



# Defense Health Agency

## PROCEDURAL INSTRUCTION

NUMBER 6025.05  
October 11, 2016

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Procurement

SUBJECT: Personal Services Contracts (PSCs) for Health Care Providers (HCPs)

References: See Enclosure 1

1. PURPOSE. This Defense Health Agency Procedural Instruction (DHA-PI), based on the authority of References (a) and (b), and in accordance with the guidance of References (c) through (h), establishes the Defense Health Agency's (DHA's) procedures for implementing the authority for PSCs for HCPs.

2. APPLICABILITY. This DHA-PI applies to:

a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

b. PSCs for HCPs awarded under References (c) through (e). Services provided under the Military-Civilian Health Services Partnership Program (Reference (e)) are not provided under PSCs and are not covered by this DHA-PI.

3. POLICY IMPLEMENTATION. It is DHA instruction pursuant to References (c) through (g) that:

a. When in-house sources are insufficient to support the medical mission of the Military Departments, or the DHA, or in using sound business judgment, it is more efficient to do so, PSCs may be executed for HCPs.

b. PSCs help mission accomplishment, maximize beneficiary access to military medical treatment facilities, maintain readiness capability, reduce the use of the TRICARE Health Care Program for Uniformed Service members, and enhance the patient and provider relationship. PSCs for HCPs shall not be used to perform inherently governmental functions.

c. PSCs for HCPs shall be subject to the same quality assurance, risk management, credentials review, and clinical privileging standards, including licensure, as those required of military and civil service HCPs.

d. All PSCs must be justified as being in the best interest of the government. The justification should be supported through one of the following three means: the most cost effective/lowest cost option when compared to reasonable alternatives; required to support readiness requirements (e.g., as in adding needed staff to allow a surgical team supporting readiness requirements to get needed caseload); or to support quality, safety, and/or access standards established by the Department when it is the most practical means of meeting these standards. In all cases, the most cost effective means should be selected to achieve the required outcome.

e. A PSC is the preferred type of contract when: the descriptive elements of the services to be provided have essentially the same attributes as are present for services performed by military or civil service HCPs of the same type (e.g., physicians and nurses, etc.) at the same facility.

f. The rights, benefits, and compensation of HCPs performing services under PSCs shall be determined solely in accordance with the PSC.

g. In no case shall the total amount of compensation paid to an individual in any year under a PSC exceed the full time equivalent rate of the President's annual compensation, (excluding the allowances for expenses) as specified in Reference (f). The standard for a full time equivalent rate shall be fact-based, and it shall neither exceed 2,087 hours nor be less than 1,776 hours per year, excluding any on-call hours. The rationale for the particular standard chosen should be documented. Typically, this documentation will consist of providing the basis for the deviation from 2,087 hours by listing the number of hours of holiday pay, annual leave, and sick leave the individual would have received if hired as a civil servant rather than under a PSC.

h. The existence of an employer-employee relationship created by a PSC shall result generally in the treatment of a PSC HCP similar to a DoD employee for many purposes. Included in this similar treatment is that claims alleging negligence by a PSC HCP shall be processed by the DoD as claims alleging negligence by DoD military or civil service employees (Reference (g)). As a result, the PSC HCP is not required to maintain medical malpractice liability insurance.


4. RESPONSIBILITIES. See Enclosure 2

5. PROCEDURES. See Enclosure 3

6. RELEASABILITY. **Cleared for public release.** This DHA-PI is available on the Internet from the DHA Website at <http://www.health.mil/dhapublications>.

7. EFFECTIVE DATE. This DHA-PI:

- a. Is effective upon signature.
- b. Will expire 10 years from the date of signature if it has not been reissued or cancelled before this date in accordance with DHA-PI 5025.01 (Reference (h)).



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Enclosures

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5136.01, “Assistant Secretary of Defense for Health Affairs (ASD(HA)),” September 30, 2013
- (b) DoD Directive 5136.13, “Defense Health Agency (DHA),” September 30, 2013
- (c) Federal Acquisition Regulation (FAR), Part 37
- (d) Defense FAR Supplement, Part 237
- (e) Section 1091 of Title 10, United States Code
- (f) Section 102 of Title 3, United States Code
- (g) Section 2671, et seq., of Title 28, United States Code
- (h) DHA-PI 5025.01, “Publication System,” August 21, 2015

ENCLOSURE 2

RESPONSIBILITIES

1. DIRECTOR, DHA. Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness and the Assistant Secretary of Defense for Health Affairs, and in accordance with DoD policies and issuances, the Director, DHA, will:

a. Develop procedures for the oversight, direction, and functional management of the PSC program.

b. Review the procedures established by the Military Departments to validate the cost effectiveness and/or neutrality of PSCs.

c. Modify or supplement this DHA-PI, as needed.

2. THE SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments will:

a. Develop procedures to support the functional requirements of the PSC, consistent with this DHA-PI.

b. Establish a methodology, including audit procedures, to evaluate whether PSCs are cost effective and/or neutral when compared to other means of delivering the needed health care.

ENCLOSURE 3

PROCEDURES

1. The procedures established in Reference (d) are applicable to selections of PSCs that are set aside solely for competition between, and award to, individuals who will be directly providing the personal services. Those procedures are not applicable to all other PSCs (i.e., those awarded to business entities), which are subject to the full and open competition requirements of References (c), (d), and other DoD and Service-specific regulations.

2. Subject to the salary cap in paragraph 3.g., prorated compensation based on hourly, daily, or weekly rates may be used when a contractor's services are not required on a full time basis. Full time basis is the number of hours established for the Full Time Equivalent Rate standard as specified in paragraph 3.g. In no case shall prorated compensation per hour, day, or week result in compensation per hour which exceeds the compensation cap in paragraph 3.g. divided by the number of hours established for the Full Time Equivalent Rate. Each PSC, regardless of whether it is with an individual or a business entity, must contain language specifically stating:

a. That the contract is a PSC and that the contract is intended to create an employer-employee relationship between the government and the individual HCPs;

b. That the performance of the individual HCP(s) under the PSC is subject to day-to-day supervision and control by health care facility personnel comparable to that exercised over military and civil service HCPs engaged in comparable work;

c. That any personal injury claims alleging negligence by the individual HCPs within the scope of the HCP's performance of the PSC shall be processed by DoD as claims alleging negligence by DoD military or civil service HCPs; and

d. The PSC does not create an employer-employee relationship between the government and any corporation, partnership, business association, or other party or legal entity with which the individual HCP(s) may be associated.

## GLOSSARY

### PART I. ABBREVIATIONS AND ACRONYMS

DHA	Defense Health Agency
DHA-PI	Defense Health Agency Procedural Instruction
FAR	Federal Acquisition Regulation
HCP	Health Care Provider
PSC	Personal Services Contract

### PART II. DEFINITIONS

HCPs. Health services personnel who participate in clinical patient care. HCPs contracted for on a personal services basis must perform duties that are primarily clinical in nature. If the duties associated with a position are primarily administrative or clerical in nature or consist primarily of maintenance or security services, then the position is not an HCP position that may be contracted for on a personal services basis.

PSC. A contract that, by its expressed terms or as administered, makes the contractor personnel appear, in effect, to be government employees. PSCs include contracts awarded to individual HCPs and contracts awarded to business entities that will provide the services of more than one HCP. If a PSC is awarded to an individual, it is subject to the payment and withholding of Federal Insurance Contributions Act tax, as well as withholding for federal income taxes.