

Local Government Contracting for Project Advisory Services

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Introduction

A perpetual question facing local governments is how to prioritize spending money, whether that money comes from local funds or state or federal grant funds. Many local governments allocate funding for construction projects, ranging in size and scope from renovation of bathroom facilities at a public park to a new health services building. Securing financing and allocating funding are only the first steps in beginning a construction project. Then, a local government must plan, procure for, and execute the project.

Often, local governments want to undertake complex construction projects but may not have the in-house expertise to manage them. Increasingly, they rely on support from project advisors to execute their construction projects. Project advisory services for public construction refer to specialized consulting services that support public entities throughout the life cycle of the project. These services help local governments deliver projects that are efficient, cost effective, and compliant with relevant regulations and standards.

There are numerous options for project advisory services, including an owner’s representative, a construction manager, and, to a lesser degree, an inspector. No statutory provisions in North Carolina explicitly govern these roles, nor are there universal definitions for them. So, how does a local government choose who to hire and when? This bulletin attempts to define the roles and scope of services provided by owner’s representatives, construction managers, and inspectors and examines how local governments might contract with various entities to provide these important services.

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Overview of Project Advisory Services

In the construction industry, it is often said that “construction is an art, not a science.”¹ Thus, the coordination and management necessary to accomplish a successful construction project are not one-size-fits-all. The most common framework for traditional construction project delivery is one in which the engineer or architect provides not only design services but also construction contract administration services as the owner’s primary representative during construction.² However, in some cases a local government may hire an independent project advisor who was not involved in developing the designs for the project. This project advisor serves a broader role on the project than the designers and contractors.

Since there are no statutory limitations in North Carolina regarding the use of project advisory services, local governments have flexibility to define the scope of services for a project advisor as needed. The exact duties and extent of responsibilities of a project advisor can vary from owner to owner and project to project. Commonly, project advisors make decisions, solve disputes, and manage changes, all while coordinating with multiple parties on a construction project.³ Ideally, a project advisor helps to ensure that the project is completed on time, within budget, and according to specified standards.

Responsibilities of a project advisor could include some or all of the following: project planning, procurement and contract negotiation, budget management, quality assurance and regulatory compliance, communication and reporting, project closeout, and warranty period assistance. A [checklist](#) at the end of this bulletin describes these responsibilities in more detail and can assist local governments in developing an appropriate scope as they contract for project advisory services.

Still, there is some overlap between project advisory roles, and especially between those of an owner’s representative and a construction manager. The next sections outline the generally understood differences between the services of owner’s representatives, construction managers, and inspectors.

Owner’s Representative: Monitoring and Decision-Making

As mentioned earlier, there is no universal standard for an owner’s representative and the North Carolina General Statutes do not define the role.⁴ In states where using an owner’s representative is required, the definition varies. For example, Massachusetts law defines an *owner’s representative* as an individual registered as a professional engineer, with at least five

1. John Anderson et al., *Phases of the Construction Project*, in *THE CONSTRUCTION PROJECT* 4 (Marilyn Klinger & Marianne Susong eds., 2006).

2. National Society of Professional Engineers, [New EJCDC Series Addresses Construction Management](https://www.nspe.org/resources/pe-magazine/fall-2021/new-ejcdc-series-addresses-construction-management), NSPE TODAY (Fall 2021), <https://www.nspe.org/resources/pe-magazine/fall-2021/new-ejcdc-series-addresses-construction-management>.

3. Hala Nassereddine et al., *Assessment of the Role of Owner’s Representative on Construction Performance: An Owner’s Perspective*, in *COLLABORATION AND INTEGRATION IN CONSTRUCTION, ENGINEERING, MANAGEMENT AND TECHNOLOGY* 471 (Syed M. Ahmed et al. eds., 2021) (citing Lenin Jawahar-Nesan & Andrew Price, *Formulation of best practices for ORs*, 13(1) *JOURNAL OF MANAGEMENT IN ENGINEERING* 44–51 (1997)).

4. The only time “owner’s representative” appears in North Carolina statutory law regarding public construction is in Chapter 143, Section 134.1(b2) of the North Carolina General Statutes (hereinafter G.S.), which is the subcontractor payment and retainage statute. This mention recognizes that public owners may use owner’s representatives and implies that such use is permissible.

years of experience in construction and the supervision of construction.⁵ In Nebraska, an *owner's representative* is an architect, an engineer, or a construction manager who supervises a project, handling both administration and project oversight for the owner.⁶ In Maine, where an owner's representative is authorized to assist with school construction, the law states that the owner's representative acts as an advisor to the owner.⁷ The law further states that "it is the responsibility of the owner's representative to facilitate open communications among all parties, to help to avoid adversarial interactions and to promote a sense of trust and teamwork in order to accomplish the smooth execution of the project and to see that the project is completed at the lowest possible cost and highest degree of quality and workmanship that are consistent with the plans and specifications for the project."⁸ In many cases, however, an owner's representative will limit its representations and warranties and typically will not agree to such sweeping obligations as are in Maine's law.

Ultimately, an owner's representative may be best described as tasked with "protecting the best interest of the owner."⁹ An owner's representative sometimes acts as a fiduciary and agent of the owner and may be empowered to make decisions on the owner's behalf, depending on the contract terms. Importantly, though, an owner's representative does not have primary responsibility for design or construction-related tasks typically assigned to the design professional and contractor.¹⁰

Construction Manager: Logistics and Administration

Another option for a project advisor is a construction manager, sometimes referred to as a construction manager as advisor. As the name suggests, the construction manager acts as an advisor to the owners, and like an owner's representative, does not enter into any contracts with contractors. Another iteration of the construction manager is the construction manager as an agent. The term "agent" implies delegation of functions by the owner and places the construction manager in a legal agent relationship with the owner.¹¹ Whether the construction manager is labeled an advisor or agent is less significant than the actual duties assigned to the construction manager and the principal-agent relationship created by the contract. This construction manager role differs from that of a construction manager at risk, authorized by

5. See MASS. GEN. LAWS ANN. ch. 30, § 39M½. Notably, the Commonwealth of Massachusetts and its agencies must contract with an owner's representative to provide professional project oversight for any "major contract," which generally means construction or repair of transportation infrastructure costing \$50 million or more. Massachusetts also requires an owner's "project manager" when entities use the construction-manager-at-risk delivery method for building projects. MASS. GEN. LAWS ANN. ch. 149A, § 15½.

6. See NEB. REV. STAT. ANN. § 45.1202, the Nebraska Construction Prompt Pay Act. See also GA. CODE ANN. § 13-11-2, which uses the same definition as Nebraska for purposes of its prompt payment statute.

7. ME. REV. STAT. ANN. tit. 5, § 1753.

8. *Id.* Moreover, in Maine, the State Bureau of General Services must procure owner's representatives in the same way it selects architects and engineers, which is qualifications-based selection. ME. REV. STAT. ANN. tit. 5, § 1743.

9. Nassereddine et al., *supra* note 3, at 472.

10. Anatoly M. Darov, [Owner's Representatives—Emerging Roles, Responsibilities, and Legal Issues](https://www.americanbar.org/groups/construction_industry/publications/under_construction/2018/spring/owner-representative/), AMERICAN BAR ASSOCIATION (Apr. 1, 2018), https://www.americanbar.org/groups/construction_industry/publications/under_construction/2018/spring/owner-representative/.

11. The Construction Management Association of America, [An Owner's Guide to Construction and Program Management](https://www.cmaanet.org/sites/default/files/inline-files/Owners%20Guide.pdf) (2011), <https://www.cmaanet.org/sites/default/files/inline-files/Owners%20Guide.pdf>.

[Chapter 143, Section 128.1 of the North Carolina General Statutes](#) (hereinafter G.S.) and under which the construction manager at risk enters into contracts with subcontractors and guarantees construction costs.

Generally, a construction manager contributes to the time management and oversight of the cost and quality of a public construction project. Where states' laws provide for construction managers, the scope ranges and includes significant involvement throughout the construction process from design review; scheduling; cost management; value engineering; constructability evaluation; preparation and coordination of bid packages; contractor selection; and coordination, management, or supervision of design or construction.¹² The most comprehensive state law defining construction management services is in Missouri, where the law delineates the services based on whether they are provided in the planning and design phases or during the construction phase.¹³ An example of a planning and design service under the Missouri statute includes "reviewing and refining budget estimates based on the public owner's program and other available information," and construction phase services include "reviewing and processing all applications for payment by involved contractors and material suppliers in accordance with the terms of the contract."¹⁴ Missouri's construction management statute, in addition to the checklist included in this bulletin, may be helpful when determining which services a local government needs from a project advisor.

Because North Carolina does not regulate project advisory services, a construction manager can become involved in a project as early as its conceptualization. Depending on the scope of the contract, a construction manager may also monitor the compliance of trade contractors with respective trade contracts.¹⁵ A construction manager may also handle the logistics of the construction site, ensuring that subcontractors are scheduled appropriately and helping to maintain a safe job site. However, the construction manager does not assume any responsibility for or guarantee the cost, length of time, or quality of the work.¹⁶

Inspector: Verification and Quality Control

Successful construction projects include materials testing and other evaluations performed by inspectors. These tests can verify the safety, durability, and quality of the project. In addition, construction projects must adhere to local and state building codes and standards; for example, the North Carolina State Building Code requires special inspections and tests of concrete construction in compliance with standards published by the American Concrete Institute and ASTM International.¹⁷ And at the local level, for instance, the City of Wilmington provides its own construction material testing and quality control standards for soils, stone bases, concrete, and asphalt.¹⁸ Testing establishes compliance with these standards, helping to avoid legal issues and potential fines. Inspectors serve a much more limited role in a construction project and

12. See OKLA. STAT. tit. 61, § 61; S.C. CODE ANN. § 40-11-20.

13. MO. ANN. STAT. § 8.675.

14. *Id.*

15. Kenneth M. Block & John Patrick Curran, [Liability of Construction Managers: Look to the Contract](#), 63 N.Y.L.J. (2010), <https://www.law.com/newyorklawjournal/almID/1202472633966/>.

16. *Id.*

17. 2018 NORTH CAROLINA STATE BUILDING CODE § 1705.3.

18. Public Services Engineering, [Construction Materials Testing and Documentation Policy](#), CITY OF WILMINGTON, N.C., <https://perma.cc/JD8R-M2ZQ>.

typically do not handle the broad range of project advisory services available through owner's representatives or construction managers. However, some firms that provide other project advisory services also offer inspections as part of their packages.

Choosing a Project Advisor

A local government should consider several factors to determine its overall needs for a construction project: in-house capacity, expense of the project advisory services, and overall risks of the project. First and foremost, a local government should assess its in-house capacity for managing a construction process. If the local government staff has neither the professional skills nor time to manage a project, a project advisor can assume these roles. Additionally, local governments with no in-house construction departments or professional engineers can utilize project advisors to fill those gaps. In other words, a project advisor can be the eyes and ears to protect a local government's interests as the project owner.

Second, local governments should evaluate whether the additional expense of a project advisor will have a positive impact on the schedule, cost, or quality of the overall project.¹⁹ Research suggests that hiring an owner's representative benefits owners by allowing them to manage budgets successfully, minimize scheduling issues, and create greater accountability.²⁰ Research also shows that construction managers help to facilitate communication, avoid project crises, and ensure that the project team has met its contractual obligations.²¹ Of course, these benefits are not without costs. An owner's representative may charge between 3–5 percent of the overall project cost, a substantial sum depending on the size of the project.²² On the other hand, if corners are cut during construction, whether intentionally or inadvertently, a local government will pay the consequences through maintenance and operations in future decades.²³ While a project advisor will add costs to the overall project, it can be money well spent.

Third, a local government should determine the overall risks of the project and how much risk it wants to assume or assign. What challenges does the project present? Is the timeline tight? Is the general contractor a newer, less established company? Will the project impact a large geographic area? Is the continued provision of essential governmental services dependent upon completion of a building or other facilities? The risks for every project are different, but a project advisor can manage some of these risks and responsibilities for a local government. As a matter of practice, some local governments do not devote any in-house resources to new construction regardless of their staff capacity. For others, the threshold for hiring a project advisor might be how long the project will take to complete. Perhaps multiyear capital improvement projects are managed by a project advisor, whereas projects that can be completed in a year or less are managed by in-house staff. Obviously, larger and more complex projects create added opportunities for issues to arise and require greater effort to manage.

19. See Darov, *supra* note 10.

20. Nassereddine et al., *supra* note 3, at 475.

21. CMAA Foundation, *CMs Help Projects Succeed, Study Finds*, <https://www.cmaanet.org/sites/default/files/inline-files/Value%20of%20CM%20web.pdf>.

22. Nassereddine et al., *supra* note 3, at 471.

23. Virtual Interview with Francesca Cameron, Purchasing Manager, Guilford County, N.C. (Aug. 7, 2024).

After assessing these three factors, a local government may have a better sense of its requirements for an owner's representative or construction manager. But which type of project advisor is the right one? Typically, an owner's representative is an all-encompassing role and can be involved in the preconstruction phases and construction phase with "boots on the ground" to assist with permitting; providing daily, weekly, or monthly updates to the owner; monitoring CCTV activity to confirm invoice accuracy; and coordinating site lab sampling. In some instances, an owner's representative can provide engineering and inspection services. And for federally funded projects, an owner's representative can assist with Davis–Bacon compliance and cost-price analyses. In comparison, a construction manager coordinates the logistics of the construction and may have less physical presence at the project site. The terminology used to describe the project advisor is less important than the local government's goal: for the construction project to progress as planned. To accomplish this goal, a local government and a project advisor must have a transparent scope of work, explicit timelines, and a shared set of expectations.

Finally, if a local government does not have adequate staff to manage project inspections, it may include these inspections in the project advisor's responsibilities or may hire these services separately. As noted earlier, many engineering firms offer construction materials testing services, but these comprehensive packages can be expensive. Local governments may be able to divide these inspections by material type to reduce costs.

Contracting with a Project Advisor

Contract Procurement

Under North Carolina law, the appropriate procurement method for contracting with a project advisor depends on whether the entity will perform architectural or engineering services as defined in G.S. Chapters 83A and 89, respectively. Notably, the practice of architecture includes "administration of construction contracts,"²⁴ whereas the practice of engineering entails "the observation of construction for the purposes of assuring compliance with drawings and specifications."²⁵ This statutory language is narrower than the full range of project advisory services for which a local government may contract, but these services could be interpreted as either architectural or engineering services under North Carolina law. Other states are more explicit about whether a project advisor must be licensed as an engineer. In Wyoming, the practice of architecture includes "general administration of the contract as the owner's representative during the construction phase."²⁶ On the other hand, Illinois does not require an owner's representative to be a professional engineer.²⁷

To have the most flexibility in the range of services that will be provided, a local government should procure a project advisor using qualifications-based selection, solicited through a request for qualifications (RFQ). The project advisor could thus provide engineering or architectural

24. G.S. 83A-1(7).

25. G.S. 89C-3(6).

26. WYO. STAT. ANN. § 33-4-101.

27. 225 ILL. COMP. STAT. ANN. 325/3.

services if necessary.²⁸ On the other hand, if a local government does not need engineering or architectural services, it can use a request for proposals (RFP) to solicit a project advisor using any criteria it deems appropriate, including costs.²⁹

When using qualifications-based selection to procure project advisory services, a local government may consider firm and team-member qualifications; demonstration of ability to perform projects comparable in design, scope, and complexity; and references of other owners for whom project advisory services have been performed. If the procurement is by RFP, a local government might also consider cost as a criterion for evaluation. In either an RFQ or RFP, a local government should describe the necessary competencies for its project advisor. Professional organizations such as the Construction Manager Association of America (CMAA) may help identify these competencies. The CMAA, for example, delineates core competencies and standards of practice for construction managers, including cost, time, and contract management.

Types of Contracts

If the local government will hire an architecture or engineering firm as a project advisor, it should use its standard contract for those professional services. A local government that subscribes to or purchases legal documents through the American Institute of Architects (AIA) or Engineers Joint Contract Documents Committee (EJCDC) may start with those organizations' standard form agreements. For example, the AIA C132-2019, Standard Form of Agreement between Owner and Construction Manager as Adviser, describes the basic scope of services assigned to a construction manager as an advisor, including recommending project delivery methods and reviewing change order requests. Likewise, the EJCDC has a document series intended for projects in which the owner's primary representative during construction will be the construction manager as an advisor, focusing on administrative tasks ranging from budgeting to scheduling to quality management. Additional options for contract templates are available from other sources, including *ConsensusDocs*, which are endorsed by the Associated General Contractors of America.³⁰

Regardless of the template it uses, a local government must ensure that the agreement with the project advisor addresses critical construction contract issues: the parties' relationship and responsibilities to each other, scope of work, cost of services and payment terms, contract duration, indemnification, insurance and bonds, dispute resolution, and termination of the contract. An owner must also determine how much authority to give the project advisor. For instance, if a project advisor will review change order requests, are they also authorized to give final approval for the requests, or is the owner responsible for doing so? Moreover, some authority cannot be delegated to a project advisor—in particular, a formal construction contract must be awarded by the unit's governing board pursuant to G.S. 143-129.

28. For more information about qualifications-based selection under the Mini-Brooks Act, see Norma Houston, [Mini-Brooks Act FAQs](https://canons.sog.unc.edu/2011/09/mini-brooks-act-faqs/), COATES' CANONS N.C. LOC. GOV'T. L., UNC SCH. OF GOV'T BLOG (Sept. 29, 2011), <https://canons.sog.unc.edu/2011/09/mini-brooks-act-faqs/>.

29. However, if federal funds are being used for the contract, the local government must follow the requirements of the Uniform Guidance, 2 C.F.R. § 200.320.

30. For example, see *ConsensusDocs 830, Standard Owner and Construction Manager As Agent Agreement (CM Provides General Condition Items)*, and *831, Standard Owner and Construction Manager (CM Agent Does Not Provide General Condition Items)*. [Document Comparison Matrix](https://www.consensusdocs.org/wp-content/uploads/2024/03/Document-Comparison-Matrix-JS-Fix-2021.pdf), <https://www.consensusdocs.org/wp-content/uploads/2024/03/Document-Comparison-Matrix-JS-Fix-2021.pdf>.

Additionally, owners should clarify that project advisors do not own project documentation that may be within their control during a project. As the American Bar Association highlights, project advisors often collect, manage, and store project information and documents on behalf of an owner. Without careful contract drafting, a local government could find itself without access to critical project documents in the event of a dispute.³¹

Conflicts of Interest

North Carolina law does not prohibit an architect or engineer who developed plans or specifications for a local government from subsequent involvement in a construction project, such as acting as the owner's representative or construction manager. In fact, the primary statutory limitation on design professionals only prohibits architects or engineers from specifying materials or goods if they have a financial interest in the manufacturer, seller, or distributor.³² The rules of professional conduct for engineers, codified in the North Carolina Administrative Code, supplement the General Statutes and require that licensed engineers "avoid conflicts of interest."³³ Still, these rules do not explicitly prohibit an engineer who designed plans from acting as a project advisor responsible for administering construction of those plans.

In contrast, some states and the U.S. Office of Management and Budget (OMB) take a stricter stance. The State of Indiana prohibits an architect or engineer who provided design services on a public construction project from serving as the construction manager on that project.³⁴ Indiana's Court of Appeals has explained that this statute was designed to prevent the wasteful use of public resources in building unnecessary or excessive improvements.³⁵ Additionally, the Uniform Guidance—rules promulgated by the OMB and applicable to federal grant funds—prohibits contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or RFPs from competing for "such procurements."³⁶ Federal agencies interpret the breadth of this rule differently; the Environmental Protection Agency, for example, does not include grant proposals in this prohibition,³⁷ whereas the Federal Emergency Management Agency does.³⁸ Unfortunately, available (and varying) agency guidance does not offer insight as to whether a local government using federal grant funds may contract for project advisory services with the same firm that provided design services. Therefore, local governments should consult with the federal granting agency before doing so.

31. See Darov, *supra* note 10.

32. G.S. 133-1. Additionally, pursuant to G.S. 143-128.1B(c), if design-building bridging is being used for project delivery, the design criteria design professional is not eligible to submit a response to the request for proposals (RFPs) nor provide design input to a design-build response to the RFPs.

33. Title 21, Chapter 56, Section .0701 *et seq.* of the North Carolina Administrative Code.

34. IND. CODE ANN. § 5-16-10-2.

35. Dible v. City of Lafayette, 678 N.E.2d 1271, 1274 (Ind. Ct. App. 1997) (cleaned up).

36. 2 C.F.R. § 200.319(b).

37. [EPA Grants Procurement, Subawards, and Participant Support Costs Webinar, Frequently Asked Questions](https://www.epa.gov/system/files/documents/2023-09/procurement-webinar-faqs_june2023.pdf) (June 27, 2023), https://www.epa.gov/system/files/documents/2023-09/procurement-webinar-faqs_june2023.pdf.

38. Federal Emergency Management Agency, [The Department of Homeland Security \(DHS\) Notice of Funding Opportunity \(NOFO\) Fiscal Year 2023 Emergency Management Baseline Assessment Grant](https://www.fema.gov/es/node/658999), <https://www.fema.gov/es/node/658999>.

Conclusion

Local governments in North Carolina can contract for project advisory services to support the management of construction projects. Determining whether project advisory services are appropriate requires evaluating a local government's in-house capacity, assessing the project risks, and balancing the costs and benefits of using a project advisor. While there may be generally understood differences between the project advisory services offered by an owner's representative versus a construction manager, what matters most is that the scope of services for the project advisor is clear, comprehensive, and specific as regards the requirements of both the owner and the project. The [checklist](#) at the end of this bulletin suggests specific duties and responsibilities local governments may include when scoping and contracting for project advisory services. Other agency solicitations, such as the three examples below, can also provide guidance for local governments seeking to procure these services.

- [Raleigh-Durham Airport Authority RFQ for owner's representative services.](#) The scope for this owner's representative includes the following:
 - developing specifications, cost estimates, and RFP documentation;
 - serving as the airport's technical advisor during the entirety of the procurement process;
 - performing design and submittal reviews;
 - supporting the design and oversight of a proof-of-concept test; and
 - providing oversight of installation, including all required acceptance tests.
- [Fayetteville State University RFQ for capital project management and owner's representative and advisory services.](#) This scope includes extensive services, such as the following:
 - identifying construction efficiencies;
 - creating and maintaining customized budget tracking tools for invoicing and pay applications; and
 - participating in owner–architect–contractor meetings pertaining to a new residence hall, which is in its construction phase, and a new College of Education building, which is in its construction document production phase.
- [Winston-Salem/Forsyth County Utilities \(WSFCU\) RFQ for owner's advisor.](#) The scope for this owner's advisor is intended to help WSFCU manage project risk. Specific services may include the following:
 - development of an RFQ for design-build services,
 - design administration,
 - review of equipment and material specifications,
 - review of project costs, and
 - authorization and delegation of other support functions and services.

Needs Checklist for Project Advisory Services

This checklist can be used to assess tasks a local government's staff can manage versus those for which the unit may contract using a project advisor.

Project Planning and Feasibility Studies

- Identifying the project's objectives and determining whether the project is necessary and technically, financially, and environmentally feasible
- Assisting in defining project scope, goals, and deliverables
- Developing detailed project plans, including timelines, milestones, and cost estimates

Procurement and Contract Management

- Developing a strategy for procuring contractors, materials, and services, such as recommending a construction delivery method
- Assisting in the preparation of procurement documents
- Evaluating bids and proposals from contractors and suppliers
- Negotiating and managing contracts with contractors, consultants, and vendors

Budget Management

- Establishing and managing the project budget
- Monitoring and controlling project costs to avoid overruns
- Monitoring and managing project risks throughout the construction process
- Reviewing and approving invoices and change orders

Quality Assurance and Regulatory Compliance

- Ensuring that construction work meets project specifications and quality standards
- Conducting regular site inspections and progress meetings
- Addressing any quality issues and implementing corrective actions
- Managing required acceptance tests
- Ensuring that the project complies with all relevant local, state, and federal regulations
- Obtaining necessary permits and approvals
- Coordinating inspections and addressing regulatory issues

Communication and Reporting

- Serving as the primary point of contact for all project stakeholders, including architects, general contractors, and other contractors or consultants
- Providing regular updates and reports to the project owner
- Facilitating communication between the project team and external parties
- Addressing any issues that arise during construction, such as delays, defects, or disputes

Project Closeout

- Overseeing the final stages of construction and project closeout activities
- Ensuring that all punch list items are completed
- Coordinating the handover of project documentation (e.g., manuals, drawings) and warranties to the owner