

Contracts
Accounting 58-3072

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Date: _____ By: 013

18 October 1956

MEMORANDUM FOR: Chief, Contract Personnel Division
THROUGH : Acting Comptroller
SUBJECT : Financial Administration of Contracts for Personal Services

1. Recently Finance Division has been requested on several occasions to effect adjustments in compensation of covert contract personnel without appropriate amendment of contracts. These adjustments most frequently pertain to the treatment of the contract for tax purposes and are occasioned by recent determinations with respect to the obligations of the Agency and/or the contractor with respect to taxes.

2. In order to properly certify payments under contracts, the Certifying Officer must establish that evidence of service contemplated by the contract is on hand and that compensation for such services is computed and paid in accordance with the specific terms of the contract. In case of questions, the Certifying Officer is protected in the exercise of his authority to certify claims only if he can show that payments have been effected in strict conformance with the terms of contracts executed by competent authority.

3. Consistent with the above, Finance Division cannot, in the absence of an appropriate contract amendment, effect adjustments in the rate or conditions under which compensation is payable under contracts for personal services, whether such adjustments relate to determinations as to tax obligations, classification of compensation, allowances, etc., for tax purposes, or changes in rates or methods of computing financial entitlements under the contract. It is recognized that, ordinarily, tax obligations are determined by applicable tax law, however, it is also true that such obligations as accrue as between the responsibilities of the Agency and persons entering into personal service contracts with it must be determined on the basis of relationships created by the contract. These relationships are often not evident from the language of the contract but must be determined on the basis of the facts in the case and the intention of the contracting parties. For this reason, and in the interest of avoiding confusion and misunderstanding, Finance Division must insist that each contract be fully documented by inclusion of appropriate language within the contract or by formal amendment, as to the full responsibilities assumed by the Agency, including treatment of amounts payable under the contract for tax purposes.

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4. Legal determinations as to the propriety of terms of contracts and interpretations of contracts are matters for resolution between the Office of General Counsel and the Contracting Officer. This is not to say that Finance Division proposes to ignore provisions of contracts which appear to require re-examination wherever they are detected in the course of routine processing of contracts. On the contrary, whenever such provisions, or provisions which appear to be impractical of administration or are inconsistent with known circumstances of the relationship come to our attention, they will be referred to Office of General Counsel or the Contracting Officer, as appropriate, for review and decision.

5. Even in instances wherein relationships established between the Agency and contractors are such as to dictate adjustment of contracts, other considerations may require modification of indicated action. Specifically, reference is made to instances wherein it has been determined that Social Security taxes should be withheld where contracts previously have not contained provisions for such action. In such instances, it is our view that amendment of contracts which provide for retroactive adjustment of taxes should be considered in the light of cover and security, as well as the legal and administrative obligations.

6. Retroactive adjustment of taxes, while creating an additional administrative burden, does not ordinarily involve cover or security considerations provided the contemplated adjustment does not involve more than tax adjustments for the current tax year. In any case, however, where previous years' taxes are involved, adjustment would normally require filing of amended tax returns by the tax-payer as well as the Agency. This action which, in most cases, may involve change from a self-employed overt return basis to an employee covert return basis may well have security and cover implications which should be considered before contracts are amended. It is our opinion that general policy should preclude retroactive amendments of contracts. Also, where amendments appear to be necessary, in exceptional cases, which will require the filing of amended returns for prior years that concurrence of Cover Division and Office of Security, as well as Office of General Counsel, should be obtained before the amendments are formalized.

7. In summary, the views of Finance Division on the above matters relating to the financial administration of contracts for personal services are expressed as follows:

a. Payments under contracts must conform to the specific terms of contracts. No adjustment of such payments should be effected without supporting contract amendment.

b. Legal determinations and interpretations of contract terms are matters for resolution by the Office of General Counsel and the Contracting Officer and not by the Finance Division.

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c. Contracts should by their terms, set forth compensation and other emoluments by specifically assigned dollar equivalents, to be treated as compensation for tax purposes, and the contract should clearly state the tax withholding and reporting obligations undertaken by the Agency.

d. Contracts and contract amendments should not be issued on a retroactive basis, but should be executed and be released prior to the effective dates. Where amendments requiring adjustment of taxes withheld or prior years' tax returns are determined to be necessary, action to amend the contract should receive Cover Division, Office of Security and Office of General Counsel approval.

B. Your reaction to the views expressed above will be appreciated. In the meantime, and in order to expedite clearance of contracts, Finance Division will return, for appropriate determination and clarification, contracts and amendments which are received which reflect variance from the above principles.

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9. Consistent with the above, the contract amendments for [REDACTED] are returned, with the request that they be further amended or voided, and executed to conform with the thoughts expressed above.

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[REDACTED] 25X1A9a

Attachments (3)

Distribution: Orig. & 1 - Addressee
1 - DD/S
1 - Cover Division
1 - Office of Security
1 - OGC
1 - Office of Personnel
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FD/LEB:mhp

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ORIGINAL DOCUMENT MISSING PAGE(S):

Attachment