



SECRETARY OF THE ARMY
WASHINGTON

10 JUL 2009

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Policy for Civilian Workforce Management and Service Contracts

1. References:

- a. Title 10 United States Code Sections 2330a, 2383, 2434 and 2463.
- b. Memorandum, President of the United States, March 4, 2009, subject: Government Contracting.
- c. Memorandum, Deputy Secretary of Defense, May 28, 2009, subject: In-sourcing Contracted Services—Implementation Guidance (Enclosure 1).

2. The purpose of this memorandum is to improve the oversight of decisions to contract services. This policy reflects recent Presidential, Secretary of Defense, and Congressional requirements and concerns related to contracts that are closely associated with inherently governmental functions, personal services contracts, and the mix of military, civilian employees, and contractors performing essential missions. In addition, we must ensure that the mission authority and workload basis for contracted services are subjected to the same level of scrutiny as our expenditure of resources for military and civilian employee requirements.

3. Senior Commanders and Headquarters Department of Army (HQDA) Principals must ensure that service contract requirements do not include inherently governmental functions and that use of personal services contracts is limited to circumstances where specific statutory authority exists. This responsibility exists not simply at the time a decision is made to contract for a specific service, but also when key force structure and weapon system acquisition decisions are made that implicate contract support requirements. These responsibilities involve strategic requirements determination decisions made at the functional level of a Command and not simply for individual contract actions. Additionally, Senior Commanders and HQDA Principals must ensure that actual contract performance does not violate the rules prohibiting contractor performance of inherently governmental functions and unauthorized personal services.

4. The Accountable General Officer or Senior Executive Service official for the requiring activity (or the U.S. Property and Fiscal Officer in the case of the U.S. Army National Guard) will certify compliance using the attached form and checklist (Enclosure 2) so that we meet these statutory and fiduciary obligations. Accountable officials may delegate certification responsibilities for service contract requirements valued \$100,000 or less in accordance with Command policy. The Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)) may change the contents of the checklist to conform to changes in law or Department of Defense policies by notifying me in writing. The Auditor General will initiate annual reviews of the activities and

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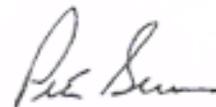
contracts in the contractor manpower inventory. The ASA(M&RA) will serve as the senior official responsible for development and execution of Army in-sourcing plans based on the annual review of the contractor manpower inventory required by statute, currently being implemented through the Panel for Documentation of Contractors (PDC) (reference a). Army organizations will provide contractor data when manpower studies are conducted or validated by the U.S. Army Manpower Analysis Agency, or when required by the G-3/5/7 in Concept Plans or the Total Army Analysis process. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) will continue oversight of the acquisition process and will support these requirements. The Assistant Secretary of the Army (Financial Management and Comptroller) and the G-8 will oversee costing and the integration of the contractor manpower inventory review into the Planning, Programming and Budgeting process. Additional implementation guidance will be provided by the ASA(M&RA) and the ASA(ALT).

5. Your in-sourcing implementation plans must be submitted to the ASA(M&RA) no later than 15 July 2009. The ASA(M&RA) lead for this action is Dr. John Anderson, (703) 693-2119 or e-mail: (john.anderson@hqda.army.mil). Reporting instructions will be provided separately by the ASA(M&RA) to your PDC point of contact. In addition, the job title, occupational series, grade, location and when a position is to be filled (month/year) should be submitted to the G-1 no later than 15 August 2009. Additional guidance on submitting the data will be provided by Rose Medina, the G-1/Civilian Human Resources Activity point of contact, (410) 306-1744 or e-mail: (Rose.Medina@us.army.mil).

6. To streamline the civilian hiring process and better meet the statutory intent of reference "a" to provide "special consideration" to Federal Government Employee performance of contracted functions identified on the checklist, I am eliminating the civilian hiring portion of this form. Instead, the hiring process should be managed through the Defense Civilian Personnel Data System as informed by The Army Authorization Documentation System.

7. In this resource constrained environment, your personal leadership is critical to ensure we retain the discretion we need to manage our workforce mix and contracted requirements.

Enclosures


Pete Geren

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REQUEST FOR SERVICES CONTRACT APPROVAL

| | |
|----------|---|
| A | Name of HQDA Principal, Army Command, Army Service Component Command or Direct Reporting Unit Organization: |
| B | Unit Identification Code (UIC): |
| C | Project Name for Contract: |
| D | Contract Number / Task Order / Delivery Order Number: |
| E | Contract Manpower Equivalentents and Cost: |
| F | Justification for Contract (attach worksheets A, B, C, and D): |
| G | <p>HQDA Principal, Army Command, Army Service Component Command, or Direct Reporting Unit Decision.</p> <p>_____ I approve and certify that:</p> <ol style="list-style-type: none"> 1) this requirement does not include inherently governmental functions; 2) this requirement does not include unauthorized personal services either in the way the work statement is written or in the way the contract operates; 3) in the case of work closely associated with inherently governmental functions, or non-competitive contracts, special consideration has been given to using federal government employees; 4) this contract (circle all that apply): <ol style="list-style-type: none"> a) has been reported in the Contract Manpower Reporting Application (CMRA); b) has not been reported in CMRA, an explanation is enclosed; c) the CMRA reporting requirement has been included in the work statement for this new requirement; 5) the requirement has been validated: for example, the requirement has been documented, it has an approved concept plan, a manpower survey has been done, or has been validated by other accepted techniques; 6) sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function. <p>_____ Disapprove</p> <p style="text-align: right;">_____ Name, Rank, Position and Date: [Printed]</p> <p style="text-align: right;">Signature: _____</p> |
| H | <p>Worksheets Prepared by: _____ Date: _____</p> <p>Signature: _____</p> |

Worksheet A (1 of 3) - INHERENTLY GOVERNMENTAL

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

The following functions constitute inherently governmental functions and may not legally be contracted. (See the FAIR Act (31 United States Code Section 501), the Federal Acquisition Regulation (FAR) Part 7.5), and Department of Defense Instruction (DoDI) 1100.22, Guidance for Determining Workforce Mix.

If the services to be contracted involve **any** of the following, then the function must be performed in-house by federal government employees.

| INHERENTLY GOVERNMENTAL | | YES | NO |
|---|--|--------------------------|--------------------------|
| <p>Answer "YES" or "NO" to the functions below that apply based on the work statement or the way the contract is performed. Any "YES" response to a function below must be performed in-house and cannot be contracted.</p> <p>Does the function:</p> | | | |
| 1 | Involve contractors providing legal advice and interpretations of regulations and statutes to Government officials? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 | Involve the direct conduct of criminal investigations? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Involve the control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | Involve the command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 | Involve the conduct of foreign relations and the determination of foreign policy? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 | Involve the determination of agency policy, such as determining the content and application of regulations, among other things? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 | Involve the determination of Federal program priorities for budget requests? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8 | Involve the direction and control of Federal employees? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9 | Involve the direction and control of intelligence and counter-intelligence operations? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10 | Involve the selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 | Involve the approval of position descriptions and performance standards for Federal employees? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12 | Involve the determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency)? | <input type="checkbox"/> | <input type="checkbox"/> |
| 13 | Involve: | | |
| | i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency); | <input type="checkbox"/> | <input type="checkbox"/> |

Worksheet A (2 of 3) - INHERENTLY GOVERNMENTAL

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

| INHERENTLY GOVERNMENTAL | YES | NO |
|---|--------------------------|--------------------------|
| <p>Answer "YES" or "NO" to the functions below that apply based on the work statement or the way the contract is performed. Any "YES" response to a function below must be performed in-house and cannot be contracted.</p> <p>Does the function:</p> | | |
| ii) Participating as a voting member on any source selection boards; | <input type="checkbox"/> | <input type="checkbox"/> |
| iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria; | <input type="checkbox"/> | <input type="checkbox"/> |
| iv) Awarding contracts; | <input type="checkbox"/> | <input type="checkbox"/> |
| v) Administering 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); | <input type="checkbox"/> | <input type="checkbox"/> |
| vi) Terminating contracts; | <input type="checkbox"/> | <input type="checkbox"/> |
| vii) Determining whether contract costs are reasonable, allocable, and allowable; and | <input type="checkbox"/> | <input type="checkbox"/> |
| viii) Participating as a voting member on performance evaluation boards. | <input type="checkbox"/> | <input type="checkbox"/> |
| 14 Involve the approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency response to the administrative appeals of denials of Freedom of Information Act requests? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15 Involve the conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16 Involve the approval of Federal licensing actions and inspections? | <input type="checkbox"/> | <input type="checkbox"/> |
| 17 Involve the determination of budget policy, guidance, and strategy? | <input type="checkbox"/> | <input type="checkbox"/> |
| 18 Involve the collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including- | <input type="checkbox"/> | <input type="checkbox"/> |
| (i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and | <input type="checkbox"/> | <input type="checkbox"/> |
| (ii) Routine voucher and invoice examination. | <input type="checkbox"/> | <input type="checkbox"/> |
| 19 Involve the control of the treasury accounts? | <input type="checkbox"/> | <input type="checkbox"/> |
| 20 Involve the administration of public trusts? | <input type="checkbox"/> | <input type="checkbox"/> |
| 21 Involve the drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Account Office, or other Federal audit entity? | <input type="checkbox"/> | <input type="checkbox"/> |

Worksheet A (3 of 3) - INHERENTLY GOVERNMENTAL

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

| | INHERENTLY GOVERNMENTAL | YES | NO |
|---|--|--------------------------|--------------------------|
| <p>Answer "YES" or "NO" to the functions below that apply based on the work statement or the way the contract is performed. Any "YES" response to a function below must be performed in-house and cannot be contracted.</p> <p>Does the function:</p> | | | |
| 22 | Require the exercise of discretion in applying Federal Government Authority? | <input type="checkbox"/> | <input type="checkbox"/> |
| 23 | Require the making of value judgements in making decisions for the Federal Government? | <input type="checkbox"/> | <input type="checkbox"/> |
| 24 | Require making judgements relating to monetary transactions and entitlements? | <input type="checkbox"/> | <input type="checkbox"/> |
| 25 | Involve the interpretation and execution of the laws of the United States so as to bind the US to take or not take some action by contract, policy, regulation, authorization, order or otherwise? | <input type="checkbox"/> | <input type="checkbox"/> |
| 26 | Involve the interpretation and execution of the laws of the United States to determine, protect and advance the United States economic, political, territorial, property or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management or otherwise? | <input type="checkbox"/> | <input type="checkbox"/> |
| 27 | Involve the interpretation and execution of the laws of the United States to significantly effect the life, liberty or property of private persons? | <input type="checkbox"/> | <input type="checkbox"/> |
| 28 | Involve the interpretation and execution of the laws of the United States to commission, appoint, direct, or control officers or employees of the United States? | <input type="checkbox"/> | <input type="checkbox"/> |
| 28 | Involve the interpretation and execution of the laws of the United States to exert ultimate control over the acquisition, use or disposition of the property, real or personal, tangible or intangible, or the United States, including the collection, control or disbursement of appropriated and other Federal funds? | <input type="checkbox"/> | <input type="checkbox"/> |

Worksheet B (1 of 2) - CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

The following kinds of services (items 1-22) are defined as "closely associated with inherently governmental functions," in 10 U.S.C. 2383(b) (3) and pursuant to 10 U.S.C. 2463, **special consideration** must be given to in-sourcing contracts performing the functions listed below. Special consideration must be given to using government employees in lieu of contractors if the answer is "no" to questions 23, 24 or 25. Pursuant to 10 U.S.C. 2330a(e) we must in-source closely associated with inherently governmental functions "to the maximum extent practicable".

| CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL | | YES | NO |
|--|--|--------------------------|--------------------------|
| Answer "YES" or "NO" to any functions below that apply based on the work statement or the way the contract is performed. (The list below is not comprehensive, as it excludes examples from DoDI 1100.22). | | | |
| Does the performance involve: | | | |
| 1 | Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 | Services that involve or relate to reorganization and planning activities. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | Services that involve or relate to the development of regulations. | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 | Services that involve or relate to the evaluation of another contractor's performance. | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 | Services in support of acquisition planning. | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 | Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors). | <input type="checkbox"/> | <input type="checkbox"/> |
| 8 | Contractors providing technical evaluation of contract proposals. | <input type="checkbox"/> | <input type="checkbox"/> |
| 9 | Contractors providing assistance in the development of statements of work. | <input type="checkbox"/> | <input type="checkbox"/> |
| 10 | Contractors providing support in preparing responses to Freedom of Information Act requests. | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 | Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402 (b)) | <input type="checkbox"/> | <input type="checkbox"/> |
| 12 | Contractors 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. | <input type="checkbox"/> | <input type="checkbox"/> |
| 13 | Contractors participating in any situation where it might be assumed that they are agency employees or representatives. | <input type="checkbox"/> | <input type="checkbox"/> |

Worksheet B (2 of 2) - CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

| | | |
|---|-----|----|
| CLOSELY ASSOCIATED W/ INHERENTLY GOVERNMENTAL | YES | NO |
|---|-----|----|

Answer "YES" or "NO" to any functions below that apply based on the work statement or the way the contract is performed. (The list below is not comprehensive, as it excludes examples from DoDI 1100.22).

| | | | |
|----|--|--------------------------|--------------------------|
| 14 | Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board. | <input type="checkbox"/> | <input type="checkbox"/> |
| 15 | Contractors serving as arbitrators or providing alternative methods of dispute resolution. | <input type="checkbox"/> | <input type="checkbox"/> |
| 16 | Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments. | <input type="checkbox"/> | <input type="checkbox"/> |
| 17 | Contractors providing inspection services. | <input type="checkbox"/> | <input type="checkbox"/> |
| 18 | Contractors providing 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. However, the direction and control of confinement facilities in areas of operations is inherently governmental. | <input type="checkbox"/> | <input type="checkbox"/> |
| 19 | Private security contractor in operational environment overseas. | <input type="checkbox"/> | <input type="checkbox"/> |
| 20 | Contract interrogators. | <input type="checkbox"/> | <input type="checkbox"/> |
| 21 | Contractor provided combat and security training. | <input type="checkbox"/> | <input type="checkbox"/> |
| 22 | Contract logistics support required for weapon systems which deploy with operational units. | <input type="checkbox"/> | <input type="checkbox"/> |
| 23 | Is there sufficient organic government expertise to oversee contractor performance of the contract? | <input type="checkbox"/> | <input type="checkbox"/> |
| 24 | Are there sufficient control mechanisms and sufficient numbers of military and civilian employees to ensure that contractors are not performing inherently governmental functions? | <input type="checkbox"/> | <input type="checkbox"/> |
| 25 | Is there a sufficient number of CORs appointed to ensure oversight of contract performance? | <input type="checkbox"/> | <input type="checkbox"/> |

Worksheet C - PERSONAL SERVICES

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

Pursuant to FAR Part 37.104, a personal services contract is characterized by "the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the Civil Service laws. Obtaining personal services by contract rather than by direct hire under competitive appointment, circumvents those laws unless Congress has specifically authorized acquisition of those services." If the contract, by its written terms or in the way it is actually performed, involves any of the following elements, modify the contract, perform it to avoid creating an employer-employee relationship or in-source: (Adapted from FAR Part 37.104 (d)).

| PERSONAL SERVICES | | YES | NO |
|-------------------|--|--------------------------|--------------------------|
| 1 | The contractor personnel are subject to relatively continuous supervision and control of a governmental officer. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 | Contractor is performing on a government site. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Principal tools and equipment are furnished by the government. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission. | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 | The need for the service provided can reasonably be expected to last beyond one year. | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 | The inherent nature of the service, or the manner in which it is provided, reasonably require (directly or indirectly), Government direction or supervision of contractor employees in order to: | | |
| | a) Adequately protect the government's interest; | <input type="checkbox"/> | <input type="checkbox"/> |
| | b) Retain control of the function involved; or | <input type="checkbox"/> | <input type="checkbox"/> |
| | c) Retain full responsibility for the function supported in a duly authorized Federal officer or employee. | <input type="checkbox"/> | <input type="checkbox"/> |

Specific statutory authority for personal services is provided in 10 United States Code §129b for:

- **experts or consultants where the services cannot be adequately provided by the Department;**
 - *In general, the authority to procure personal services for experts and consultants pursuant to 10 United States Code §129b requires the approval of the ASA(AL&T) unless the services being acquired are covered by the delegation of authority covered in AFARS Sub Part 5137-104-90-2 (i.e., stenographic reporting, stage, motion picture or television productions or legal services outside the United States). In all cases, additional procedures required by AFARS Part 5137.104-90 must be followed with appropriate approval authority.*
- **direct support of a defense intelligence component or counter-intelligence organization of the Department of Defense where the services are urgent or unique and cannot be practically obtained within the Department;**
 - *Pursuant to DFARS SubPart 237.104(b)(iii)(A), the Head of a Contracting Activity must provide written approval.*
- **direct support of mission of special operations command where the services are urgent or unique and cannot be practically obtained within the Department;**
 - *Pursuant to DFARS SubPart 237.104(b)(iii)(A), the Head of a Contracting Activity must provide written approval.*
- **services provided by individuals outside the US regardless of their nationality;**
 - *Pursuant to DFARS SubPart 237.104(b)(iii)(A), the Head of a Contracting Activity must provide written approval.*
- **or 10 United States Code §1091 for carrying out health care responsibilities in medical treatment facilities of the Department of Defense.**
 - *DODI 6025.5 limits this exception to health care personnel who participate in clinical patient care and does not include personnel whose duties are primarily administrative or clerical, nor personnel who provide maintenance or security services.*

Worksheet D

(This worksheet must be included as part of the Services Contract Approval Form when contracting a function is being contemplated or before exercising an option.)

| | | YES | NO |
|---|---|--------------------------|--------------------------|
| 1 | Has in-sourcing been considered? Special consideration should be given to civilians in the following situations: | <input type="checkbox"/> | <input type="checkbox"/> |
| | i) The function was performed by Department of Defense civilian employees since January 1998. | | |
| | ii) The function is closely associated with the performance of an inherently governmental function. (See worksheet B.) | | |
| | iii) The function is performed pursuant to a contract awarded on a non-competitive basis. | | |
| | iv) The contracting officer has determined that the contract has been performed poorly because of excessive costs or inferior quality. | | |
| 2 | Has the contract been accurately reported in the Contractor Manpower Reporting Application (https://cmra.army.mil/) pursuant to SecArmy policy? For new requirements, has the Contractor Manpower Reporting Application (CMRA) Requirement been included in the work statement? CMRA reporting pursuant to SecArmy policy is being used by Department of the Army to comply with most of the reporting required by the National Defense Authorization Act for FY2008, Section 807. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Has the contract requirement been documented on the TDA? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | Has a concept plan for the contract requirement been approved? | <input type="checkbox"/> | <input type="checkbox"/> |