

General Services Administration
Washington, DC 20405

ADM 2800.12B, Change 129
June 24, 2021

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAM Case 2021-G513, Personal Services Contracts

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM) to provide additional guidance regarding personal services contracts, to clarify limitations and identify best practices to avoid inappropriate actual or perceived relationships.
2. Background. Authority to contract for personal services is extremely limited. While FAR 37.104 contains guidance, the Senior Procurement Executive has found that further elaboration would be helpful to the GSA Acquisition Workforce.

In addition, two separate GSA Office of Inspector General (OIG) audits¹ included findings related to personal services. GSA staff were found to be approving timecards for contractors, instructing contractors to perform work outside of their schedule, and identified implication of contractors performing work that is on the line of inherently governmental services.

GSA has very limited authority to contract for personal services² Because the issues are highly technical, close coordination with Counsel is required.

The more common concern is ensuring that contracting officers and contracting officer representatives recognize personal services and know how to avoid contracting for them. For that reason, the Federal Acquisition Institute has created a class, Managing the Government Contractor Relationship Recognizing and Avoiding Personal Service Contracts, to reduce the risks that personal services place on both parties to the contract. Personal services can have implications for employment law, tax law, and inherently governmental services relevant to the parties.

¹ General Service Administration Office of Inspector General Report, A160134/P/2/R19001; <https://www.gsaig.gov/content/audit-public-buildings-services-use-contract-employees-new-england-and-northeast-and> dated 12/12/2018.

² 40 U.S.C. 321(c)(1)(A)(iii) outlines GSA's authority to contract for certain information technology (IT) requirements

This policy, with the class, provides acquisition professionals the tools to either avoid or advocate against a service contract turning into a personal service contract.

3. Effective date. June 24, 2021.
4. Explanation of changes. This amendment includes non-regulatory GSAM changes to subpart 537.1. For full text changes of the amendment see Attachment A, GSAM Text Line-In/Line-Out.

The following is a summary of the non-regulatory changes:

- Incorporates reference to 537.104 Personal Services Contracts within section 507.503(b)(1) Acquisition Planning to ensure it's considered in this phase of the acquisition life cycle.
 - Adds section 537.104 Personal Services Contracts, to include general information for acquisition professionals to avoid or mitigate personal services, and exceptions for personal service contracts.
 - Adds section 537.504 Contracting Official's Responsibilities, to incorporate language identifying best practices on how to avoid prohibited personal service contracts.
5. Cancellations. Not applicable.
 6. Point of contact. For clarification of content, contact Adina Torberntsson, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov.

Jeffrey Koses
Senior Procurement Executive
Office of Acquisition Policy
Office of Government-wide Policy

GSAM Text, Line-In/Line-Out

GSAM Baseline: Change 128 effective 06-22-2021

- Additions to baseline made by rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by rule are indicated by ~~strikerthroughs~~
- Five asterisks (* * * * *) indicate that there are no revisions between the preceding and following sections
- Three asterisks (* * *) indicate that there are no revisions between the material shown within a subsection

Part 507—Acquisition Planning

Subpart 507.5 Inherently Governmental Functions

507.503 Policy

* * *

(b) The requirements office must also review the examples of functions listed under FAR 7.503(d). While these functions are not inherently governmental, they may restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using the contractor services or work products. If the services to be acquired may cause such restrictions, the acquisition plan must discuss the associated vulnerabilities, and address management controls to mitigate them.

(1) These measures may include requiring special controls and safeguards to prevent improper personal services relationships, contractor personnel access to privileged or sensitive information, and/or confusion regarding the mistaking of contractor employees for Federal employees. **[For additional guidance see 537.104 Personal Service Contracts.]**

* * * * *

Part 537—Service Contracting

Subpart 537.1 Service Contracts—General

* * * * *

[537.104 Personal Services Contracts.

(a) **General.** GSA is generally not authorized to award personal service contracts. Personal services contracts are often triggered by perception, in particular when it is hard to differentiate between contractor employees and Federal employees. GSA contracting activities should avoid engaging in personal services contracts as described in FAR 37.104, unless excepted (see paragraph (b)), and work to establish and administer contracts such that the risk of the appearance of personal service contracts is mitigated and documented in the file. For more information on how to administer service contracts and avoid inappropriate personal service contract perception, see 537.504.

(b) **Exceptions.** There are limited exceptions in which GSA may actively engage in personal service type contracts:

(1) A contracting officer may enter into a personal services contract if the acquisition is being conducted on behalf of another agency who has statutory authority to enter into personal service contracts specific to that acquisition. The contracting officer must obtain the written concurrence of the Office of Legal Counsel and the Contracting Directors prior to issuing a solicitation.

(2) A contracting officer may enter into a personal services contract for GSA use only after obtaining the written concurrence of the Office of Legal Counsel and of the Contracting Director. See FAR 37.104(e) and GSA Order ADM 5000.4B November 14, 2014.

(3) GSA has authority to enter into contracts for personal services for Information Technology, per 40 USC 321(c)(1)(A)(iii), only when the contract is less than one year in duration, after meeting the requirements above.

(c) **Delegating Responsibilities.** Contracting officers must ensure any contracting officer's representative (COR) delegation letter includes language regarding personal service contract responsibilities. Standard delegation language can be found on GSA's Acquisition Portal at <https://insite.gsa.gov/acquisitionportal>.

* * * * *

[Subpart 537.5 Management Oversight of Service Contracts

537.504 Contracting officials' responsibilities.

Below is a non-exhaustive list of techniques the acquisition team can use to effectively manage and oversee service contracts, while avoiding the appearance of prohibited personal service contracts described in FAR 37.104(d)-

- (a) **Identification.** Have contractor staff clearly identify themselves as contractors in both email signature lines and identity badges.
- (b) **Communication of roles and responsibilities.** During the contract kickoff meeting let the contractor and their personnel know how work assignments will be communicated and who should be included in the communication.
- (c) **Clear terms and conditions.** Clearly define performance roles, expectations, and deliverables in the terms and conditions of the contract. Have terms and conditions specify that the contractor supervise their staff onsite when feasible.
- (d) **Contract type.** Firm fixed price (FFP) contract type is preferable for work performed that could have the appearance of personal services, since other contract types require more Government oversight which could lead to the appearance of personal services; however all contract types are susceptible to perceptions that can prompt personal services.
- (e) **Limit who can assign work.** Contractor assignments should be communicated by the contracting officer, or COR, directly to one representative for the contractor (such as a contractor's team lead or program manager).
- (f) **Avoid ad hoc work assignments.** Avoid ad hoc work assignments which can create a personal services relationship, and may also cause "scope creep" to the contract, which places the Government at risk of a future claim.
- (g) **Do not provide managerial or administrative support to contractors.** To avoid the appearance of personal services, do not approve contractor staff's performance plans or leave.
- (h) **Computer system access.** Avoid personal services by limiting the electronic systems, and roles within systems, that contractors may have access to (e.g., do not provide approval access in any system

in which there may be an obligation of funds, such as a contract writing system).]

*** * * * ***