

# Part 537 - Service Contracting

## Subpart 537.1 - Service Contracts—General

537.101 Definitions.

537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.

537.104 Personal Services Contracts.

537.106 Funding and term of service contracts.

537.110 Contract clauses.

## Subpart 537.2 - Advisory and Assistance Services

537.201 Definitions.

537.204 Guidelines for determining availability of personnel.

537.270 Contract clause.

## Subpart 537.5 - Management Oversight of Service Contracts

537.504 Contracting officials' responsibilities.

## Subpart 537.6 - Performance-based Acquisition

537.601 General.

## Subpart 537.70 - Unmanned Aircraft Systems (UAS) Services

537.7001 Definitions.

537.7002 Policy.

537.7003 General.

**Parent topic:** General Services Administration Acquisition Manual

## **Subpart 537.1 - Service Contracts—General**

### **537.101 Definitions.**

“Contracts for building services” means contracts for services relating to the operation and maintenance of a building (e.g., janitorial, window washing, snow removal, trash removal, lawn and grounds care), inspection, maintenance, repair or replacement of building systems or equipment (e.g., elevators, air-conditioning, heating systems, and protection or guard service).

## **537.102-70 Application of performance-based acquisition (PBA) policy for leases and leasehold interests in real property.**

GSA contracting activities are not required to use PBA methods for leases and leasehold interests in real property. However, contracting activities are not precluded from using PBA methods when contracting for leases or leasehold interests in real property if using PBA best meets the Government's needs.

## **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 5000.4, Office of General Counsel Legal Review.

(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>.

## **537.106 Funding and term of service contracts.**

517.101 identifies GSA-specific statutory authority for multiyear contracts for certain services.

## **537.110 Contract clauses.**

(a) *Contracts for building services.* Except for solicitations and contracts for building services placed under FAR subpart 8.7, insert the clause at 552.237-71, Qualifications of Employees, in solicitations

and contracts for building services that are anticipated to exceed the simplified acquisition threshold.

(b) *Contracts for guard services.* Insert the clause at [552.237-72](#), Prohibition Regarding “Quasi-Military Armed Forces,” in solicitations and contracts for guard services.

## **Subpart 537.2 - Advisory and Assistance Services**

### **537.201 Definitions.**

As used in this subpart—

*Evaluation or analysis of a proposal* means proposal evaluation as described in FAR 15.305. It includes: Cost or price evaluation using cost or price analysis, as defined in FAR 15.404.

*Proposal* means a proposal submitted for an initial contract award. (See FAR 37.203(d)). It does not include proposals submitted after contract award, such as value engineering proposals, proposals related to contract modifications, claims, or other contract administration actions.

*Readily available* means that employees with the requisite training and capability are employed by the agency, capable of handling additional work relating to other duties as assigned by management, and that the travel and other costs associated with using covered personnel does not exceed the projected cost of a contract for evaluation and analysis services.

*Requisite training and capability* means training and capability necessary to successfully perform the task or contract at issue in the time and in the manner required. It may include relevant experience, recent performance of work of similar size and scope, specific training and other factors that the contracting officer determines are necessary to the successful performance of the task or contract at issue.

### **537.204 Guidelines for determining availability of personnel.**

(a) *Authority.* The contracting officer is authorized to make the determinations required by FAR 37.204 unless the HCA designates another agency official.

(b) *Policy.* The contracting officer, or the HCA’s designee, must make the determination whether GSA personnel with the requisite training and capabilities are readily available to perform the evaluation or analysis before issuing a solicitation which includes evaluation and analysis services (see FAR 37.205).

(c) *Identifying qualified personnel.* The contracting officer, or the HCA’s designee, must base the determination on information received in response to a survey conducted as follows:

(1) If the estimated cost of evaluation and analysis services to be obtained under a contract or order is less than the micropurchase threshold, the administrative cost and time associated with conducting the search and other costs, such as travel, will likely exceed the cost of providing the services under the contract or order. In this case, the survey need only include the appropriate Assistant Commissioner, Assistant Regional Administrator, or designee within the contracting

organization at the location where the services are to be performed.

(2) If the estimated cost of the evaluation and analysis services to be obtained under a contract or order is expected to exceed the micropurchase threshold, the survey must include all of the following:

(i) The appropriate Assistant Commissioner, Assistant Regional Administrator, or designee at the location where the services are to be performed, and managers within other GSA Regions and Central Office of the contracting organization.

(ii) Other Federal agencies that are reasonably expected to have covered personnel with the requisite training and capability at the location where the services are to be performed.

(d) *Decisions on availability of personnel.* The contracting officer, or the HCA's designee, should request that decisions on availability be made by a management official at a level higher than the employee's immediate supervisor.

(e) *Documentation.* The determination required by FAR 37.204 may be incorporated in the acquisition plan or made a part of another document prepared in the normal course of a procurement action. The file should, at a minimum, describe:

(1) *Who was surveyed and a summary of the responses received;*

(2) *The circumstances requiring the use of outside evaluators;*

(3) *Actions GSA will take to avoid organizational or other conflicts of interest under FAR 9.5; and*

(4) *The competitive relationship between prospective offerors, including proposed subcontractors, and the prospective evaluator(s).*

(f) *Indefinite delivery contracts for evaluation and analysis services.* You may issue an indefinite delivery contract for evaluation and analysis services if there is a reasonable expectation that there will be occasions when personnel with the requisite training and capabilities will not be readily available to perform the evaluation and analysis services covered by the contract.

(1) Before issuing a solicitation for an indefinite delivery contract, the appropriate agency official should first assess the ability of the Federal Supply Schedule Program to support the need and consider manpower and workload projections over the proposed contract period. This should help avoid unnecessarily incurring the cost of soliciting offers and awarding a contract. Document the acquisition file accordingly.

(2) The appropriate agency official should establish procedures for making determinations regarding particular evaluations before orders are placed under the contract.

### **537.270 Contract clause.**

Insert the clause at 552.237-73, Restriction on Disclosure of Information, in solicitations and contracts for proposal evaluation and analysis services.

## **Subpart 537.5 - Management Oversight of Service Contracts**

### **537.504 Contracting officials' responsibilities.**

(a) 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)—

- (1) Identification. Have contractor staff clearly identify themselves as contractors in both email signature lines and identity badges.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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).
- (6) 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.
- (7) 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.
- (8) 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).

## **Subpart 537.6 - Performance-based Acquisition**

### **537.601 General.**

Contracting Officers are encouraged to use the Steps to Performance-Based Acquisition (SPBA) available at <https://buy.gsa.gov/spba>.

# **Subpart 537.70 - Unmanned Aircraft Systems (UAS) Services**

## **537.7001 Definitions.**

As used in this subpart—

"Adversary country", as defined in Executive Order 13981, means the Democratic People's Republic of Korea, the Islamic Republic of Iran, the People's Republic of China, the Russian Federation, or, as determined by the Secretary of Commerce, any other foreign nation, foreign area, or foreign non-government entity engaging in long-term patterns or serious instances of conduct significantly adverse to the national or economic security of the United States.

"Drones", terminology commonly used to refer to unmanned aircraft, unmanned aircraft system, or covered unmanned aircraft system—

(a) "Unmanned Aircraft", as defined in 14 CFR Part 1, means an aircraft operated without the possibility of direct human intervention from within or on the aircraft. Unmanned Aircraft is synonymous with UAS.

(b) "Unmanned Aircraft System", as defined in 14 CFR Part 1, means an unmanned aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the airspace of the United States. UAS is commonly referred to as "drones".

(c) "Covered Unmanned Aircraft System (UAS)", as defined in Executive Order 13981, means any UAS that:

(1) is manufactured, in whole or in part, by an entity domiciled in an adversary country;

(2) uses critical electronic components installed in flight controllers, ground control system processors, radios, digital transmission devices, cameras, or gimbals manufactured, in whole or in part, in an adversary country;

(3) uses operating software (including cell phone or tablet applications, but not cell phone or tablet operating systems) developed, in whole or in part, by an entity domiciled in an adversary country;

(4) uses network connectivity or data storage located outside the United States, or administered by any entity domiciled in an adversary country; or

(5) contains hardware and software components used for transmitting photographs, videos, location information, flight paths, or any other data collected by the UAS manufactured by an entity domiciled in an adversary country.

## **537.7002 Policy.**

(a) Executive Order (E.O.) 13981, "Protecting the United States From Certain Unmanned Aircraft Systems", states that it is the policy of the United States to prevent the use of taxpayer dollars to procure UAS that present unacceptable risks and are manufactured by, or contain software or critical electronic components from, foreign adversaries.

(b)GSA Information Technology (IT) Security Procedural Guide CIO-IT Security-20-104, "Drones/Unmanned Aircraft Systems (UAS) Security" outlines the process for ensuring UAS security at GSA. The Chief Information Office (CIO) policies are available at <https://insite.gsa.gov>.

(c)GSA Order OAS 5615.1, "GSA Unmanned Aircraft Systems (UAS) Policy" describes the policy for GSA's ownership and use of UAS. GSA Orders are available at <https://gsa.gov/directives-library>.

### **537.7003 General.**

(a) *GSA employee use of UAS.* GSA is prohibited from owning and procuring UAS (commonly referred to as "drones") for use by GSA employees.

(b) *GSA-funded acquisitions that use UAS.* GSA may contract for services that use ancillary UAS. For any contract, order, agreement, purchase card transaction, or purchasing mechanism used for GSA-funded acquisitions for services that use ancillary UAS services, the requirements office must.

(1)Specify in the contract language that:

UAS will not be owned or used exclusively by GSA; and,

(The contractor will comply with the requirements of all applicable FAA regulations including but not limited to 14 CFR Part 107 "Small Unmanned Aircraft Systems" (<https://www.ecfr.gov/current/title-14/chapter-I/subchapter-F/part-107>).

(2)Ensure that the UAS is not a covered UAS.

(3)Ensure all UAS are registered and authorized for use through the process detailed in the GSA Information Technology (IT) Security Procedural Guide CIO-IT Security-20-104, "Drones/Unmanned Aircraft Systems (UAS) Security".

UAS registered and authorized for use. UAS that is registered and authorized for use can be found at the GSA Enterprise Architecture Analytics and Reporting (GEAR) application (<https://ea.gsa.gov/>). Utilizing GEAR will ensure the procurement does not violate the prohibition at [537.7002\(a\)](#).

Request for new UAS. For new UAS not already registered and authorized for use in the GEAR application (<https://ea.gsa.gov/>), follow the instructions in the "GSA IT Security Procedural Guide CIO-IT Security-20-104, "Drones/Unmanned Aircraft Systems (UAS) Security".

(4)Review and incorporate the applicable sections, requirements, and best practices of "GSA IT Security Procedural Guide CIO-IT Security-20-104, "Drones/Unmanned Aircraft Systems (UAS) Security" in the statement of work or equivalent. This includes:

(i)UAS Operator Approval and Recertification;

(ii)Installation and use of UAS software and firmware;

(iii)Securing UAS operations;

(iv)UAS data storage and transfer; and,

(v)Approval of UAS platforms.

(5) Coordinate pre-award solicitations with [IS-Contracts-Review@gsa.gov](mailto:IS-Contracts-Review@gsa.gov) for GSA IT review and approval of the applicable sections, requirements, and best practices for the ancillary UAS services, see also [539.101\(b\)](#) for CIO coordination involving the acquisition of information technology.

(6) Review and incorporate the applicable sections and requirements of GSA Order OAS 5615.1, "Unmanned Aircraft Systems (UAS) Policy".

(c) *Assisted acquisitions that use UAS.* The requesting agency is responsible for ensuring that its UAS policy and operational guidance has been established and is followed. As the servicing agency, the GSA contracting officer should confirm the existence of the requesting agency's policy and operational guidance by documenting it in the interagency agreement or through a separate document included in the contract file.