

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF GENERAL SERVICES



Administrative Order No: 2025 - 001

Date: February 10, 2025

Subject: Contracting and procurement practices by the Department of General Services (the “Department” or “DGS”) related to inherently governmental functions

Originator: Delano Hunter, Director

Distribution: All DGS Employees

Expiration Date: Until Rescinded

I. Purpose

The purpose of this Administrative Order (the Order) is to provide all DGS employees guidance and clarification for the contracting and procurement practices related to inherently governmental functions pursuant to D.C. Code § 2–352.05a and Chapter 30 Title 27 of the District of Columbia Municipal Regulations (“Chapter 30 of 27 DCMR”).

II. Authority

D.C. Code § 2–352.05a
Chapter 30 of 27 DCMR, § 3000, § 3001, § 3002 and § 3099

III. Applicability

This Policy applies to all contracting and procurement practices conducted and supervised by the Department.

IV. General Policy

- A. Per DC Code §2-352.05a(a) and Chapter 30 of 27 DCMR, § 3000.1, DGS shall not award a contract to any contractor(s) to provide any service that is an inherently governmental function (“IGFs”).
- B. Per DC Code §2-352.05a(b) and Chapter 30 of 27 DCMR, § 3000.2, DGS may enter into a contract for the performance of a function closely associated with an

inherently governmental function (“Closely Associated with IGFs”) only if the Director:

- (1) Finds that appropriate DGS employees cannot reasonably perform the function at issue;
- (2) Ensures that appropriate DGS employees supervise contractor performance of the contract and perform all IGFs associated with the contract; and
- (3) Addresses any potential organizational conflicts of interest of the contractor in the performance of the Closely Associated with IGFs under the contract.

V. **Determination and Finding**

With respect to specialized consultants, including but not limited to construction project managers and consultants with subject matter expertise necessary for the agency to carry out the functions established in D.C. Code § 10–551.01, I hereby find that DGS employees do not have the necessary expertise and/or capacity to reasonably perform the services required to manage certain DGS contracts. Therefore, DGS has established procedures (1) to ensure that appropriate DGS employees supervise contractor performance of the contract and perform all IGFs associated with the contract; and (2) to address any potential organizational conflicts of interest of the contractor in the performance of the Closely Associated with IGFs under the contract.

A. **Supervision by DGS employees:** DGS contractors are subject to several layers of supervision by DGS employees throughout the course of performing Closely Associated IGFs. This supervision includes, but is not limited to the follow areas:

1. **Vendor Evaluation:** After the initial review of a vendor by the DGS contractor, in each instance, an Executive Program Manager (EPM) or Operations Manager (OM), who is a DGS employee, shall review, revise, and complete the written vendor evaluation in coordination with a contracting officer, who is also a DGS employee.
2. **Invoice Review:** Most substantive review and identification of performance deficiencies occurs in ProjectTeam (where contractor PMs identify and report the findings of their QA/QC inspections, and DGS employees – either in CCSD or Contracts & Procurement (C&P) – can take any required IGF action). Separately, the PMs, whether a contractor or DGS employee, provide a detailed review of the invoices when they are added by vendors to the Procurement Automated Support System (PASS). PASS is set up so that individuals who have access to the system have levels of authority to perform certain functions within the system. This review includes, as part of supporting contract management, confirming whether the work the vendor is invoicing for was actually performed per contract

requirements. Invoicing only happens after a contract has been approved and reviewed by DGS employees and many other District parties have approved for an allotment of funds to be spent on a specific scope of work (SOW) typically set forth in the contract's schedule of values (SOV).

The reviewing PM, whether a contractor or DGS employee, shall not have the final authority to approve or reject the invoices. The PM is permitted to provide first-line routine examination of the invoices. Subsequently all invoices must be reviewed by a supervisory DGS employee in PASS. Even though PASS labels all PMs as COTRs in its reporting systems (whether they are actually a COTR or not), the PM, as a part of their administrative invoice review, shall only be allowed to view invoices; they shall not have the authorization or ability to issue a new requisition (RK) or purchase order (PO), or to see or utilize any other functions in the PASS system. Furthermore, contractor PMs are never designated as COTRs by C&P for any contract actions, regardless of the automatically assigned label in PASS.

During the various review stages in PASS, a PM may reject an invoice outright if there is an obvious deficiency or discrepancy. However, a contractor PM may only make such a decision based on the criteria developed solely by DGS employees and specifically set forth in the PASS workflow. The PM shall not exercise substantial discretionary authority when examining the invoices. Per DGS procedures, the PM shall document in PASS the reasons for invoice rejection so that there is a record of why an invoice is initially disapproved. An example of an acceptable reason for disapproval of invoices in PASS is failure to submit correct paperwork (e.g., missing subcontractor backup, CBE form, certified payroll, or release of lien). This step in PASS should be entirely administrative. The contractor PM at this stage is not authorized and shall not review invoices for the quality of work delivered. Further, this stage of review shall not result in a final denial of invoice payment, but rather shall result in the generation of a notification to the vendor to submit the missing invoice documentation in an effort to expedite the payment process for work that has been performed. The vendor's 30-day Quick Payment Act pay period shall not and does not begin until a proper invoice is received in PASS – and that includes all required backup documentation.

3. **Requisition Review:** When a vendor submits a schedule of values (SOV) to DGS as part of the requisition (RK) development process, the PM, whether a contractor or DGS employee, will review the SOV

for accuracy before it is submitted to the EPM for further review and approval. DGS's Office of the Chief Financial Officer (OCFO) will then review the proposed SOV for compliance with capital funding requirements. When a RK is then created in PASS, it will go through additional reviews to include the COTR before a contracting officer ultimately approves and issues a PO based on the RK which becomes part of a contract action -- e.g. GMP modification, letter contract, or Early Start Agreement. Only once this process is complete can the vendor begin contract performance and bill for the work.

- B. Avoiding potential organizational conflicts of interest:** DGS contractors shall be prohibited from involvement in the management of any DGS contract involving the contractor's employing business entity. Only DGS employees shall be authorized to manage these contracts, including but not limited to the review and approval of contract invoices.

Rationale behind above operational structure: DGS has been and will continue to adopt this operational structure as part of its standard operating procedure because of the volume and complexity of construction projects it is tasked with delivering each year. DGS has a current volume of active projects of approximately \$4.5 billion. Without the assistance of outside contractors, DGS faces substantial difficulties in meeting its construction benchmarks and deadlines. Operationally, DGS set up this structure to ensure that all final determinations are made by DGS employees.

Such operational structure complies with the requirements set forth under DC Code § 2-352.05a(b) and Chapter 30 of 27 DCMR, § 3000.2.

VI. Definitions and Clarifications

A. What are considered IGFs

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the District to:

1. Bind the District to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
2. Appoint, direct, or control officials or employees of the District;
3. Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the District, including the control, or disbursement of, appropriated and other District funds;
4. Approve District government policy, including budget policy;
5. Approve the final selection or non-selection of individuals for District government employment;

6. Approve position descriptions or performance standards of District government employees.
7. Make a final adjudication in a civil or criminal proceeding or perform adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution;
8. Control criminal prosecutions;
9. Direct the conduct of criminal investigations;
10. Approve final agency responses to Freedom of Information Act requests including the determination to either withhold or release documents or approve agency responses to administrative appeals of Freedom of Information Act requests;
11. Collect, control, and disburse fees, royalties, fines, taxes, and other public funds, unless authorized by law; and
12. Command public safety, fire, emergency response, and homeland security employees.

With respect to contracts to procure goods or services for the District, an IGF involves, among other things:

1. Determine what supplies or services are to be acquired by the District, and at what prices¹;
2. Participate as a voting member on any source-selection board, unless the contractor has:
 - a. Been hired by the District for its specific technical expertise;
 - b. No conflict of interest exists with regard to the contract or vendors under consideration by the source-selection board;
3. Approve any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
4. Award contracts;
5. Administer contracts, including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services;
6. Terminate contracts;
7. Determine whether contract costs are reasonable, allocable, or allowable;
8. Evaluate a contractor's performance when the evaluation is to be used to determine whether payment should be made to the contractor and in what amount.

B. What are not considered IGFs

IGFs do not normally include, among other things, services that involve or relate to:

¹ The Mayor or the Mayor's designee may give a contractor authority to acquire supplies for the District at prices within specified ranges and subject to other reasonable conditions considered appropriate.

1. Gathering information for or providing advice, opinions, recommendations, or ideas to District government employees or officials;
2. Budget analyses, including activities such as workload modeling, fact finding, efficiency studies, and cost analyses;
3. Conducting analyses or feasibility studies, or providing strategy options to be used by agency personnel in developing policy;
4. Providing research, analysis, draft language, or administrative support to District employees on regulations;
5. Supporting contract management;
6. Supporting agency responses to Freedom of Information Act requests, provided that such support is primarily technical or administrative in nature and does not involve making final decisions about document release or production;
7. Providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses;
8. Providing alternative dispute resolution services such as arbitration or mediation;
9. Inspection services;
10. Providing legal advice and interpretations of regulations and statutes to District officials, provided that District or an instrumentality thereof retains final decision-making authority on all dispositive matters;
11. Representing the District as outside litigation counsel, bond counsel, or disclosure counsel, or in any legal proceedings, provided that District or an instrumentality thereof retains final decision-making authority on all dispositive matters;
12. Special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details;
13. Routine voucher and invoice examination; and
14. Functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services.

C. What are considered Closely Associated with IGFs (and by definition, not IGFs)

According to Chapter 30 of 27 DCMR §3099.1, functions that are “closely associated” with IGFs are “similar” to IGFs because of “the nature of the function, the manner in which the contractor performs the function, or the manner in which the government administers the contractor's performance of the function.”² However, they are not IGFs and should not be considered IGFs as defined under D.C. Official Code § 2-352.05a.

Functions Closely Associated with IGFs include services that involve or relate to:

² Chapter 30 of 27 DCMR §3099.1.

1. The evaluation of another contractor's performance when the evaluation is not to be used to determine whether payment should be made to the contractor and in what amount;
2. The use of or access to confidential information or proprietary information;
3. Supporting acquisition planning;
4. Supporting government reorganization activities;
5. Evaluating contract proposals, participating as a technical advisor to a source selection board, or serving as a nonvoting member of a source selection board; and
6. Developing, but not approving, statements of work.

VII. Questions

Any questions or issues arising under this Policy should be referred to the DGS General Counsel.

VIII. Effective Date

This Order is effective immediately and will remain in effect until rescinded.

 *Delena Hunter*
Delena Hunter, Director