ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 04-28-2017 BY C28W34B64 NSICG

UNCLASSIFIED

FEDERAL BUREAU OF INVESTIGATION

POLICY DIRECTIVE

0957D

1. Policy Directive Title.	Personal Services Contracts
2. Publication Date.	2017-02-27
3. Effective Date.	2017-02-27
4. Review Date.	2020-02-27

5. Date of Last Renewal.
N/A

6. Authorities:

6.1. Federal Acquisition Regulation (FAR), Title 48 Code of Federal Regulations (CFR) Sections (§§) 2.101, Definitions; § 37.104, Personal Services Contracts; and Subpart 7.5, Inherently Governmental Functions

6.2. Title 50 United States Code (U.S.C.) § 3072, Authority of Federal Bureau of Investigation to Award Personal Services Contracts

6.3. Internal Revenue Service (IRS) Regulation, 26 CFR § 31.3121(d)-1(c)(2)

7. Purpose:

This document establishes policy and procedures for requesting, issuing, and administering personal services contracts (PSCs) in the Federal Bureau of Investigation (FBI).

8. Policy Statement:

8.1. A PSC may be executed only for services that directly support the intelligence or counterintelligence mission of the FBI, although PSCs do not necessarily have to work within the Directorate of Intelligence or Counterintelligence Division.

8.2. PSCs should be established for a period not to exceed two years and include a base period up to one year and up to one year in renewal options.

8.2.1. If duties, responsibilities, and tasks assigned to a personal services contractor have not been completed during the first year of the contract, and continuation of the services will be required during an option period, written justification in the form of an electronic communication (EC) must be submitted to the contracting officer (CO) a minimum of 60 workdays before the beginning of the option period and approved by the appropriate division head and executive assistant director (EAD) a minimum of 60 workdays before the beginning of the option period.

8.2.2. Options under any existing PSC that do not meet the requirements contained herein may not be exercised, and a new contract must be issued. Such contracts must be submitted to the CO a minimum of 90 workdays before the current contract expiration date.

8.2.3. Existing PSCs that have reached the two-year term maximum require a request for exemption if continuation of services is required.

8.2.4. Any time served under a PSC must not be creditable towards the length of service computation regarding a federal retirement annuity under either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS).

8.3. Compensation for personal services contractors must be made on a labor-hour basis with no allowance for paid vacation, federal holidays, or other leave.

8.4. PSCs should allow for travel only if it directly supports the intelligence or counterintelligence mission of the FBI. Reimbursement must not exceed that permitted under the Federal Travel Regulations (FTR) for official travel by an FBI employee under similar circumstances and may not exceed the amount set forth in the contract without advance written CO approval. Travel will not be authorized for commuting purposes.

8.5. Personal services contractors are considered to be employees of the FBI for the purposes of income tax withholding and the Federal Insurance Contribution Act (i.e., Social Security and Medicare). Therefore, federal and state income taxes must be withheld from the compensation of each personal services contractor.

8.6. Personal services contractors may perform duties closely associated with inherently governmental functions, but they may not perform inherently governmental functions, which are reserved for government employees.

8.7. Each division using a PSC must pay the FBI's share of Social Security, Medicare, and imputed costs associated with processing and administering the personal services contractor payments. This amount must be included as a separate line item on requisitions.

8.8. For government ethics purposes, persons employed under personal service contracts, as defined in this policy, are to be treated as federal employees in the application of government ethics laws, including 18 U.S.C. §§ 201-209 and all regulations promulgated by the Office of Government Ethics (OGE) regarding the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635).

9. Scope:

This directive is applicable to all FBI divisions and field offices.

10. Proponent:

Finance Division

11. Roles and Responsibilities:

11.1. The Deputy Director (DD) must review any request to extend a PSC beyond a two-year period.

11.2. The associate deputy director (ADD) must review any PSC request to hire former FBI employees if there is negative employment information (e.g., poor performance ratings, disciplinary information, an Office of Professional Responsibility [OPR] inquiry, or any other notation or indication of possible misconduct) about these former employees.

11.3. The Office of the General Counsel (OGC), Fiscal and Contract Law Unit (FCLU) must review all PSC ECs and analyze the role proposed for the PSC to determine whether the PSC will be supporting "intelligence and counterintelligence activities as required by statute."

11.4. By December 31 each year, FD will provide a listing of all active PSCs under a respective EAD's span of control.

11.5. EADs must:

11.5.1. Confirm to FD, within 30 days of receipt, that all PSCs under their control continue to be necessary to achieve the mission objectives.

11.5.2. Approve any ECs requesting a new PSC under their span of control.

11.6. The requesting division must:

11.6.1. Submit an EC to the FD assistant director (AD) and the section chief (SC) of the Procurement Section (PS) that has been signed by the EAD or designee (or signed by the division head in instances in which there is no EAD) and includes the following information:

11.6.1.1. A certification that services will directly support the intelligence or counterintelligence mission of the FBI and that no FBI employee is capable of performing or available to perform the function

11.6.1.2. The unique skills or qualifications necessary to perform the job

11.6.1.3. The duties, responsibilities, and specific tasks that the personal services contractor will perform

11.6.1.4. A plan to train or hire an FBI employee to perform the job and transition the work to that individual during the PSC period of performance (POP) or option period

11.6.1.5. Requested PSC start date, which may not be earlier than 60 workdays from EC upload

11.6.1.6. An estimate of the total travel costs during the POP of the PSC and a justification for the travel

11.6.1.7. The results of the personnel information review of the proposed former FBI employee and a copy of the ADD's approval if negative personnel information is located

11.6.1.8. The personal services contractor's Data Universal Number System (DUNS) number and confirmation that he or she is registered as a sole proprietor in the System for Award Management.

11.6.2. Identify funding for the estimated yearly labor and travel costs (if authorized), plus an additional 10.65 percent of the estimated gross calendar year labor cost to cover taxes and imputed costs. Each of the three cost categories should be listed as a separate line item on the requisition.

11.6.3. Retain and provide to PS, FD the following information by the 10th business day in October of each year for statutory reporting to Congress:

11.6.3.1. The number of PSCs entered into during the previous fiscal year (FY)

11.6.3.2. The amount expensed (outlayed) for compensation and travel for each such PSC for the previous FY, reported as separate line items for labor and travel (if authorized)

11.6.3.3. The POP of each such PSC and the date of award or option exercised

11.6.3.4. The number of PSC options entered into during the previous FY and the length if less than one year

11.6.3.5. The types of services provided by each PSC

11.6.3.6. The availability of government personnel to perform functions similar to the services provided by each PSC

11.6.3.7. The current and previously made efforts to fill personnel vacancies or request additional personnel positions in areas relating to the intelligence or counterintelligence mission of the FBI

11.7. The requesting division's chief security officer (CSO) must:

11.7.1. Initiate actions to comply with all security-related requirements for PSC requests.

11.7.2. Review all PSC ECs generated by his or her division.

11.7.3. Provide an EC to PS, FD upon successful completion of a contractor's security clearance.

11.8. The requesting division's budget officer (BO) or financial manager (FM) must verify funds availability for each PSC by submitting a requisition to the CO, including 10.65 percent of estimated gross wages for Social Security, Medicare, and imputed costs.

11.9. The FD AD, or his or her designee, must review all PSC requests.

11.10. PS, FD must:

11.10.1. Review each PSC EC request to ensure that all required documentation has been provided.

11.10.2. Recommend approval or disapproval of each PSC to the FD AD or his or her designee and return any denied requests to the requesting division.

11.10.3. Prepare and issue the PSC, which should include the following:

11.10.3.1. A statement that "Personal services contractors are considered to be employees of the FBI for purposes of income tax withholding and the Federal Insurance Contribution Act (Social Security and Medicare)."

11.10.3.2. A statement that "For government ethics purposes, persons employed under personal service contracts, as defined in Policy Directive 0957D, *Personal Services Contracts,* are to be treated as federal employees when applying government ethics laws, including 18 U.S.C. §§ 201-209 and all regulations promulgated by the OGE regarding the Standards of Ethical Conduct for Employees of the

Executive Branch (5 CFR Part 2635)."

11.10.3.3. Travel (if authorized) shown as a separate line item in the contract and a statement that authorized travel may not be exceeded without prior written approval from the CO.

11.10.3.4. A requirement that PSC invoices break out the labor and any authorized travel as separate invoices, and that failure to do so will result in rejection of the invoice as improper.

11.10.4. Send completed tax withholding forms to the Commercial Payments and Confidential Services Unit (CPCSU), Accounting Section (AS), FD prior to the first invoice being submitted.

11.10.5. Collect and verify the information set forth in subsection 11.6.3., as well as the FBI's share of Social Security and Medicare, and prepare a report each October for the Director of the FBI to submit to Congress.

11.10.6. Provide federal and state tax withholding forms to each personal services contractor upon award.

11.10.7. Participate in all labor rate negotiations.

11.11. CPCSU, AS, FD must:

11.11.1. Remit withheld personal services contractor income taxes to the IRS and appropriate state tax offices.

11.11.2. Issue all personal services contractors a W-2 form each calendar year.

12. Exemptions:

If the extension of a PSC beyond the allowed two-year period is critical to a mission requirement, the division must submit an EC requesting an extension through the FD AD and the ADD that addresses all items and approvals as set forth above. Final approval will require review by the DD.

13. Supersession:

None

14. References, Links, and Forms:

DUNS numbers: www.dnb.com/US/duns_update/

15. Key Words, Definitions, and Acronyms:

15.1. Definitions:

15.1.1. Data Universal Number System number: a unique, nine-digit number assigned to each physical location of a business. A DUNS number is required for registration in the System for Award Management.

15.1.2. Personal services contract: a contract that, by its express terms or as administered, makes contractor personnel appear to be, in effect, government employees and is characterized by the employer-employee relationship it creates between the government and the contractor personnel. (See FAR, 48 CFR § 37.104, Personal Services Contracts, for additional guidance.)

15.1.3. Inherently governmental function: a function that is so intimately related to the public interest as to mandate performance only by government employees. (See FAR, 48 CFR § 2.101, Definitions, and Subpart 7.5, Inherently Governmental Functions, for additional guidance.)

15.2. Acronyms

15.2.1. AD: assistant director

15.2.2. ADD: associate deputy director

15.2.3. AS: Accounting Section

15.2.4. BO: budget officer

15.2.5. BS: Budget Section

15.2.6. CFR: Code of Federal Regulations

15.2.7. CO: contracting officer

15.2.8. CPCSU: Commercial Payments and Confidential Services Unit

15.2.9. CSO: chief security officer

15.2.10. CSRS: Civil Service Retirement System

15.2.11. DD: Deputy Director

15.2.12. DUNS: Data Universal Number System

15.2.13. EAD: executive assistant director

15.2.14. EC: electronic communication

15.2.15. FAR: Federal Acquisition Regulation

15.2.16. FBI: Federal Bureau of Investigation

15.2.17. FCLU: Fiscal and Contract Law Unit

15.2.18. FD: Facilities and Logistics Services Division and Finance Division

15.2.19. FERS: Federal Employees Retirement System

15.2.20. FM: financial manager

15.2.21. FTR: Federal Travel Regulations

15.2.22. FY: fiscal year

15.2.23. GS: general service

15.2.24. IRS: Internal Revenue Service

15.2.25. OGC: Office of the General Counsel

15.2.26. OGE: Office of Government Ethics

15.2.27. OPR: Office of Professional Responsibility

15.2.28. POP: period of performance

15.2.29. PS: Procurement Section

15.2.30. PSC: personal services contract

15.2.31. SC: section chief

15.2.32. U.S.C.: United States Code

16. Appendices and Attachments:

None

Sponsoring Executive Approval	
Name:	Richard Lee Haley, II
Title:	Assistant Director Finance Division
Final Approval	
Name:	David L. Bowdich
Title:	Associate Deputy Director

UNCLASSIFIED