

FFRDC POLICY 101

GOVERNMENT AND CONTRACTOR INTERACTIONS AT THE FREDERICK NATIONAL LABORATORY FOR CANCER RESEARCH (FNLCR)

A. PURPOSE AND BACKGROUND

FNLCR is a unique environment that exists at a Government Owned Contractor Operated (GOCO), Federally Funded Research and Development Center, (FFRDC). This policy outlines the rules of engagement to ensure appropriate professional interactions between Contractor and Government staff at FNLCR and its surrounding operations, where Contractor support is provided. The principles guiding this policy include inherently governmental functions and Contractor support without personal services.

B. SCOPE

This policy applies to **all** Contractor **and** Government employees who work at or with FNLCR, FNLCR off-site facilities, as well as all customers of the FFRDC at FNLCR.

C. DEFINITIONS

1. **Federal Acquisition Regulation (FAR)**
2. A **Statement of Work (SOW)** is a document that defines the scope of the work a contractor will perform under a contract.
3. **Contracting Officer (CO)** refers to a Government Contracting Officer in the Management and Operations Support Branch of the FNLCR.
4. **Contracting Officer's Representative (COR)** is a Government employee designated by the CO to assist in the technical monitoring or administration of a contract. The designation does not include authority to make any commitments or changes to the contract.

The **Contractor's Employer-Employee Relationship** with Contractor staff includes activities such as: (i) interviewing (i.e. contractor's process for making a hiring decision to include selecting candidates, obtaining candidate information, obtaining customer (Government) feedback on candidates and hiring candidates as Contractor employees), (ii) supervising performance and conducting performance evaluations of Contractor employees, (iii) approving time-cards or leave-requests for Contractor employees, (iv) reassigning or redirecting Contractor employees, (v) determining compensation for Contractor employees, and (vi) disciplining and terminating Contractor employees.

D. PROCEDURES

1. Inherently governmental functions are functions that are so intimately related to the public interest as to mandate performance by Government employees only.
 - a. Inherently governmental functions may only be performed by Government employees, and may not be performed by Contractor employees. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority (i.e. the act of governing) or the making of value judgments related to Government monetary transactions and entitlements.
 - b. Inherently governmental functions pertaining to Federal employees include: hiring, directing and controlling Federal employees, determining job qualifications and performance standards for Federal employees, and conducting hearings to evaluate clearance or eligibility issues.
 - c. Inherently governmental functions pertaining to Federal processes include: determination of agency policy, budget policy, guidance, or strategy, disposition of Government property, handling of Federal funds unless statutorily authorized, officiating in federal procurement of prime contracts, acting upon Freedom of Information Act (FOIA) requests, responding to Congressional inquiries and Federal audits, and approving Federal licensing or inspections.
 - d. Inherently governmental functions **do not** normally include gathering information for, or providing advice, opinions, recommendations, or ideas to, Government officials. They also do not include functions that are primarily administrative or internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services.

2. The National Cancer Institute (NCI) does not have authority for personal services contracts. For this reason, the following guidance is provided for Contractor and Government employees interacting at FNLCR in order to avoid any personal services relationships:
 - a. **General activities appropriate for both Contractor and Government employees:**
 - i. Discussing scientific and technical concepts freely.
 - ii. Collaborating on research and development projects.
 - iii. Providing creative input and constructive feedback on research and development projects.
 - iv. Finding solutions to scientific and technical problems.
 - v. Seeking and giving advice on the specifics of a SOW tasking.
 - vi. Interacting in a courteous and professional manner at all times.

 - b. **Specific activities appropriate for Government employees:**
 - i. Discussing Contractor employee compensation concerns only with the Government CO.

- ii. Establishing experience/training requirements for Contractor positions in the SOW.
 - iii. Approving SOWs.
 - iv. Referring prospective Contractor job candidates to Contractor management for any position.
 - v. Attending Contractor meetings with Contractor finalist job candidates, generally, for certain senior level or specialty positions which will have high levels of interaction with Government staff. The Contractor must provide the CO with quarterly metrics data of these meetings summarizing, at a minimum: dates, job position titles, levels of positions, offices the positions will support, numbers of government and contractor attendees at each meeting, and identifying information about the contractor individual who conducted the meeting.
 - vi. Providing feedback/comments to Contractor management on Contractor job candidates with whom the Government staff have either met or reviewed the candidates' resumes.
 - vii. Providing feedback/comments to Contractor management on Contractor employee performance.
 - viii. Evaluating overall Contractor performance of the SOW.
 - ix. Communicating SOW performance issues to Contractor management.
- c. **Specific activities prohibited for Government employees:**
- i. Discussing Contractor compensation issues with Contractor employees directly or with Contractor management.
 - ii. Interviewing Contractor job candidates.
 - iii. Specifying which job candidates are to be interviewed or hired by the Contractor.
 - iv. Supervising any Contractor staff.
 - v. Formally training Contractor employees in job skills required to perform the SOW.
 - vi. Determining compensation for any Contractor employee.
 - vii. Approving leave or signing-off on time cards for any Contractor employee.
 - viii. Writing performance evaluations for individual Contractor employees or participating in performance discussions with individual Contractor employees.
 - ix. Requesting disciplinary action or termination of any Contractor employee.
- d. **Specific activities appropriate for Contractor employees authorized to do so by the Contractor:**
- i. Discussing Contract Terms and Condition issues with the Government COR and/or the CO.
 - ii. Assisting with the development of SOWs.
 - iii. Following requirements and instructions in the SOW.
 - iv. Interviewing Contractor job candidates.
 - v. Requesting Government feedback/comments on Contractor job candidates with whom the Government staff have met or reviewed.

- vi. Recruiting Contractor job candidates with appropriate experience/training background as specified in the SOW.
 - vii. Providing formal training to Contractor employees as needed.
 - viii. Supervising all Contractor staff.
 - ix. Seeking Government feedback/comments on Contractor employee performance.
 - x. Determining compensation for Contractor employees.
 - xi. Promoting Contractor employees.
 - xii. Approving leave and signing-off on time cards for Contractor employees.
 - xiii. Managing Contractor staff performance.
 - xiv. Determining and managing disciplinary actions and terminations of Contractor employees.
- e. **Specific activities prohibited for Contractor employees:**
- i. Discussing Contract Terms and Conditions unless the Contractor employee has express written authority to represent and commit their company.
 - ii. Asking Government staff to select or interview Contractor job candidates.
 - iii. Discussing compensation of Contractor employees with Government staff.
 - iv. Delegating supervision of Contractor staff to Government.

E. RESPONSIBILITIES

Government and Contractor employees must understand their respective roles and responsibilities. Issues that may arise related to inherently governmental functions and/or perceived personal services relationships between the Government and Contractor should rely on the guidance contained herein, assistance from a program-specific Government COR or by the Contracting Office directly. In addition, FNLCR employees, Contractor or Government, should always report concerns or direct inquiries through their appropriate management channels. Recognizing issues early and attempting to resolve them at the appropriate level with appropriate staff in a professional and timely manner are essential for successful Government and Contractor interactions at the FNLCR.

F. REFERENCES

[1] FAR 35.017

[2] FAR 7.503