

The Office of Acquisition and Logistics Management Newsletter 2017 March/April

Acquisition of Employee Business Cards – Revised Policy

Business card purchases are authorized for NIH employees in the performance of their official duties if there is a critical need to interface with the general public on a routine and continual basis. Employees must prepare a written justification, to be approved in accordance with the attached Acquisition of Employee Business Cards Policy. The justification must include:

- A description of the employees duties
- Rationale of why the business cards are needed
- Level with interaction of people or organizations external to NIH, including types of interaction and frequency
- Adverse impact of the employee's communication capabilities with external parties if business cards are not authorized

If using appropriated funds, no more than 250 cards may be purchased and purchases may be made from only one of two mandatory sources.

Each I/C must develop an individual policy that meets the requirements of this NIH policy. For the full policy and a sample request for approval memorandum, please see the attached file.

A copy of the policy is also available at:

- [Division of Acquisition Policy and Evaluation](#)
- [Division of Simplified Acquisition Policy and Services:](#)
- [Acquisition Services and Review Branch customer facing SharePoint site: Rules: Laws, Regulations & Policies](#)

For questions about the policy, please e-mail: OAMP@nih.gov

Severable Service Contracts for Periods Crossing Fiscal Years

A severable service contract is used for services that are repetitive in nature such as facility maintenance or technical services. The key distinction between severable and non-severable services is the agency receives a benefit each time a severable service is performed, e.g. the bathrooms are cleaned daily or lab samples are being processed. In contrast, a non-severable service has a single output where the agency would not receive benefit of the service until specific actions have been accomplished such as the receipt of progress/technical report(s) or training prerequisites which could take months or even years to accomplish before the agency receives the benefit of the proposed service(s).

Prior to 1994, all severable service contracts ended on or prior to 30 September of the fiscal year in which it was obligated. This changed with [41 U.S.C. § 3902](#) which now authorizes executive agencies “to enter into a contract for the procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.”

There are several appropriation types including one year, multi-year and no year. The National Institutes for Health (NIH) typically use one-year, otherwise known as annual appropriations. Annual appropriations allow for the acquisition of a severable service which crosses fiscal years provided the agency obligates all funding up front or on a fiscal year basis. Service contracts made in year one must begin in year one but in no instance, “extend beyond September 30” of the following year and does not exceed twelve months in duration. Under no circumstances may an annual appropriation used in year one be applied to services not scheduled to commence until year two. “Severable services are considered a bona fide need of the appropriation current at the time rendered.” Failure to adhere to this rule would be a violation of the Anti-deficiency Act [31 U.S.C. § 1341\(a\)](#). Non-severable service contracts may also cross fiscal years, however this type of contract must be obligated entirely with appropriations available at the time of award and any funding not used or expired must be de-obligated.

Due to the complexities associated with appropriations law it becomes essential when contracting for services the Program and Contracting offices build and maintain a high-performance team centered on effective two-way communication where requirements are clearly defined and all parties understand the purpose and intended outcome of the requirement. If there is ever a question regarding whether a service is severable or not severable there is a simple test to resolve any confusion. Suppose a contract for window washing services was scheduled to commence in fiscal year 2017 and extend into fiscal year 2018 but the contract was terminated in the first year. The agency would still have the benefit of clean windows as it received a benefit each time the windows were cleaned, this is clearly a severable service where all money would be appropriated up front or on a fiscal year basis. In comparison, if the agency contracted for the preparation of a study in fiscal year 2017 with a final report due in fiscal year 2018 but the contract was terminated in the first year the agency would receive no benefit as receipt of the final report was the intended benefit of the contract. This would be a non-severable service where the appropriation would be obligated entirely up front based on funding available at the time of award.

New Gift Rules Policy for Informational Materials

HHS recently distributed information for Informational Materials about revisions to Government-wide gift rules. This new gift rule policy in no way changes the [NIH Policy Manual 2400-10 Gifts From Outside Sources](#) Section E. Exceptions: Gifts of \$20 or Less. That remains at \$20 or less with a maximum yearly aggregate of \$50. The new gift rule change below applies to informational materials distributed at Widely Attended Gatherings (WAG).

WAG:

- 1) OGE made a non-substantive amendment to the Speaking and Similar Engagements exception to the gift rule located at 5 CFR 2635.203 (moved the provision from a (g) (1) exception to a (b) (8) exclusion). This section of the regulations allows employees to accept, among other things, meals when presenting information on behalf of the agency. There are two results from this change:
 - a) Since the provision no longer falls under the WAG exception, written approval is no longer required for a presenting employee to receive the gift of free attendance on any day the employee is presenting; and
 - b) The definition of “free attendance” now includes the speaker’s dinner, if that meal is hosted by the event sponsor and occurs on the day of the presentation.
- 2) The regulations now require all widely attended gatherings (g) (2) WAGs – events where the employee merely attends and does not present information to be approved in writing. As this has always been NIH policy, this is not a substantive change for NIH employees.

Please note: the WAG exception to the gift prohibition is used by an employee when he or she accepts a gift such as a meal or a reception in his or her personal capacity. If the employee is attending the event as part of his or her official duties (a scientific meeting for example), and thus, the NIH would pay the meeting registration fee, then the NIH uses other gift-accepting authority (likely HHS-348 sponsored travel) to accept the gift of free registration.

New Gift Rules - Informational Materials of \$100 or less

New Rule: Employees may accept unsolicited gifts of informational materials provided that the aggregate market value of all the materials received from any one person does not exceed \$100 in a calendar year. If the aggregate market value of the informational materials exceeds \$100 in the calendar year, an agency ethics official may permit an employee to accept the materials after conducting further written analysis.

What are informational materials?

Informational materials are writings, recordings, documents, records, or other items that:

- Are educational or instructive in nature;
- Are not primarily created for entertainment, display, or decoration; and
- Contain information that relates in whole or in part to:
 - o The employee’s official duties or position, profession or field of study;

- A general subject matter area, industry, or economic sector affected by or involved in the programs or operations of the agency; or
- Another topic of interest to the agency or its mission

Widely attended Gatherings – Written Authorization Required

New Rule: Employees must receive written authorization from an agency ethics official in order to accept an unsolicited offer of free attendance to a widely-attended gathering.

What is a widely attended gathering?

A “widely-attended gathering” is an event where a large number of persons will attend, including persons with a diversity of views or interests, and there will be an opportunity to exchange ideas and views among invited persons. Although the employee is being invited to the widely-attended gathering because of his or her official position, attendance at the event must be on the employee’s own time or, if authorized, on excused absence.

THE ROLE OF MARKET RESEARCH IN PERFORMANCE BASED SERVICE CONTRACTING

Market research is the process of collecting and assessing data about specific markets to arrive at the most suitable approach to acquiring, distributing, and supporting both supplies and services. The primary objective of market research is to help the acquisition team become informed consumers enabling them to achieve the best possible outcome regarding cost and quality of service. The Federal Acquisition Regulation ([FAR](#) Part 10) apply to all acquisitions at the National Institutes of Health (NIH). Market research should be conducted appropriate to the circumstances surrounding the acquisition e.g. less market research may be applied to services which are purchased on a continuing basis verses a service which is new to the agency where there is less information to make a reliable decision. There are many benefits for conducting market research including, but not limited to:

- Increased potential for more reliable pricing
- Increased potential for small business offers
- Increased potential for commercially available items
- Increased potential for higher quality, lower cost services

Although the idea of conducting market research may seem daunting, market research applies to our everyday lives. Would you consider purchasing a car, a house or even hiring a doctor without first looking at the market? Government market research is no different than market research we conduct every day. As federal workers, our job is to ensure we manage taxpayer dollars as if they were our own.

1. Consider all Available Sources

To streamline the acquisition process Contract Specialists, Purchasing Agents and Contracting Officers (CO) are required to first seek and use pre-negotiated agreements within the scope of the requirement for the procurement of services. This may include Federal Supply Schedules (FSS), Blanket Purchase Agreements (BPAs), Delivery type contracts including (Definite Quantity, Indefinite Quantity and Requirements) as well as Government-Wide and Multi-Agency contracts otherwise known as GWACs and MACs before continuing to open market or commercial sources.

The advantage of using pre-negotiated contract vehicles (within scope of the service) is that much of the market research may have already been completed, in fact, [FAR 8.002 \(2\)](#) mandates that before the Performance Work statement (PWS) or Statement of Objectives (SOO) is finalized the Program Office must ensure that all alternative and/or available sources such as People Who are Blind or Severely Disabled otherwise known as the [Ability One](#) be used to the maximum extent practicable. In a readily available contract or agreement vehicle these sources would have already been checked saving the Government both time and resources.

2. Determine cost and market drivers

When evaluating market research, you will need to identify both cost and market drivers, for example is the proposed contractor the only one in the world who could perform the service based on a patented process or technique? If so, this would naturally drive the price up and limit market availability. Perhaps the market is saturated with contractors providing the same or similar service, in this case it is expected that pricing would be more competitive as competition tends to drive pricing down as contractors compete for the job. If the market is competitive there is a very good chance of finding small business resources to compete for the opportunity. [FAR 19.502-2\(a\)](#) mandates that acquisitions exceeding \$3,500 but not over \$150,000 are automatically reserved for small business. This reservation shall apply unless the CO determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Understanding what drives the market is a crucial step in defining the desired outcomes in the Performance Work Statement, Statement of Work or Statement of Objectives and for estimating any related costs associated with the requirement. In addition, knowing what the market is capable of handling empowers the CO to establish clear and measurable performance standards to meet the agency's needs.

NIH DSEIS Presents: The ULT Freezer Show

The NIH Division of Scientific Equipment and Instrumentation Services (DSEIS) will host *NIH DSEIS Presents: The ULT Freezer Show* from 10 a.m. to 1:30 p.m. on Wednesday, April 26, in the Building 10 South Lobby.

Intramural principal investigators, lab managers, other interested researchers, and administrative/acquisition staff are invited to inspect ultra-low temperature (ULT)

freezers that meet new energy-efficient requirements. (See [NIH policy on management of ULT freezers](#) for details.)

DSEIS staff will also be on hand to answer questions about options for obtaining and maintaining ULT freezers and other scientific equipment.

According to Tammie Edwards, Acting Director of DSEIS, “This event is just one way DSEIS is fulfilling its mission to help members of the NIH intramural community acquire and maintain scientific equipment and laboratory instrumentation.”

The ULT Freezer Show is the first in the *NIH DSEIS Presents* series of on-campus events for the intramural research community. Each event will feature a different type of equipment or instrumentation so that intramural researchers can get “up close and personal” with the tools they need to conduct their important work.

For more information about DSEIS, visit <https://www.ors.od.nih.gov/sr/dseis/Pages/default.aspx>

For Equipment Sales and Rental, contact Anju Vergheese at (301) 496-9748 or email rental@ors.od.nih.gov.

For Equipment Maintenance, Repairs, and Fabrication needs contact Jerry Tyus, call (301) 496 4131 or email DSEIS_repairs@nih.gov.

TRAINING INFORMATION

Acquisition Training at NIH

Acquisition Training Classes that are offered by the NIH Training Center can be accessed at the following link: [Acquisition Management Training](#).

Federal Acquisition Certification Coursework

CON courses and other Federal Acquisition Certification required courses can be found at the [NIH Training Center](#), [Federal Acquisition Institute](#), and [Defense Acquisition University](#).

Section 508 Accessibility Training

Section 508 Accessibility Training courses can be accessed at: [CIT Section 508 Accessibility training website](#).

Green Purchasing Training

Green Purchasing Training and other Green Training courses can be found at: [OALM Green Purchasing Website](#).

As a reminder, per HHS policy, all contracting officers, contract specialists, purchase cardholders, card approving officials, CORs and acquisition staff in job series 1102, 1105, and 1106 are required to take the Green Purchasing training every two calendar years. The training includes online training modules for your convenience.

Questions regarding Green Purchasing Training should be sent to:
GreenPurchasing@mail.nih.gov.

NIH Blanket Purchase Agreement (BPA) Lists Available Online

Lists of all NIH Blanket Purchase Agreements (BPAs) can be found at the NIH Blanket Purchase Agreement [webpage](#).

This location contains Two BPA Lists:

- 1) Complete vendor alphabetical list;
- 2) Vendor list sorted by commodity; and

If you have any questions or need further clarification, please contact the BPA helpline at 301-496-5212 or [email](#).

We Would Like to Thank All Those Who Contributed to This Issue and to Future Editions of the OALM Newsletter.

The OALM Newsletter will be published six (6) times in calendar year 2017. We encourage staff to submit articles that would be of interest to our readers. We will do our best to include such articles in future editions of the OALM Newsletter.

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If you have any questions or comments regarding the information, policy and/or procedures published in this issue, you may contact Milton Nicholas at the e-mail address above. For future issues please contact the Simplified Acquisitions Helpline on 301-496-0400 or via e-mail at OALMNewsletter@mail.nih.gov and you will be referred to the appropriate editor.