

MANAGEMENT MEMO

	NUMBER: MM 18-01
SUBJECT: DGS DELEGATION OF PUBLIC WORKS PROJECTS TO CLIENT AGENCIES	DATE ISSUED: MARCH 28, 2018 Expires: UPON INCORPORATION INTO SAM
REFERENCES: Public Contract Code 10105, 10106, 10108, and 10108.5	ISSUING AGENCY: DEPARTMENT OF GENERAL SERVICES

Purpose

This management memo (MM) announces a change to the existing process for delegations of Public Works projects to Departments. The goal of this change is to make our standards of evaluation clear and consistent, streamline two processes into one and maximize dollar thresholds for agencies utilizing this choice to pursue projects per statute.

Policy

Under the Public Contract Code (PCC), Public Works of Improvement over \$314,000ⁱ constitute a “project,” and with the exception of those departments with specific statutory authority to carry out such projects, all Public Works projects must be undertaken by DGS.ⁱⁱ

However, PCC 10108 and 10108.5 permit DGS to delegate projects under its jurisdiction to a department when two conditions are met:

1. When the “nature of the work in the opinion of the departmentⁱⁱⁱ is such that its services in connection therewith are not required,”
2. When the “estimated cost does not exceed \$709,000 (or \$975,000 for departments in the Resources Agency).”^{iv}

Additionally, by policy, DGS places the following restrictions on delegations to departments:

1. **Special Functions:** DGS typically requires that any CEQA services be carried out by DGS staff, given the potential liability. Likewise, DGS typically requires that construction inspection and due diligence services be provided by DGS staff.

ⁱ This number is adjusted biennially by the Department of Finance per PCC 10105.

ⁱⁱ See PCC 10106.

ⁱⁱⁱ In the Public Contract Code, this refers to DGS for the purposes of delegation.

^{iv} Both figures are adjusted biennially by the Department of Finance per PCC 10105. DGS can further delegate without limit to District Agricultural Associations and the State’s Land Commission.

2. **Tenant Limitations:** for DGS managed buildings, DGS further limits the type of work it permits tenants to undertake. Projects that materially^V impact the performance and/or maintenance of Fire and Life Safety, electrical, mechanical, or structural systems, or building accessibility, will not be delegated, except in very rare instances.

Failure to adhere to the policies outlined in this MM or a delegation memo by a department may result in the revocation of a delegation or the denial of future delegation requests.

Basis for Cost Estimates

In determining whether a project can be delegated under the cost thresholds established by statute, DGS will consider project “hard costs” only. This does not include “soft costs,” such as design costs, costs for DGS CEQA or Construction Inspection, regulatory review fees, project management fees, etc.^{VI}

The basis for the estimate of costs must be reasonable, match the scope of the project, must include hazardous materials testing/abatement and/or demolition costs (if applicable to the scope of work), and must include prevailing wages.

The estimate of costs and an explanation of how the requesting department arrived at those costs must be provided to receive a delegation from DGS.

Note: Major Capital Outlay projects subject to Public Works Board oversight shall not be delegated to departments.

Determining When DGS Services are Required

In order to receive a delegation, DGS must make a determination that its services are not required for the successful completion of the project. In making this determination, DGS will assess the following:

1. The scope of the project and required design disciplines and regulatory reviews/certifications required.
2. The requesting Department’s ability to contract or otherwise provide the architectural and engineering (A&E) services required for the project.

The requesting Department’s experience and/or capability in executing projects of a similar scope and/or complexity.

^V DGS-RESA defines a “material” impact as one that could substantially affect the performance or maintenance of the area in which work is being performed or to the building as a whole.

^{VI} This distinction between soft and hard costs are for the purposes of delegation only and in no way should be understood to mean that the delegated department does not need to plan, budget, and execute all aspects of the project, including regulatory reviews.

Documentation Required for Requesting a Delegation

When a department requests a delegation from DGS, that department will be required to submit the following:

1. A detailed description of the project.
2. A listing of all expected design disciplines required.
3. A listing of required regulatory reviewers or certifications required.
4. An explanation of design capabilities (via regulations or in-house).

An explanation of the department's previous history successfully carrying out projects of a similar scope and/or complexity.

Conditional Delegations

As stated above, when receiving a request for a delegation, DGS will review the requesting department's experience and/or capabilities and understanding of the project and make a finding as to whether DGS' services are required.

Departments without relevant experience or documented capability, or that demonstrate an insufficient understanding of executing the specific project, shall not be granted a delegation. In certain instances, DGS may grant a **conditional delegation**. A conditional delegation is one where DGS has formally determined that its services are not required to execute the project, but where additional monitoring is determined to be needed.

Instances in which a conditional delegation may be appropriate, include, but are not limited to:

1. Where the requesting department has demonstrated its experience and capabilities are sufficient to execute the specific project, but have not managed a project of this amount or complexity.
2. Where the nature of the project's scope is such that it is reasonably likely that significant additional work may be required. (Note: The additional work must be within scope.)
3. When the project is of a sufficiently sensitive nature that additional oversight is warranted. Fire and Life Safety projects are an example of this type of project.
4. When DGS has delegated projects of a similar nature to other departments and those departments have commonly encountered issues, such as additional work that increased project costs over delegatable limits, or have increased the project's complexity such that DGS would not have issued a delegation had those issues been know at the time of the request.
5. When a previous delegation for a project of a similar nature to the requesting department demonstrated that the department is unable to safely and correctly execute a delegated project, but corrective action has been taken.

- Generally, if a department demonstrates an inability to execute a delegated project, future project delegations shall be denied. However, if the department demonstrates that they have taken corrective action to address the underlying issue(s), DGS may grant a conditional delegation.

In granting a conditional delegation, DGS shall ensure that monitoring requirements are imposed only as may be necessary to reasonably ensure that the project stays within scope and is safely and competently executed. Specific requirements will be determined on a project by project basis.

Outline of Revised Delegation Process

The following outlines the basic process steps for requesting a project delegation. For each specific delegation, teleconferences/meetings may be required to ensure a consistent understanding of a particular project's scope.

1. Department identifies the need for a Public Works project.
2. Department either uses contracted A&E firm, in-house A&E staff, or hires DGS staff (scope only) to scope the project.
3. Department submits a CRUISE request for a delegation and includes a completed Form 23.
4. The Form 23 will be reviewed by both the Department's assigned DGS program manager and appropriate Principal Architect.^{vii}
5. DGS Principal Architect will review the request and determine what level of delegation (conditional or full) to grant, or to deny the request.
 - a. If denied, DGS will provide a written denial outlining the reasons for the denial and recommended next steps.
 - b. If approved, DGS will provide a memo outlining the type of delegation being granted and how to proceed.

Documentation Requirements and Scope Changes

Departments are advised that when granting delegations (full or conditional), DGS reserves the right to:

1. Audit project records at any time.
2. Require notification at the end of each major project phase.
3. Require that the delegated department work collaboratively and communicate timely to DGS Office Building Managers if the project is in a DGS managed building.
4. Require the submission of as-built drawings at project completion.

^{vii} DGS has two Principal Architects. One is responsible for delegations in DGS managed buildings and one is responsible for the balance of the state.

For all delegations, DGS must approve changes in work before they are authorized by the delegated department.

DGS Fees for Related Work

DGS time for any and all workload associated with reviewing, approving, or managing delegations shall be billed to the requesting department.

Additional Resources

Request delegation of Public Works for State Facility Alterations:

[Real Estate Services Division](https://www.dgs.ca.gov/RES/Services/Page-Content/Real-Estate-Services-Division-Services-List-Folder/Request-for-Delegation-of-Public-Works) (https://www.dgs.ca.gov/RES/Services/Page-Content/Real-Estate-Services-Division-Services-List-Folder/Request-for-Delegation-of-Public-Works)

- Form 23
- Delegation Process Flowchart
- Sample Conditional Delegation Memo
- Sample Full Delegation Memo
- Sample Denial of Delegation Memo

Signature



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Date

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