

**PART 23**  
**SERVICE CONTRACTS**

**Table of Contents**

23.1	SERVICE CONTRACTS.....	1
23.1.1	General Service Contract Policies.....	1
23.1.2	Personal Services.....	2
23.1.3	Consulting Services.....	2
23.1.4	Inherently Governmental Functions. ....	2
23.1.5	Safety Requirements.....	3
23.1.6	Clause Usage Prescriptions.....	4
23.2	USE OF PRIVATE-SECTOR TEMPORARY HELP SERVICE FIRMS.....	4
23.2.1	Definitions.....	4
23.2.2	Coverage.....	4
23.2.3	Conditions for Using Private-Sector Temporaries.....	4
23.2.4	Supervisory Relationships.....	5
23.2.5	Relationship to Civil Service Procedures.....	5
23.2.6	Requirements.....	6
23.3	UNAUTHORIZED USE OF COMPUTER SOFTWARE BY CONTRACTORS.....	6
23.3.1	Clause Usage Prescriptions.....	6
23.4	SCREENING CONTRACTOR PERSONNEL.....	6
23.4.1	Background Screenings.....	6
23.4.2	Pre-Registration of Foreign Nationals.....	7
23.4.3	Clause Usage Prescriptions.....	7
23.5	CONCESSION CONTRACTS.....	7
23.50	TEXT OF CLAUSES.....	8

**23.1 SERVICE CONTRACTS.**

**INFORMATION:** A service contract requires a contractor to furnish time and effort to perform an identifiable task, rather than to supply a product.

**23.1.1 General Service Contract Policies.**

(a) BPA shall not enter into or maintain any contractual arrangement which results in contractor performance of inherently Governmental functions. See 23.1.4.

(b) BPA shall not enter into or maintain a services contract if any of the following conditions apply:

- (1) The requesting organizational element has been staffed to provide the service;
- (2) The services required are readily and economically available within BPA or another Federal agency;
- (3) The contract would circumvent personnel laws;
- (4) The services are not essential to the effective execution of the program; or
- (5) If, for any other reason, it is not in the best interest of BPA to acquire the services by contract. Also, see 6.17 regarding contracts with current or former BPA and other federal employees.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

(c) The period of performance for support services contracts shall generally be limited to five years, including options. This period may be extended if the CO determines that it is necessary in a specific instance.

#### **23.1.2 Personal Services.**

(a) **POLICY:** Contracts which create personal services relationships are not permitted.

(b) **INFORMATION:** A personal services contract, in the BPA purchasing context, is characterized by the employer-employee relationship it creates between BPA and the contractor's personnel. BPA is normally required to obtain its employees by direct hire under the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws.

(c) **INFORMATION:** An employer-employee relationship under a services contract occurs when, as a result of the contract's terms or the manner of its administration during performance, contractor personnel are subject to relatively continuous supervision and control by a BPA employee or employees. Supervision consists of the day-to-day direction of the physical conduct of the details of performance of the job. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision that results in a personal services contract.

(d) **INFORMATION:** Each contract arrangement must be judged in the light of its own facts and circumstance, the key question being: Will BPA exercise relatively continuous supervision and control over the contractor personnel? The sporadic supervision of contractor employees would not be relevant, while relatively continuous BPA supervision of contractor employees would be.

#### **23.1.3 Consulting Services.**

(a) **INFORMATION:** Consulting services are purely advisory services of experts relating to administrative and program management activities of BPA.

(b) **POLICY:** BPA shall not contract for consulting services or other services of experts and consultants--

(1) To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of agency officials; or

(2) To aid specifically in influencing or enacting legislation.

(c) **POLICY:** The services of experts and consultants shall normally be obtained on an intermittent or temporary basis. Repeated or extended arrangements should not be entered into, except under extraordinary circumstances.

#### **23.1.4 Inherently Governmental Functions.**

(a) **INFORMATION:** An "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority, or the application of value judgments in making decisions for BPA. Inherently governmental functions involve the interpretation and execution of laws which: Bind BPA to take or not take some action by contract, policy, regulation, authorization, order, or otherwise; Exercise ultimate control over the acquisition, use, or disposition of the property of BPA, including the collection, control, or disbursement of funds. These functions normally fall into two categories: (1) The discretionary exercise of Government authority, and (2) Monetary

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

transactions and entitlements. Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to BPA officials. They also do not include functions that are primarily ministerial and internal, such as building security, operation of cafeterias, housekeeping, facilities and warehouse operations, and other routine services.

(b) **POLICY:** BPA shall not contract for inherently governmental functions. BPA follows the principles outlined in OFPP Policy letter 92-1 dated September 23, 1992, to determine whether an activity is an inherently Governmental function.

(c) **POLICY:** Contractors must not establish or alter BPA policies, programs or plans. Contractors may be used to research background material, review and comment on policies, programs and plans; may develop recommendations; and produce documents or reports--suitably marked as produced by contractors--for consideration by BPA staff. Contractors must provide identification in meetings or in work situations where their actions could be construed as representing BPA for inherently Governmental functions.

(d) **POLICY:** BPA employees are solely responsible for determining work requirements under support service contracts, and for preparing statements of work. A support service contractor must not be allowed to identify its own work requirements or write its own task assignments. However, this policy is not intended to preclude a contractor from preparing and submitting proposals for work in response to requests, or as unsolicited proposals.

(e) **INFORMATION:** The following are representative inherently governmental functions, which may not be contracted:

- (1) Determination of BPA policy, such as determining the content and application of regulations;
- (2) Determination of BPA program priorities and budget requests;
- (3) Direction and control of Federal employees;
- (4) Approval of position descriptions and performance standards for Federal employees;
- (5) Determination of what BPA property is to be disposed of and on what terms;
- (6) Determining what supplies or services are to be acquired by BPA;
- (7) Approval of any contractual documents such as those documents defining requirements, incentive plans and evaluation criteria;
- (8) Awarding, administering, and terminating contracts;
- (9) Determining whether contract costs are reasonable, allocable and allowable; and
- (10) Determination of budget policy, guidance and strategy.

#### **23.1.5 Safety Requirements.**

**POLICY:** While a contractor, including subcontractors, is to be held responsible for its actions with respect to safety, BPA has adopted a safety policy which requires additional measures for working safely on and around transmission lines, substations, rights-of-way and other projects that may place workers in close proximity to energized transmission facilities and other potentially hazardous conditions. BPA safety policy and procedures are found in the BPA's Accident

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

Prevention Manual and in BPI 15.2. (Also, see BPI 11.5, 11.8, 14.16(a), 15.2.1(a), 24.4.4 for additional purchasing requirements regarding safety.)

#### **23.1.6 Clause Usage Prescriptions.**

##### ***PROCEDURE:***

(a) The CO may include a clause similar to 23-1, Continuity of Services, in service solicitations and contracts when BPA anticipates the need to facilitate the transition from one Contractor to another, or to BPA.

(b) The CO shall include a clause similar to 23-2, Key Personnel, in any solicitations and contracts when specific personnel are essential to the conduct of a project.

#### **23.2 USE OF PRIVATE-SECTOR TEMPORARY HELP SERVICE FIRMS.**

##### **23.2.1 Definitions.**

##### ***INFORMATION:***

(a) A "temporary help service firm" is a private-sector entity which provides other organizations with specific services performed by its pool of employees, possessing the appropriate work skills, for brief or intermittent periods. The firm is the legally-responsible employer and maintains that relationship during the time its employees are assigned to a client. The firm, not the client organization, recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. Among other employer obligations, the firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and workers' compensation, and shall provide required liability insurance and bonding.

(b) "Private-sector temporaries" or "outside temporaries" are those employees of a temporary-help service firm who are supervised and paid by that firm, and whom that firm assigns to various client organizations who have contracted for the temporary use of their skills when required.

(c) A "critical need" is a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines which must be met. A recurring, cyclical peak workload, by itself, is not a critical need.

##### **23.2.2 Coverage.**

***INFORMATION:*** This authority is based on 5 CFR 300, Subpart E, and shall not be used for Senior Executive Service or work of managerial or supervisory positions.

##### **23.2.3 Conditions for Using Private-Sector Temporaries.**

***POLICY:*** BPA may enter into a contract with a temporary-help service firm for the brief or intermittent use of the skills of private-sector temporaries, when required, and may call for those services, subject to these conditions:

(a) One of the following short-term situations exists--

(1) An employee is absent for a temporary period because of a personal need, including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances which are not shown to be compelling, or

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

(2) BPA must carry out work for a temporary period which cannot be delayed because of critical need.

(b) The need cannot be met with current employees or through the direct appointment of temporary employees within the time available by the date, and for the duration of time, help is needed. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, BPA may have sufficient time to follow the temporary appointment recruiting requirements, including veterans' preference in Chapter 316 of the Federal Personnel Manual to determine whether qualified candidates are available by the date needed and for the length of service required.

(c) These services shall not be used:

(1) In lieu of the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service;

(2) To displace a Federal employee.

(3) To circumvent controls on employment levels; or

(4) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR part 330, subparts F and G.

#### **23.2.4 Supervisory Relationships.**

**POLICY:** Services furnished by temporary-help firms shall be performed by their employees, who shall not be considered or treated as Federal employees for any purpose, and shall not be eligible for civil service employee benefits, including retirement. Such services shall not be regarded as establishing an employee-employer relationship. Further, to avoid creating any appearance of such a relationship, BPA shall observe the following requirements:

(a) Time limit on use of temporary help service firm. BPA may use a temporary help service firm(s) in a single situation, as defined in subpart 23.2.3, initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, BPA may extend its use of temporary help services up to a maximum limit of 240 workdays.

(b) Time limit on use of individual employee of a temporary help service firm.

(1) An individual employee of any temporary help firm may work at a major organizational element (headquarters or field) of BPA for up to 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment.

(2) BPA may extend an individual up to a maximum of 240 workdays only when using the services of the same individual for the same situation will prevent significant delay.

(c) BPA shall assure that supervisory responsibilities such as review of employee performance, disciplinary actions, promotions, etc., are carried out by the temporary help service firm. At the same time, BPA must give technical, task-related instructions to private-sector temporaries including orientation, assignment of tasks, and review of work products, in order that the temporaries may properly perform their services under the contract.

#### **23.2.5 Relationship to Civil Service Procedures.**

**INFORMATION:** BPA continues to have full authority to decide to meet its temporary needs by a number of means including appointing individuals as civil service employees, details or time-

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

limited promotions of current employees, redistribution of work, overtime, in-house pools, and the on-call authority.

#### **23.2.6 Requirements.**

##### ***PROCEDURE:***

(a) BPA must follow other applicable requirements of the BPI in purchasing services from the private sector.

(b) The CO should clearly state in the contract that the firm is the legally-responsible employer and specify the obligations the temporary-help service firm will have to meet to provide effective performance, including such matters as the types and levels of skills to be provided, deadlines for providing service, and, when necessary, security requirements.

(c) Requisitioners shall document on the PR the nature of the short term situation meeting the requirements of 23.2.3(a), and the determination that there are no qualified candidates as described in 23.2.3(b).

#### **23.3 UNAUTHORIZED USE OF COMPUTER SOFTWARE BY CONTRACTORS.**

(a) ***POLICY:*** BPA shall caution contractors concerning the proper use of copyrighted software licensed to BPA.

##### **23.3.1 Clause Usage Prescriptions.**

***PROCEDURE:*** The CO shall include a clause similar to 23-3, Unauthorized Reproduction or Use of Computer Software, in solicitations and contracts where the contractor employees are expected to have access to copyrighted or proprietary software.

#### **23.4 SCREENING CONTRACTOR PERSONNEL.**

***POLICY:*** It is BPA policy to protect agency workforce and facilities, and sensitive and critical information by taking steps to ensure that the contractor workforce is properly screened prior to gaining access to BPA facilities and/or computer resources.

##### **23.4.1 Background Screenings.**

***INFORMATION:*** BPA policy and procedures regarding security management are found in BPAM Chapter 1070, and those for identification badges are in BPAM 1072. Federal Law establishes the screening procedures which apply to child care contractors in Title 42, USC - The Public Health & Welfare, Chapter 132, Subchapter V. For all other contractors, standards for the procedure are found in clause 23-4, Screening Requirements for Personnel Having Access to BPA Facilities. Effective October 27, 2005, BPA will follow the procedures and guidance prescribed in Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, and Federal Information Processing Standards (FIPS) 201, issued by the National Institute of Standards and Technology (NIST).

***PROCEDURE:*** Contractor personnel that require access to BPA facilities, and/or sensitive information and computer systems, must be screened in order to protect BPA property, information, and child day care attendees. The contractor must comply with the procedures established at BPA for screening of new hires, and current staff, as prescribed in HSPD-12 and FIPS 201, as implemented at BPA. The contractor will initiate the screening process by ensuring that its employees present the required forms of personal identification, and complete SF85 -

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

Questionnaire for Non-Sensitive Positions, and submit to the BPA Sponsor for processing. The BPA Sponsor may be the COTR or some other person designated to facilitate the contractor employees' entry into BPA facilities and computer systems.

#### **23.4.2 Pre-Registration of Foreign Nationals.**

**INFORMATION:** In compliance with DOE Order 142.3, Unclassified Foreign Visits and Assignments, a contract employee who is a Non-US citizen (foreign national) must but be pre-registered and approved prior to visits or work assignments at BPA facilities. This process is in addition to the screening process described above. BPA program offices determine the need for, and appropriate work duration, of all contract employees, including non-US Citizens.

**PROCEDURE:** The contract employee must complete BPA form 5632.08 – Foreign Nationals Registration (Short Form) or BPA form 5632.08a – Foreign Nationals Registration (Long Form) and submit it to the BPA Security office for processing.

#### **23.4.3 Clause Usage Prescriptions.**

**PROCEDURE:** The CO shall include clause 23-4, Screening Requirements for Personnel Having Access to BPA Facilities, in all solicitations and contracts that require contractor personnel to have access to BPA information resources and/or facilities, including child day care centers, either on a continuing basis or during frequent visits.

### **23.5 CONCESSION CONTRACTS.**

#### **INFORMATION:**

(a) A concession contract is a specialized contractual document between BPA and a contractor, referred to in this instance as the concessionaire. Such contracts are normally used when BPA requires a service to be performed, for which funds are collected by the concessionaire from third parties for services performed by the concessionaire, but where BPA has provided significant support. Examples of concession contracts include those for food service and day care centers. Concession contracts may require payment to BPA by the concessionaire, or by BPA to the concessionaire.

(b) Each concession contract is unique, and must be tailored to the specific situation. Concession contracts need not include the clauses normally required by the BPI. However, COs must ensure that appropriate clauses are used which clearly define the rights and responsibilities of the parties. Among the issues which must be considered are:

- (1) What facilities or services will BPA provide to the concessionaire?
- (2) Will the facility be provided at no cost, or will the concessionaire be required to pay a use fee?
- (3) Are other payments to BPA required, and if so, how will they be calculated?
- (4) How will the quality of service be evaluated, and what types of corrective actions may be initiated by BPA for inadequate performance?
- (5) What liabilities will be assumed by each party?
- (6) What labor and/or compensation standards are to be established for concessionaire employees?

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

- (7) What are the parties' responsibilities for property maintenance, repair and replacement?
- (8) What insurance requirements are advisable?
- (9) Are there public safety and health considerations which must be addressed?
- (10) What termination rights should be reserved to each party?
- (11) What rights to change the contract should be reserved to each party?
- (12) Is the work to be performed in spaces which subject the concessionaire to the application of BPA policies such as those described in 3.7?

#### **23.50 TEXT OF CLAUSES.**

The following clauses are referred to in BPI Part 23:

- 23-1 Continuity of Services
- 23-2 Key Personnel
- 23-3 Unauthorized Reproduction or use of Computer Software
- 23-4 Screening Requirement for Personnel having access to BPA Facilities

#### **Clause 23-1 CONTINUITY OF SERVICES (Sep 98)(BPI 23.1.6)**

(a) The Contractor recognizes that the services under this contract are vital to BPA and must be continued without interruption and that, upon contract expiration, a successor, either BPA or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 60 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at a high level of proficiency.

(c) The Contractor shall also disclose necessary personnel records and allow the successor to conduct on-site interviews. If selected employees are agreeable to the change, the Contractor

shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

#### **Clause 23-2 KEY PERSONNEL (Sep 98)(BPI 23.1.6)**

The personnel listed below are considered to be essential to the work being performed hereunder. No diversion shall be made by the Contractor without the written consent of the Contracting Officer. (List key personnel below)



## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **PART 23 -- Service Contracts**

---

(End of clause)

#### **Clause 23-3 UNAUTHORIZED REPRODUCTION OR USE OF COMPUTER SOFTWARE (Sep 98)(BPI 23.3.1)**

The contractor shall hold BPA harmless for unauthorized reproduction or use of copyrighted or proprietary computer software and/or manuals or other documentation by the contractor's employees or subcontractors in the performance of the contract.

(End of clause)

#### **Clause 23-4 SCREENING REQUIREMENTS FOR PERSONNEL HAVING ACCESS TO BPA FACILITIES (May 07)(BPI 23.4.1)**

(a) The following definitions shall apply to this contract:

(1) "Access" means the ability to enter BPA facilities as a direct or indirect result of the work required under this contract.

(2) "Sensitive unclassified data" means information requiring a degree of protection due to the risk and magnitude of loss or harm that could result from inadvertent or deliberate disclosures, alteration, or restriction. Sensitive unclassified data may include, but are not limited to: personnel data maintained in systems or records subject to the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a); proprietary business data within the meaning of 18 U.S.C. 1905 and the Freedom of Information Act (5 U.S.C. 552); unclassified controlled nuclear information within the meaning of 42 U.S.C. 2168; critical infrastructure information, energy supply data; economic forecasts; and financial data.

(b) BPA personnel screening activities are based on the Homeland Security Presidential Directive 12 (HSPD-12), and DOE rules and guidance as implemented at BPA. The background screening process to be conducted by the Office of Personnel Management is called a National Agency Check with Inquiries (NACI). The results of the NACI process will provide BPA with information to determine an individual's initial eligibility or continued eligibility for access to BPA facilities including IT access. Such a determination shall not be construed as a substitute for determining whether an individual is technically suitable for employment.

(c) The contractor is responsible for protecting BPA property during contract performance, including sensitive unclassified data. Effective October 27, 2005, all new-hire contract employees expected to work at federal facilities for six or more consecutive months must be screened according to HSPD-12. To initiate the federal screening process discussed in paragraph (b) above, the contractor shall ensure that all prospective contract employees present the required forms of personal identification and complete SF85 - Questionnaire for Non Sensitive Positions and submit it to BPA for processing. All contract employees on board prior to that date will be screened in phases according to length of service. Rescreenings of longer term contract employees will occur at periodic intervals, generally of five years.

(d) As part of the NACI, the government's determination of approval for an individual's access shall be at least based upon criteria listed below. However, the contractor also has a responsibility to affirm that permitting the individual access to BPA facilities and/or computer systems is an acceptable risk which will not lead to improper use, manipulation, alteration, or destruction of BPA property or data, including unauthorized disclosure. Positive findings in any of these areas shall be sufficient grounds to deny access.

(1) Any behavior, activities, or associations which may show the individual is not reliable or trustworthy.

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**PART 23 -- Service Contracts**

---

(2) Any deliberate misrepresentations, falsifications, or omissions of material facts.

(3) Any criminal, dishonest or immoral conduct (as defined by local Law), or substance abuse.

(4) Any illness, including any mental condition, of a nature which, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case

(e) If the NACI screening process described above prompts a determination to disapprove access, BPA shall notify the contractor, who will then inform the individual of the determination and the reasons therefor. The contractor shall afford the individual an opportunity to refute or rebut the information that has formed the basis for the initial determination, according to the appeal process prescribed by HSPD-12 and supplemental implementing guidance.

(f) If the individual is granted access, the individual's employment records or personnel file shall contain a copy of the final determination as described in paragraph (e) above and the basis for the determination. The contractor shall conduct periodic reviews of the individual's employment records or personnel file to reaffirm the individual's continued suitability for access. The reviews should occur annually, or more often as appropriate or necessary. If the contractor becomes aware of any new information that could alter the individuals' continued eligibility for approved access, the contractor shall notify the COTR immediately.

(g) If a security clearance is required, then the applicant's job qualifications and suitability must be established prior to the submission of a security clearance request to DOE. In the event that an applicant is specifically hired for a position that requires a security clearance, then the applicant shall not be placed in that position until a security clearance is granted by DOE.

(h) In addition to the requirements described elsewhere in this clause, all contractor employees who may be accessing any of BPA's information resources must participate annually in a BPA-furnished information resources security training course.

(i) The contractor is responsible for obtaining from its employees any BPA-issued identification and/or access cards immediately upon termination of an employee's employment with the contractor, and for returning it to the COTR, who will forward it to Security Management.

(j) The substance of this clause shall be included in any subcontracts in which the subcontractor employees will have access to BPA facilities and/ or computer systems.

(End of Clause)