminate subcontractors or to add subcontractors to the list, provided that any subcontractor added to the list is acceptable to the CM at-risk firm.

After your jurisdiction has approved the list of subcontractors for a subcontract, the CM at-risk firm invites bids from the approved subcontractors. The bids must be based on detailed bidding information developed by the CM at-risk firm. For each subcontract, the CM at-risk firm selects a subcontractor and presents the bids and the selection decision(s) to your jurisdiction, along with a written explanation of the reason for the subcontract award. M.G.L. c. 149A, § 8(j).

For subcontracts estimated to cost \$25,000 or less, the CM at-risk firm may use any subcontractor selection method that has been approved by your jurisdiction. M.G.L. c. 149A, § 8(j).

⁸⁸ The trade contractor agreement requires the trade contractor, upon execution of the agreement and before commencing any work, to provide the CM at-risk firm with "evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Public Agency by the Construction Management at-risk firm." M.G.L. c. 149A, § 8(k).

Undertaking Construction Work Before Execution of the GMP Amendment

M.G.L. c. 149A sets forth the specific conditions under which you may undertake portions of the construction work before your jurisdiction has executed the GMP amendment to the contract with the CM at-risk firm. For any such work, you must execute a separate amendment to your contract with the CM at-risk firm detailing the scope of the fast-tracked work and dollar amount of the amendment, which must include the cost of construction, the general conditions and any additional fee to be paid to the CM at-risk firm. Also, any work performed before the GMP amendment is executed is subject to the trade contractor selection process discussed earlier in this chapter. You should require the CM at-risk firm to select the nontrade subcontractors using the selection procedures for nontrade subcontractors discussed above.

If you undertake construction work under such a contract amendment and subsequently fail to negotiate a GMP amendment with the CM at-risk firm, any trade contracts between the CM at-risk firm and trade contractors for work scheduled to begin before execution of the GMP amendment may be assigned to your jurisdiction or to another CM at-risk firm designated by your jurisdiction without the consent of the trade contractors. In this case, your jurisdiction or the designated CM at-risk firm and the trade contractors will be bound by the terms of the trade contractor agreements. M.G.L. c. 149A, § 7(b)(3).

CM at-risk projects are subject to the statutory provisions that apply to other public construction contracts in Massachusetts governing:

- Payment of prevailing wages. M.G.L. c. 149, §§ 26-27D.
- Payment bonds. M.G.L. c. 149, § 29.
- Prohibition on subcontractor indemnification. M.G.L. c. 149, § 29C.
- Workers' compensation insurance. M.G.L. c. 149, § 34A.
- Subcontractor rights to payment, including direct payment. M.G.L. c. 30, § 39F.
- Finality of decisions on construction contracts. M.G.L. c. 30, § 39J.
- Rights of contractors to payment. M.G.L. c. 30, § 39K.
- Equitable contract adjustments for differing site conditions. M.G.L. c. 30, § 39N.

- Delays and suspensions by owner and additional costs for contractors and subcontractors. M.G.L. c. 30, § 39O.
- Timing of owner decisions. M.G.L. c. 30, § 39P.
- Contractor record-keeping. M.G.L. c. 30, § 39R.89
- Labor harmony and OSHA training certifications. M.G.L. c. 30, § 39S.

Awarding authorities considering the CM at-risk option should consult M.G.L. c. 149A and our Office's website at www.mass.gov/ig for additional information on CM at-risk project requirements. Our Office's 2009 report, *Experience of Public Agencies With Construction Management at Risk Under M.G.L. c.149A*, is also available at the same website.

Evaluating the CM at-risk firm and the Trade Contractors

An awarding authority must complete a standard contractor evaluation form for the CM at-risk firm and all trade contractors on a CM at-risk project undertaken under M.G.L. c. 149A. 810 CMR 8.00. The evaluation form contains written comments as well as numerical ratings reflecting the performance of the CM at-risk firm or the trade contractor on the project. The standard contractor evaluation form may be downloaded from the DCAMM website at www.mass.gov/dcamm.

M.G.L. c. 149, § 44D, provides qualified immunity to individuals responsible for completing contractor and subcontractor evaluations on behalf of public owners. If a contractor initiates a lawsuit in response to a completed evaluation, the awarding authority is required to provide legal representation and indemnification for the individual completing the evaluation on behalf of the awarding authority.

Under DCAMM regulations, the OPM is required to complete the required evaluations pertaining to all building contracts for which an OPM is required. 810 CMR 8.02, 8.09. An awarding authority or OPM may seek input from the general contractor in evaluating a subcontractor's performance. However, the awarding authority or its representative must complete and sign the evaluation form. 810 CMR 8.09.

The awarding authority must also certify the accuracy of the contents of each completed evaluation form and may not negotiate the contents of the evaluation form or the project

⁸⁹ See M.G.L. c. 149A, § 10.

rating with the CM at-risk firm or trade contractor, or its representative, for any reason. 810 CMR 8.02, 8.09. The completed evaluation is then sent to DCAMM for use in deciding whether to certify the CM at-risk firm or the trade contractor on future public building projects. A copy of the completed evaluation form must also be mailed to the CM at-risk firm or trade contractor, who has 30 days in which to submit a written response to DCAMM. M.G.L. c. 149, § 44D(7).

When the project is approximately 50 percent complete, you are required to provide the CM at-risk firm with a preliminary, informational, written evaluation of the CM at-risk firm's performance on the project. Within 70 calendar days of project completion, your jurisdiction must submit to DCAMM a properly completed standard contractor evaluation form for the CM at-risk firm.

Your jurisdiction must also submit to DCAMM a properly completed standard contractor evaluation form for each trade contractor on the project within 90 days of contract completion or termination. Although you are not required to provide a preliminary, informational evaluation to each trade contractor when the project reaches the 50 percent completion stage, we strongly recommend that you do so.

**Optional Design-Build Delivery Method for Public Works Construction Contracts
Estimated to Cost \$5 Million or More**

On a design-build project, the owner selects and executes a single contract with a single entity (e.g., a design-build firm, joint venture or contractor that subcontracts with a designer) to design and construct the project. Thus, design and construction are combined into a single stage, with no separate bid for construction based on complete plans and specifications. Instead, design-build contracts are procured based on a scope of work statement and performance requirements.

Contracting for project design and construction from a single design-build entity enables construction schedules to be accelerated by beginning construction work before the design is complete and eliminating the time required to solicit competitive construction bids. This contractual arrangement also enables single-point accountability for the project and because the designer is a member of the contractor's team, facilitates collaboration and communication between the designer and the contractor.

TOWN OF OAK BLUFFS
FISCAL YEAR 2021 BUDGET
ANALYSIS OF AVAILABLE REVENUES
November 5, 2019

I. SOURCES OF FUNDS	FY 2015 Budget	FY 2016 Budget	FY 2017 Budget	FY 2018 Budget	FY 2019 Budget	FY 2020 Budget	FY 2021 Budget	20-21(\$)	20-21(%)
A. GENERAL GOVERNMENT									
1. Cherry Sheet Estimates									
<i>a. Resolution Aid</i>	\$678,335	\$1,033,299	\$1,004,926	\$1,062,367	\$965,408	\$1,037,439	\$1,037,439	\$0	0.00%
<i>b. Education Offset Items</i>	\$260,321	\$226,153	\$177,250	\$223,027	\$215,238	\$204,785	\$204,785	\$0	0.00%
<i>d. Library Offset</i>	\$7,270	\$7,310	\$7,795	\$7,728	\$6,992	\$6,651	\$6,651	\$0	0.00%
<i>e. Lottery and Other Aid</i>	<u>\$205,074</u>	<u>\$208,746</u>	<u>\$215,169</u>	<u>\$220,214</u>	<u>\$254,712</u>	<u>\$273,562</u>	<u>\$273,562</u>	<u>\$0</u>	<u>0.00%</u>
Total Estimated Receipts	\$1,151,000	\$1,475,508	\$1,405,140	\$1,513,336	\$1,442,350	\$1,522,437	\$1,522,437	\$0	0.00%
LESS:									
<i>Direct Offsets: Education & Lib.</i>	\$267,591	\$233,463	\$185,405	\$230,755	\$222,230	\$211,436	\$211,436	\$0	0.00%
<i>Cherry Sheet Assessment</i>	<u>\$1,033,665</u>	<u>\$1,086,576</u>	<u>\$1,074,471</u>	<u>\$1,212,788</u>	<u>\$1,122,060</u>	<u>\$1,187,125</u>	<u>\$1,187,125</u>	<u>\$0</u>	<u>0.00%</u>
Total:	\$1,301,256	\$1,320,039	\$1,259,876	\$1,443,543	\$1,344,290	\$1,398,561	\$1,398,561	\$0	0.00%
Net Estimated State Revenues	-\$150,256	\$155,469	\$145,264	\$69,793	\$98,060	\$123,876	\$123,876	\$0	0.00%
<i>Construction Reimbursements</i>	\$567,924	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Cherry Sheet	\$417,668	\$155,469	\$145,264	\$69,793	\$98,060	\$123,876	\$123,876	\$0	0.00%
2. Non-Property Tax Local Revenues									
<i>Local Estimated Receipts - General</i>	\$3,458,000	\$3,316,533	\$3,470,000	\$3,845,000	\$3,857,000	\$4,128,000	\$4,150,000	\$22,000	0.53%
<i>Receipts Reserved for Approp</i>	\$0	\$376,544	\$290,684	\$286,375	\$286,375	\$245,681	\$220,000	-\$25,681	-10.45%
<i>Wastewater Fund</i>	\$1,412,857	\$1,422,625	\$1,467,667	\$1,468,667	\$1,436,693	\$1,372,772	\$1,372,772	\$0	0.00%
<i>Chapter 90 and Other Sources</i>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<i>Community Preservation</i>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<i>Free Cash</i>	<u>\$250,000</u>	<u>\$250,000</u>	<u>\$120,983</u>	<u>\$0</u>	<u>\$146,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	
Total Non-Property Tax Local Revenue	\$5,120,857	\$5,365,702	\$5,349,334	\$5,600,042	\$5,726,068	\$5,746,453	\$5,742,772	-\$3,681	-0.06%

	2015 Budget	FY 2016 Budget	FY 2017 Budget	FY 2018 Budget	FY 2019 Budget	FY 2020 Budget	FY 2020 Budget	20-21(\$)	20-21(%)
3. LOCAL PROPERTY TAX REVENUE									
<i>Base Levy</i>	\$18,190,117	\$19,408,891	\$20,064,474	\$20,757,301	\$21,494,560	\$22,592,311	\$23,379,875	\$787,564	3.49%
<i>Amended Previous New Growth</i>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
PLUS:									
<i>2 1/2% Increase</i>	\$454,753	\$485,222	\$501,612	\$518,933	\$537,364	\$564,820	\$584,497	\$19,677	3.48%
<i>Estimated New Growth</i>	\$164,021	\$170,361	\$191,215	\$218,326	\$285,387	\$222,744	\$230,000	\$7,256	3.26%
<i>Overrides</i>	\$600,000	\$0	\$0	\$0	\$275,000	\$0	\$0	\$0	
<i>Levy Limit Inside Prop. 2 1/2</i>	\$19,408,891	\$20,064,474	\$20,757,301	\$21,494,560	\$22,592,311	\$23,379,875	\$24,194,372	\$814,497	3.48%
<i>Gross Excluded Debt</i>	\$1,799,919	\$1,766,829	\$2,406,405	\$2,347,769	\$2,158,815	\$2,105,003	\$2,105,003	\$0	0.00%
<i>Less: State Reimbursements</i>	\$567,918	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<i>Less: Bond Premiums Applied</i>	\$0	\$0	\$0	\$0	\$0	\$25,681	\$0	-\$25,681	-100.00%
<i>Net Debt Exclusions</i>	\$1,232,001	\$1,766,829	\$2,406,405	\$2,347,769	\$2,158,815	\$2,079,322	\$2,105,003	\$25,681	1.24%
<i>Capital Exclusions</i>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
Total Levy Limit	\$20,640,892	\$21,831,303	\$23,163,706	\$23,842,329	\$24,751,126	\$25,459,197	\$26,299,375	\$840,178	3.30%
Total Adjusted Levy	\$20,300,431	\$21,831,303	\$23,163,706	\$23,842,329	\$24,721,196	\$25,459,197	\$26,299,375	\$840,178	3.30%
TOTAL GENERAL GOVERNMENT:	\$25,838,956	\$27,352,474	\$28,658,304	\$29,512,164	\$30,545,324	\$31,329,526	\$32,166,023	\$836,497	2.67%
TOTAL ALL REVENUES:	\$25,838,956	\$27,352,474	\$28,658,304	\$29,512,164	\$30,545,324	\$31,329,526	\$32,166,023	\$836,497	2.67%
Special Town Meetings Requested Budget									
TOTAL BUDGET REQUESTED									
<i>Recommended Budget</i>	\$25,722,453	\$26,512,543	\$28,494,488	\$29,338,060	\$30,353,682	\$31,106,880	\$31,106,880	\$0	0.00%
<i>Special Town Meetings</i>	\$0	\$699,570	\$0	\$0	\$0	\$0	\$0	\$0	
TOTAL APPROVED BUDGET	\$25,722,453	\$27,212,113	\$28,494,488	\$29,338,060	\$30,353,682	\$31,106,880	\$31,106,880	\$0	0.00%
PLUS:									
<i>Budget Overlay</i>	\$112,600	\$120,000	\$150,000	\$150,000	\$150,000	\$122,417	\$122,417	\$0	0.00%
Total - SELECTMEN:	\$25,835,053	\$27,332,113	\$28,644,488	\$29,488,060	\$30,503,682	\$31,229,297	\$31,229,297	\$0	0.00%
ADJUSTMENTS:									
<i>Budget Reduction Package</i>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
<i>Prior Year Deficits</i>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
BALANCE/(SHORTFALL)	\$3,903	\$20,361	\$13,816	\$24,104	\$41,642	\$100,229	\$936,726		



*Town of Oak Bluffs
Budget Calendar
Fiscal Year 2021*

Initial Revenue Estimates are Reviewed with the Finance Committee	November 7, 2019
Budget Materials are Distributed to Department Heads For Completion	November 8, 2019
Deadline for the Submission of Budget Requests by Departments	December 02, 2019
Copies of Budget Requests are Submitted to Finance Committee For Review	December 12, 2019
Town Administrator Submits Recommended Budget to Selectmen	January 6, 2020
Board of Selectmen Budget Workshop	January 14, 2020
Board of Selectmen Submits Recommended Budget to Finance Committee	January 16, 2020
Finance Committee Budget Hearing	February 27, 2020
Deadline for the Submission of Annual and Special Town Meeting Articles	February 17, 2020
Final Draft of Annual and Special Town Meeting Warrant	March 6, 2020
Deadline for the Submission of Finance Committee Recommendations	March 20, 2020
Deadline for Warrant to be submitted to Newspaper	March 24, 2020
Annual Town Meeting Warrant Newspaper Publication	March 27, 2020
Deadline for Posting Annual Town Meeting Warrant	March 31, 2020
Annual Town Meeting	April 14, 2020



TOWN OF OAK BLUFFS

Post Office Box 1327 • Oak Bluffs, MA 02557
Telephone 508-693-3554 • Fax 508-696-7736

Board of Selectmen

Brian C. Packish, *Chairman*
Jason Balboni
Gail M. Barmakian
Gregory A. Coogan
Michael J. Santoro

December 6, 2019

Rebecca Rausch, Senate Chair
Joint Committee on Municipalities
And Regional Government
24 Beacon St.
Room 419
Boston, MA 02133

Robert L. Whritenour, Jr.
Town Administrator

James O'Day, House Chair
Joint Committee on Municipalities
And Regional Government
24 Beacon St.
Room 540
Boston, MA 02133

RE: H.1783, An Act concerning the rental of mopeds and motor scooters in the Town of Oak Bluffs

Dear Senator Rausch and Representative O'Day,

On behalf of the Town of Oak Bluffs, its Board of Selectmen writes to implore your swift action in recommending the passage of H.1783, An Act concerning the rental of mopeds and motor scooters in the Town of Oak Bluffs. Here on Martha's Vineyard the rental of scooters has become a serious public safety problem for both local residents and unsuspecting tourists who are routinely sent out into traffic at an alarming rate with no real appreciation of the potential hazards that await them. The scooters are modern, gas-powered vehicles often capable of exceeding the twenty-five-mph limit on their power. Anyone can rent them, as a license is not required, and they are sent out to compete with vehicle traffic with no regard to the ability of the operator to adequately maintain control and safety. These vehicles are a complete hazard, and even the first instance of driver inattention or inability to react quickly can and often does result in death and dismemberment, as operators are afforded no safety whatsoever in collisions with cars and trucks.

The Town of Oak Bluffs has been mindful of the safety problems with these vehicles for many years, and has acted responsibly to enact local bylaws which we attach for your review that seek to help consumers have a safer experience and to better regulate licensing by requiring maverick rental operators to institute proper safety provisions. Can you imagine our shock and dismay that the courts have ruled that our simple bylaw inconsistent with Chapter 90, Section 1B and that its provisions cannot be enforced? This is simple nonsense, and places unsuspecting

members of the public in grave danger. This industry requires the safety provisions we have attempted to put into place, and the State is simply not in a position to oversee these rentals in a comprehensive manner.

To appreciate the gravity of this situation for our community, one need only review the sadly misguided presentment letter enclosed of a lawsuit against the Town seeking \$5 million in connection with a horrible moped accident in our community in which a young lady nearly lost her life. As a result of the courts preventing the enforcement of our local bylaw, the Town is accused of “gross negligence” and we must bear the anguish of seeing yet another horrible tragedy unfold as a result of this loophole that leaves a dangerous problem essentially unregulated.

Through this legislation we seek to close this loophole to prevent accidents like this which have been all-to-commonplace in our community. Affordable transportation alternatives abound with a rich array of auto rentals, bicycle rentals, electric bicycle rentals, cabs and a top-notch public transportation system. We have spent millions of dollars to create and maintain segregated shared use paths that cyclists and electric cyclists can safely use to traverse the island. The Town licensing of moped rentals serves no public purpose to provide for efficient transportation, it simply creates an unnecessary hazard for the public. Based on this we strongly urge your support for H. 1783.

Sincerely,

The Oak Bluffs Board of Selectmen

Brian Packish, Chairman

Jason Balboni

Michael J. Santoro

Gregory A. Coogan

Gail M. Barmakian

encl.

cc: Senator Julian Cyr
Representative Dylan Fernandes