



Report to the Ranking Member,
Committee on Homeland Security and
Governmental Affairs, U.S. Senate

July 2017

FEDERAL CONTRACTING

Improvements Needed in How Some Agencies Report Personal Services Contracts

GAO Highlights

Highlights of [GAO-17-610](#), a report to the Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

A personal services contract is one that makes contractor personnel appear to be government employees. These contracts must be authorized by federal law. According to FPDS-NG, the government reported obligating about \$1.5 billion on personal services contracts in fiscal years 2011 through 2015.

GAO was asked to examine the federal government's use of personal services contracts. This report discusses (1) the extent to which selected federal agencies award personal services contracts, and (2) how those agencies use them.

GAO identified the four agencies spending the most on personal services contracts—the Air Force, Army, Navy, and USAID—as reported in FPDS-NG. These agencies account for about 60 percent of total spending on these contracts. GAO also reviewed the service contract inventories these agencies prepared for fiscal year 2014, the latest year available at the time of this review. GAO reviewed the files for a nongeneralizable sample of 60 personal (15 at each agency) and 40 nonpersonal services contracts (10 at each agency) and interviewed agency officials. GAO did not review the administration of the contracts.

What GAO Recommends

GAO recommends that the Secretary of Defense direct the Air Force and Army to take steps to ensure the accurate recording of personal services contracts in FPDS-NG; and that USAID ensure the correct authority is cited for personal services contracts performed in the United States. DOD and USAID concurred with our recommendations.

View [GAO-17-610](#). For more information, contact William T. Woods at (202) 512-4841 or WoodsW@gao.gov.

July 2017

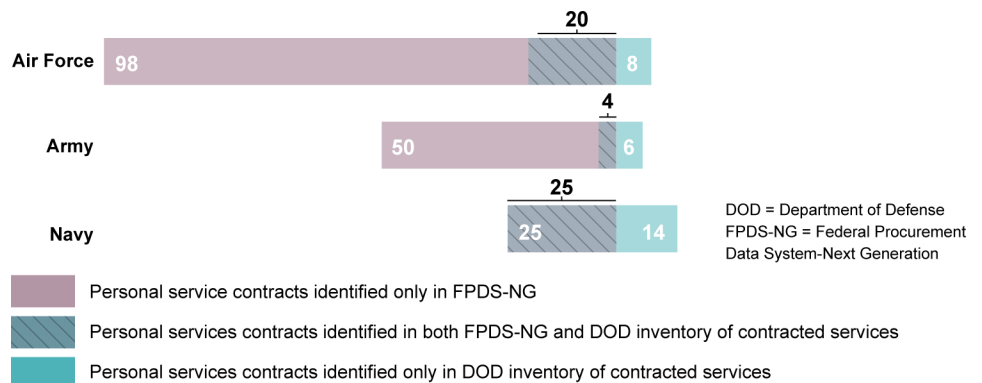
FEDERAL CONTRACTING

Improvements Needed in How Some Agencies Report Personal Services Contracts

What GAO Found

The United States Agency for International Development (USAID) spent more than \$123 million on personal services contracts in fiscal year 2015, according to the Federal Procurement Data System-Next Generation (FPDS-NG). But GAO cannot confirm the extent that personal services contracts are awarded by the Department of Defense (DOD) because GAO identified significant reporting errors at two DOD agencies—the Air Force and the Army. Specifically, 4 of the 15 Air Force contracts and 13 of the 15 Army contracts GAO reviewed were incorrectly recorded in FPDS-NG as personal services contracts. Defense officials agreed with this assessment. Further, the fiscal year 2014 inventories of contracted services at Air Force, Army, and Navy contained personal services contracts not captured in FPDS-NG, as shown in the figure below. Apart from the inaccuracies of the reported data, GAO observed and agency officials agreed that additional undercounting could exist since some contracts for nonpersonal services could become personal services contracts, depending on whether the contract involves direct supervision by government employees. In the absence of accurate data, proper management of personal services and other contracts becomes more difficult.

DOD Personal Service Contracts as Reported in FPDS-NG and Inventories, Fiscal Year 2014



Source: GAO analysis of Department of Defense data. | GAO-17-610

Military departments and USAID use personal services contracts differently. DOD personal services contracts GAO reviewed were mostly for health care services. As permitted under its regulations, USAID uses personal services contracts for a broader range of functions such as program management, security analysis, and logistics, some of which are considered tasks that only government employees should perform—inherently governmental activities. Federal regulations that prohibit contractors from performing such activities do not apply to authorized personal services contracts. DOD's practice is not to use personal services contracts for inherently governmental tasks. DOD and USAID have multiple authorities for awarding personal services contracts, but none of the files GAO reviewed at USAID cited the correct authority for personal services contracts performed in the United States. USAID has taken steps to address this issue but has not yet determined whether these steps will be effective.

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Abbreviations

COR	contracting officer's representative
DFARS	Defense Federal Acquisition Regulation Supplement
DOD	Department of Defense
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GSA	General Services Administration
OFPP	Office of Federal Procurement Policy
OSD	Office of the Secretary of Defense
USAID	United States Agency for International Development

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July 27, 2017

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Senator McCaskill:

Personal services contracts are characterized by relatively continuous supervision and control of the contractor by a government official, which creates an employer-employee relationship between the government and the contractor.¹ Generally, the government is expected to hire its employees using the procedures required by civil service laws. However, there are circumstances where the government requires services—and needs to exercise relatively continuous supervision of the person performing the service—and does not obtain these services by using a government employee hired in accordance with the civil service laws. Agencies may not award personal services contracts unless a statute specifically authorizes acquisition of the services by contract, and a number of such statutes exist. You requested that we examine the use of personal services contracts. This report addresses (1) the extent to which selected agencies award personal services contracts, and (2) how those agencies use personal services contracts.

To address the extent to which selected agencies award personal services contracts, we obtained data from the Federal Procurement Data System-Next Generation (FPDS-NG), using the product service code identifying personal services contracts—for contracts awarded in fiscal years 2011 through 2015.² Fiscal year 2015 was the latest year with certified FPDS-NG data at the time we started our review. Using FPDS-NG data, we identified the four agencies—the Air Force, Army, and Navy within the Department of Defense (DOD), and the United States Agency for International Development (USAID)—with the highest obligations for personal services contracts. These agencies account for nearly 60

¹The FAR defines a personal services contract as a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, government employees; Federal Acquisition Regulation(FAR) § 2.101.

²A product or service code is the category in the Product and Service Codes Manual that best identifies the product or service procured.

percent of the spending on such contracts in fiscal year 2014. Although we identified inaccuracies in some of the data in FPDS-NG, as discussed later in this report, we discussed the data and its limitations with agency officials and determined that the data from FPDS-NG were sufficiently reliable for purposes of selecting the agencies with the highest obligations on personal services contracts. We reviewed a nongeneralizable random sample of 60 contracts coded as personal services contracts in FPDS-NG, 15 contracts from each agency. We also examined the fiscal year 2014 annual inventories of contracted services for the selected agencies. These inventories are congressionally required compilations of services contracts intended to provide insight into the kinds of services purchased and the number of contractor personnel involved.³ Fiscal year 2014 was the latest year with certified inventory data at the time of our review. We also obtained policy documents and supplemental regulations from the agencies detailing agency responsibilities with respect to personal services contracts and interviewed agency officials.

To determine how DOD and USAID use personal services contracts, we reviewed contract files to determine the authority cited for awarding the contracts and analyzed the statements of work, which define the kinds of services required under the contracts. To further explore the differences in how these agencies use personal services contracts and other types of service contracts, we also reviewed a different nongeneralizable random sample of 40 contracts that were coded as engineering and technical services, or other professional services contracts awarded by the Air Force, Army, Navy, and USAID in fiscal year 2014 (10 contracts from each agency). We selected these categories of services because they are similar to the types of services performed by personal services contractors and constituted a majority of the services contracts awarded by DOD and USAID. We did not review contractor performance or contract administration for this report. We compared the data reported in FPDS-NG, such as the contract number and award value, to information in the selected contract files and determined that the FPDS-NG data were sufficiently reliable for the purposes of selecting our sample. For additional details about our scope and methodology, see appendix I.

We conducted this performance audit from February 2016 to July 2017 in accordance with generally accepted government auditing standards.

³In their inventories, agencies are required to report the number of contractor personnel expressed as full-time equivalents for direct labor.

Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Personal services contracts are a type of contract in which the government exercises relatively continuous supervision and control over the individuals performing the work. FPDS-NG reports that the federal government obligated approximately \$1.5 billion on personal services contracts from fiscal years 2011 through 2015. General guidance on personal services contracts is laid out in the Federal Acquisition Regulation (FAR). In addition, there are federal statutes giving specific authority to agencies to award personal services contracts. Agencies such as DOD and USAID also have developed supplemental regulations for approving, overseeing, and administering such contracts. Agencies may award personal services contracts for a variety of services under specific statutory authority. Some examples of services performed by personal services contractors include medical services and management support for agency operations such as disaster relief. Lastly, the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget has issued guidance on defining and managing the performance of inherently governmental and critical functions.

Contracts Data Reported in FPDS-NG

FPDS-NG is a comprehensive, web-based tool for agencies to report contract transactions. It is a searchable database of contract information that provides a capability to examine data across government agencies and provides managers a mechanism for determining where contract dollars are being spent. The contracting officer who awards a contract has responsibility for the accuracy of the individual contract action information entered in FPDS-NG. Agencies are responsible for developing a process and monitoring results to ensure timely and accurate reporting of contractual transactions in FPDS-NG and are required to submit certifications about the accuracy of contract reporting to the General Services Administration (GSA). According to GSA, these certifications collectively demonstrate that the data in FPDS-NG currently have an overall accuracy rate of 95 percent. We previously have reported on some of the shortcomings of the FPDS-NG system and its

predecessors.⁴ Nevertheless, we routinely use data from FPDS-NG, but only after determining, through various means, that the data we use are sufficiently reliable for our specific reporting purposes.

Federal Acquisition Regulation Guidance on Personal Services Contracts

Part 37 of the FAR prescribes policy and procedures specific to the acquisition and management of services by contract. Sections 37.103 and 37.104 specifically discuss contracting officer responsibilities and provide descriptive elements for assessing whether a proposed contract is a personal services contract. According to the FAR, the employer/employee relationship can occur either as a result of the contract's terms or in the manner of administration of the contract. The FAR notes that each contract arrangement should be judged in the light of its own facts and circumstances, with the primary question being whether the contractor's personnel are subject to the relatively continuous supervision and control of government personnel.⁵

The FAR enumerates the characteristics of personal services contracts:⁶

- Performance on a government site,
- Principal tools and equipment furnished by the government,
- Services applied directly to the agency mission,
- Comparable services are performed in similar agencies using civil service personnel,
- The need for the type of service can reasonably be expected to last more than 1 year, and
- The nature of the service or the way that it is performed reasonably requires government direction or supervision of the contractor's employees to adequately protect the government's interest, retain control of the function, or retain full responsibility for the function.

⁴GAO, *Improvements Needed to the Federal Procurement Data System-Next Generation*, GAO 05-960R (Washington D.C.: Sept. 27, 2005).

⁵GAO has reported on the risks inherent in using contractors and the difficulty in separating contractor personnel from government employees. See GAO, *Defense Contracting: Army Case Study Delineates Concerns with Use of Contractors as Contract Specialists*, GAO-08-360 (Washington, D.C.: Mar. 26, 2008).

⁶FAR §37.104(d).

Agencies also may have supplemental regulations to the FAR. Before awarding some personal services contracts, Department of Defense Federal Acquisition Regulation Supplement (DFARS) requires, for example, a determination that asserts, among other things, that a nonpersonal service contract—a contract not directly supervised by government employees—is not practicable and cites the relevant statutory authorities. The USAID Acquisition Regulation provides references to statutory authority and describes the kinds of tasks U. S. citizens may be assigned as personal services contractors, including some duties that might otherwise be assigned to direct-hire employees.

Annual Inventory of Contracted Services

Since 2008 for DOD and 2009 for civilian agencies, Congress has required agencies to prepare an annual inventory of contracted services, covering the preceding fiscal year.⁷ The inventories are to include a number of data elements for each entry, including a description of the services, the total dollar amount obligated, the number of contractor personnel expressed as full-time equivalents for direct labor, and whether the contract is a personal services contract. Agencies also are required to review their inventories to, among other things:

- ensure that each contract that is a personal services contract has been entered into, and is being performed, according to laws and regulations;
- ensure that the agency is not using contractor personnel to perform inherently governmental functions; and
- identify activities that should be considered for conversion to performance by federal employees.

These inventories are intended, in part, to help provide better insight into the number of contractor full-time equivalents providing services and the functions they are performing, and determine whether any of these functions warrant conversion to performance by government employees. We have previously reported on challenges with developing and using the inventory of contracted services and have made recommendations for DOD to revise inventory guidance to improve the review of contract functions, approve a plan of action with milestones and time frames to establish a common data system to collect contractor manpower data,

⁷10 U.S.C. § 2330a(c); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, § 743 (2009). For civilian agencies, the first inventory was required to cover service contracting in fiscal year 2010.

and designate a senior management official at the military departments to develop plans to use inventory data to inform management decisions. DOD concurred with GAO's recommendations.⁸

Office of Federal Procurement Policy Letter

In 2011, OFPP issued guidance, OFPP Policy Letter 11-01, on the performance of inherently governmental and critical functions. The guidance was intended to assist agencies in ensuring that only federal employees perform work that is inherently governmental. The guidance contained examples of the types of work that would be considered inherently governmental. Some examples include determination of budget policy, hiring decisions for federal employees, the direction and control of intelligence or counterintelligence operations, and administering contracts, among others. The FAR states that contracts shall not be used to perform inherently governmental functions, but the regulation provides that this prohibition does not apply to personal services contracts issued under statutory authority.⁹

The Extent to Which DOD Awards Personal Services Contracts Is Unknown

We cannot confirm the extent that personal services contracts are awarded at DOD because we found discrepancies at two DOD agencies whose contracts we examined. Specifically, although FPDS-NG reports that DOD spent about \$118 million on personal services contracts in fiscal year 2015, we found that personal services contract obligations from the Air Force and Army were overstated in the FPDS-NG data because they included obligations that were not for personal services contracts. In addition, we identified personal services contracts in the inventory of contracted services data for the Air Force, Army, and Navy that were not recorded as such in FPDS-NG. We did not identify similar issues at USAID, which reported spending more than \$123 million on personal services contracts in fiscal year 2015. For both DOD and USAID, however, we observed that the extent to which personal services contracts are used may be undercounted since some contracts for

⁸GAO, *Defense Contractors: Additional Actions Needed to Facilitate the Use of DOD's Inventory of Contracted Services*, [GAO-15-88](#) (Washington, D.C.: November 19, 2014); GAO, *Defense Acquisitions: Update on DOD's Efforts to Implement a Common Contractor Manpower Data System*, [GAO-14-491R](#) (Washington, D.C.: May 19, 2014); and GAO, *Defense Acquisitions: Continued Management Attention Needed to Enhance Use and Review of DOD's Inventory of Contracted Services*, [GAO-13-491](#) (Washington, D.C.: May 23, 2013).

⁹FAR §7.502 and §7.503.

nonpersonal services share many of the characteristics of personal services contracts and could, in fact, be administered as personal services contracts.

DOD Has Substantial Reporting Errors in FPDS-NG for Personal Services Contracts

We found that the extent to which personal services contracts are used by DOD may be over stated in FPDS-NG based on our review of selected files and interviews with contracting officials. Specifically, documentation in contract files for some Air Force and Army contracts did not support the classification as a personal services contract as reported in FPDS-NG. Contracting officers are tasked with ensuring the accuracy of the data captured in FPDS-NG, but, in total, 17 of 45 DOD contracts—more than one third—we reviewed were incorrectly coded. The results of our examination of the selected contracts for each agency follow:

- Air Force

We found that 4 of the 15 contracts reviewed were incorrectly reported as personal services contracts in FPDS-NG. We confirmed this with Air Force officials. Documentation in the contract file for the 4 contracts indicated that the product service code was not correct. For example, one incorrectly coded Air Force contract was for the Air Force Tricare liaison to coordinate referrals and ensure that medical paperwork was provided to external providers for continuity of care, which, according to the contract's performance work statement, did not involve the direct supervision or control by government staff—a defining feature of personal services contracts. The correctly coded contracts were all for medical personnel, such as dental assistants, nurses, and pharmacy technicians at various Air Force installations.

- Army

We found that 13 of the 15 contracts we selected were incorrectly coded in FPDS-NG as personal services contracts. Of the 13 incorrectly coded contract actions we reviewed, 2 were task orders for billeting services. An Army official stated that the product service code cited in the base contract was incorrect at the time of the initial award and was then applied to subsequent task orders. Eleven other contracts did not constitute personal services contracts based on our review of the statement of work. For example, in one incorrectly coded Army contract, the contractor was required to present six separate seminars, but was not subject to the relatively continuous supervision and control of government staff, a defining characteristic of personal services contracts. Army officials confirmed that the original product service codes recorded in FPDS-NG were incorrect for these 13

contracts. The two contracts correctly coded were for engineering services in Iraq.

- Navy

We found that 15 of 15 Navy contracts in our sample reported as personal services contracts in FPDS-NG were all correctly coded and the designation was supported in the contract file. All of the contracts we reviewed were for health care-related services at U.S. Naval Hospital, Guam, including pharmacy technicians and a registered nurse.

- USAID

We found that 15 of 15 contracts selected for review based on the product service code reported in FPDS-NG had documentation in the contract file to support the personal services contract designation.

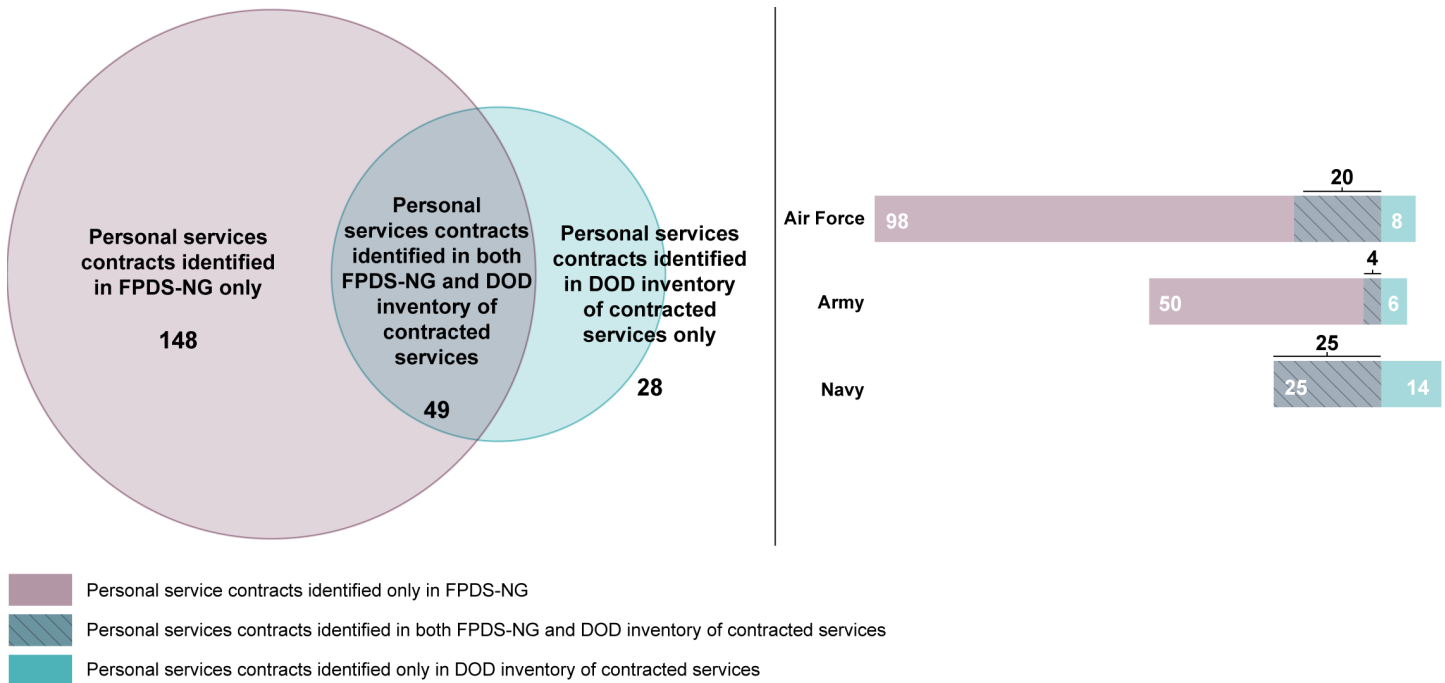
Agency officials stated that the distinction between personal services contracts and nonpersonal services contracts is sometimes difficult to determine, and that making a decision that a particular contract is a personal service contract is subjective and depends on the interpretation of tasks and supervision. According to section 37.103 of the FAR, the contracting officer is responsible for ensuring that a proposed contract for services is proper. For personal services contracts, the contracting officer must document the file with a statement of the facts and rationale supporting a conclusion that the contract is specifically authorized by statute. Further, according to Standards for Internal Control in the Federal Government, management is responsible for the design and execution of appropriate types of control activities that ensure the proper execution of transactions. This includes appropriate documentation of transactions to ensure that reliable information is available for making decisions and the proper supervision of contractors.¹⁰

Reporting Differences Found in DOD's Fiscal Year 2014 Inventory of Contracted Services

The second source we used for information about DOD's personal services contracts, DOD's annual inventories of contracted services, differed from FPDS-NG in the reporting of personal services contracts information. Figure 1 depicts the extent to which DOD personal services contracts appeared in both the inventory of contracted services and in FPDS-NG.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), (Washington, D.C.: Sept. 2014).

Figure 1: Personal Services Contracts Identified in Both Federal Procurement Data System Next Generation and Department of Defense Inventory of Contracted Services, in Fiscal Year 2014



DOD = Department of Defense
 FPDS-NG = Federal Procurement Data System-Next Generation

Source: GAO analysis of Department of Defense data. | GAO-17-610

The FPDS-NG data for the Air Force, Army, and Navy differed substantially from the inventory, as depicted above in figure 1. For each of the military departments, the inventory of contracted services contained references to personal services contracts not recorded as such in FPDS-NG. For both the Air Force and the Army, there was little commonality between the personal services contracts identified in FPDS-NG and the inventories. Although all of the Navy’s personal services contracts that were identified in FPDS-NG were included in the Navy’s inventory of contracted services, the Navy’s inventory included 14 additional personal services contracts not identified in FPDS-NG.

The discrepancies between FPDS-NG and the inventory of contracted services could be explained by a variety of circumstances. We have reported and agency officials agreed that the inventories are developed in

different ways.¹¹ For example, in the case of the Navy, officials stated that they develop the inventory using information from both FPDS-NG and the Enterprise-wide Contractor Manpower Reporting Application, a system used by contractors to self-report information.¹² Officials stated that identifying whether a contract was for personal services was one of the data fields to be completed by the contractor, but contractors may not be knowledgeable about the characteristics of personal services contracts. We did not find discrepancies between the personal services contracts in FPDS-NG and the USAID's inventory.¹³ USAID uses data from FPDS-NG to develop its annual inventory of contracted services.

According to Standards for Internal Control in the Federal Government, it is the responsibility of management to ensure that reliable information is available for making decisions and the proper supervision of contractors.¹⁴ An accurate account of the use of personal services contracts assists agencies to properly understand manpower requirements, evaluate risks, and determine if adjustments are needed. The inconsistency in the reported data from the two sources hinders the ability of agency managers to understand the extent that they are using personal services contracts and how they are used.

Personal and Nonpersonal Services Contracts Can Be Difficult to Distinguish from Each Other

Apart from the inaccuracies and differences in data reported in FPDS and the inventories of contracted services, it is also possible that personal services contracts could be undercounted because nonpersonal services contracts could be administered in a manner that results in their actually being personal services contracts and potentially unauthorized personal

¹¹GAO has additional work on the annual inventories of contracted services. See GAO, *DOD Inventory of Contracted Services: Actions Needed to Help Ensure Inventory Data are Complete and Accurate*, [GAO-16-46](#), (Washington, D.C.: Nov. 18, 2015). For inventories at other federal agencies see GAO, *Civilian Service Contract Inventories: Opportunities Exist to Improve Agency Reporting and Review Efforts*, [GAO-12-1007](#), (Washington, D.C.: Sept. 27, 2012).

¹²The Enterprise-wide Contractor Manpower Reporting Application is an online database tool that allows contractors to report contract information such as direct labor hours and associated labor costs. It is used by DOD agencies to facilitate preparation of the annual inventory of contracted services.

¹³USAID's services contract inventory only catalogs contracts over \$25,000. This threshold prevented GAO from comparing personal services contracts with obligations less than \$25,000 identified in FPDS-NG to the inventory.

¹⁴GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#), (Washington, D.C.: Sept. 2014).

services contracts. In our sample of 40 contracts coded as engineering and technical services, or other professional services contracts—nonpersonal services—we did not assess the contract administration and, therefore, did not identify examples of where a contract was a personal services contract due to being administered in a way that resulted in direct supervision of a contractor by government personnel. However, we note that relatively small changes in the tasks or supervision could result in some of the nonpersonal services contracts we reviewed being administered as personal services contracts. For example, many of the contracts involved the contractor performing critical tasks, with performance occurring in a government workspace. While the statement of work required the contractor (not the government) to provide supervision, given the critical nature of the tasks performed and co-location of contractors and government personnel, there is an opportunity for government officials to exercise continuous supervision and control over the contractor so that the contract would become a personal services contract. Contracting officials for these contracts emphasized that these contracts were not personal services contracts since they did not entail the relatively constant supervision of the contractor staff by government officials. The officials acknowledged, however, that just a slight change in the administration of these contracts could convert them into personal services contracts. Officials also stated that, in some cases, performance of selected tasks by contractor staff could be an area where it would be challenging to say whether a particular activity constituted personal services or not.

In our review of the 40 nonpersonal services contracts awarded by the Air Force, Army, Navy, and USAID in fiscal year 2014, we found that a number of contracts had several characteristics common to personal services contracts based on documentation in the contract file and the FAR's descriptive elements.¹⁵ To illustrate, the following four contracts, one from each agency, demonstrate the similarities to personal services contracts. For each contract below either the contract or discussions with contracting officials specified that the Contracting Officer's Representative (COR) served as the liaison between the government and the contractor, but other aspects of the contract meet many of the characteristics of personal services contracts as presented in the sidebar.

¹⁵ FAR § 37.104(d).

Elements of Personal Service Contracts Present in Selected Non-Personal Services Contracts

We noted the following personal service contract elements identified in FAR 37.104(d) in each of the four selected contracts:

- ✗ Contractor personnel are subject to relatively continuous government supervision.
- ✓ Performance of the contract tasks on a government site.
- ✓ Principal tools and equipment furnished by the government.
- ✓ Services are applied directly to the integral effort of the agencies in furtherance of assigned mission.
- ✓ The need for the type of service can reasonably be expected to last more than 1 year.
- ✓ The nature of the service or the way that it is performed reasonably requires, either directly or indirectly, Government direction or supervision of the contract employees to adequately protect the government's interest, retain control of the function, or retain full personal responsibility for the function that is supported in a duly authorized federal officer or employee.
- ✓ Found in contract
- ✗ Not found in contract

Source: Federal Acquisition Regulation and GAO analysis of selected contracts. | GAO-17-610

- An Air Force contract for engineering cost support services includes specific tasks such as preparing program office estimates, cost benefit analyses, and sufficiency reviews of prime contractor estimates, and evaluating costs. The contractor acts as a liaison between the program office and auditors from agencies such as Air Force Audit Agency, DOD's Office of the Inspector General, and the Government Accountability Office. Other duties entail preparing a monthly acquisition report, program management review, budget management reviews, and spring and fall program reviews.
- An Army contract for support to Army Comprehensive Soldier and Family Fitness Training Centers specifies various tasks. One task identified an operations manager serving as the co-chair /member of the Walter Reed Army Institute of Research and as a member of the Army Fit Content Review Board. A second task identified includes the operation manager facilitating external research projects from the initial planning to implementation. A third task is for managing multiple facets of curriculum development and review. A fourth task is for a public affairs specialist to be responsible for planning, developing and executing strategic public affairs programs.
- A Navy contract to provide engineering and technical services for control systems and information systems required life-cycle support to software systems and major acquisition programs and support of Navy policies for acquisition of software intensive systems, including preparing test plans and participation in an executive steering group.
- A USAID contract to provide surge services for administrative functions such as the development of policy in the areas of event management, meeting and retreat facilitation, curriculum development, project design, and program and evaluation to support USAID's mission.

USAID Cited Incorrect Authority for Personal Services Contracts, and USAID and DOD Use the Contracts for Different Purposes

USAID and DOD have multiple authorities available for awarding personal services contracts. However, contract files at USAID did not cite the correct authority for the 15 contracts we reviewed. Additionally, USAID and DOD personal services contracts are used to support differing missions and entail different kinds of tasks.

USAID Files Did Not Document Correct Authority

USAID has permanent authority to award personal services contracts under the Foreign Assistance Act of 1961 as amended.¹⁶ USAID also received authority in its fiscal year 2014 appropriation for some personal services contracts.¹⁷ For the 15 domestic USAID personal services contracts we reviewed, the authority cited in the contract file was a provision of the Foreign Assistance Act of 1961 that only authorizes personal services contracts abroad—outside of the United States—and an executive order. USAID officials acknowledged that the authority cited in the contracts was not the relevant authority. However, they stated that other authority pertaining to disaster relief in the Foreign Assistance Act of 1961 authorized the use of the domestic personal services contracts we reviewed.¹⁸ We did not find evidence of the correct authority documented in the file as required under the FAR.¹⁹ USAID acknowledged these documentation errors during the course of our review, and shared steps it had taken to revise its personal services contracts documentation. For example, USAID had revised its cover

¹⁶Pub. L. No. 87-195, codified, as amended, at 22 U.S.C. § 2151 et seq.

¹⁷The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2014, provides authority for USAID to employ up to 40 personal services contractors in the United States. Pub. L. No. 113-76, div. K, tit. VII, § 7057(g).

¹⁸USAID's disaster relief authority is in section 491 of the Foreign Assistance Act of 1961, as amended. Officials noted that this is one example of a program-specific authority that may be used to enter into personal services contracts. These authorities are in addition to USAID's authority, under section 636(a)(3) of the same Act to contract with individuals for personal services abroad and authorities provided in annual appropriations.

¹⁹FAR § 37.103(a)(3)(ii).

sheet for personal services contracts listing the possible authorities with a check box to indicate the authority relevant to that contract. However, USAID had not yet developed a process to determine whether the availability of the cover sheet will ensure that contracting officials cite the specific and correct authority.

DOD’s statutory authorities for the use of personal services contracts include personal services for health care among others. DOD contracts cited statutory authority or the DFARS which, in turn, had a reference to the relevant statutory authority. Table 1 shows the authority cited for the DOD personal services contracts we reviewed.

Table 1: Authorization Cited in Department of Defense Personal Services Contracts Reviewed

	Air Force	Army	Navy
Personal Services Contracts for Health Care (10 U.S.C. § 1091)	-	-	15
Personal Services Contracts for Health Care (DFARS 237.104(b)(ii))	11		
Personal Services Contracts for Services to be Provided by Individuals Outside the U.S. (DFARS 237.104(b)(iii)(A)(1)(i))		1	
Personal Services Contracts for Services that Directly Support the Mission of the Special Operations Command of DOD (DFARS 237.104(b)(iii)(A)(1)(iii))		1	

Source: DOD data | GAO-17-610

USAID and DOD Use Personal Services Contracts for Different Purposes

USAID’s personal services contracts that we reviewed cover a broad range of activities including program management, security analysis, and logistics, among others. In contrast, the majority of DOD’s personal services contracts that we reviewed are more narrowly focused on medical personnel. Another difference between USAID and DOD is the use of personal services contracts to conduct inherently governmental tasks. USAID’s supplemental regulation stipulates that personal services contractors can perform any duty a government employee might perform with few exceptions. According to DOD officials, it is not DOD’s practice to assign personal services contractors to perform inherently governmental tasks.

As explained in USAID's supplemental regulation, USAID's personal services contractors who are U.S. citizens may be delegated or assigned any authority, duty, or responsibility that direct hire employees might have, with some exceptions, such as acting as a contracting officer.²⁰ Inherently governmental tasks are those that would ordinarily only be performed by government employees such as making decisions about the priorities for budget requests, direction of intelligence operations, or awarding contracts, and examples of such tasks are laid out in the FAR and OFPP Policy Letter 11-01. The FAR's general prohibition on the use of contractors to perform inherently governmental tasks does not apply to personal services contracts issued under statutory authority.²¹ USAID officials confirmed the tasks in some contracts we reviewed include inherently governmental tasks, as illustrated in two examples below.

- **Security Analyst:** This contractor is responsible for a variety of tasks including analyzing large volumes of security data and reports to make decisions or recommendations shaping agency programs. In addition, the contractor develops strategies for major areas of uncertainty in domestic and international political, social, or economic policies, trends, or situations that have potentially significant repercussions to the agency. The contractor develops the organization's position on controversial or disputed issues. These tasks are considered inherently governmental, according to the FAR and OFPP Policy Letter 11-01.
- **Senior Program Manager:** This contractor is responsible for a variety of tasks including performing complex country analysis and program design to develop existing and future programs and strategies in high priority countries. In addition, the contractor manages or participates in the selection of grantees, contractors, and other personal services contractors. These tasks are considered inherently governmental, according to the FAR and OFPP Policy Letter 11-01.

The majority of DOD's personal services contracts we reviewed were awarded to obtain medical services from practitioners such as doctors, nurses, and pharmacists. For example, for the Navy, all 15 personal services contracts were for medical services. This was also the case for 11 contracts from the Air Force. The Army's personal services contracts in our sample were for engineering services abroad.

²⁰USAID Acquisition Regulation, Appendix D, Direct USAID Contracts with a U.S. Citizen or a U.S. Resident for Personal Services Abroad.

²¹FAR § 7.502.

Conclusions

Agencies need accurate information about their personal services contracts in order to ensure that government supervision of the work is appropriate. Without such information agencies do not have information useful for managing their programs. The Air Force and Army had significant errors in reporting the use of personal contracts and USAID consistently cited the incorrect authority for awarding the personal services contracts we reviewed. Therefore, there is room for improving procedures to help ensure accurate information is recorded. USAID has taken initial steps to revise its documentation but has not yet developed a process to determine whether the steps taken will result in increased accuracy. Personal services contracts are important to understand and track because the contractors are directly supervised by government personnel much as government employees would be. Because of their organic relationship to the work of government, it is incumbent on government agencies to have credible, accurate information about the number of these contracts and the authorities under which they are awarded. The absence of such reliable and credible information hinders the ability of government managers to determine if there are sufficient government personnel to carry out inherently governmental work and to properly oversee the work of contractors to ensure that the government remains responsible for the execution of approved government functions and for managing the agency's work.

Recommendations for Executive Action

To ensure accurate reporting of personal services contracts, we make the following two recommendations.

- The Secretary of Defense direct the Secretaries of the Air Force and the Army take steps to ensure the accurate recording of personal services contracts in the Federal Procurement Data System-Next Generation.
- The Administrator, United States Agency for International Development implement periodic reviews of selected personal services contracts to ensure the effectiveness of steps taken to assist contracting officers to cite the correct statutory authority for personal services contracts.

Agency Comments and Our Evaluation

We provided a draft of this report to DOD and USAID for their review and comment. In written comments reprinted in appendixes II and III, both DOD and USAID concurred with our recommendations and described the actions they plan to take. DOD stated that the Director, Defense Procurement and Acquisition Policy, will issue a memo to the Army and Air Force Senior Procurement Executives directing them to take appropriate steps to ensure the accurate recording of personal services contracts. USAID stated that the Agency had revised and distributed a coversheet to a standard form which they believed would result in greater accuracy in citing the authorization for domestic personal services contracts. Consistent with our recommendation, USAID has revised its checklist used for reviewing and validating key acquisition functions. The agency will use the checklist in its annual procurement systems reviews to verify that contracting officials cite the correct authority.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Administrator, United States Agency for International Development, the Undersecretary of Defense for Acquisition, Technology, and Logistics, the Undersecretary of Defense, Personnel and Readiness and other interested parties. In addition the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or at woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

Sincerely yours,



William T. Woods
Director, Acquisition and Sourcing Management

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the extent to which selected agencies award personal services contracts; and (2) how those agencies use personal services contracts.

To identify the extent to which the government reports awarding personal service contracts, we analyzed data from the Federal Procurement Data System—Next Generation (FPDS-NG). We selected contracts, excluding modifications, identified as personal services contracts based on the product service code of R 497—a product service code reserved for personal services contracts—for contracts awarded in fiscal years 2011 through 2015.¹ Fiscal year 2015 was the latest year with certified FPDS-NG data at the time we started our review. We identified 11 agencies or departments that reported obligations for personal services contracts. We analyzed the data and identified the Department of Defense (DOD) and the United States Agency for International Development (USAID) as the two agencies that reported the highest obligations for personal services contracts in fiscal years 2011 through 2015. Although we identified inaccuracies in some of the data in FPDS-NG, as discussed in this report, we discussed the data and its limitations with agency officials and determined that the data from FPDS-NG were sufficiently reliable for purposes of selecting the agencies with the highest obligations on personal services contracts and obtaining a sample of contracts.

We also identified the four agencies—the Air Force, Army, and Navy within the Department of Defense (DOD), and the United States Agency for International Development (USAID)—with the highest obligations for personal services contracts using FPDS-NG data. These agencies account for nearly 60 percent of the spending on such contracts in fiscal year 2014. We reviewed a nongeneralizable random sample of 60 contracts coded as personal services contracts in FPDS-NG, 15 contracts from each agency (Air Force, Army, Navy, and USAID). The 60 contract random nongeneralizable sample was drawn from all contracts in fiscal year 2014 that reported obligations for personal services contracts equal to or greater than \$10,000. We reviewed the files to determine the specific statutory authority cited for awarding the personal services contract, the tasks performed by the contractor, supervision provided, and the duration of the contract including options. We also obtained policy documents and supplemental regulations from the agencies detailing

¹A product or service code is the category in the Product and Service Codes Manual that best identifies the product or service procured.

agency responsibilities with respect to personal services contracts and interviewed agency officials. We compared the data reported in FPDS-NG, such as the contract number and award value, to information in the selected contract files and determined that the FPDS-NG data were sufficiently reliable for the purposes of selecting our sample.

We determined that a number of contracts identified by the Army and the Air Force as personal services contracts were miscoded as personal services contracts based on documentation in the contract file and discussions with agency officials. To obtain additional information on the extent to which agencies use personal services contracts, we also examined the data on personal services contracts from the publically available inventories of contracted services for the Air Force, Army, Navy and USAID for fiscal year 2014. Fiscal year 2014 was the latest year with certified inventory data, at the time of our review. These inventories are congressionally required compilations of services contracts intended to provide insight into the kinds of services purchased and the number of contractor personnel involved. We discussed the preparation of the inventories with agency officials and reviewed our prior reports on inventories. However, examination of the inventory of contracted services data for the Air Force, Army and Navy did not resolve discrepancies we found between DOD's FPDS-NG data and the inventory of contracted services data.

Based on our review of the FPDS-NG data, reviews of the selected service contract inventory data, selected contract files, and interviews with DOD and USAID officials, we determined that the FPDS-NG data are not sufficiently reliable for comparing obligations from year to year for personal services contracts or for determining the extent to which DOD awarded personal services contracts. We present data on obligations for illustrative purposes only.

To determine how DOD and USAID use personal services contracts, we reviewed contract files to determine the authority cited for awarding the contracts and analyzed the statements of work, which define the kinds of services required under the contracts. To further explore the differences in how these agencies use personal services contracts and other types of service contracts, we also reviewed a different nongeneralizable random sample of 40 contracts that were coded as engineering and technical services, or other professional services contracts awarded by the Air Force, Army, Navy, and USAID in fiscal year 2014 (10 contracts from each agency). We selected these categories of services because they are similar to the types of services performed by personal services

contractors and constituted a majority of the services contracts awarded by DOD and USAID. We did not review contractor performance or contract administration for this report. We compared the data reported in FPDS-NG, such as the contract number and award value, to information in the selected contract files and determined that the FPDS-NG data were sufficiently reliable for the purposes of selecting our sample. The sample of contracts both personal and nonpersonal included in our review is not generalizable to a larger universe, but is designed to provide illustrative examples of characteristics and use of personal service contracts at the selected agencies and components, and for comparison of characteristics of personal and nonpersonal services contract awards.

We reviewed the Federal Acquisition Regulation (FAR), obtained supplemental regulations and policy documents from the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget, and from the agencies we reviewed that detailed agency responsibilities with respect to personal services contracts. We interviewed agency personnel concerning their responsibilities for awarding personal services contracts, for preparing the data entered in FPDS-NG, for preparing the annual inventory of contracted services, and reviewing the contracts subsequent to inventory preparation.

To gain further insight into FPDS-NG, agency-specific service contract inventories, and contract files, we interviewed officials from the Air Force, Army, Navy, USAID, and the Office of the Secretary of Defense (OSD), including OSD General Counsel and OSD's Total Force Manpower and Resources Directorate. We also interviewed officials from the Office of Management and Budget's OFPP regarding the government-wide use of personal services contracts.

We conducted this performance audit from February 2016 to July 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense



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WASHINGTON, DC 20301-3010

JUL 05 2017

Mr. William Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report, GAO-17-610, "Federal Contracting: Improvements Needed in How Some Agencies Report Personal Service Contracts," dated June 6, 2017 (GAO Code 100687). The Department's comment on the report recommendation is enclosed.

Sincerely,

A handwritten signature in black ink that reads "Claire M. Grady".

Claire M. Grady
Director, Defense Procurement
and Acquisition Policy

Enclosure:
As stated

**GAO Draft Report Dated June 6, 2017
GAO-17-610 (GAO CODE 100687)**

**“FEDERAL CONTRACTING: IMPROVEMENTS NEEDED IN HOW SOME AGENCIES
REPORT PERSONAL SERVICE CONTRACTS”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 1: To ensure accurate reporting of personal services contracts, the Government Accountability Office (GAO) recommends that the Secretary of Defense direct that the Secretaries of the Air Force and the Army take steps to ensure the accurate recording of personal services contracts in the Federal Procurement Data System-Next Generation.

DoD RESPONSE: Concur. The Director, Defense Procurement and Acquisition Policy will issue a memo to the Army and Air Force Senior Procurement Executives directing they take appropriate steps to ensure accurate recording of personal services contracts in the Federal Procurement Data System-Next Generation.

Appendix III: Comments from the United States Agency for International Development



JUN 29 2017

Mr. William T. Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: FEDERAL CONTRACTING: Improvements Needed In How Some Agencies Report
Personal Services Contracts (GAO-17-610)

Dear Mr. Woods:

I am pleased to provide the United States Agency for International Development's (USAID) formal response to the U. S. Government Accountability Office (GAO) draft report entitled "*FEDERAL CONTRACTING: Improvements Needed in How Some Agencies Report Personal Services Contracts*" (GAO-17-610).

This letter and the enclosed USAID comments are provided for incorporation as an appendix to the final report. Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff while conducting this GAO engagement.

Sincerely,

A handwritten signature in blue ink, appearing to read "Angelique M. Crumbly".

Angelique M. Crumbly
Acting Assistant Administrator
Bureau for Management

Enclosure: a/s

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USAID COMMENTS ON GAO DRAFT REPORT
**FEDERAL CONTRACTING: Improvements Needed in How Some Agencies Report
Personal Services Contracts (GAO-17-610)**

USAID appreciates the opportunity to comment on GAO's draft report entitled "FEDERAL CONTRACTING: Improvements Needed in How Some Agencies Report Personal Services Contracts."

USAID has taken great effort to ensure that our FPDS-NG data and other reporting are accurate. We are pleased to see the result of these efforts confirmed in your review.

As noted in your report, USAID relies on the Foreign Assistance Act (FAA) of 1961, as amended, as its primary authority for personal services contracts (PSC) performed abroad. The Agency has several other statutory authorities upon which it can rely for its domestic PSCs. The domestic contracts identified in this review had a different authority than the FAA authority that was cited in the contract file. During a review last year of our PSC regulations and policies, USAID had also identified that Contracting Officers (CO) were not always citing the correct authority for contracts performed in the US. We determined that the best way to address this was to revise the PSC Cover Page Form AID 309-1 in such a way that COs would be less likely to cite our most commonly used authority in the FAA. These revisions to the form were finalized in May 2016 and published in the Federal Register after review by the Office of Management and Budget. The Bureau for Management, Office of Acquisition and Assistance (M/OAA) shared this form and instructions for its use, including identification of the correct authority, with our COs worldwide. We believe that this will correct the issue, but agree with your conclusion that additional validation will be beneficial.

This report has one recommendation for USAID as shown on page 17 of the draft report:

Recommendation: To ensure accurate reporting of personal services contracts, we recommend that the Administrator, United States Agency for International Development implement periodic reviews of selected personal services contracts to ensure the effectiveness of steps taken to assist contracting officers to cite the correct statutory authority for personal services contracts.

USAID's Response: USAID agrees with this recommendation to implement periodic reviews of selected personal services contracts to ensure the effectiveness of the steps we have taken. USAID's Bureau for Management, Office of Acquisition and Assistance Evaluation Division (M/OAA/Evaluation) performs regular reviews of the Agency's Procurement System. M/OAA/Evaluation performs reviews of the procurements in each of our contracting activities using a checklist that identifies key functions and validates that they are being performed accurately. USAID has added a test factor to this checklist to determine whether the appropriate authority is cited for each personal services contract it reviews. Through this change, each of the Procurement System reviews done annually will verify that the correct authority is cited. USAID believes that this is the best means to implement periodic reviews to ensure the effectiveness of the steps we have taken. Given the actions already completed prior to the delivery of this draft report, plus the actions taken to verify its effectiveness, we believe this recommendation has been fully satisfied. We, therefore, request that GAO consider indicating in

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the published report that the required actions have been completed and the recommendation is considered closed.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

William T. Woods, (202) 512-4841 or woodsw@gao.gov

Staff Acknowledgments

In addition to the contact named above, Penny Berrier, Assistant Director; John Beauchamp; Stephanie Gustafson; Kristine Hassinger; Julia Kennon; Carol Mebane; Jean McSween; Kate Pfeiffer; Roxanna Sun; and Abby Volk made significant contributions to this review.

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