

Reclamation Manual

Directives and Standards

Subject:	Obtaining Private Sector Temporary Help Services
Purpose:	Issue Directives and Standards (D&S) to implement and provide a consistent Bureau of Reclamation-wide approach to the acquisition of non-permanent, private sector support to address temporary and critical staffing needs. It is essential that Reclamation have standard procedures in place for the proper management and tracking of temporary help services. This D&S supplements the Department of the Interior guidance. The benefits of this D&S are to facilitate understanding of the appropriateness of when and how to utilize temporary services and to define roles and responsibilities.
Authority:	Title 5 CFR 300.501, Subpart E, <i>Use of Private Sector Temporaries</i> ; Title 48 CFR, The Federal Acquisition Regulation (FAR); and Department of the Interior's Policy Memorandum on "Contracting for Temporary and Critical Staffing Needs," dated November 22, 2006
Approving Officials:	Director, Administration Director, Management Services Office
Contact:	Human Resources Office (84-25000); Management Services Office, Acquisition and Assistance Management Division (84-27800)

1. **Introduction.** Reclamation may find it necessary to utilize non-permanent service contractors to address temporary and critical staffing needs. When the need arises, Reclamation has various options for obtaining temporary help services, after consultation with the Human Resource Office (HRO), to enter into contracts or other arrangements for private sector help to fulfill temporary work requirements. The use of micro-purchase authority to procure temporary services is prohibited as are personal services contracts as set forth by the Federal Acquisition Regulation (FAR) 37.104.
2. **Definitions.**
 - A. "Contracting Officer" (CO) means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
 - B. "Critical need" means a sudden or unexpected occurrence, an emergency, a pressing necessity, or an exigency. Such occasions are characterized by additional work or deadlines required by statute, executive order, court order, regulation, or formal directive from the Commissioner or designee. A recurring, cyclical peak workload, by itself, is not a critical need.
 - C. "Employer-employee relationship" occurs when contractor personnel are subject to the relatively continuous supervision and control of a government officer or employee.

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- D. “Homeland Security Presidential Directive 12 (HSPD-12)” directs the creation of a new Federal standard to enhance security, increase government efficiency, reduce identity fraud, and protect personal privacy and facilities by establishing a mandatory, government-wide standard for secure and reliable forms of identification issued by the Federal government to its employees and contractors (including contract employees).
- E. “Parental and family responsibilities” means situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.
- F. “Personal services contracts” are characterized by the employer-employee relationship created between the government and the contractor’s personnel. The government is normally required to obtain employees by direct hire under competitive appointment or other procedures required by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.
- G. “Private sector temporaries” means the employee of a temporary help service firm who is supervised and paid by that firm and whom that firm assigns to perform the contract work assignments.
- H. “Technical Representative” for the purposes of this D&S may otherwise be called a program manger or designated as a Contracting Officer Representative or Contracting Officer Technical Representative. A technical representative must be a Federal employee and is generally the requestor of the temporary help service
- I. “Temporary help service firm” means a contractor which provides services that are 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 the contract. The firm recruits, tests, hires, trains, assigns, pays, provides benefits and leave, and as necessary, addresses performance problems, disciplines, and terminates its employees. The firm is responsible for payroll deductions, payment of income taxes, social security, unemployment insurance, worker’s compensation, and any required liability insurance and bonding
- J. “Workday” means a day on which work is performed. Any portion of a day worked (whether weekday, weekend or holiday) is considered a workday and by definition counts towards the 120-240-day limitation.

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3. Responsibilities.

A. Managers.

- (1) Managers are responsible for (a) defining their workload requirements; (b) evaluating whether other current government staff resources are available; (c) redistributing workload, as appropriate.
- (2) When the requirement cannot be met through existing resources as addressed above, managers must consult with their servicing HRO.
- (3) Managers must ensure that temporary help services are obtained by authorized employees in accordance with this D&S. Managers will use the *Determination of Work Requirements for Temporary Services* form (Appendix A) for new requests and extensions of private sector temporary help services.
- (4) Managers must only request specific individuals when it can be substantiated that no one else can do the work. This documentation must comply with all requirements of the applicable regulations, including the FAR, and will serve as the sole-source justification.
- (5) Managers must ensure oversight of the use of temporary services to include at a minimum the following:
 - (a) Proper monitoring of the 120/240-workday limitation.
 - (b) Accurate contractor invoicing, including overtime and travel.
 - (c) Compliance with HSPD-12, if applicable.
- (6) Managers are responsible for ensuring private sector employees contracted through temporary sources will not be considered or treated as Federal employees and cannot be compensated for any time when work is not being performed

B. Technical Representative (Certified).

- (1) Technical Representatives will use the *Determination of Work Requirements for Temporary Services* form (Appendix A) for new requests of private sector temporary help services.
- (2) If the requesting office desires to retain the services in a single situation beyond 120 workdays, not to exceed 240 workdays, the requesting office must submit the *Determination of Work Requirements for Temporary Services form* (Appendix A) to the servicing HRO representative for approval. The HRO must receive the

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notification at least 10 working days before expiration of the initial 120 workdays.

- (3) Technical representatives along with the help of the HRO and CO must ensure that the work is performed commensurate with the labor classification, labor rate, and work assignments.
- (4) Technical representatives will ensure that temporary help services are limited to 120 workdays in a 24-month period or a maximum of 240 workdays if extended in a 24-month period.
- (5) Technical representatives will serve as sponsor in accordance with HSPD-12 requirements. If the private sector temporary employee will require access to government-controlled facilities or information systems, this private sector temporary employee will need to be issued either a Personal Identity Verification (PIV) card; temporary identification card; or visitor badge. This identity card/badge must be issued prior to the contractor employee gaining access to the facility. The technical representative is responsible for determining the physical and information technology access requirements and whether a PIV card or temporary identification card is required.
- (6) Technical representatives must verify that invoices are matched against actual hours (including authorized overtime hours and travel) and workdays, and that the contracted rate per hour is correct. Overtime and travel will only be paid if authorized in the contract/task order. Any discrepancies that are identified will be reported to the CO.

C. Servicing Human Resources Office.

- (1) The servicing HRO is responsible for consulting with the technical representative to ensure the request meets the requirements for use of private sector temporaries.
- (2) The servicing HRO must approve the appropriate section of the *Determination of Work Requirements for Temporary Services* form (Appendix A) for new requests and extensions.
- (3) The servicing HRO is responsible for providing the *Determination of Work Requirements for Temporary Services* form (Appendix A) to the technical representative upon request.
- (4) The servicing HRO is responsible for providing ethics counseling to returning/former Reclamation employee(s) concerning post-employment restrictions as set forth by Federal ethics laws.

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D. Contracting Officer.

- (1) The CO must be in receipt of the *Determination of Work Requirements for Temporary Services* form (Appendix A), as verification of approval by the servicing HRO, before contracting for temporary services.
- (2) The CO is responsible for ensuring the appropriate contracting method is utilized when acquiring non-permanent staff.
- (3) The CO is responsible for ensuring competitive labor rates are negotiated as compared to commercial market rates for like staffing. Documentation of fair and reasonable pricing must be present in the contract file.
- (4) The CO must have a proper sole source justification for any request for specific individuals.
- (5) The servicing CO provides a *Technical Representative Designation* memorandum (Appendix B).
- (6) The servicing CO shall report all temporary staffing service acquisitions over \$2,500 into the Federal Procurement Data System, using the appropriate service code.
- (7) The CO will ensure all requirements under the contract are given by means of technical, task-related instructions to private sector temporaries including orientation, assignment of tasks, and review of work products to assure proper completion of tasks performed.
- (8) The Reclamation Acquisition Regulation Security Requirements clause shall be included for each acquisition/task order issued by the servicing acquisition office. In addition, the statement of work for each acquisition/task order shall include HSPD-12 requirements.

4. Provisions.

A. **Determination of Work Requirements.** In order to utilize a temporary services contract, one of the following short term situations must exist:

- (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 in the judgment of the agency.

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- (2) An agency must carry out work for a temporary period which cannot be delayed in the judgment of the agency because of a critical need. 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. At minimum, this must include an agency determination that there are no qualified candidates on the applicant supply file and on the re-employment priority list (both of which must provide preference for veterans), and no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 USC § 3112, who are immediately available for temporary appointment of the duration required, and that employees cannot be reassigned or detailed without causing undue delay in their regular work. In instances where a need is foreseeable, as when approval of employee absence is requested well in advance, an agency may have sufficient time to follow the temporary appointment recruiting requirements, including veterans' preference found in 5 CFR part 316 to determine whether qualified candidates are available by the date needed and for the length of service required.

B. Services Not Used. 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, or
- (2) to displace a Federal employee, or
- (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, subpart F (Agency Career Transition Assistance Plan for Displaced employees (CTAP)) and subpart G (Interagency Career Transition Assistance Plan for Displaced employees (ICTAP)).

C. Utilization of Temporary Help Services. After consultation with the HRO and the determination has been made that it is appropriate to utilize a temporary service contract, the following criteria applies:

- (1) An individual employee of any temporary help service firm(s) shall not work for more than an aggregate of 120 workdays in a 24-month period for **any** Reclamation facility, except as outlined in Paragraph 3.C.(3).
- (2) Reclamation will use a temporary help service firm(s) in a single situation initially for no more than 120 workdays. Provided the situation continues to exist beyond the initial 120 workdays, Reclamation may extend the use of temporary help services firm(s) up to the maximum of 240 workdays. Extension is dependent on HRO approval.

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- (3) If it is determined that using the services of the same individual for the same situation will prevent significant delay in Reclamation's ability to perform its mission, these services may be extended to a maximum of 240 workdays in a 24-month period and shall not be extended beyond the 240 workdays.
- (4) The 24-month period begins on the first day of the assignment.
- (5) Service needs that will continue longer than 240 workdays must be filled through appropriate competitive civil service hiring procedures or appropriate acquisition instruments.
- (6) These services cannot be acquired through the use of micro-purchase authority (credit card or convenience check).