forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;
(2) Is for the performance of security functions at any military installation or facility in the United States;
(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and
(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

(d)(1) Under Section 332 of Public Law 107–314, as amended by Section 333 of Public Law 109–364 and Section 343 of Public Law 110–181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—
(i) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;
(ii) The agency has determined that—
(A) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;
(B) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and
(C) Performance of such functions will not result in a reduction in the security of the installation or facility;
(iii) Contract performance will not extend beyond September 30, 2012; and
(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed the following limitations:
(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006.
(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006.
(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.
(D) For fiscal year 2010, the number equal to 70 percent of the total number of such personnel employed under such contracts on October 1, 2006.
(E) For fiscal year 2011, the number equal to 60 percent of the total number of such personnel employed under such contracts on October 1, 2006.
(F) For fiscal year 2012, the number equal to 50 percent of the total number of such personnel employed under such contracts on October 1, 2006.


237.102–71 Limitation on service contracts for military flight simulators.

(a) Definitions. As used in this subsection—
(1) Military flight simulator means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.
(2) Service contract means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 6701.

(b) Under Section 832 of Public Law 109–364, as amended by Section 883(b) of Public Law 110–181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—
(1) Determines that a waiver is in the national interest; and
(2) Provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis shall include, at a minimum—
(i) A clear explanation of the need for the contract; and
(ii) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

(A) A rationale for including the alternative.

(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

(C) A discussion of the benefits to be realized from the alternative.

(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer shall notify the program officials of the prohibition in paragraph (b) of this subsection. If the program officials decide to request a waiver from the Secretary of Defense under paragraph (b) of this subsection, the contracting officer shall follow the procedures at PGI 237.102–71.


237.102–72 Contracts for management services.

In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—

(1) Courses of action to be taken in the best interest of the Government; and

(2) Best technical performance for the warfighter; and

(c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

(74 FR 34269, July 15, 2009)

237.102–73 Prohibition on contracts for services of senior mentors.

DoD is prohibited from entering into contracts for the services of senior mentors. See PGI 237.102–73 for references to DoD policy and implementation guidance.

(75 FR 71564, Nov. 24, 2010)

237.102–74 Taxonomy for the acquisition of services.


(75 FR 78619, Dec. 16, 2010)

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature;

(2) Acquisition of the services is advantageous to the national defense;

(3) DoD personnel with necessary skills are not available;

(4) Excepted appointment cannot be obtained;

(5) A nonpersonal services contract is not practicable;

(6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(7) Any other determination required by statues has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.