
CONTROL OF PERSONAL SERVICES CONTRACTS
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CONTROL OF PERSONAL SERVICES CONTRACTS
General

1. GENERAL

1.1 Introduction. This supplement provides Bureau policy and guidelines concerning the provisions of personal services in the acquisition of services, special studies and analyses.

1.2 Background. "White collar" professional services typically require close and coordinated effort with Bureau personnel. This interaction increases the opportunity for inadvertently creating an improper personal services situation. The contract should be written in such a manner that the contractor or its employees are not employees of the Bureau. (See also 19 BIAM Supp. 8, Proposal Evaluation and Source Selection).

A. Personal services can occur either through the written terms of the contract or the manner in which the contract is administered. Personal services occur where the Bureau exercises such supervision or control over contractor employees (or, allows the contractor such discretion and authority to act for the Bureau) that they become, for all intents and purposes, employees of the Bureau. Care must also be taken both in the creation and in the administration of specific contracts for consulting and management services, and special studies and analyses so that personal services are avoided. (See also 19 BIAM Supp. 13, Use and Control of Consulting and Management Services and Studies).

B. The Contracting Officer must make a determination of personal vs. nonpersonal services for relevant purchase orders and contracts. This determination must be reviewed and approved at the next higher level than the Contracting Officer. A follow-up legal review in writing by the Solicitor (See 48 CFR Part 37 and 48 CFR 1437.104) is also required for contracts in excess of \$10 thousand. Illustration 1 provides the questionnaire format for the determination, review, and approval of personal vs. nonpersonal services. Illustration 1 shall be completed for each action requiring a determination of personal vs. nonpersonal services. The Acquisition Request (AR) initiator shall complete the questionnaire and submit it with the AR package through the surname process to the Contracting Officer (and higher level review) and then to the Acquisition/Assistance Agreement Review Committee (ARC). The determination of personal vs. nonpersonal services is based on the completed questionnaire and the Statement of Work (SOW), and made before issuance of the solicitation, thus ensuring that the written terms of the eventual contract call for a proper nonpersonal services effort.

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C. In order to facilitate the determination of personal vs. nonpersonal services and to avoid problems during contract performance, the SOW relating to a support services requirement must provide, in detail, all of the reference specifications or instructions that the contractor needs to understand and complete the contract. The SOW tasks must clearly reflect the appropriate relationship between the contractor and the Bureau during contract performance; identify the deliverables and a schedule that will signal contract completion; and provide for contractor performance free of Bureau supervision.

CONTROL OF PERSONAL SERVICES CONTRACTS
Policy

2. POLICY

2.1 General. Senior line executives and Contracting Officers should provide orientation on an annual basis to all Bureau personnel involved with the initiation or administration of services, special studies and analyses contracts in order to minimize problems relative to personal services.

2.2 Applicability. Furnishing of office space to employees of contractors is contrary to Bureau policy and requires advance written approval of the Deputy Assistant Secretary - Indian Affairs (Operations) or Area Office Director of the field activity, as applicable. Requests for approval shall be submitted by memorandum and a copy of the approved request must be made a part of the AR package. Requests shall address the following:

A. Justification for providing space. The reason must be compelling and documented.

B. The conditions under which the space will be provided must be specified.

C. Space must be segregated, i.e., totally dedicated to contractor employees with no Bureau personnel collocated. Requests will document how this will be accomplished. If it is necessary to collocate Bureau and contractor employees, the request must describe the administrative procedures that will be employed to avoid the development of personal services situations.

D. Furnishing articles of ordinary Government property to contractors (such as office equipment, typing paper, telephone lines) is unnecessary and may suggest that the Bureau is treating the contractor's employees as Bureau employees. Such requirements must be fully described and justified in the approval request.

U.S. Department of the Interior
Bureau of Indian Affairs

FORMAT FOR PERSONAL
SERVICES CONTRACTS QUESTIONNAIRE

Instructions. The following questions are to be answered by the person initiating the Acquisition Request (AR) for an acquisition that involves the possibility of personal services. The completed Questionnaire will be included as part of the AR, routed through the surname process, and will be used by the Contracting Officer in making a determination as to whether the services are nonpersonal. The Director, Office of Administration (Central Office) will then provide the next review and approval level, to be followed by a written legal review by the Solicitor for acquisitions in excess of \$10 thousand.

A. THE NATURE OF THE WORK.

(1) To what extent can the Bureau obtain Federal employees to do the job?

(2) Does the proposed contractor have specialized knowledge or equipment which is unavailable in the Bureau? If the answer is "yes", describe the specialized knowledge or equipment.

(3) To what extent do the proposed services represent the discharge of a governmental function which calls for the exercise or personal judgment and discretion on behalf of the Bureau?

(4) To what extent is the requirement for services to be performed under the proposed contract continuing rather than short-term or intermittent?

B. CONTRACTUAL PROVISIONS CONCERNING THE CONTRACTOR'S EMPLOYEES.

(1) To what extent does the Bureau specify the qualifications of, or reserve the right to approve, individual contractor employees? (Providing the necessary health qualifications is always permissible control over contractor employees; also, it is permissible to some extent to specify in the contract the technical and experience qualifications of contractor employees, if this is necessary to assure satisfactory performance.)

(2) To what extent does the Bureau reserve the right to assign tasks to and prepare work schedules for the contractor employees during the performance of the contract? (This does not preclude inclusion in the contract, at its inception, of work schedules for the contractor, or the establishment of a time or performance for orders issued under a requirements or other indefinite delivery-type contract.)

(3) To what extent does the Bureau retain the right (whether actually exercised or not) to supervise the work of the contractor employees, either directly or indirectly?

(4) To what extent does the Bureau reserve the right to supervise or control the method in which the contractor performs the service, the number of people she/he will employ, the specific duties of individual employees, and similar details. (It is always permissible to provide in the contract that the contractor's employees must comply with regulations for the protection of life and property; also, it is permissible to specify a recommended, or occasionally even a minimum, number of people the contractor must employ, if this is necessary to assure performance - but in that event it should be made clear in the contract that this does not in any way minimize the contractor's obligation to use as many employees as are necessary for proper contract performance.)

(5) To what extent will the Bureau review performance by each individual contractor employee, as opposed to reviewing a final product on an overall basis after completion of the work?

(6) To what extent does the Bureau retain the right to have contractor employees removed from the job for reasons other than misconduct or security?

C. OTHER PROVISIONS OF THE CONTRACT.

(1) Are the services properly defined as an end-product?

(2) Is the contractor undertaking a specific task or project that is definable either at the inception of the contract or at some point during the performance, or is the work defined on a day-to-day basis? (This does not preclude use of a requirements or other indefinite delivery-type contract, provided the nature of the work is specifically described in the contract, and orders are formally issued to the contractor rather than to individual employees.)

(3) Will payment be for results accomplished or solely according to time worked?

(4) To what extent is the Bureau to furnish the office or working space, facilities, equipment, and supplies necessary for contract performance?

D. ADMINISTRATION OF THE CONTRACT.

(1) To what extent are contractor employees used interchangeably with Bureau personnel to perform the same functions?

(2) To what extent are the contractor employees integrated into the Bureau's organizational structure?

(3) To what extent are any of the elements in (B) and (C) above present in the administration of the contract, regardless of whether they are provided for by the terms of the contract?

E. Prepared by: _____ (Name) Code _____ Date _____

F. "Pursuant to 19 BIAM Supplement 30, Part 1.2B on the basis of information contained above and a review of the reference AR, it is my determination that the services to be procured are (nonpersonal) (personal)."

Date: _____

/s/ Contracting Officer

G. "I (concur) (do not concur), and believe that the Contracting Officer judgment (may) (may not) reasonably be made under 19 BIAM Supplement 30, Part 1.2B."

Date: _____

/s/ Director, Office of Administration
(Central Office)

H. "I have provided a legal review of the proposed acquisition request prior to the issuance of a solicitation, in conformance with 48 CFR 1437.104. This review (does not support) (supports) the Determination and Findings of the Contracting Officer and the concurrence of the Director, Office of Administration. It is my opinion that the proposed acquisition will procure (personal) (nonpersonal) services."

Date: _____

/s/ Solicitor