

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

District Personnel Manual Issuance System

This instruction should be filed behind the divider for Part III of DPM Chapter (s) 8, 9, 36, and 38
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DPM Instruction No. 8-56; 9-27; 36-5; & 38-15

SUBJECT: Supervision of District Government Employees by
Personal Services Information Technology (IT)
Contractors

Date: July 28, 2008

NOTE: This District Personnel Manual (DPM) instruction supersedes DPM Instruction No. 9-18, *Negotiated Services Contracts – Contracting for Information Technology Services*, dated March 25, 2003.

1. Purpose

The purpose of this DPM instruction is to inform agency officials and employees in general of the circumstances under which *personal services IT contractors* may exercise managerial and supervisory authority over District government employees.

2. Regulatory Basis Allowing for the Exercise of Managerial and Supervisory Authority by *Personal Services IT Contractors* over District Government Employees

On February 14, 2003, the Mayor of the District of Columbia adopted final rules to add a new section 1902, *Contracting for Information Technology Services*, to Chapter 19 of Title 27, Contracts and Procurement, of the District of Columbia Municipal Regulations (DCMR). The rules were published in the *D.C. Register* (DCR) at 50 DCR 1531.

3. Provisions

- a. The rules allow for a contracting officer to contract with an *IT consultant* as a *personal services consultant*, if the consultant:
 - (1) Provides services to the Office of the Chief Technology Officer (OCTO);
 - (2) Is unable to be hired as a District government employee because the *consultant* is requiring compensation that cannot be accommodated through a District government pay schedule; and

Note: DPM instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employees under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart I, § 1.3.]

Inquiries: Policy & Planning Administration, DCHR (202) 442-9700

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- (3) Is deemed critical by the Mayor to the IT program of the OCTO.
 - b. Section 1902.2 of the rules allows *personal services IT contractors*, where applicable, to exercise managerial and supervisory authority over District government employees; and be subject to direct control or supervision by District government personnel.
 - c. Section 1902.3 of the rules provides that a personal services contract authorized under section 1902 may establish or allow any of the following:
 - (1) An employer-employee relationship between District government employees and the *contractor*;
 - (2) Detailed control or supervision by District government personnel of the *contractor* or its employees with respect to the *contractor's* day-to-day operations or the methods to accomplish the services procured;
 - (3) A regularly established tour of duty for the *contractor*; or
 - (4) Performance of work of a policy-making, decision-making, or managerial nature.
 - d. As defined in section 1999 of the rules, these particular *personal services IT contracts*, *by their express terms or as administered, make the contractor personnel appear, in effect, as District government employees*.
3. **Text of Section 1902 of Chapter 19 of 27 DCMR**

A copy of the Notice of Final Rulemaking adding section 1902 to Chapter 19 of 27 DCMR is attached for reference.


Brender L. Gregory
Director

Attachment:

- Copy of Notice of Final Rulemaking Published at 50 DCR 1531 (February 14, 2003)

THE MAYOR OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

The Mayor of the District of Columbia, pursuant to authority granted by section 202(a) of the District of Columbia Procurement Practices Act of 1985, as amended, ("PPA"), effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §2-302.02(a)), hereby gives notice of the adoption of the following final rules, amending chapter 19 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The rules are intended to implement personal services contracting for information technology ("IT") consultants for the Office of the Chief Technology Officer.

The rules were approved as emergency and proposed rules on May 17, 2001, and a second Emergency Rulemaking was published on September 28, 2001, at 48 DCR 8989. No substantive changes have been made to the text of the proposed rules, as published in the Notice of Emergency and Proposed Rulemaking in the *D.C. Register* on June 8, 2001, at 48 DCR 5383.

The Council of the District of Columbia approved these rules on January 9, 2003, pursuant to section 205(a) of the Procurement Practices Act (D.C. Official Code, §2-302.02(a)).

CHAPTER 19**CONTRACTING FOR SERVICES**

A new section 1902 is added to read as follows:

- 1902 **CONTRACTING FOR INFORMATION TECHNOLOGY SERVICES**
- 1902.1 Notwithstanding §1901, a contracting officer may contract with an information technology ("IT") consultant as a personal services contractor if the IT consultant:

- (a) Provides services to the Office of the Chief Technology Officer;
 - (b) Is unable to be hired as a District employee because the consultant is requiring compensation that cannot be accommodated through District pay schedules; and
 - (c) Is deemed critical by the Mayor to the IT program of the Office of the Chief Technology Officer.
- 1902.2 A personal services contractor hired under §1902 may, where applicable, exercise managerial and supervisory authority over District employees, and be subject to direct control or supervision by District personnel.
- 1902.3 A personal services contract authorized by §1902 may establish or allow any of the following:
- (a) An employer-employee relationship between the District and the contractor;
 - (b) Detailed control or supervision by District personnel of the contractor or its employees with respect to the day-to-day operations of the contractor or the methods of accomplishment of the services;
 - (c) A regularly established tour of duty for the contractor;
 - (d) Supervision of District employees by the contractor; or
 - (e) Performance of work of a policy-making, decision-making, or managerial nature.
- 1902.4 The contracting officer shall determine in writing, based upon certification of facts by the Chief Technology Officer, that the criteria set forth in §1902.1 are met and that the use of a personal services contract for IT consultant services is in the best interests of the District.
- 1902.5 Before processing any contractual action or solicitation for IT consultant personal services, the contracting officer shall ensure that the applicable provisions of this Chapter have been complied with and that the required documentation is complete and included in the contract file.
- 1902.6 For procurement of IT consultant personal services, the contracting officer shall ensure that the following are accomplished:
- (a) Each requirement is appropriate and fully justified in a written determination and findings. The justification shall include a statement

of need and the requesting official's certification that the services do not unnecessarily duplicate any previously performed work or services;

- (b) Each work statement is specific and complete, and states a fixed period of performance within which the services are to be provided;
- (c) Each contract is awarded pursuant to the Act and this title;
- (d) Appropriate disclosure is required of, and warning is given to, contractor personnel to avoid conflicts of interest;
- (e) Each contract is properly administered and monitored to ensure that performance meets the requirements of the contract;
- (f) Each proposed contract action is properly authorized by a written, signed document; and
- (g) Each proposed contract is approved, in writing, by the City Administrator prior to award of the contract.

- 1902.7 A contract for IT consultant personal services may be extended by modification, but in no event shall the period of the base contract and any extensions exceed three (3) years.
- 1902.8 Federal and District statutes or regulations applicable to District employees concerning ethics shall apply to all contractors under this Chapter. All contracts entered into pursuant to this Chapter shall comply with the laws and regulations governing ethics in the District government.
- 1902.9 The contracting officer may waive the insurance coverage requirements of §2712 of chapter 27 of this title when the Chief Technology Officer submits a written determination that waiver of the insurance coverage requirements is in the best interests of the District.

Section 1999 is amended by adding the following definition:

Personal Services Contract – a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, as District government employees.