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STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BUREAU OF GENERAL SERVICES  
BURTON M. CROSS BUILDING  
4<sup>TH</sup> FLOOR, 77 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0077

JOHN ELIAS BALDACCI  
GOVERNOR

REBECCA M. WYKE  
COMMISSIONER

ELAINE L. CLARK  
DIRECTOR

25 May 2005

To:

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Rep. Scott Lansley  
Phillip McCarthy  
State Board of Education

From: Janet McLaughlin, Dir. of School Construction, Bureau of General Services *JM*

Re: BGS Update Report on Major Capital School Construction per LD 149 Task Force Final Report

We are pleased to submit to you the follow up report re the LD 149 Task Force Final Report as requested by the Joint Standing Committee on Education and Cultural Affairs.

If you have questions, please don't hesitate to contact me, 624-7351, [janet.mclaughlin@maine.gov](mailto:janet.mclaughlin@maine.gov)

cc: Commissioner Wyke, DAFS  
Elaine Clark, BGS  
Judith Malcolm, DOE  
Scott Brown, DOE  
Dale Doughty, DOE  
Paul Johnson, DOE  
Gerald Clockedile, MSMA  
John Butts, ACM  
Judith Harvie, AIA Maine  
Kathleen Newman, ABC

**Report**

**To: Joint Standing Committee on Education and Cultural Affairs**

**State Board of Education**

**Major Capital School Construction**

**Prepared by  
Janet McLaughlin  
Director of School Construction  
Bureau of General Services**

**May 20, 2005**

## Introduction

Following up on the January 2004 Final Report by the L.D. 149 Task Force, the Joint Standing Committee on Education and Cultural Affairs requested a report in January 2005.

The Executive Summary of the Final Report of the Task Force is attached as Appendix A.

The two major recommendations of that report were 1) to eliminate the 0.4% fee paid to the Bureau of General Services for oversight services on school construction projects, and 2) to improve the overall oversight function exercised within the Department of Education (DOE) and the Bureau of General Services (BGS).

In addition, the Task Force Report recommended continued collaboration between DOE and BGS, in conjunction with the State Board of Education, to continue with assessing their work in this area and to develop additional recommendations for improving the school construction process.

The following changes made at BGS will improve the process:

- The 0.4% BGS fee is being eliminated, starting with the FY '06 Budget.
- All BGS professional staff are now project managers on school major capital construction projects.
- The BGS Director of School Construction attends and participates in meetings of the State Board of Education Construction Subcommittee.
- BGS project managers are becoming involved at the earliest appropriate stages of the DOE's review and approval process.
- BGS professional staff attend all school project bid openings.
- BGS professional staff attend and participate in meetings of the High Performance School Building working group, under the auspices of the Public Utilities Commission.
- BGS is drafting modified versions of the American Institute of Architects contractual documents to be reviewed by interested parties and then finalized for use.
- BGS is requesting up to 3 weeks to review and comment on bid documents prior to final approval.
- BGS project managers are familiar with a project's program elements and advise the School Construction Review Team (SCRT) re the impact of change orders and cost reductions on program elements.
- BGS is developing a technical document to complement the SCRT School Project Workbook.
- BGS will obtain project management software that also can be used for tracking and evaluating budgets and fund allocations.
- BGS quarterly and annual reports on school construction activity are sent to the State Board.

## **BGS Fee**

While recommending that the oversight responsibilities for school construction remain within the Bureau, the Task Force Report also acknowledged the intent to eliminate the 0.4% BGS fee. As part of the FY '06 Budget, the 0.4% BGS fee has been eliminated.

This means the BGS fee remains in effect for major capital school construction projects that receive State Board of Education and Commissioner of Education final funding approval on or before June 30, 2005. Per Department of Education Rule Chapter 61, the Commissioner establishes the Final Funding Budget after construction bids have been received.

The date of the Commissioner's approval will determine the responsibility to pay this fee. For all projects receiving such final funding approval prior to June 30, 2005, the fee is receivable, even if the billing is delayed and sent after June 30, 2005.

Major capital school construction projects receiving their State Board and Commissioner final funding approval after June 30, 2005, will not be assessed this fee.

## **Selection of Architects and Engineers: Timing of Fee Discussions**

The Task Force Report recommends that BGS study the timing of fee discussions, including a consideration of whether the architect's proposed fee be part of the qualification process. The Bureau has chosen to address this issue by evaluating and revising the contracts used for architects and engineers.

Currently the contracts BGS uses to engage the designers can be, and are, revised by the designer, resulting in changes to scope of work and reimbursable expenses. The resulting contracts are not always comparable, nor are the fees equitable. A designer's base fee that may seem to be the lowest of those submitted can be ratcheted up through fees for additional services and expenses.

BGS is creating modified versions of the American Institute of Architects (AIA) Standard Form of Agreement between Owner and Architect. These documents will include provisions specific to Maine statutes and rules. Their format will be locked to alterations by outside parties. They will be available to the Maine School Management Association and the design community prior to being put into use for school projects.

The timing of consideration of the architect's fee will remain unchanged. However, by having a stronger contract, over which the Bureau retains control, we fully anticipate that the fees presented will be more closely equivalent, based on a consistent scope of work. BGS will retain the qualifications-based process and will continue to monitor and work to improve access to solid fee information.

## **Project Approval Process/Schedule Approval**

The Bureau strongly supports the Task Force Report call for more realistic schedules.

BGS is addressing this in our requests to architects for documents to be submitted to DOE and BGS with sufficient lead time for meaningful review and comment. Typically, on a major capital project, BGS requires 3 weeks to review the bid documents, the 95-98% drawings and specifications, prior to these bid documents being available for general contractors. The State Plumbing Inspector and State Fire Marshall offices also need review time at this point in the process. Adequate time for BGS comment and then reviewing the corresponding responses from the designers at this juncture serves to clarify the documents. Clarification here reduces the need for change orders and potential time delays when the project is underway.

The Bureau continues to work with the DOE School Construction Review Team (SCRT) to insert adequate time into the construction schedules. BGS will track projects under construction to identify typical time frames for various stages and the impact of phasing on the final construction schedules. Proposed schedules can then be examined and adjusted if necessary, based on this information.

In BGS reviews of requested construction change directives and change orders, we will be scrutinizing any proposed associated time extensions. BGS understands the importance of ongoing attention to the project schedule and to maintaining good communication between the parties. We want to have realistic expectations on the part of all parties involved in the projects.

Discussions between the Owner, the Architect, and the General Contractor at the pre-construction meeting serve to clarify each of their understandings about the construction schedule. This is also an opportunity for BGS to assist in presenting options which can get school facilities personnel into parts of the building prior to final completion.

The impact of the timing of bond issuance is dealt with on a project-by-project basis. The DOE School Construction Review Team diligently includes discussion of this timing with the school representatives and architect during the review process. We may want to consider having information in the SCRT notebook to alert the school administrative units that this discussion will happen and may impact the timing of their project.

### **The Team**

The Bureau takes direction from the Task Force Report and is becoming involved and engaged with the owners at every appropriate opportunity. In addition, the Bureau now assigns all of its professional staff architects (3) and engineers (2) as project managers for school construction projects.

BGS will continue to work with the Maine School Management Association (MSMA) to conduct informative and relevant sessions for school district personnel from districts on DOE's

designated project list for major capital construction projects. We look forward to having these superintendents and business managers meet BGS project managers before the projects get off the ground.

Going forward, the BGS project managers will participate in meetings on the Regional Study and Site Review, and, when appropriate, provide written comment.

The Bureau's professional staff is now offering written comments based on information provided at the Program Conference. This early involvement gives the BGS project manager a useful foundation of knowledge about the goals of the project and helps foster a positive working relationship with the owner and architect.

BGS project managers are expected to coordinate their review comments with the SCRT and keep the lines of communication open with those personnel, as well as with the owner and architect.

BGS acknowledges the importance of having one point of contact for the Owner when projects are under construction. We will coordinate the scope of work with the SCRT and will review Owner's Representative contracts to ensure that the person in this position has the appropriate authority to be the contact person and the decision maker. BGS will also request that this person be identified at the pre-construction meeting.

## **Construction Process**

### Fee

As of July 1, 2005, the 0.4% BGS fee is eliminated.

### Preconstruction Process, Documents, Construction Process

In its evaluation of the AIA Standard Form of Agreement between Owner and Architect, BGS is taking care to retain designer accountability. BGS is modifying these documents, with an eye to Maine statutory requirements and to insert and retain appropriate owner and state control.

We now encourage designers to have BGS review and approve the wording of contracts prior to obtaining signatures from any party. Currently, failure to do this can and does result in having to revise sections of the contract and to obtain new signatures. We will initiate a combination of using the modified AIA documents and a requirement for BGS approval of the contract language prior to any signatures to counteract the current time-consuming situation. This also better fulfills the BGS statutory responsibility re contract review and approval.

A requirement in the modified AIA documents will be that, prior to commencing work, the designer provide BGS and the Owner with copies of all certificates of insurance. Since BGS sees more of these on a regular basis than does any individual school administrative unit, it makes sense for BGS to be part of this review process.

BGS project managers are directed to review construction drawings and specifications thoroughly and to coordinate their reviews with SCRT. The BGS project managers are more frequently using phone conversations and face to face meetings with the designers to resolve questions and concerns at this juncture. While this requires more time on the part of our professional staff, we are committed to working with the designers to have as complete a set of documents as possible when school construction projects go out to bid.

We will continue to work with the designers to build sufficient review time into the schedule. The currently requested 3-week time span is working well and will be evaluated as we proceed.

The documents prepared by the owner and designer for the educational specs Program Conference are reviewed by the BGS project manager. This familiarity with the educational intent of the project will enable BGS staff to consider the potential impact of change order requests on program elements and to make appropriate recommendations to the SCRT.

The SCRT guidelines for bid openings give general guidance for process and procedures. After reviewing the guidelines, SCRT and BGS have made a couple of revisions. These include the statement that BGS will be present at bid openings, and a requirement that the architect of record distribute to the Owner, DOE, and BGS the bid tabulations within three working days. As BGS develops a technical document to augment and accompany the SCRT guidelines, it will include a checklist of the various project forms typically required to be included by the general contractor in their bid.

The concern that the state does not have contractual access to the designer, its consultants, the contractor, or its sub-contractors continues. BGS will review this situation, research approaches used elsewhere, and make recommendations to and work with DOE and the State Board of Education to improve access and communication.

The Task Force Report recommendation for a uniform field inspection and report system is being put into place. We need to have this information from a BGS perspective, as well as from others present in the field and at requisition meetings.

The SCRT has a budget format for school construction projects. BGS has issued an RFP for project management software that will enable us to track and evaluate conceptual and final budgets, along with the sources of funds, and the allocation of funds on change orders. We will work with MSMA to inform the owners of the advantages to them of this financial tracking.

Observations lead BGS and SCRT to be concerned about the use of construction contingencies. The practice of using bid alternates to evaluate the likelihood of including some project components can potentially lead to a broader use of construction contingencies than was originally anticipated. BGS continues to work with designers and owners to reduce the number of bid alternates and discourage this practice. We also have the opportunity to use the revised AIA documents to support the construction contingency funds as "project contingency" funds, thereby reclaiming control of those dollars. BGS and SCRT have held stern discussions with designers and owners informing them that this money is not automatically theirs to spend. As the conversations continue, we will work with MSMA to educate the owners on this issue.



The new BGS project management and financial software will be used to track requested and approved change orders. We will know which entity - designer, owner, or contractor - initiated the change order, what type of change order it is, and if state, local, or a combination of funds are proposed to be used to pay for it. This tracking will provide up to date information on the status of the project's construction contingencies. Both the programmatic and the financial impact of proposed change orders will be assessed. The SCRT will continue to monitor proposed change orders relative to State Board decisions.

A similar tracking process will be used for value-engineered (cost reduction) items, with the intent that such items have as minimal an impact as possible on the program elements.

BGS and the SCRT will evaluate the need to review architects' invoices.

BGS is compiling data from recently closed-out projects. This is undertaken in conjunction with our evaluation of the scope of work for systems testing and building commissioning. We will create a template for building closeout so this process is more standardized and all parties involved will be aware of the expectations. This is another component of the on-going education BGS needs to offer to owners through the MSMA.

### **Roles and Responsibilities**

There is an on-going discussion about the appropriate and required roles for the Owner's Representative, the Architect's Clerk of the Works, and the BGS project manager. BGS will develop scope of work documents for the Owner's Rep and Clerk positions and will present this information to the owners both individually and through the resources of MSMA. BGS will work with the SCRT in defining these scopes and the associated budget amounts for the Owner's Rep and the Clerk. Attention will be paid to having a flexible scope, particularly for the Owner's Rep, so the responsibilities of that position can be project specific.

The guidance in the Task Force Report to have a preconstruction team meeting at which roles and responsibilities are spelled out is on target is being put into practice. We suggest that this be tried for a number of projects before determining if it needs to be a directive of the State Board.

BGS and the SCRT will work with representatives from all participating entities in formulating the roles and responsibilities of all parties to the school construction process.

### **Training Workshops**

BGS has expressed its willingness with MSMA and the SCRT to participate in workshops for owners. We've initially talked about having two paths of information, one for those experienced with construction projects, and one for those new to this adventure. We anticipate the next opportunity for these workshops to come this fall, after the Priority List becomes the Designated Project List, and we know the anticipated schedule for projects.

BGS will also explore with the Maine School Boards Association its interest in participating in these informational workshops.

In addition, BGS project managers and the Director of School Construction are available to answer questions and assist owners throughout the life of any project.

### **Review and Oversight by State Board of Education**

The BGS Director of School Construction attends and participates in meetings of the State Board's Construction Subcommittee and attends those meetings of the full State Board held in the Augusta area. Relevant and timely issues from the BGS perspective are brought to the attention of the Construction Subcommittee.

The BGS quarterly and annual reports on school construction activities are sent to all members of the State Board.

## APPENDIX A

### EXECUTIVE SUMMARY

On November 6, 2003, during an interim report to the Education Committee, the Task Force was asked to provide a recommendation whether school construction services should be transferred from the Bureau of General Services to the Maine Department of Education.

The Task Force has recommended retaining within the Bureau of General Services (BGS) those oversight responsibilities for school construction which the Bureau now exercises. The Task Force notes that the 0.4% fee paid to BGS for oversight services does not fully cover the costs thereof. The Task Force acknowledges the intent of the Commissioners of the Department of Education (DOE) and the Department of Administrative and Financial Services (DAFS) to work to eliminate that fee by FY '06 and their commitment to explore ways to eliminate the fee on all new projects by FY '05. The Task Force also recommends a number of steps to improve the overall oversight function as it operates within the Department of Education and the Bureau of General Services.

Furthermore, the Task Force urges continuing collaboration between these two units, working with the State Board of Education, to continue the process of self-assessment and to develop additional recommendations for improving the school construction process. Other recommendations made by the Task Force include:

- An increased level of BGS oversight including attendance at all bid openings;
- Developing a standard construction budget format;
- Modifying the change order process to assure that program and building specifications approved by the State Board of Education at final design are adhered to during the construction phase of the project;
- That BGS and DOE submit to the State Board of Education a timetable for recommended improvements to the oversight process for major capital school construction.

The Task Force also recommends further consideration of the following issues:

- The process under which fees for architectural and engineering services are determined (A/E);
- Whether construction schedules are sometimes too aggressive in an effort to fit with school calendars;
- The role of local building committees during the construction process;
- Providing "access" to designers and contractors with whom the state has no contractual relationship;

- Defining the roles and responsibilities of the various individuals and groups involved in oversight.
- Providing training for owners, school boards, superintendents, and building committees on their oversight responsibilities for the construction phase of a major capital improvement project. The training should be a collaborative effort by Maine School Management Association (MSMA), Department of Education (DOE), and the Bureau of General Services (BGS).