

HOMELAND SECURITY ACQUISITION MANUAL

**DEPARTMENT OF HOMELAND SECURITY
REVISIONS TO HSAM CHAPTER 3037 - SERVICE CONTRACTING; AND
OTHER TECHNICAL CHANGES**

This HSAM Notice is being transmitted to all DHS Heads of Contracting Activities and Acquisition Leads. PLEASE DISSEMINATE TO WIDEST POSSIBLE AUDIENCE - ACQUISITION STAFF, FINANCIAL PERSONNEL, CUSTOMERS, PURCHASE CARDHOLDERS, ETC.

Introduction: This notice provides revisions to Homeland Security Acquisition Manual (HSAM) Subchapter 3037.104-70, Personal Services Contracts by incorporating and updating the policy presently established in Homeland Security Acquisition Regulation (HSAR) 3037.104-70(b)(i)(A) and (B). The information at HSAR 3037.104-70(b)(i)(A) and (B) will be eliminated in the HSAR Final Rule which is expected to be released soon. Therefore, please refer to the information provided in this HSAM change for guidance on Personal Services Contracting.

Additional technical changes made to Chapter 3001, Appendix A and Subchapter 3037.204 are described herein.

This notice is issued in accordance with HSAM 3001.301-70(a). The changes are integrated into the electronic HSAM version at www.dhs.gov and DHS Online. The HSAM changes are as follows:

CHAPTER 3001 - FEDERAL ACQUISITION REGULATIONS SYSTEM

(1) Chapter 3001, Appendix A, Heads of the Contracting Activity, is revised to read:

CBP	Executive Director Procurement
ICE	Director, Procurement Division
DHS OPO	Chief, Office of Procurement Operations
FEMA	Senior Procurement Executive
FLETC	Director, Procurement Division
TSA	Deputy Assistant Administrator for Acquisition

USCG	Deputy Assistant Commandant for Resources, Planning, and Procurement
USSS	Chief, Procurement Division

CHAPTER 3037 - SERVICE CONTRACTING

(2) Subchapter 3037.104 Personal services contracts is revised to read:

Subchapter 3037.104 Personal services contracts.

Subchapter 3037-104-70 Personal services contracts.

(b) The Department of Homeland Security was given the Personal Services Contracting (PSC) authority in the Homeland Security Act (HSA) Section 832 (1) and (2).

(1) The rate of pay for services rendered by an expert or consultant is governed by Management Directive (MD) Number 3010.2, Employment of Experts and Consultants. The pay cannot exceed the daily equivalent of the maximum rate payable for a senior-level position under 5 U.S.C. 3109 for PSCs authorized under the Homeland Security Act (HSA) Section 832(1). If the services are necessary due to urgent homeland security needs under HSA Section 832(2) and justified in a Determination and Findings (D&F), the pay limitations do not apply (See 5 U.S.C. 5376).

(2) The duration of the PSC must conform to one of the following scenarios:

(i) HSA Section 832(1): The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a possible reappointment (option) not to exceed 1 additional year; or, the duties are of an intermittent nature or a part-time nature and the total time will not exceed the 2 year limitation or the cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 U.S.C.3109 AND 5 U.S.C. 5376.

(ii) HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed 1 additional year and the pay limitations of section 3109 are waived.

(3) The following are requirements that must be satisfied to use the authority.

(i) Verify it would not be practicable to obtain such services by other means (See FAR 37.104 for the definition of a PSC).

(ii) Verify that the contract will not involve the following:

- (A) A position requiring Presidential appointment;
- (B) A Senior Executive Service Position;
- (C) Performance of managerial or supervisory work;
- (D) Work currently being performed by your regular employees;
- (E) Filling in for staffing shortages; and
- (F) Providing that individual a career appointment.

(iii) Prepare a determination and findings (D&F) in accordance with (FAR) 1.7 and include a determination that states the following:

- (A) The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a reappointment not to exceed 1 additional year. OR; The duties are of an intermittent nature or part-time nature and the total time will not exceed the 2 year limitation or the cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 U.S.C. 3109 and 5 U.S.C. 5376. OR HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed 1 additional year and the pay limitations of section 3109 are waived.
- (B) DHS personnel with necessary skills are not available;
- (C) The contract will not fill a staffing shortage;
- (D) Excepted appointment cannot be obtained;
- (F) A nonpersonal services contract is not practicable;
- (G) If the pay limitation of 5 U.S.C. 3109 is exceeded, the D&F supports the rationale and include the finding that the services are necessary due to urgent homeland security needs; and
- (H) Any other determination required by statues has been made.

(iv) Coordinate benefits, taxes, personnel ceilings, or conflict of interest matters with the cognizant civilian personnel office.

(4) Legal Review: Legal review is required for personal services contracts in accordance with FAR 37.104(e).

(5) Approval: The Chief of the Contracting Office (COCO) shall approve the required D&F unless the personal services contract for experts and consultant services are acquired without regard to the pay limitation of 5 U.S.C. 3109 in which case, the Head of the Contracting Activity (HCA) shall approve.

(6) Additional Considerations: The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(7) Reporting Requirements: In accordance with 5 U.S.C. 3109 and MD 3010.2, each agency shall report to the Office of Personnel Management on an annual basis with respect to:

(i) The number of days each expert or consultant employed by the agency during the period was so employed; and

(ii) The total amount paid by the agency to each expert and consultant for such work during the period.

(iii) In order to comply with this requirement, each OE shall maintain a record of the above information for inclusion in a consolidated agency report.

(3) Subchapter 3037.204 Guidelines for determining availability of personnel, is revised to read as follows:

Subchapter 3037.204 Guidelines for determining availability of personnel.

(a), (b) and (d) The COCO is delegated the authorities at (FAR) 48 CFR 37.204.

Additional Information:

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Attachment: None

Effective date: August 4, 2005

Signed by:

(signed)

Ashley J. Lewis
Director, Office of Acquisition Policy and Oversight