

OGC Has Reviewed

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OGC 72-1176

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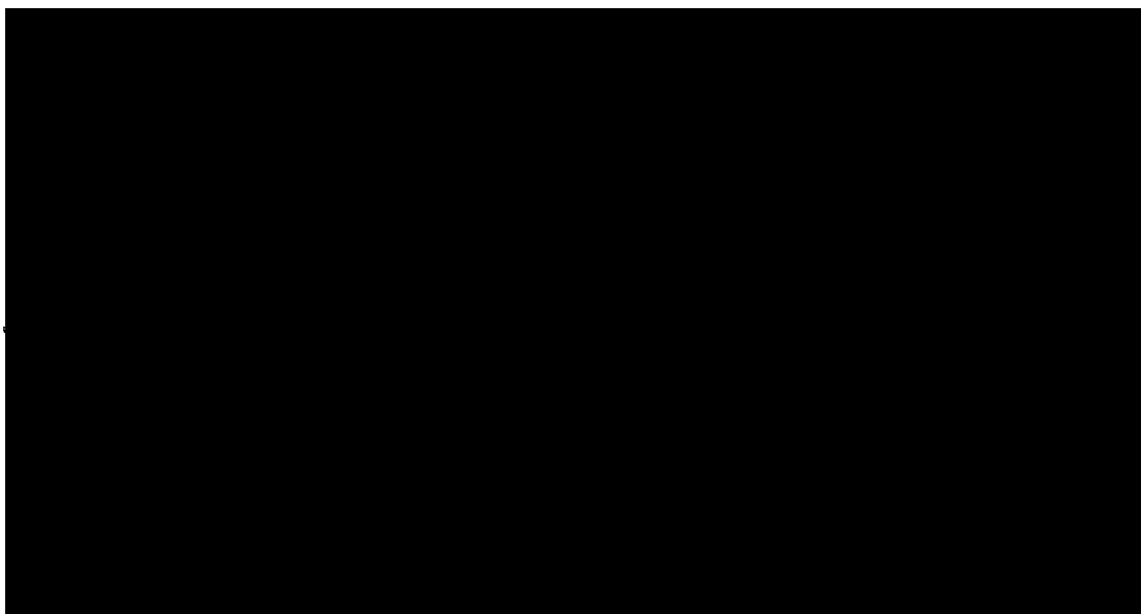
MEMORANDUM FOR: Deputy Director for Support

SUBJECT: Relationships with the National Capital
Planning Commission (NCPC)

1. You have requested this office to consider whether it is necessary for the Agency to comply with the laws and regulations pertaining to NCPC in connection with the proposed construction of a garage in the Headquarters area.

2. An argument can be made that we are not bound by law so to comply, but I am of the opinion that such an argument should not be advanced on the basis of legal technicalities for the following reasons.

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4. Since we are not otherwise exempted from the laws setting forth the functions of the NCPC, and our situation in regard to construction at Headquarters does not differ from that of other departments and agencies, we would at least not have the support of the Comptroller General in asserting exemption on the basis of our funds authorities. I think the natural result might well be a feeling in Congress, particularly in our own subcommittees, that this was not a proper exercise of those authorities.

5. The other basis for arguing that we need not comply with the NCPC requirements lies in the language of the NCPC statute, which provides in part, "After such consultation and suitable consideration of the views of the Commission the agency may proceed to take action in accordance with its legal responsibilities and authority." Technically, we could take the position that we have had adequate consultation and can, therefore, proceed without further compliance with the regulations. Undoubtedly, this would antagonize the NCPC and all those who support its functions, whereas it is my understanding that the Commission and its staff have been cooperative and helpful. Furthermore, if we can get its support for a master plan, however speculative, this would be helpful if there are attempts by other potential users to have us surrender land in the Headquarters area which we may need for future development.

6. This is a situation where it seems clearly advantageous to work with the system and where a contrary course would bring additional publicity and criticism on the Agency. On the same reasoning, it would appear to be highly desirable to continue with the construction in cooperation with the General Services Administration on the normal procedure of advertising, bid, and award. No aspect of this construction proposal appears to justify negotiated or sole-source contracts. Also, if and when the almost inevitable environmental question is raised, GSA and NCPC will be in the forefront rather than this Agency.

STATINTL

LAWRENCE R. HOUSTON
General Counsel

cc: D/Logistics
D/Finance
Assoc Gen Coun-

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