PART 637—SERVICE CONTRACTING

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

Source: 53 FR 26176, July 11, 1988, unless otherwise noted.

Subpart 637.1—Service Contracts—General

637.102 Policy.

637.102-70 Special requirements for the acquisition of local guard services overseas.

637.102-71 Safety considerations.

637.103 Contracting officer responsibility.

637.104 Personal services contracts.

637.104-70 DOS authorities for personal services contracts.

637.104-71 Personal services agreements.

637.110 Solicitation provisions and contract clauses.

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

Subpart 637.6—Performance-Based Contracting

637.601 General.

Parent topic: SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Subpart 637.1—Service Contracts—General

637.102 Policy.

(c) Any Acquisition Plan or procurement request package for services expected to exceed $25,000 shall include a Form DS–4208 completed by the requiring activity. Instructions for completing the DS–4208 may be found at *http://aopepd.a.state.gov/Content/documents/DS-4208-Instructions.docx*.

637.102-70 Special requirements for the acquisition of local guard services overseas.

(a) *Policy.* Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864) encourages the participation of United States persons and qualified United States joint venture persons in local guard contracts overseas under diplomatic security programs.

(b) *Evaluation preference.* For purposes of determining competitive status, proposals of United States persons and qualified United States joint venture persons shall receive a ten (10) percent price preference reduction.

637.102-71 Safety considerations.

When contracting for services to be performed overseas, always consider 636.513(b) and FAR 36.513(b), and consult with technical representatives to determine whether special precautions are appropriate, such as when the services are for building operations, building maintenance or infrastructure repairs.

637.103 Contracting officer responsibility.

(a)(2) The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.103(a)(2).

(e) The Contracting Officer shall review the Forms DS–4208 submitted by requiring activities, not contract for inherently governmental functions and assist in implementation of mitigation strategies for efforts that are closely associated with inherently governmental functions. A copy of the DS–4208 shall be retained in the contract file.

637.104 Personal services contracts.

(e) The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 37.104(e).

637.104-70 DOS authorities for personal services contracts.

Pursuant to FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(a) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(b) For the Bureau of Population, Refugees, and Migration, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(c) For the Bureau for International Narcotics and Law Enforcement Affairs, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(d) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(e) For the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(f) For the Bureau of Overseas Buildings Operations, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296);

(g) For the U.S. Mission to the United Nations, section 7 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287e);

(h) For the Bureau of International Organization Affairs, the separate State Department appropriations acts; and

(i) For the Bureau of Diplomatic Security, section 206 of Public Law 99–399, as amended by the Emergency Supplemental Appropriations Act of 1998.

637.104-71 Personal services agreements.

(a) *Applicability.* This section applies only to personal services agreements (PSAs) awarded under the authority of 22 U.S.C. 2669(c).

(b) *Definition.* "Personal Services Agreement (PSA)" is a method of employment using the statutory authority under 22 U.S.C. 2669(c). The Procurement Executive has delegated program management responsibility for PSAs awarded under the Department of State basic authority at 22 U.S.C. 2669(c). When applied to U.S. citizens hired under this authority, the term "PSA Plus" is normally used.

(c) *Policy.* DOS contracting officers at overseas posts should not award any personal services contracts that are subject to acquisition statutes and regulations.

(d) *Authority.*

(1) The Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, amended section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)) by revising the Department's authority. This language states: "and such contracts are authorized to be negotiated, the terms of the contracts to be prescribed, and the work to be performed, where necessary, without regard to such statutory provisions as relative to the negotiation, making, and performance of contracts and performance of work in the United States."

(2) This authority was further amended under the National Defense Authorization Act for Fiscal Year 2002 which added subsection (n) to 22 U.S.C. 2669. This language states "exercise the authority provided in section (c), upon the request of the Secretary of Defense or the head of any other department or agency of the United States, to enter into personal services contracts with individuals to perform services in support of the Department of Defense or such other department or agency, as the case may be." This authority allowed the use of 22 U.S.C. 2669(c) by all other agencies, provided they meet certain criteria and agree to follow certain guidelines laid out in a Memorandum of Agreement (MOA). That MOA is not signed at the post level, but by a senior official at the Department of State and the other agency. Without the MOA in place, other agencies may not use this basic authority. HR/OE has responsibility for implementation of the authority that came with this legislative change. The HR/OE Web site includes the latest listing of agencies that have signed the MOA and can use this authority.

(3) This statutory language has continuing effect and provides authority to the Department of State, and now other agencies, if they so agree, to obtain personal services without adherence to acquisition statutes. In furtherance of the authority provided by the statute, the Procurement Executive has waived the applicability of acquisition regulations when obtaining personal services under the authority of 22 U.S.C. 2669(c). As a result, it is not necessary for the individual executing a PSA under the authority of 22 U.S.C. 2669(c) to have a contracting officer's certificate of appointment required under FAR 1.603 and 601.603 (see 601.603–3(d)).

(e) *Signatory authority.* Only direct hire U.S. citizens may sign PSAs. Provided the individual meets that criterion, individuals who may sign PSAs are limited to the following:

(1) The Human Resources Officer;

(2) The Human Resources/Financial Management Officer; or,

(3) The Management Officer or American FSO designated to perform human resources functions (e.g., GSO, RSO, etc.).

637.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 652.237–70, Compensatory Time Off, in personal services contracts awarded in support of International Narcotics Control programs overseas, if the contracting officer determines its use appropriate.

(b) The contracting officer shall insert a clause substantially the same as the clause at 652.237–72, Observance of Legal Holidays and Administrative Leave, in all solicitations and contracts where contractor personnel will be working on-site in any Department of State facility. Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

(c) The contracting officer shall insert the provision at 652.237–73, Statement of Qualifications for Preference as a U.S. Person, in all overseas local guard solicitations.

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

Subpart 637.6—Performance-Based Contracting

637.601 General.

It is the Department's policy that all new service contracts be performance-based, with clearly defined deliverables and performance standards. Any deviations from this policy shall be fully justified in writing and approved by the Departmental Advocate for Competition.