



UNITED STATES MARSHALS SERVICE'S USE OF INDEPENDENT CONTRACTORS AS GUARDS

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UNITED STATES MARSHALS SERVICE'S USE OF INDEPENDENT CONTRACTORS AS GUARDS

EXECUTIVE SUMMARY

The United States Marshals Service (USMS) assumes custody of individuals arrested by federal agencies and is responsible for housing and transporting prisoners from the time they are brought into federal custody until they are either acquitted or sentenced. On any given day, the USMS has in its custody roughly 47,000 detainees housed in federal, state, local, and private jails throughout the nation.

The USMS is granted authority under 28 U.S.C. Section 565 to employ the use of personal services contract guards¹ to assist USMS deputy marshals in day-to-day operations throughout its 94 districts.² The USMS's primary sources for procuring personal services contract guards are 1) guard company vendors and 2) independent contractors. Since the Office of the Inspector General (OIG) has reviewed the USMS's use of guard company vendors in prior audits (as discussed in the background section of the report), we selected as the focus of this audit the USMS's use of independent contractors for guard services.

The objectives of this audit were to: 1) assess the USMS's internal controls over the procurement of independent contractors for guard service, 2) determine whether the USMS is adequately monitoring the performance of its independent contract guards, 3) determine whether the independent contractors are meeting the USMS's experience and fitness-for-duty requirements, 4) evaluate the initial training provided to contract personnel, and 5) determine whether independent contractors are performing only authorized duties.

¹ The Federal Acquisition Regulation (FAR), Part 37.104 states that "a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract."

² 28 U.S.C., Section 565 states that "the (USMS) Director is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements... for security guards and for the service of summons on complaints, subpoenas, and notices in lieu of services by United States marshals and deputy marshals."

The audit encompassed the USMS's management of personal services contract guards during fiscal years (FYs) 2003 and 2004. Our primary focus was on management of contract guards by USMS district offices and the Justice Prisoner and Alien Transportation System (JPATS).³ In conducting the audit we:

- Researched and reviewed applicable laws, policies, regulations, manuals, and memoranda;
- Interviewed officials at USMS headquarters;
- Reviewed contract operations at 7 USMS sites⁴ and selected a judgmental sample of 223 case files of independent contractors to determine whether guards 1) met experience requirements for guard service, 2) were fully trained, 3) met fitness-for-duty standards, and 4) had received background clearances;
- Interviewed contracting officers, contracting officer's technical representatives (COTRs), and supervisors in each site to determine whether the sites were effectively monitoring the contracts and contractors' performance; and
- Interviewed district judges at each site we visited, and interviewed six judges on the Judicial Conference Committee for Security and Facilities.

I. Summary of Audit Findings

Our audit of the USMS's use of independent contractors as guards disclosed the following deficiencies:

- The USMS districts' procurement practices are in violation of USMS policy and the FAR with regard to procurement of independent contractors.

³ In 1995 the air fleets of the USMS and the Immigration and Naturalization Service merged to create the JPATS. Operated by the USMS, the JPATS transports prisoners between judicial districts, correctional institutions, and foreign countries. According to the USMS, the JPATS averages more than 270,000 prisoner and alien movements annually through a network of aircraft, sedans, vans, and buses.

⁴ The OIG visited six USMS districts and the JPATS during our audit. These sites included large and small districts that were geographically dispersed throughout the country.

- A lack of controls over procurement process for independent contractors has created an environment conducive to inconsistencies, and inefficiencies.
- Internal control weaknesses in the hiring and monitoring of independent contractors allowed for hiring of unqualified individuals for guard service.
- Because of the lack of documentation in USMS files, we could not verify for the majority of independent contractors tested whether they had been medically certified as fit for duty.
- Armed guards did not always receive firearms training on a timely basis.
- We could not verify that background investigations had been conducted for contract guards prior to their employment, where applicable, due to lack of documentation in USMS files.

II. Background

Under 28 U.S.C., Section 565, the USMS director is authorized to use appropriated funds “to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements... for security guards... in lieu of services by United States marshals and deputy marshals.”

Prisoner Management, Section 9.31 established policies and procedures for USMS districts and the JPATS governing procurement of independent contractors as security guards. To ensure that USMS procurement practices are compliant with the FAR, the USMS incorporated into its policy, the FAR requirements for procurement of personal services contracts, in particular, the need for a competitive bidding process in awarding contracts.

According to USMS policy, independent contractors may be used to: 1) guard and process federal prisoners in the cellblock, courtroom, and during transport; 2) guard and transport federal prisoners to and from medical appointments; and 3) guard federal, seized, or forfeited property (including entry control, roving patrol, fixed posts, and emergency response). During the course of this review, we found that the USMS uses independent contractors primarily to transport federal prisoners to and from court facilities, and guard federal prisoners in courtrooms or cellblocks.

III. Management of Independent Contractors

Independent contractors, as the term implies, require a separate contract for each individual contractor. In FY 2003, for example, the USMS district offices employed a total of 2,786 independent contractors, each of whom required a separate contract. By contrast, use of guard company vendors may provide for hundreds of guards under a single contract. Under the USMS's Court Security Officer Program, for instance, the USMS utilizes 12 separate contracts with regional guard companies to obtain the services of 4,500 contract guards to provide security at about 400 federal court facilities nationwide.

Our review of 223 individual contracts with independent contractors in six districts and the JPATS operations hub revealed material deviations from the USMS policy and the FAR, including the absence of a competitive bidding process, arbitrary wage determination, unauthorized contract payments, and contracting officers exceeding procurement authority. The problems stem largely from a general disregard in the districts for USMS policy governing procurement practices for personal services contracts. Instead of a proper procurement process, what we found in the field was a process that more closely resembles the recruitment of employees than the hiring of independent contractors. Further, the overall lack of a formal procurement process for hiring independent contractors as guards has created an environment conducive to inconsistencies, inefficiencies, and misuse of authority.

Full and Open Competition

We found that the USMS sites reviewed failed to provide for full and open competition in the awarding of personal services contracts to independent contractors. For example, the USMS sites reviewed did not maintain bidders' lists, in accordance with USMS policy. Further, there was no formal solicitation of sealed bids from potential contractors, nor was there any other systematic approach to procure contract guards based on a competitive process, as required by USMS policy and the FAR.

Of the 57 independent contractors that we interviewed or who provided questionnaires, 42 contractors (74 percent) indicated that they learned about the guard position through informal contacts with colleagues or acquaintances in law enforcement. At least four others were actively recruited by the USMS. In no instances did we observe the use of a bidders list or any formal solicitation of independent contractors for guard services pursuant to a full and open competitive bidding process. To the contrary, what we observed were procurement practices that encouraged the

development of a closed system that restricts the pool of applicants to those individuals who, through some personal contact, learn of contract guard positions. USMS officials cited sole source justification in circumventing the full and open competition requirements of the FAR.

Wage Determination

We found that wage rates for independent contractors are set by the districts with approval from USMS headquarters, rather than through a competitive bidding process, as required by USMS policy directives. We observed that the discretion afforded the districts resulted in broad variances in hourly wage rates from district to district, ranging from a low of \$12 in the Central District of California, which includes the Los Angeles metropolitan area, to a high of \$35 for select guards within the District of Columbia Superior Court.

We could not attribute wage variances to cost-of-living factors because wages in some metropolitan areas, such as Los Angeles, with an hourly wage rate of \$12, were lower than that of more rural areas such as the Southern District of Texas and the Southern District of Iowa, which had hourly wage rates of approximately \$18. Rather, the variances stem from the fact that some districts established wage rates for independent contract security guards commensurate with wages for active duty sworn law enforcement officers, while others, such as JPATS, established wage rates commensurate with that of bailiffs and jailers, which is more in line with the duties required of the contract.

Such variances would not exist under contracts with guard company vendors, where wages are established by the vendor, and are based upon the Department of Labor's (DOL's) prevailing wage rate determinations for the applicable service industry occupation, in accordance with the McNamara-O'Hara Service Contract Act of 1965.⁵ The current DOL prevailing wage rate for bailiffs and jailers averages about \$16.25 nationwide.

We determined that the high wages were offered, in part, to attract active duty sworn police officers to serve as contract guards, as was the case in the Western District of Washington, which offered an hourly rate of \$25 hour. The problem we found with this strategy was that while the districts may succeed in recruiting some active duty police officers, in most

⁵ The McNamara-O'Hara Service Contract Act of 1965 establishes standards for minimum compensation, safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the federal government and the District of Columbia.

instances the districts are forced to rely on generally less-qualified contract guards — usually retirees — because the active duty police officers are not always available when needed for work.

Thus, in some districts the USMS is paying too much for independent contractors by setting wages for a labor pool of which it cannot take full advantage. On average, USMS independent contractors were paid at an hourly rate of \$19.62 for guard services in FY 2003, \$3.37 greater than the average prevailing wage rate of \$16.25, based on the DOL's prevailing wage rates for bailiffs and jailers. Based on 611,638 total contract guard hours reported in FY 2003, we estimate that the USMS paid approximately \$2 million in excess of the prevailing wage rate for comparable services in that year alone. This does not necessarily mean that such cost savings could be achieved, but it does reflect a basic flaw in the districts' wage-setting methodology.

Procurement Authority

The contracts for most of the independent contractors reviewed were not to exceed \$25,000 and procurement authority delegated to contracting officers at the sites reviewed was generally for the same amount. USMS policy directive 9.31 D.8.e states, "should the contract per guard exceed the district's procurement authority the action must be ratified by the Procurement Office. The districts and the JPATS shall properly justify the need to exceed the contract amount." This language is derived from the FAR, which states that "Contracting officers may bind the Government only to the extent of the authority delegated to them."

We found that in 3 of the 7 sites reviewed, USMS contracting officers allowed contractors to receive payments that exceeded the contract amount by \$221,586 without written justification, or approval from USMS headquarters, as follows:

- In the Southern District of New York, the contracting officer allowed payments to exceed the contract amount in 8 of the 17 contracts reviewed, or 47 percent, for a total of \$187,490 in unauthorized payments.
- In the District of Columbia Superior Court, the contracting officer allowed payments to exceed the contract amount in 10 of the 25 contracts reviewed, or 40 percent. Unauthorized payments for the 10 contracts totaled \$28,539.

- In the District of Puerto Rico, the contracting officer allowed payments to exceed the contract amount in 2 of 39 contracts, or 5 percent, for a total of \$5,557.

Our review of payroll totals for all of the 2,786 independent contractors employed in FY 2003 indicated that a total of 97 guards were paid in excess of their contract amounts by a total of \$887,756. As of the third quarter of FY 2004, 26 guards had received unauthorized payments totaling \$135,532.

Unauthorized Services

USMS policy, as reflected in the Statement of Work for independent contractors, specifically delineates those services authorized under the contract (see Appendices III and IV). To determine whether contractors were providing only authorized services, we interviewed district officials, reviewed timesheets and obtained information directly from independent contractors. We noted the following problems:

- In the District of Arizona, the USMS and the Tucson Police Union have established a system whereby for every five police officers assigned guard work at a given time, the district has to have a police sergeant assigned to supervise them. Under the agreement, the district also has to pay the sergeant \$4 more an hour than the regular contract rate. We noted that the two sergeants we interviewed spend 10 to 20 percent of their time performing administrative duties, such as scheduling. USMS policy clearly prohibits the use of independent contractors for administrative and supervisory functions.
- In the Western District of Washington, the USMS hired a recently retired USMS employee as a contract guard. While the time and attendance records for the retiree-turned-contractor indicated that she was performing prisoner transport, in reality the retiree was being used in her former capacity as an administrator to train her replacement, a function not permitted under 28 U.S.C. Section 565.
- In the Southern District of New York, a recently retired administrative employee was hired by the district as a contract guard, only to resume her administrative duties until a full-time replacement could be found. The retiree was under contract in FY 2003 and up through April 2004, when the chief deputy terminated her contract. As was the case in the Western District of Washington, the contractor's time and attendance records indicated

that she was performing guard services, when in fact, she was performing administrative duties.

Use of Independent Contractors

At the heart of the issue underlying the problems we encountered with the USMS's use of independent contractors is the question of whether the USMS can realistically be expected to adhere to the rules regarding their procurement. Deviations from USMS policy and the sections of the FAR upon which it is based were commonplace and fostered an environment conducive to inconsistencies, inefficiencies, and unauthorized uses of independent contractors. However, requiring districts to provide full and open competition in accordance with USMS policy (e.g., formal solicitations, bidders' lists, sealed bids) on 2,000 plus individual contracts annually, in our judgment, would be an administrative burden that would negate the benefits derived from the use of the independent contractors. Indeed, even with the current "streamlined" procurement practices, districts with large numbers of independent contractors commented on the administrative workload required in managing so many individual contracts. The fact that the districts have almost universally ignored the requirements of USMS policy governing the procurement of independent contractors, in our judgment, constitutes a tacit rejection of the policy, and indicates that full implementation of the policy is not practicable.

Thus, the dilemma facing the USMS: To allow the districts to continue with their current procurement practices, which are expedient but fundamentally flawed and susceptible to abuse, or to fully implement the procedures required to bring the districts into compliance with USMS policy and the FAR and in so doing create an unmanageable administrative burden.

Possible Alternatives

Since neither of the above options is an acceptable solution, we recommend the USMS consider seeking alternative approaches to acquiring the necessary guard services that would eliminate the need for independent contractors. Specifically, we recommend that the USMS consider 1) expanding the use of company vendor contracts, 2) expanded use of intergovernmental agreements with local jails or cooperative agreements with local law enforcement agencies, and 3) explore as an alternative the use of part-time and temporary employees.

Vendor Contracts (Company Guards)

The USMS could expand, to some extent, its use of guard company vendors. Currently, the USMS uses contract vendors primarily to provide courtroom security via the CSO Program and for guarding inmates receiving outside medical care. Our review determined that USMS districts rarely use vendor guards for court-related prisoner handling activities, preferring instead to use independent contractors.

Cooperative Agreements/IGAs

Current USMS policy requires that districts obtain guard services to the extent possible from existing IGAs with local jails. Toward that end, the districts could negotiate agreements with local law enforcement or corrections agencies to provide guard services and prisoner transportation. One of the districts surveyed had indicated an interest in pursuing the use of a cooperative agreement with the local police department in lieu of using independent contractors. Expanded use of these agreements could alleviate the districts' reliance on independent contractors for transporting prisoners to and from federal courthouses and medical facilities.

Part-time and Temporary Employees

In 1978, the U.S. Congress established the Federal Employees Part-time Career Employment Act (Act) to promote the expansion of part-time employment. Congress concluded that part-time employment benefits the government by offering management more flexibility in meeting work requirements and filling shortages in various occupations.

We noted in our review of USMS payroll reports that over 90 percent of the independent contractors used in FY 2003 worked fewer than six months during the year. On average, independent contractors worked about 200 hours over the course of the year. Despite the fact that these independent contractors represent, for the most part, a workforce of temporary, part-time workers, there is no indication that the USMS has ever pursued a part-time program or explored the use of part-time or temporary employees for guard services. We believe that the implementation of such a program may be a feasible alternative to the use of independent contractors that would meet the USMS's flexibility requirements because of fluctuations in courtroom activity.

IV. Internal Controls

There are inherent risks associated with transporting and guarding federal prisoners outside of a jail or detention center. To minimize these risks the USMS has established policies and procedures to ensure that independent contractors hired for guard service possess the skills and experience necessary to perform their duties. However, our review of over 200 contract guard case files revealed internal control weaknesses in the hiring and monitoring of independent contractors. We determined that at least 12 individuals with little or no law enforcement experience were hired as guards and performed guard duties. Further, we were unable to establish for a significant number of guards whether they were qualified for guard service due to a lack of USMS documentation. For example, we were unable to verify that guards had been fully trained, had met fitness standards, and had received a required background investigation due to a lack of documentation. In general, the problems noted resulted from the lack of a systemized approach to hiring and monitoring contracts by the contracting officers and COTRs. Failure to address these weaknesses may allow poorly qualified, ill-trained individuals to obtain guard contracts, which in turn could jeopardize the safety of individuals involved in the judicial process.

Qualifications

Individuals hired as independent contract guards are classified under one of five qualifying experience categories: 1) active duty sworn state or local law enforcement officers; 2) reserve sworn state or local law enforcement officers; 3) former/retired sworn federal, state, or local law enforcement officers; 4) former/retired military police; or 5) private security/correctional officers. Properly classifying a contractor's qualifying experience is important because it determines the requirements needed by a contract guard to meet USMS employment standards. Category 1 and 2 guards, for instance, need only affirm that they meet specific USMS standards, e.g., firearms qualified, physically fit, sufficiently experienced in law enforcement, while category 3, 4, and 5 guards must provide medical fitness certification signed by a doctor; and be firearms qualified by the USMS.

We were unable to determine or verify qualifying experience for a significant number of independent contractor guards because the USMS files lacked sufficient documentation. The USM-234 Personal Qualifications Statement, for instance, the main document used to determine a contractor's qualifications, was missing from 51 case files, or 23 percent of the 223 case files we examined. Lack of documentation was generally concentrated in two of the sites we reviewed. In one district, 21 case files,

or 84 percent of the 25 case files reviewed, lacked the necessary documents for determining the contractors' qualifications. The USM-234 was not on file for any of the 30 independent contractors reviewed in another district. Case files were missing for 10 of the 30 contractors, and the remaining 20 case files reviewed did not contain the USM-234.

For those files reviewed that did contain sufficient documentation, we determined that at least 12 of the guards hired lacked the experience required to qualify as contract guards. Four of those individuals had no prior law enforcement experience at all, but rather held positions as a sales clerk, a receptionist, a retired USMS employee who had worked as an administrative clerk, and an airport screener. While two of the four guards were no longer employed as contract guards, the former receptionist and airport screener were still active at the time of our review. USMS officials commented that while these individuals may not have had the proper law enforcement experience at the time they were hired, they now have qualifying experience through their guard service with the USMS. However, we believe that the hiring of unqualified individuals for prisoner handling operations represents a breakdown in internal controls that places an undue risk on all parties involved in the judicial process.

Fitness-for-duty

We reviewed 132 active case files to verify that independent contractor guards were medically certified as fit for duty. Our tests revealed a range of results. On the positive end of the spectrum was one district and the JPATS operation, whose case files were fully documented. At the other end of the spectrum were the three districts in which the case files were poorly documented. Somewhere in between were two districts, in which most but not all case files reviewed were adequately documented.

While not cited as an overriding concern, the physical fitness of retirees in the guard service was cited as an issue by USMS employees in the districts we reviewed and with the 14 judges that we interviewed. While the judges were generally satisfied with the performance of the independent contractors, one of the judges who responded by questionnaire did express concern stating, "The contract guards are usually older (some retired) or have worked a previous shift(s) for their regular employer. Due to a combination of these factors, contract guards are more likely to fall asleep during court proceedings."

It should be noted that while deputy marshals are medically certified by an agency physician, independent contractors are allowed to have their own private physicians sign their certification forms. As such, some

skepticism is required as to the validity of those certifications. For example, we determined that at least three independent contractors had retired from their respective police agencies on medical disability. In addition, the contracts for at least four guards in one district were terminated because they did not meet fitness-for-duty standards. All were category 1 guards, i.e., active duty sworn law enforcement officers, who had been affirmed as fit-for-duty by their police agency. A guard with a physical disability or deteriorating health may not be able to respond adequately in an emergency, which could jeopardize the safety of all parties involved in the judicial process.

Training for Independent Contractors

USMS policy requires that independent contractors receive specific training within the first 30 days of service and annual refresher training thereafter. For example, the USMS requires independent contractors to review USMS policy on the use of force and view videos on bloodborne/airborne pathogens, prisoner restraints, and prisoner transportation. In the majority of case files reviewed, we were unable to verify that contractors had been provided with the required training. We reviewed a sample of 223 current and former independent contractors to determine whether they were provided the required training. We found documentation of training in one of the six districts we reviewed was virtually nonexistent, while documentation in three other districts were only marginally better.

Firearms Qualifications

In addition to general training, we assessed whether contractors had met the USMS firearms qualifications requirements. Not all contractors are armed guards. In fact, the USMS Statement of Work for independent contractors states that they shall be unarmed unless otherwise directed (see Appendix IV). For those contractors that the USMS designates as armed guards, USMS firearms policy requires that the guards qualify with firearms at least once every six months (see Appendix V).

Of the 132 active contractors selected for review, we determined that 77 contractors, or 58 percent, were required to be armed while 41 contractors, or 31 percent, were unarmed. We could not determine for the remaining 14 independent contractors, or 11 percent, whether they were required to carry and qualify with firearms because either their files or their Weapons Qualification Forms (USM-333) were not available. With the exception of five armed contractors who did not qualify with their firearms, we concluded that armed contractors at the sites reviewed received firearms

qualifications. However, there was no indication of any corrective action taken to ensure that the five armed contractors qualified with their firearms. In addition, the required training for 23 of the 77 armed contractors, or 30 percent, was not provided in a timely manner, *i.e.*, every six months, as required by USMS firearms policy. Independent contractors in four of the six districts we reviewed had gone a year or longer without re-qualifying with their firearms.

Background Investigations

Background investigations on applicants serve an important purpose in mitigating the risk of hiring unqualified individuals for guard duty. Our review of active case files at the sites selected indicated that district offices are not in compliance with USMS policy concerning background investigations for independent contractors. We could not verify that a “limited background investigation” had been conducted in 86 case files, or 65 percent of the 132 active case files reviewed.

Contract Monitoring

In general, the internal controls weaknesses discussed in this report in large part are attributable to poor contract monitoring on the part of USMS contracting officers and their respective COTRs.⁶ This is not to say that contracting officers and their COTRs were not monitoring the contractors themselves. Indeed, our interviews with contracting officers and their COTRs indicated that they were personally aware of contractors’ individual performances in the completion of their assigned duties. However, all of the sites visited lacked a reliable system to record and maintain contract documentation related to hiring, training, and evaluating independent contractors. A comprehensive system of rosters and databases would provide the USMS with an effective means to collect and track information related to contract activity.

⁶ Contracting officers may appoint individuals selected by the district or site office to act as authorized representatives in the monitoring and administration of a contract. Such officials are designated in the contract as the COTR. The COTR must attend and successfully complete a COTR course and obtain training in procurement ethics. Once the COTR signs a certification for procurement officials required by the Procurement Integrity Act, the contracting officer designates in writing that the COTR can act as an authorized representative to monitor contract performance and deliveries in accordance with the contract requirements and certify satisfactory delivery of supplies or services before contractor invoices are paid. The contract guard policy states that a marshal or another appropriate individual may be a COTR after receiving the appropriate training.

Toward that end, we noted that at least three of the six districts we reviewed had implemented signed rosters to document training completed and videos viewed by independent contractors. In addition, the JPATS operation had recently implemented a database for monitoring training provided to its independent contractors. The JPATS database includes contractors' orientation, firearms qualifications, ethics training, fit-for-duty requirements, JPATS-specific training, annual refresher training, and affirmation of work qualifications forms. In our judgment, the steps taken in the aforementioned districts and JPATS to document and track guard training represent a best practice that USMS management should use in developing a system to implement in all districts.

We also noted that one district had implemented the use of written evaluations of its independent contractors. In addition, the administrative officer in another district informed us that the district was developing an evaluation form for its independent contractors. We highlight the use of a formal evaluation process as another best practice that the USMS should implement in all districts.

V. OIG Recommendations

Our report contains 7 recommendations, including that the USMS:

- Ensure the use of formal procurement procedures in the districts to remedy the inconsistencies, inefficiencies, and unauthorized uses of independent contractors that are cited in this report.
- Revise the independent contractor fitness-for-duty requirements to reflect the physical requirements needed to adequately perform contractor assignments.
- Require that contracting officers maintain complete contract files documenting each independent contractor's qualifying experience, the qualification category under which he or she is hired, fitness-for-duty, and a completed limited background investigation.
- Institute a formal evaluation process to include, at the minimum, having supervisors perform written evaluations of independent contractors on an annual basis.
- Develop and implement in the districts a system to track and document annual independent contractor training.

- Ensure that independent contractors required to carry firearms qualify every six months.
- Consider obtaining the guard services currently provided by independent contractors through the following alternative methods: 1) expanded use of guard company contracts, 2) expanded use of intergovernmental agreements with local jails, 3) use of cooperative agreements with local law enforcement agencies, and 4) use of part-time or temporary employees.

**UNITED STATES MARSHALS SERVICE'S
USE OF INDEPENDENT CONTRACTORS AS GUARDS**

TABLE OF CONTENTS

INTRODUCTION	1
Background	1
Use of Independent Contractors.....	2
Procurement Process for Independent Contractors	4
Prior Reports.....	4
FINDINGS AND RECOMMENDATIONS	6
1. MANAGEMENT OF INDEPENDENT CONTRACTOR GUARD FORCE PROVES PROBLEMATIC	6
Lack of Competitive Bidding Process.....	6
Arbitrary Wage Determinations.....	7
Exceeding Procurement Authority	9
Unauthorized Services.....	10
Use of Independent Contractors.....	11
Possible Alternatives	12
Conclusion.....	14
Recommendations	14
2. INTERNAL CONTROL WEAKNESSES IN HIRING AND MONITORING OF INDEPENDENT CONTRACTORS INCREASE RISK THAT THE USMS WILL HIRE UNQUALIFIED PERSONS FOR GUARD SERVICE	15
Qualifications For Contract Guards Not Adequately Documented.....	15
Medical Certifications Not Consistently Documented	17
Inability to Verify Contractor Training	19
Firearms Qualifications Not Always Timely.....	20
Limited Background Investigations.....	23
Contract Monitoring	24
Conclusion.....	25
Recommendations	26
OTHER REPORTABLE MATTERS	27
STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS	28

APPENDICES:

I	- OBJECTIVES, SCOPE, AND METHODOLOGY	29
II	- GLOSSARY OF TERMS AND ACRONYMS	31
III	- USMS DIRECTIVES ON PRISONER MANAGEMENT PERSONAL SERVICES CONTRACT GUARDS	33
IV	- STATEMENT OF WORK PERSONAL SERVICES CONTRACT GUARDS	44
V	- USMS FIREARMS POLICY.....	53
VI	- U.S. MARSHAL QUESTIONNAIRE	56
VII	- AUDITEE'S RESPONSE.....	59
VIII	- OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION SUMMARY OF ACTIONS NECESSARY TO CLOSE REPORT	62

UNITED STATES MARSHALS SERVICE USE OF INDEPENDENT CONTRACTORS AS GUARDS

INTRODUCTION

The United States Marshals Service (USMS) is responsible for housing and maintaining an average daily population of about 47,000 federal prisoners awaiting trial in federal courts. Federal prisoners in USMS custody are housed in local jails, contract facilities, and federal Bureau of Prisons (BOP) facilities throughout the country. Depending upon the length of a court trial, time spent in USMS custody may run from several days to several years, during which time the USMS is responsible for transporting prisoners to and from federal court facilities for trial proceedings. In addition, when prisoners require outside medical treatment, the USMS must provide secure transport to and from outside health care facilities and guard prisoners during the period of treatment.

Background

The USMS is granted authority under 28 U.S.C. Section 565 to hire personal services contract guards to assist USMS deputy marshals in day-to-day operations throughout its 94 districts. The USMS's primary sources for procuring personal services contract guards are 1) guard company vendors and 2) independent contractors.

Guard Company Vendors

Contracts with guard company vendors may be managed through USMS headquarters or individual districts depending on the size of the contract and the district's procurement authority. The Court Security Officer (CSO) Program, for instance, is a centralized operation in which contracting officers at USMS headquarters procure guard services through large-scale contracts, covering multiple districts. The CSO Program represents the USMS's most significant use of contract guard services involving the use of about 4,500 contract guards nationwide to provide courtroom security in the more than 400 federal courthouses in the 94 districts. Individual districts may also procure guard services through local guard company vendors, as we found in our recent audit of USMS prisoner medical care. In contrast to CSO contracts, these are smaller scale contracts, managed at the district level to provide for the guarding of prisoners taken to outside medical facilities for medical care.

Independent Contractors

We found that the primary method used to procure guard services at the district level is through the use of independent contractors. We surveyed the 94 U.S. Marshals about their use of personal services contract guards in the districts and received responses from 63, or 67 percent (see Appendix VI). Only 2 of the 63 said that they acquired guard services exclusively through local guard company vendors. Another five respondents said that they used a combination of both guard company vendors and independent contractors. The remaining 54 (86 percent) of the respondents said that they obtained guard services exclusively through the use of independent contractors.

Unlike contracts with guard company vendors, which may be managed by the districts or by USMS headquarters, depending on the size of the contracts, procurement of independent contractors is an entirely decentralized function in which contracting officers in the districts contract with individuals for the necessary guard services. Contracts with independent contractors, as the term connotes, are individual contracts with a single contract guard. In Fiscal Year (FY) 2003, the USMS initiated and administered 2,786 separate contracts for each of its independent guard contractors.

Although the Federal Acquisition Regulation (FAR) definition of personal services contracts includes all security guard services, the USMS more narrowly defines the term "personal services contract" as a contract for guard services with an independent contractor. As noted on page 4 of this section, the OIG has conducted two prior reviews of the USMS's use of guard company vendors; therefore, we decided to focus this audit on the USMS's use of independent contractors for guard services. The focus of our audit was on the USMS's use of these independent contractors.

Use of Independent Contractors

USMS policy covering the use of personal services contract guards (independent contractors) states that they are to be used on an "as needed basis," not as a replacement for full-time, USMS employees. When utilized, independent contractors' duties include: 1) guarding and processing federal prisoners in the cellblock, courtroom, and during transport; 2) guarding and transporting federal prisoners to and from medical appointments; and

3) guarding federal, seized or forfeited property (including entry control, roving patrol, fixed posts, and emergency response).⁷

Use of independent contractors for guard services varies from district to district. For example, two of the six districts we reviewed did not use any independent contractors in FY 2003, instead choosing to acquire needed guard services through local guard company vendors. Some districts used a combination of methods, acquiring most of its guard services through guard companies and using independent contractors on a very limited basis. Still other districts relied solely on independent contractors for guard services. Overall, the USMS's procurement of independent contractors for guard services has shown a steady increase, both in number and cost from year to year, as indicated in the table below:

**Independent Contractors Employed For
Fiscal Years 2001 Through 2003**

Fiscal Year	Independent Contractors	Average Hourly Wage	Total Cost
2001	2,208	\$ 17.88	\$ 8,251,181
2002	2,432	\$ 18.67	\$ 9,491,842
2003	2,786	\$ 19.58	\$11,866,351

Source: USMS payroll reports.

While the USMS prominently highlights its use of contract CSO's in its literature and on its website, no similar mention is made of the USMS's equally heavy reliance on the thousands of independent contractors used on a daily basis for prisoner handling activities. The term "shadow force" has entered the lexicon of USMS employees and is used in reference to this large, but unacknowledged pool of contract guards that operates alongside the deputy marshals. The term may also be attributed to the fact that the expanding ranks of independent contractors are approaching that of a one-to-one ratio to deputy marshals (*i.e.*, every deputy marshal casts a contract shadow). The USMS's reliance on independent contractors was borne out in workload statistics that we reviewed indicating that independent contractors constitute a core part of the USMS's workforce in many districts, sometimes accounting for more than 50 percent of total hours charged to prisoner handling activities.

⁷ According to USMS policy, duties for which independent contractors may not be used include: 1) fugitive investigations, 2) out-of-district special assignments, 3) international extraditions, 4) personal security details, 5) witness security details, and 6) administrative support, or supervisory functions.

Procurement Process for Independent Contractors

Contracting for guard services through independent contractors differs in significant respects from contracting for guard services with guard companies. Under a guard company contract, the company, as the contractor, supplies the USMS with the agreed-upon guard services. The USMS pays the guard company for its services and the company, in turn, pays its employees (the contract guards) the agreed-upon wages per the contract. In addition, as the guards' employer, the guard company is responsible for personnel functions such as hiring, training, scheduling, timekeeping, payroll, and disciplinary actions. Under the procurement process for independent contractors, in contrast, the administrative and personnel functions rest entirely with USMS district personnel. Specifically, the USMS districts are responsible for awarding individual contracts for independent contractors, negotiating contract prices, scheduling, timekeeping, payroll, training, disciplinary actions, and contract termination, if deemed necessary.

Prior Reports

We previously conducted several audits that examined aspects of the USMS's use of contract guards. In our audit report entitled "United States Marshals Service Prisoner Medical Care," 04-14, February 2004, we disclosed that management of contract guard operations relative to prisoner medical care was characterized by inadequate training, breaches in policy, and lapses in internal controls. We noted problems in nearly all areas of contract guard activity, ranging from lack of documentation to overpayments. More importantly, the ill-managed contract guard operations created an environment in which the USMS cannot effectively control the risks inherent in transporting federal prisoners to and from off-site health care facilities. In one instance, a contract guard's failure to follow procedure, among other factors, had resulted in the escape from a hospital of a prisoner with active tuberculosis.

In our audit report entitled "United States Marshals Service Court Security Officer Program," 00-21, August 2000, we disclosed several issues concerning the overall effectiveness of the CSO Program. Specifically, we found that: 1) there was no provision in the contracts for in-service training; 2) unannounced tests of security screening posts were being conducted, as required by USMS policy, at only 5 of the 16 district offices that we reviewed. Unannounced tests at the other 11 districts were conducted either infrequently, or in some cases not at all, and 3) a number

of CSOs' security clearances and medical certifications could not be verified because documentation was not consistently maintained at the district level.

FINDINGS AND RECOMMENDATIONS

1. MANAGEMENT OF INDEPENDENT CONTRACTOR GUARD FORCE PROVES PROBLEMATIC

Our audit of the USMS's use of independent contractors for guard services revealed fundamental flaws in the procurement practices of USMS districts. In our review of 223 individual contracts for guard services, we encountered material deviations from USMS policy directives and the Federal Acquisitions Regulation (FAR) governing personal services contracts, including the lack of competitive bidding, arbitrary wage determination, unauthorized contract payments, and the exceeding of procurement authority.⁸ We attributed the problems encountered, in large part, to districts' general disregard for USMS policy directives concerning the procurement process. This disregard for procurement directives is caused in many instances by the fact that adherence may not be administratively practicable. Nevertheless, the districts' lack of a formal procurement process has created an environment that is conducive to the proliferation of inconsistencies, inefficiencies, and unauthorized uses of independent contractor guards.

Lack of Competitive Bidding Process

The FAR, Subpart 6.101 (a) states, "with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding government contracts." Pursuant to the FAR requirement for full and open competition, USMS policy directive: Section 9.31 – Use of Personal Services Contract Guards, Part 8 – Procurement states "Personal services contracts will be procured in accordance with the FAR.... district offices should establish a list of bidders who are cleared to perform services for the government... The purpose of the list is to assist the district in meeting the FAR requirement that the government seek competition when it awards contracts. Thus when the USMS has a requirement for a guard to provide services, it should solicit offers from three of the individuals on the list and award the contract to the guard offering the lowest price."

⁸ The FAR is the primary regulation for use by federal agencies in their acquisition of supplies and services with appropriated funds. It became effective on April 1, 1984, and is issued within applicable laws under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration, under the broad policy guidelines of the Administrator, Office of Federal Procurement Policy, Office of Management and Budget.

We found that the sites we reviewed failed to provide for full and open competition in the awarding of personal services contracts to independent contractors. The USMS sites reviewed did not maintain bidders' lists, as required by USMS policy. Further, there was no formal solicitation of sealed bids from potential contractors, nor was there any other systematic approach to procure contract guards based on the competitive process. While the JPATS operation advertised for guard positions in local and national publications, we found that guard contracts are usually obtained through personal networking, rather than open competition.

Of the 57 independent contractors that we interviewed or provided with questionnaires at the 7 sites we reviewed, 42 contractors (74 percent) indicated that they learned about the guard position through informal contacts with colleagues or acquaintances in law enforcement. At least four others were actively recruited by the USMS. Further, in our survey of the 94 U.S. Marshals, none of the 63 respondents indicated the use of a bidders list or any formal solicitation of independent contractors for guard services pursuant to a full and open competitive bidding process. Instead, we found that the process more closely resembles the recruitment of employees than the procurement of contract services. Further, the procurement practices we observed, rather than providing a forum for full and open competition, instead restricted the pool of applicants to those individuals, who, through some personal contact, sometimes with other independent contractors, sometimes with USMS employees, learn of contract guard positions. USMS officials cited a sole source justification in circumventing the full and open competition requirements of the FAR.⁹

Arbitrary Wage Determinations

We found that wage rates for independent contractors are determined, not through a competitive bidding process, but rather are set by the district, with approval from USMS headquarters. We observed that the discretion afforded the districts resulted in broad variances in hourly wage rates from district to district, ranging from a low of \$12 in the Central District of California, which includes the Los Angeles metropolitan area to a high of \$35 for select guards within the District of Columbia Superior Court.

We could not attribute wage variances to cost-of-living factors because wages in some metropolitan areas, such as Los Angeles, with an hourly wage rate of \$12, were lower than that of more rural areas such as the

⁹ The FAR, Part 6.302-1(a)(2) states that "When the supplies or services required by the agency are available from only one responsible source,...from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for."

Southern District of Texas and the Southern District of Iowa, which had hourly wage rates of approximately \$18. Rather, the variances stem from the fact that some districts established wage rates for independent contract security guards commensurate with wages for active duty sworn law enforcement officers, while others, such as JPATS, established wage rates commensurate with that of bailiffs and jailers, which is more in line with the duties required of the contract.

In at least two districts, we found variances within the district itself. For example, the Southern District of New York paid its independent contract guards at an hourly wage of \$27, except for one, a former deputy marshal, who was paid an hourly wage of \$32. In the District of Columbia Superior Court, four independent contractors were paid an hourly wage of \$35, which was double the contract rate of \$17.50 paid to the District's other independent contractors. Such variances would not exist under contracts with guard company vendors. Under contracts with guard company vendors, wages are established by the vendor and are based upon the Department of Labor's (DOL's) prevailing wage rate determinations for the applicable service industry occupation, in accordance with the McNamara-O'Hara Service Contract Act of 1965.¹⁰

We determined that the high wages were offered, in part, to attract active duty sworn police officers to serve as contract guards, as was the case in the Western District of Washington, which offered an hourly rate of \$25 hour. The problem we found with this strategy was that while the districts may succeed in recruiting some active duty police officers, in most instances the districts are forced to rely on generally less-qualified contract guards — usually retirees — because the active duty police officers are not always available when needed for work.

Thus, in some districts the USMS is paying too much for independent contractors by setting wages for a labor pool of which it cannot take full advantage. On average, USMS independent contractors were paid at an hourly rate of \$19.62 for guard services in FY 2003, \$3.37 greater than the DOL's average prevailing hourly wage rate of \$16.25 for bailiffs and jailers. Based on 611,638 total contract guard hours reported in FY 2003, we estimate that the USMS paid approximately \$2 million in excess of the prevailing wage rate for comparable services. This does not necessarily mean that such cost savings could be achieved, but it does reflect a basic flaw in the districts' wage-setting methodology.

¹⁰ The McNamara-O'Hara Service Contract Act of 1965 establishes standards for minimum compensation, safety and health protection of employees performing work for contractors and subcontractors on service contracts entered into with the federal government and the District of Columbia.

Exceeding Procurement Authority

The contracts for most of the independent contractors reviewed were not to exceed \$25,000 and procurement authority delegated to contracting officers at the sites reviewed was generally for the same amount. USMS policy directive 9.31 D.8.e states, "should the contract per guard exceed the district's procurement authority, the action must be ratified by the Procurement Office. The districts and the JPATS shall properly justify the need to exceed the contract amount." This requirement is derived from the FAR, which states "Contracting officers may bind the Government only to the extent of the authority delegated to them."

In 3 of the 7 sites reviewed — the Southern District of New York, the District of Columbia Superior Court, and the District of Puerto Rico — USMS contracting officers allowed payments to independent contractors in excess of the contract amount without providing USMS Headquarters written justification. Contracting officers in two of those sites — the Southern District of New York and the District of Puerto Rico — also exceeded their procurement authority.

The effects of allowing payments in excess of contract amounts were twofold: 1) payments in excess of contract prices were not authorized, and 2) the contracting officers exceeded their procurement authority in allowing these excess payments. The District of Columbia Superior Court was an exception in that the contracting officer had procurement authority of \$100,000. Thus, while the contracting officer allowed unauthorized payments in excess of contracted amounts, she did not exceed her procurement authority in doing so.

In three of the six districts reviewed, we identified a total of \$221,586 in unauthorized payments, as follows:

- In the Southern District of New York, the contracting officer exceeded her procurement authority in 8 of the 17 contracts reviewed, or 47 percent, allowing a total of \$187,490 in unauthorized payments.
- In the District of Columbia Superior Court, the contracting officer allowed payments to exceed the contract amount in 10 of the 25 contracts reviewed, or 40 percent. Unauthorized payments for the 10 contracts totaled \$28,539.

- In the District of Puerto Rico, the contracting officer exceeded his procurement authority in 2 of 39 contracts, or 5 percent, allowing a total of \$5,557 in authorized payments.

In general, the overpayments resulted from lack of oversight from the contracting officers and their respective contracting officer's technical representatives (COTRs). Our review of payroll totals for all of the 2,786 independent contractors employed in FY 2003 indicated that a total of 97 guards were paid in excess of their contract amounts by a total of \$887,756. As of the third quarter of FY 2004, 26 guards had received unauthorized payments totaling \$135,532.

Unauthorized Services

In addition to exceeding procurement authority, we also noted instances involving the districts' unauthorized use of independent contractors. USMS policy, as reflected in the Statement of Work for independent contractors, specifically delineates those services authorized under the contract (see Appendices III and IV). However, we noted instances in three of the districts reviewed in which the lack of controls over the procurement process led to the districts' use of contractors for unauthorized purposes, as follows:

- In the District of Arizona, the USMS and the Tucson Police Union established an arrangement whereby for every five police officers assigned guard work at a given time, the district has to have a police sergeant assigned to supervise them. Under the agreement, the district has to pay the sergeant \$4 more an hour than the regular contract rate. We noted that the two sergeants we interviewed spent 10 to 20 percent of their time performing administrative duties, such as scheduling. USMS policy clearly prohibits of the use of independent contractors for supervisory functions and administrative duties.
- In the Western District of Washington, the USMS hired a recently retired USMS employee as a contract guard. While the timesheets for the retiree turned contractor indicated that she was performing prisoner transport, in reality the retiree was being used in her former capacity as an administrator to train her replacement, a function not permitted under 28 U.S.C. Section 565.
- In the Southern District of New York, a recently retired administrative employee was hired by the district as a contract guard. As in the Western District of Washington, we found that the

contractor's timesheets indicated that she was performing guard-related duties, when in fact she had resumed her prior administrative duties. District officials explained that at the time of the employee's retirement, the District needed staff to perform administrative duties but was unable to hire a replacement for the retiree. Consequently, they hired the retired employee as a contract guard, so that she could perform her administrative duties until a permanent replacement could be found.

The examples in the Western District of Washington and the Southern District of New York, in our judgment, were not only unallowable under 28 U.S.C. Section 565, but also represented a deliberate misuse of contract authority in order to circumvent civil service rules governing the hiring of government employees. We also noted that these incidents were neither new, nor isolated, based on the fact that the issue had been raised in at least one prior review conducted by the USMS's former Program Review Office.¹¹ In that report, dated July 1, 1997, the Central District of California was admonished for hiring contract guards and then using them in an administrative capacity in violation of USMS policy and the contract's Statement of Work. We attributed these instances to the general lack of controls over the procurement of independent contractors, which has created a process that is susceptible to abuse.

Use of Independent Contractors

At the heart of the issue underlying the problems we found with the USMS's use of independent contractors is the question of whether USMS districts can realistically be expected to adhere to the rules regarding their procurement. In place of competitive bidding for independent contractors, we found informal recruiting practices in most districts. In place of sealed bids, we found arbitrary wage determinations. In place of contract monitoring, we found overpayments and circumvention of civil service rules. In short, the procurement practices we observed, while expedient, violated both USMS policy and the sections of the FAR upon which the policy is based.

The obvious answer is to bring the districts' procurement practices into compliance with USMS policy, but this may not necessarily be the best solution. Requiring USMS districts to provide full and open competition in accordance with USMS policy (e.g., formal solicitations, bidders' lists, sealed bids) on 2,000 plus individual contracts annually, in our judgment, would

¹¹ In FY 2004, the USMS reorganized its internal review function by establishing an Office of Inspections. The reorganization included the folding of its former Program Review Office into the new Office of Inspections.

result in an administrative burden that would largely negate the benefits currently derived from the flexibility and expediency afforded by use of independent contractors. Indeed, even with the current deficient procurement practices, officials from districts with large numbers of independent contractors commented on the administrative workload required in managing so many individual contracts. The fact that the districts have almost universally ignored the requirements of USMS policy governing the procurement of independent contractors constitutes a tacit rejection of the policy, and indicates that full implementation of the policy is not practicable.

Thus, the dilemma facing the USMS: The districts' current procurement practices are fundamentally flawed and susceptible to abuse, and need to be brought into compliance with USMS policy and federal procurement regulations. However, full implementation of the procedures required to bring the districts into compliance on the procurement of independent contractors would create a tremendous administrative burden, and therefore is not practicable.

Possible Alternatives

In our judgment, given that neither the continuance of the current deficient procurement practices nor the full implementation of USMS policy for procurement of independent contractors are acceptable solutions, the USMS should consider alternatives to the use of independent contractors for guard services. The following is a discussion of the possible alternatives:

Vendor Contracts (Company Guards)

To the extent possible, the USMS could expand its use of guard company vendors. Currently, the USMS uses contract vendors primarily to provide courtroom security via the CSO Program and for guarding inmates receiving outside medical care. Our review determined that USMS districts rarely use vendor guards for court-related prisoner handling activities, preferring instead to use independent contractors.

District officials replying to our questionnaire on the use of independent contractors often stated that they preferred independent contractors to company guards primarily because it provided them the ability to individually screen candidates and therefore ensure the quality of the guards hired.

While we have noted in prior audits that the quality of company guards does not always meet USMS established criteria, it is the responsibility of the

districts, particularly the contracting officers and COTRs, to ensure that vendors provide qualified guards (See Prior Reports Section in the Introduction on page 4). Guard companies have a contractual obligation to provide fully qualified and trained individuals to perform guard duty at the time and place required. Contractors who do not meet USMS requirements should be replaced with contractors who can meet those requirements.

Part-time and Temporary Employees

In 1978, the Federal Employees Part-time Career Employment Act (Act) established a continuing program for the promotion and expansion of part-time employment. The Act made significant changes in federal personnel management practices, which included: 1) narrowing the definition of part-time career employment from scheduled work of less than 40 hours per week to scheduled work of between 16 and 32 hours per week, and 2) changing the method for counting part-time employees against the agency personnel ceiling by requiring the counting of part-time employees on the basis of the fractional part of the 40-hour week actually worked.

According to the Act, Congress found that part-time employment benefits the government by offering management more flexibility in meeting work requirements and filling shortages in various occupations. Also, the Act required the establishment of part-time career employment programs to be used in connection with establishing part-time career employment goals.

We noted in our review of USMS payroll reports that over 90 percent of the independent contractors used in FY 2003 worked fewer than six months during the year. The amount of time contractors worked ranged from a low of 2 hours to a high of 2,110 hours. On average, independent contractors worked about 200 hours over the course of the year. In fact, the 605,897 hours worked by the 2,786 independent contractors on the payroll in FY 2003 equated to only 291 full-time positions for the year.

Despite the fact that independent contractors represent, for the most part, a workforce of temporary, part-time workers, our review of the USMS's contract operations during this and prior audits did not indicate that the USMS has ever pursued a part-time program or explored the use of part-time or temporary employees for guard services. While the use of part-time employees in districts with large fluctuations in courtroom activity would not be effective, we believe that the implementation of such a program may be a feasible alternative to the use of independent contractors in districts that have a constant predictable workload.

Cooperative Agreements/IGAs

Current USMS policy requires that districts obtain guard services to the extent possible from existing IGAs with local jails. Toward that end, the districts might also negotiate agreements with local law enforcement or corrections agencies to provide guard services and prisoner transportation. One of the districts surveyed had indicated an interest in pursuing the use of a cooperative agreement with the local police department in lieu of using independent contractors. Expanded use of these agreements could alleviate the districts' reliance on independent contractors for transporting prisoners to and from federal courthouses and medical facilities.

Conclusion

The USMS districts' procurement of independent contractors is not in compliance with USMS policy or the FAR. Deviations from USMS policy and the FAR included the lack of competitive bidding, arbitrary wage determination, unauthorized contract payments, exceeding of procurement authority, and unauthorized uses of independent contractors.

The USMS must either bring its procurement process into compliance with its own policy or seek alternative methods for procuring the necessary guard services. However, given the impracticality of fully competing nearly 3,000 individual contracts annually, the USMS should consider alternative methods for staffing prisoner-handling operations in the districts.

Recommendations

We recommend the USMS:

1. Ensure the use of formal procurement procedures in the districts to remedy the inconsistencies, inefficiencies, and misuse of authority cited in this report.
2. Consider obtaining guard services currently provided by independent contractors through the following alternative methods: 1) expanded use of guard company contracts, 2) expanded use of intergovernmental agreements with local jails or cooperative agreements with local law enforcement agencies, and 3) use of part-time or temporary employees.

2. INTERNAL CONTROL WEAKNESSES IN HIRING AND MONITORING OF INDEPENDENT CONTRACTORS INCREASE RISK THAT THE USMS WILL HIRE UNQUALIFIED PERSONS FOR GUARD SERVICE

Our review of over 200 contract guard case files revealed internal control weaknesses in the hiring and monitoring of these independent contractors. We were unable to establish whether contractors were qualified for guard service for 23 percent of the contracts reviewed due to missing case files or missing documents. For those cases where adequate documentation existed, we determined that at least 12 individuals (6 percent) were hired for guard service with little or no law enforcement experience, in violation of USMS policy. In addition, we were unable to verify that guards had been fully trained, had met fitness standards, and had received a required background investigation. In general, the problems noted resulted from the lack of a systemized approach to hiring and monitoring contracts by USMS district contracting officers and Contracting Officers Technical Representatives (COTRs). Failure to address these weaknesses may allow poorly qualified, ill-trained individuals to obtain guard contracts, which in turn could jeopardize the safety of the judiciary and the general public.

There are inherent risks associated with the transportation and guarding of federal prisoners outside of a jail or detention center. To minimize these risks, the USMS has established policies and procedures to ensure that independent contractors hired for guard service possess the skills and experience necessary to perform their duties. However, we found that weak internal controls in district oversight of contract operations have resulted in poorly maintained case files that make it difficult to verify whether contract guards: 1) meet USMS experience requirements for guard service, 2) are medically fit for duty, 3) have received the required training, 4) have qualified with firearms on a timely basis, and 5) have received a background investigation.

Qualifications For Contract Guards Not Adequately Documented

According to USMS policy, independent contractors hired for guard services must have qualifying experience under one of the following five categories: 1) active duty sworn state or local law enforcement officers; 2) reserve sworn state or local law enforcement officers; 3) former/retired sworn federal, state, or local law enforcement officers; 4) former/retired military police; or 5) private security/correctional officers (see Appendix III).

Properly determining and documenting qualifying experience is important because it affects the specific requirements needed by a contract guard to meet USMS guard standards. Category 1 and 2 guards, for instance, need only affirm that they meet specific USMS standards, e.g., weapons qualified, physically fit, sufficiently experienced in law enforcement. On the other hand, category 3, 4, and 5 guards must provide medical fitness certification signed by a doctor and be weapons qualified by the USMS.¹²

We reviewed 223 case files to determine whether the contract guards hired had the experience necessary to qualify for guard service. We found that the districts and the JPATS had not documented in the case files the contract guards' category of qualifications because this information is not required by USMS policy directives.

Because the qualifying experience was not formally documented, we had to review documents in the case files to determine the selected guards' qualifying experience. We were unable to do so for a significant number of cases because the files lacked sufficient documentation to make a determination. The USM-234 Personal Qualifications Statement, for instance, the main document used to determine a contractor's qualifications was missing from 51 case files, or 23 percent of the 223 files we examined. Lack of documentation was generally concentrated in two of the sites reviewed. In one district, 21 case files, or 84 percent of the 25 case files reviewed, lacked the necessary documents for determining the contractors' qualifications. The USM-234 was not on file for any of the independent contractors reviewed in another district. Case files were missing for 10 of the 30 contractors, and the remaining 20 case files reviewed did not contain the USM-234.

For those files reviewed that did contain sufficient documentation, we determined that at least 12 of the guards hired lacked the experience necessary to qualify as contract guards. Four of the 12 individuals hired had no law enforcement experience at all, but rather background as a sales clerk, a receptionist, an administrative clerk with the USMS, and an airport screener. While 2 of the 4 guards were no longer active at the time of our audit fieldwork, the receptionist and the airport screener were still active at the time of our review. District officials commented that while these contract guards may not have had law enforcement experience at the time they were hired, they now have qualifying experience through their guard service with the USMS. However, we believe that hiring unqualified individuals for prisoner handling operations represents a breakdown in

¹² Contractor applicants sign an Affirmation of Work Qualifications for contract guards.

internal controls that places an undue risk on all parties involved in the judicial process.

Medical Certifications Not Consistently Documented

In addition to meeting experience requirements, contract guards are also expected to meet physical fitness standards. To ensure that guards maintain certain fitness-for-duty standards, they are required to annually submit a form, signed by the guard's physician, stating that the contractor can physically perform the duties required. These requirements include that the guard must: 1) be able to lift or carry 45 pounds, 2) be able to reach, grab, and climb, and 3) have the ability for rapid mental and physical movement. If a contractor is also an active-duty law enforcement officer, the USMS requires only that the guard's agency sign an affirmation that the contractor meets the agency's fitness standards.

We reviewed 132 active case files to verify that guards were medically certified as fit for duty. Our tests of six districts and the JPATS revealed a range of results. On one end of the spectrum one of the six districts and the JPATS had fully documented case files. At the other end of the spectrum were three districts that each had poorly documented case files. Somewhere in between were two districts, in which most but not all case files reviewed were adequately documented.

Independent Contractors' Fitness-For-Duty Certification

Site	Active Guards' Files Reviewed	Medically Certified ¹³	Percentage Verified (%)
District 1	20	16	80
District 2	20	6	30
District 3	20	13	65
District 4	12	7	58
District 5	20	20	100
District 6	20	6	30
JPATS Oklahoma City	20	20	100

Source: Contract guard files

The physical fitness of retirees in the guard service was an issue with some of the USMS employees and judges that we interviewed. While most of the 14 judges interviewed stated that they were satisfied with the performance of the independent contractors, one of the judges who responded by questionnaire did express concern stating, "The contract guards are usually older (some retired) or have worked a previous shift(s) for their regular employer. Due to a combination of these factors, contract guards are more likely to fall asleep during court proceedings."

It should be noted that while deputy marshals are medically certified by an agency physician, independent contractors are allowed to have their own private physicians sign their certification forms. As such, skepticism is required as to the validity of some certifications. For example, we determined that at least three independent contractors who were former law enforcement officers had retired from their respective police agencies on medical disability. In addition, the contracts for at least four of the former guard files reviewed in one district were terminated because they did not meet fitness-for-duty standards. All were category 1 guards, *i.e.*, active duty sworn law enforcement officers who had been affirmed as fit-for-duty by their police agency. A guard with a physical disability or deteriorating health may not be able to respond adequately in an emergency, which could jeopardize the safety and welfare of the judiciary and the general public.

¹³ Active duty sworn law enforcement officers only need affirmation of fitness from their agency.

Inability to Verify Contractor Training

USMS policy requires that independent contractors receive specific training within the first 30 days of service and annual refresher training thereafter. The policy allows past or current agency training to be used in lieu of USMS training for categories 1 and 2 guards, but such training must be annotated on the Affirmation of Qualifications statement in the guard's contract file.¹⁴ However, there was some ambiguity in this matter, as the Statement of Work for personal services contract guards clearly identifies USMS training for these same contractors, including the USMS policy directives on the "Use of Force, Firearms and Code of Professional Responsibility." In addition, all categories of independent contractors must review and become familiar with USMS policies and procedures regarding cellblock operations, JPATS operations, in-district prisoner movement, and the prisoner tracking system. Districts also have to ensure that independent contractors reviewed these USMS policies and procedures.

We reviewed a sample of 223 current and former independent contractors to determine whether they were provided the required training on the use of force and whether they viewed videos on bloodborne/airborne pathogens, prisoner restraints, and prisoner transportation. Our results are presented in the following table:

¹⁴ The Affirmation of Qualifications is a signed document listing the contractor's qualifications, including experience, training, background, and fitness for duty. The contractor training recorded on this particular form does not specify whether or not videos on pathogens and restraints were viewed by the independent contractors as a part of their training in these areas. In our audit, we could only determine whether training videos were viewed from information obtained through independent contractor interviews and questionnaires.

Initial and Refresher Contractor Training

Site	Use Of Force	Pathogens Video	Ethics	Policies & Procedures	Restraints Video	Transport Video
<i>n=sample</i>	<i>Y=Yes, N=No, U=Unknown, N/A=Not Applicable</i>					
District 1 (n=40)	Y=0 N=40	Y=9 N=31	Y=0 N=40	Y=0 N=40	Y=9 N=31	Y=1 N=39
District 2 (n=24)	Y=0 N=24	Y=0 N=24	Y=0 N=24	Y=0 N=24	Y=0 N=24	Y=0 N=24
District 3 (n=30)	Y=0 N=0 U=30	Y=11 N=15 U=4	Y=0 N=26 U=4	Y=0 N=26 U=4	Y=10 N=16 U=4	Y=0 N=6 U=4 N/A=20
District 4 (n=17)	Y=8 N=9	Y=0 N=17	Y=3* N=14	Y=0 N=17	Y=0 N=17	Y=0 N=17
District 5 (n=32)	Y=24 N=8	Y=10 N=22	Y=25 N=7	Y=12 N=20	Y=11 N=21	Y=11 N=21
District 6 (n=40)	Y=6 N=30 U=4	Y=4 N=33 U=3	Y=17 N=19 U=4	Y=0 N=40	Y=1 N=35 U=4	Y=0 N=36 U=4
JPATS – Oklahoma City (n=40)	Y=39 N=1	Y=20 N=20	Y=21 N=19	Y=20 N=20	Y=20 N=20	Y=32** N=8**
TOTAL (N=223)	Y=77 N=112 U=34	Y=54 N=162 U=7	Y=66 N=149 U=8	Y=32 N=187 U=4	Y=51 N=164 U=8	Y=44 N=151 U=8 N/A=20

**Records for all three contractors were outdated. **Contractors received JPATS-related training.*

Source: Site Personnel and Procurement Files; Contractor Interviews and Questionnaires

As indicated in the table above, in the majority of case files reviewed we were unable to verify that contractors had been provided with the required training. Documentation of training in one district was virtually nonexistent. Three districts were only marginally better. Although not reflected in the totals, documentation of training in the case files for current active contractors in another district and the JPATS operation hub was for the most part complete.

Firearms Qualifications Not Always Timely

The Statement of Work for independent contractors states that contractors shall be unarmed unless otherwise directed (see Appendix IV). Unarmed contractors are used to guard prisoners and provide security in the courtroom and the cellblock. For contractors that the USMS designates as armed guards, USMS firearms policy requires that the guards qualify with firearms at least once every six months (see Appendix V).

Of the 132 active independent contractors selected for review, we determined that 77 active contractors, or 58 percent, were required to be armed and 41 active contractors, or 31 percent, were unarmed. We could not determine whether the remaining 14 active contractors, or 11 percent, were required to carry and qualify with firearms because either their files or their Weapons Qualification Forms (USM-333) were not available.

We tested the 77 active contractors identified as armed to determine whether they had completed firearms qualifications on handguns and, if so, whether they had qualified in a timely manner. If the qualification was not timely, the time elapsed from the prior qualification was noted. Our results are presented in the following table:

Firearms Qualifications

Site	Qualified Firearms	Were Those Who Qualified Timely? **	If Not Timely, Time Elapsed Since Last Qualification
<i>n=sample</i>	<i>Q=Qualified, NQ=Not Qualified, U=Unknown, N/A=Not Applicable</i>		
<i>District 1 (n=20)</i>	Q=15 NQ=0 Unarmed=4 U=1	Yes=2 No=1 N/A=12	15 months
<i>District 2 (n=20)</i>	Q=2 NQ=0 Unarmed=18	Yes=0 No=2	8 months & 15 months
<i>District 3 (n=20)</i>	Q=3*** NQ=0 Unarmed=17	Yes=0 No=0 N/A=3	
<i>District 4 (n=12)</i>	Q=10 NQ=1 Unarmed=1	Yes=3 No=5 N/A=2	12 months
<i>District 5 (n=20)</i>	Q=20 NQ=0	Yes=0 No=5 N/A=13 U=2	11 months
<i>District 6 (n=20)</i>	Q=6 NQ=1 Unarmed=1 U=12	Yes=0 No=3 N/A=3	17-18 months
<i>JPATS - Oklahoma City* (n=20)</i>	Q=16 NQ=3 U=1	Yes=6 No=7 N/A=3	7 months

Source: Personnel and Procurement Files, Records; Contractor Interviews and Questionnaires

* Contractors qualify only on shotguns.

** N/A=Contractor qualified on firearms at another law enforcement agency. Since the contractor was not qualified by the USMS, whether or not the training was provided timely was not readily determinable.

***Guards indicated in their questionnaires that they were required to be armed.

With the exception of five armed contractors who did not qualify at all with their firearms, we concluded that armed contractors at the sites reviewed did receive firearms qualifications. However, there was no indication of any corrective action taken to ensure that the five armed contractors qualified with their firearms. In addition, the required training for 23 of the 77 armed contractors, or 30 percent, was not provided in a timely manner, *i.e.*, every six months, as required by USMS firearms policy. Independent contractors in four of the six districts we reviewed had gone a year or longer without re-qualifying with their firearms.

Limited Background Investigations

Our review of active case files at the sites selected indicated that district offices are not in compliance with USMS policy concerning background investigations for independent contractors.¹⁵ We could not verify that the required background investigation had been conducted in 86 case files, or 65 percent of the 132 active case files reviewed, as shown in the table below:

**Limited Background Investigations
On Active Contractors**

Site	Contracts Reviewed	Required LBI or waiver not on file	Percent Not Verified
District 1	20	17	85
District 2	20	13	65
District 3	20	20	100
District 4	12	7	58
District 5	20	18	90
District 6	20	6	30
JPATS Oklahoma City	20	5	25
Total	132	86	65%

Source: USMS contract files

To the extent that the USMS fails to perform the necessary background checks on applicants, it fails to effectively mitigate the risk that USMS districts will hire individuals unqualified or unsuitable for guard duty.

¹⁵ Upon initial hire the following documents are to be sent from the district to the USMS's Human Resources Division (HRD) Background and Suitability Team in order to complete the contractors required background investigations: 1) Three signed copies of an FD-258 or Standard form 87A, Fingerprint Cards, 2) Standard Form 85P, Questionnaire for Public Trust Positions, 3) Form DOJ-555, Disclosure and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act, 4) Form USM-164 Applicant Appraisal Questionnaire, 5) DD214 (Category 3-5), and 6) Fit-for-duty (Category 3-5).

Contract Monitoring

In general, the deficiencies discussed in this finding are in large part attributable to poor contract monitoring on the part of contracting officers and their respective COTRs.¹⁶ This is not to say that contracting officers and their COTRs were not monitoring the contractors themselves. Indeed, our interviews with contracting officers and their COTRs indicated that they were personally aware of contractors' individual performances in the completion of their assigned duties. However, the sites shared in common the lack of a reliable system to record and maintain contract documentation related to hiring, training, and evaluating independent contractors. A comprehensive system of rosters and databases would provide the USMS with an effective means to collect and track information related to contract activity.

Toward that end, we noted that at least three of the six districts had implemented signed rosters to document training completed and videos viewed by independent contractors. In addition, the JPATS operation had recently implemented a database for monitoring training provided to its independent contractors. The JPATS database includes contractors' orientation, firearms qualifications, ethics training, fit-for-duty requirements, JPATS-specific training, annual refresher training, and affirmation of work qualifications forms. In our judgment, the steps taken in the aforementioned districts and JPATS to document and track guard training represent a best practice that USMS management should use in developing a system to implement in all districts.

We also noted that only one district had implemented the use of written evaluations of its independent contractors. In addition, another district was developing an evaluation for its independent contractors, according to the District's administrative officer. We highlight the use of a formal evaluation process as another best practice that the USMS should implement in all districts.

¹⁶ Contracting officers may appoint individuals selected by the district or site office to act as authorized representatives in the monitoring and administration of a contract. Such officials are designated in the contract as the COTR. The COTR must attend and successfully complete a COTR course and obtain training in procurement ethics. Once the COTR signs a certification for procurement officials required by the Procurement Integrity Act, the contracting officer designates in writing that the COTR can act as an authorized representative to monitor contract performance and deliveries in accordance with the contract requirements and certify satisfactory delivery of supplies or services before contractor invoices are paid. The contract guard policy states that a marshal or another appropriate individual may be a COTR after receiving the appropriate training.

Conclusion

Based on our review of contractor files for both active and former contract guards, we concluded that internal control weaknesses exist in the hiring and monitoring of independent contract guards. We determined that at least 12 individuals without qualifying experience had obtained guard contracts. Further, we could not verify for a significant number of guards that once hired, they receive the required training and background checks. We attributed these internal control deficiencies to a lack of a systemized approach on the part of contracting officers and COTRs to documenting and maintaining contract guard activity. Failure to address these weaknesses increases the risk that breakdowns in the process will result in unqualified, ill-trained individuals obtaining guard contracts.

Recommendations

We recommend the USMS:

3. Revise the independent contractor fitness-for-duty requirements to reflect the physical requirements needed to adequately perform contractor assignments.
4. Require that contracting officers maintain complete contract files documenting each independent contractor's qualifying experience, the qualification category under which he or she is hired, fitness-for-duty, and a completed limited background investigation.
5. Institute a formal evaluation process of independent contractors to include, at the minimum, having supervisors perform written evaluations of independent contractors on an annual basis.
6. Develop and implement in the districts a system to track and document annual independent contractor training.
7. Ensure that independent contractors required to carry firearms qualify every six months.

OTHER REPORTABLE MATTERS

We noted internal control weaknesses with regard to the handling of guard-issued identification (ID) cards at 4 of the 7 sites reviewed. Poor accountability for property, such as ID cards, increases the risk that property lost or stolen may be used to gain unauthorized access to federal facilities.

- **District 1:** The district issues ID cards to contract guards, which provides them access to USMS space. The district did not follow USMS policy or procedures to deactivate the cards.
- **District 3:** Contractors were issued ID cards and swipe cards, and at least eight of the contractors were issued keys. However, we were able to verify only one instance in which the issuance of property was recorded on a hand receipt.
- **District 4:** USM-288A Hand Receipt forms were not issued to the contract guards along with their government ID cards. District officials explained that hand receipts were not issued because they did not believe they were required. However, district officials stated that the ID cards, which are issued on an annual basis, are collected and destroyed at the end of the fiscal year.¹⁷
- **JPATS (Oklahoma City):** ID and swipe cards are issued along with uniforms. Upon return, the ID card is destroyed and the swipe card is recycled and issued to a new guard. JPATS maintains a list of the guards issued uniforms. However, only ten percent of the guards reviewed were given hand receipts for their ID and swipe card.

¹⁷ USMS Directives under Property Management 7.1.D.4.e states that accountable property must be controlled by the use of a hand receipt and that all accountable property must be retrieved from contract guards when their contracts expire or is not renewed. In addition, ID cards will be hand receipted annually on an USM-288A Hand Receipt. ID cards given to contract guards must be retrieved when the contract expires or the guards' services are no longer needed.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the standards, we tested selected transactions and records to obtain reasonable assurance about the USMS's compliance with laws and regulations that, if not complied with, we believe could have a material effect on operations. Compliance with laws and regulations applicable to use of independent contract guards is the responsibility of USMS management.

An audit includes examining, on a test basis, evidence about laws and regulation. The specific requirements for which we conducted tests are contained in the Unites States Code, Title 28, Section 565, Federal Acquisitions Regulation (FAR) Part 13.106, and Part 6, subpart 6.303-1. We found that the USMS was not in full compliance with requirements of the FAR regarding full and open competition for independent guard contracts.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of the audit were to: 1) assess the USMS’s internal controls over the procurement of independent contractors for guard service, 2) determine whether the USMS is adequately monitoring the performance of its independent contractors, 3) determine whether the independent contractors are meeting the USMS’s experience and fitness-for-duty requirements, 4) evaluate the initial training provided to contract personnel, and 5) determine whether independent contractors are performing only authorized duties.

Scope and Methodology

We conducted the audit in accordance with the Government Auditing Standards issued by the Comptroller General of the United States, and included the tests and procedures necessary to accomplish our objectives.

The scope of the audit encompassed USMS management of independent contract guards for FY 2003 and FY 2004. We conducted fieldwork at USMS Headquarters in Arlington, VA; and district offices located in six districts. We also conducted fieldwork at the JPATS operational hub in Oklahoma City, OK.

To accomplish our objectives we:

- Researched and reviewed applicable laws, policies, regulations, manuals, and memoranda.
- Interviewed officials at USMS Headquarters.
- Interviewed officials and contract guards at USMS district offices and the JPATS operation in Oklahoma City, Oklahoma.
- Interviewed district judges in the districts visited.
- Interviewed and obtained opinions from six federal judges concerning courtroom performance of independent contractors.¹⁸

¹⁸ Six of the judges sitting on the Administrative Office of the United States Courts’ “Judicial Committee for Security and Facilities” agreed to be interviewed about the use of independent contractors for courtroom security.

- Reviewed district guard budgets and compared to actual expenditures.
- Selected 223 guards on a judgmental basis to include both current and former guards active during FY 2003 and FY 2004. Former guards were selected to include guards that were terminated for cause.
- For each guard selected, we reviewed USM-234 Personal Qualifications Statement, Affirmation of Work Qualifications, USM-333 Firearms Qualifications, and Medical Certifications for each guard selected to determine whether the guard met qualification and fitness-for-duty requirements.
- Reviewed the procurement file to determine the hourly guard rate and contract amount, and compared these rates to payroll records.
- Reviewed 752 time and attendance records.
- Reviewed files of former guards to determine causes for termination and verified return of government property.
- Designed and disseminated questionnaires on the districts' use of independent contract guards to each of the 94 U.S. Marshals. We received 63 responses. Information obtained from those questionnaires is reflected throughout the report.
- Obtained and analyzed payroll data on all active independent contract guards during FY 2003 and FY 2004.

GLOSSARY OF TERMS AND ACRONYMS

Affirmation of Work Qualifications: A signed document containing the contractor's qualifications including experience, training, background, and fitness for duty.

Cellblock: Secure area in the USMS district office intended to house prisoners waiting for their court proceedings.

Contracting Officer: Contracts may be entered into and signed on behalf of the USMS only by a contracting officer.

Contracting Officer Technical Representative (COTR): Official authorized to monitor and administer a contract for the purpose of inspection and acceptance.

Cooperative Agreements Program (CAP): Pursuant to 18 U.S.C., the CAP assists state and local governments in funding the renovation or construction of detention facilities. The state and local governments in return guarantee the USMS bed space for a predetermined period of time.

Court Security Officer (CSO): Contract guard hired under the Court Security Officer Program to provide courtroom and facility security at federal courthouses.

Federal Acquisition Regulation (FAR): Uniform codification of policies for acquisition of supplies and services by executive agencies.

Fed Biz Ops: Publication listing current federal government procurement opportunities over \$25,000.

Federal Insurance Contributions Act (FICA): Payroll withholdings for Social Security tax.

Hand receipts USM-288A: Document used to assign personal accountability to USMS property.

Human Resources Division (HRD): HRD is responsible for performing background and suitability checks on independent contractors.

Intergovernmental Agreement (IGA): Formal written agreement between the USMS and a local or state government for the housing, care and safekeeping of federal prisoners.

Independent contractors: Individual contract with a single contract guard.

Justice Prisoner and Alien Transportation System (JPATS): Operated by the USMS, the JPATS transports prisoners between judicial districts, correctional institutions, and foreign countries. According to the USMS, the JPATS averages more than 270,000 prisoner and alien movements annually through a network of aircraft, sedans, vans, and buses. The air fleet includes Boeing-727s and numerous smaller craft. Whether by air or by surface transportation the JPATS routinely serves about 40 cities and provides as-needed service to many others. Air fleet operations are centered in Oklahoma City, Oklahoma, with satellite hubs in Phoenix, Arizona, and Alexandria, Louisiana.

NCIC/NLETS: National Crime Information Center/National Law Enforcement Telecommunication System (Automated background checks)

National Finance Center (NFC): Federal payroll system that issues Bi-weekly payments to government employees and is also used to pay independent contractors.

Personal Qualifications Statement (USM-234): Application for employment completed by independent contractors.

Personal services contract: A contract that enables the government to directly supervise a contractor's personnel. Contracts with security guard vendors represent a typical example of a personal services contract.

Procurement Authority: The dollar contract limitation stated on the contracting officer's "Certificate of Appointment."

Shadow Force: USMS colloquialism referring to the largely unacknowledged workforce of independent contractors.

Statement of Work (SOW): The portion of a contract that describes in precise terms the work (tasks, materials and services) to be provided by the contractor.

USM-7 Bi-weekly: Time sheet used to record all personal service guard hours.

**USMS DIRECTIVES ON PRISONER MANAGEMENT
PERSONAL SERVICES CONTRACT GUARDS**

The following are excerpts from USMS policy directives concerning the use of personal services contract guards for the purposes of prisoner management.

Scope of services

Contract guard duties: When utilized, contract guards assist the USMS; duties include the following:

1. Guarding and processing federal prisoners in the cellblock, courtroom, and during transport.
2. Guarding and transporting federal prisoners to and from medical appointments.
3. Guarding federal, seized, or forfeited property (including entry control, roving patrol, fixed posts, and emergency response).

Restrictions: Contract guards may not be used for:

1. Fugitive investigations;
2. Out-of-district special assignments;
3. International extraditions (JPATS contract guards may be an exception during prisoner movement);
4. Personal security details;
5. Witness security details (JPATS contract guards may be an exception during prisoner movement);
6. Administrative support functions; or
7. Any supervisory function.

Work schedule: Contracted hours will be scheduled on an “on call/as needed” basis. District and JPATS management will determine if a contract guard is also working a shift or hours with a local agency (e.g., working a double shift).

1. A USM-7, Bi-weekly Time Report, is to be used to record all personal service guard hours.
2. Contract guards cannot be scheduled for more than 16 USMS duty hours per day;
3. Overtime compensation will be paid after 40 hours have been worked per week;
4. USMS operational personnel have the right to first refuse an opportunity to work overtime hours prior to a contract guard being offered overtime provided Law Enforcement Availability Pay hours have been worked and the event has been scheduled a week in advance, if applicable.
5. Discontinued Service: Personal services contracts for guards may be terminated at any time for any reason. However, contractors must be provided 15 days notice before the contract can be terminated (pursuant to 48 CFR, Ch 1, FAR Section 52.249-12). All USMS property and identification must be accounted for and collected by the termination date.

Requirements

General Requirements: All applicants must fulfill the following requirements:

1. Be a United States citizen,
2. Be at least 21 years of age,
3. Speak, read, and write the English language,
4. Possess a valid driver’s license,
5. Demonstrate a proficiency in firearms that meets USMS standards if the assignment requires the use of an armed contract guard,

6. Be physically able to perform the full range of contract guard duties as described in the Statement of Work (SOW) without limitation,
7. Have no medical problems (e.g., amputations, deformities, disabilities, etc.) that would restrict strenuous exertion or prevent satisfactory performance,
8. Have no history of medical problems (e.g., high blood pressure, heart or respiratory disease, etc.) that would restrict strenuous exertion,
9. Have no other health-related problems such as alcohol dependency, controlled substance abuse, illegal drug use, mental illness, or psychological disorders,
10. Categories are used to separate contract guard applicants into groups for the purpose of contracting procedures and processing. These categories do not represent any hierarchy of qualifications.
 - a. Category 1: Actively employed sworn state or local law enforcement officers.
 - b. Category 2: Reserve sworn state or local law enforcement officers with a minimum of 1-year full-time law enforcement employment/experience.
 - c. Category 3: Former/retired sworn federal, state, or local law enforcement officers with a minimum of 1-year full-time law enforcement experience who are separated no longer than 5 years from law enforcement employment.
 - d. Category 4: Former/retired military police with full-time experience in the performance of guard duties over prisoners on a regular basis who are separated no longer than 5 years from law enforcement.
 - e. Category 5: Private security/correctional officers. Employment as a private security guard does not qualify applicants unless they have at least 3 years of full-time guard duties supervising prisoners on a regular basis. Applicants must also have received an accredited law

enforcement course of training. Academic or technical training may not be substituted for experience.

Firearms

The districts and JPATS identify guards who will provide services while armed. Before providing services while armed, contract guards must meet the training and qualification requirements stated in the current USMS firearms policy, unless otherwise specified in this directive. Special deputation is not required for contract guards to provide armed services.

- a. Contract guards may be issued USMS firearms and ammunition.
- b. Contract guards may carry approved handguns and USMS shotguns. Rifles are not authorized for contract guard use.
- c. Active and reserve sworn state and local law enforcement officers (Categories 1 and 2) may carry the handgun and ammunition issued by the agency with whom they are employed after the USMS district firearms instructor has inspected the firearm for compliance with USMS policy.
- d. A contract guard may carry a personal handgun if it is inspected by the USMS district firearms instructor for compliance with USMS policy.
- e. **Firearms Qualification**
 1. Categories 1 and 2 contract guards are exempt from USMS firearms qualifications if they certify in the Affirmation of Work Qualifications for contract guards that they are currently qualified and authorized to carry their duty firearm. Otherwise, the USMS is required to qualify Categories 1 and 2 contract guards in accordance with USMS firearms policy.
 2. Categories 1 and 2 contract guards must have been qualified by their agency within the past 12 months and must re-qualify at least annually, thereafter. Otherwise, the USMS is required to qualify the contract guards in accordance with USMS firearms policy.
 3. Categories 3, 4, and 5 contract guards are required to qualify in accordance with USMS firearms policy.

Contract Guard Check List (X Indicates Required Item)	Source of Contract Service Guards				
	Category One	Category Two	Category Three	Category Four	Category Five
Training:					
Bloodborne/Airborne Pathogen	Optional	Optional	X	X	X
USMS Use of Force	X	X	X	X	X
Firearms qualification (handgun)	Optional	Optional	X	X	X
Firearms qualification (shotgun)	Optional	Optional	X	X	X
Code of Professional Responsibility	X	X	X	X	X
Review of USMS policies and procedures	X	X	X	X	X
View videos: <i>Prisoner Restraints and USMS/BOP Prisoner Transportation</i>	Optional	Optional	X	X	X

Accountable Property

All USMS accountable property such as USMS-issued weapons, USMS-issued identification, and related property or equipment will be secured in USMS custody at the end of each tour of duty.

- a. USMS management may waive this requirement when articulated circumstances make it impractical to secure issued items.
- b. Lost or stolen government property, including weapons, identification, uniforms with the USMS insignia, or other issued equipment, must be immediately reported to the USM or designee. Lost or stolen accountable property must be reported in accordance with current USMS policy.

- c. Accountable property must be retrieved from contract guards when their services are discontinued.
 - 1. The Human Resources Division (HRD) will have oversight of the contract guard identification.
 - a. HRD will issue the identification software/program and supplies to administer identification cards.
 - b. The guard identification cards are governed by the USMS Badge and Credential Policy.
 - c. Lost or stolen identification will be reported as required by the USMS Badge and Credential Policy.

Procurement

Personal services contract guards will be procured in accordance with the Federal Acquisition Regulation (FAR) subpart 37.1.

- a. **Oversight:** Management and Budget Division (MBD), Office of Finance, will have oversight of the policies covering guard appropriations, procurement, and payment of personal services contractors.
- b. **Initiating Actions:** All proposed contract actions must be initiated by an USM-157, Requisition of Supplies and Services, Statement of Work, and an Optional Form 347, Order for Supplies and Services.
- c. **Bidders List.** District offices should establish a list of bidders who are cleared to perform services for the government. This is done by compiling a list of individuals who are financially sound, have professional integrity, and are capable of providing the services. The purpose of the list is to assist the district in meeting the Federal Acquisition Regulation (FAR) requirement that the government seek competition when it awards contracts. Thus, when the USMS has a requirement for a guard to provide services, it should solicit offers from three of the individuals on the list and award the contract to the guard offering the lowest price. Future contracting will be easier if the hourly rate charged by each guard is included on the bidder's list.
- d. **Use of Multiple Contracts.** District may fill their requirements through the award of separate contracts. For example, if a USM or CDUSM is satisfied with the performance of a particular contractor, they

may award separate contracts to that individual to cover different requirements. Thus, one responsible contractor may receive a contract for guarding cellblock prisoners, another contract for guarding property, and/or a contract for transporting prisoners.

- e. **Exceeding Procurement Authority.** Should the contract per guard exceed the district's procurement authority, the action must be ratified by the Procurement Office. The districts and the JPATS shall properly justify the need to exceed the contract amount. To prevent districts or the JPATS from exceeding their procurement authority, that contract guard is to be exchanged for the next individual on the rotated list.
- f. **FICA Withholding.** The USMS is required by the Internal Revenue Code to withhold and report Federal Income Tax and Social Security (FICA).
- g. **JPATS Contract Guards.** Contract guards engaged to assist JPATS are contracted in Oklahoma City, Oklahoma; Alexandria, Louisiana; and El Paso, Texas.
- h. **National Finance Center Payment.** Contract guards will be paid through the National Finance Center (NFC) payroll system when possible. The NFC will record hours worked, provide pay statements, and do all necessary tax reporting. There are no limitations on hours worked by contract guards before they can be placed in the NFC system. Also, it is not required or recommended to remove contract guards from the NFC when their services are discontinued.
 - 1. District offices will be responsible for the overall implementation and maintenance of payroll records for contract guards using the NFC payroll system.
 - 2. A separate USM-7 will be used to record the contract guard's hours within a two-week pay period.
 - 3. The following forms are required to enroll a contract guard in the NFC and will be submitted to MBD:
 - a. Direct Deposit Sign-up Form
 - b. Department of Justice Locator (DOJ-233)
 - c. Withholding Allowance Certificate (W-4)

- i. **Non-NFC Payment.** Contract guards may be paid by district check if they are not enrolled in the NFC system.
 1. Federal, state, local, and FICA deductions are required to be deducted from the earnings of the contract guard.
 2. Withholding Allowance Certificate (W-4) is required to calculate withholdings.
 3. Internal Revenue Service, Circular E, contains tables that are used to determine the amount of federal tax to be withheld.
 4. The district and JPATS are required to prepare and submit a Form W-2, Wage and Tax Statement, to the IRS for each contract guard at the end of the calendar year.
 5. Withholdings must be paid to the IRS electronically as mandated by current federal law.
 6. Management and Budget Division, Office of Finance, will assist with FICA calculations and submission of withholdings.

Contracting, General

- a. **Statement of Work.** A contract guard provides services under a Statement of Work or contract as an independent contractor. Contract guards shall perform the service stated in the SOW with the full knowledge that the authority vested in them can only be exercised in furtherance of the objective of the contract. (The SOW is approved for use by the Office of General Counsel. Changes to the SOW should be reviewed by the Prisoner Services Division prior to use).
- b. **Reporting Relationships.** Reporting relationships are as follows:
 1. **Contracting Officer:** A contracting officer is a person with the authority to enter into, administer and/or terminate contracts, and make related determinations and findings. The contracting officer is responsible for developing a Statement of Work, monitoring contract performance, and evaluating the criteria for awarding the personal services contract. Contractor performance issues need to be documented and forwarded to the respective contracting officer. The contracting officer may appoint a COTR to officer technical guidance and direction to a personal services guard and to officer technical guidance to a

contracting officer. The USM or other appropriate individual may be a COTR after receiving the appropriate training. Only the respective contracting officer may change the terms and conditions of a contract.

2. **Oversight:** Contract guards will receive general direction or oversight from the USM or their designee when handling, guarding, or transporting prisoners, or guarding property.
 3. **Changes in Qualifications, Employment, or General Requirements:** It is the responsibility of the contract guard to immediately notify the USM or designee of any significant changes in these areas.
- c. **Affirmation of Work Qualifications for Contract Guards.** The Affirmation letter is used to reduce contracting paperwork and affirm training requirements for contract guard applicants. Categories 1 and 2 applicants' current law enforcement agency may certify to the USM that the applicant/officer is not the subject of any internal or external investigations, under suspension, or on medical or administrative leave. Recertification is required on an annual basis or upon change of law enforcement agency or department. It is the responsibility of the contract guard to immediately notify the contracting officer of any significant employment change.
- d. **Special Deputation.** Special deputation is not required or recommended for a contract guard to provide services while armed or unarmed. The authority to perform services while armed, carry a concealed firearm, cross jurisdictional boundaries, and enforce federal laws are extended to contract guards in the federal function established by the Statement of Work or contract they enter into with the USMS. The USMS protects the contract guard for government liability purposes to the degree of a deputy marshal.

Contracting Procedures

- a. **Procedures and Documents for the USM.** The USM, or designee, requesting the guard service will complete the following and forward them and documents completed by the applicant to the contracting officer, usually the district administrative officer.
 1. Form USM-157, Requisition of Supplies and Services, will be completed and signed by the district staff member who is

requesting guard services. The USM-157 is not to exceed the district's procurement authority.

2. NCIC/NLET criminal checks will be run to check for outstanding warrants, criminal records, or restraining orders. Any positive hits may result in the discontinuance of the contracting process.
 3. Statement of Work request.
- b. **Procedures and Documents for the contracting officer.** The contracting officer will complete an Optional Form 347, Order for Supplies and Services, that will note the contract guard hourly, overtime, and not-to-exceed purchase order value upon receipt upon receipt of the USM-157. A guard file will be developed for the OF-347, USM-157 Affirmation of Work Qualifications for Contract Guards, Fit for Duty Medical Certification, and Statement of Work.
- c. **Procedures and Documents for All Applicants.** The following will be completed and submitted to the USM or designee within 10 business days or at the time service is to be performed:
1. Affirmation of Work Qualifications for contract guards will be provided by the districts and JPATS during the interview process. The applicant will have their immediate supervisor complete, sign, and date the qualification's statement.
 2. A Statement of Work for contract guard services will be reviewed, signed, and dated by the contract guard applicant.
 3. Form I-9, Employment Eligibility Verification.
 4. Form USM-234, Personal Qualifications Statement.

Responsibilities

- a. **U.S. Marshals/Chief Deputy U.S. Marshals/JPATS:**
5. Identify suitable contract guard applicants and complete the contracting procedures and process.
 6. Complete limited background investigations on contract guards and guard applicants, when applicable.

7. Provide training for contract guards on proper USMS policies and procedures.
 8. Print, issue, and maintain accountability for contract guard identification and equipment.
- b. **Prisoner Service Division:** Assist the districts and JPATS with the overall administration of the contract guard policy and procedures.
- c. **Human Resources Division:**
1. Process and review limited background investigations.
 2. Process background waivers for contract guards.
 3. Provide assistance and oversight of the contract guard identification program.
- d. **Management and Budget Division:**
1. Assist the districts and JPATS with the appropriations, procurement, and payment of personal services contracts.
 2. Provide assistance and oversight of the National Finance Center payroll system for the USMS.
 3. Assist the districts and JPATS with the development of Statements of Work and complying with requirements of the FAR and Federal Procurement Laws.
- e. **Office of General Counsel:** Assist the districts and JPATS in interpreting laws, regulations, legal instruments, and defend the USMS in any actions brought before a federal court or administrative tribunal.

**STATEMENT OF WORK
PERSONAL SERVICES CONTRACT GUARDS**

Objective:

The objective of this contract is to provide for the security in handling and transportation of all federal prisoners and aliens, certain non-federal detainees, and military prisoners in various work contexts, including hospital details.

Personal services contract guards, referred to as guards, must be experienced in the field of law enforcement. Guards must meet the contract guard minimum requirements as described in USMS policy. Certain guards may be armed at the discretion of the chief deputy marshal or his/her designee. Guards are authorized to carry and use the handgun and ammunition that their issuing agency has trained and qualified them with and has authorized them to carry. Non-active duty law enforcement will qualify with USMS-approved duty handgun and ammunition semiannually on a USMS course of fire. This handgun will be the only handgun non-active duty law enforcement will be authorized to carry as a guard for the USMS. At the discretion of the USMS, guards may be issued shotguns for use if they have completed the semiannual shotgun familiarization course of fire. This authorization is limited to time periods while under contractual obligations to the USMS. All guards are required to read, understand, and comply with the current USMS Policy Directives on Use of Force, Firearms, and Code of Professional Responsibility. Copies of applicable USMS policies are available for review from the chief deputy U.S. marshal or is/her designee, Monday through Friday, 8 a.m. – 4:30 p.m.

Work Locations:

Guards may be utilized for duties in these areas:

1. Hospitals
2. Cell blocks
3. JPATS
4. Hangar Security
5. Courts
6. Transport of detainees
7. Seized Assets

Reporting Requirements:

A *Contracting Officer* is available to offer contract interpretation. Issues regarding the Statement of Work, the purchase order, or contractor-related issues will be directed to the contracting officer.

Deputy U.S. Marshals can be designated COTRs (Contracting Office Technical Representatives) by the contracting officer after an approved course of study. They will offer technical guidance to contract guards. Guards will receive general direction or oversight when engaged in specific work contexts involving the handling, guarding, or transporting of prisoners or detainees from designated deputy U.S. Marshals.

Objectives for Guards:

1. The guard agrees to provide guard services in accordance with this Statement of Work upon request of the chief deputy marshal or his/her designee. Request for these services may be made at any time of the day or night, and the guard must be capable of providing the services. As much advance notice as possible shall be given.
2. Guards shall be unarmed unless otherwise directed. Armed guards must meet the training and qualification requirements stated in current USMS policies prior to providing services while armed. The authority to carry a concealed weapon is extended to the guard to the extent necessary to meet the objectives of this written Statement of Work. No authority is extended to carry a concealed weapon beyond duty assignments.
3. Guards shall be responsible for the secure custody of any federal, state, or local detainee from the time the detainee is accepted into the custody of the USMS or its designee, and until he/she is properly removed from custody by an authorized official.
4. The guard must maintain constant guard and observation of the detainee. In the event of an escape or attempted escape, the guard must notify the chief deputy marshal or his/her designee.
5. The guard may be required to travel. Such travel may require overnight stays. The guard shall be reimbursed for actual hours worked (from the time required to show until the guard is released from work that duty day). The duty location is subject to change depending on mission requirements. Meals and hotel expenses will

be reimbursed in accordance with the Joint Federal Travel Regulations. Incidental expenses will be reimbursed based on actual expenses with proper documentation (i.e., rental car, parking, and tolls). Guards will submit a written estimate (Travel Authorization/Advance) of costs prior to travel and file travel expense vouchers within five days of their return.

6. The guard shall be notified by the chief deputy U.S. Marshal or his/her designee of any special instructions concerning any individual detainee being guarded or transported.
7. The guard shall not leave the assignment without notifying the chief deputy U.S. Marshal or his/her designee, including for meals or rest breaks.
8. Any information or records provided to the guard regarding individuals being guarded shall be treated as confidential, and shall not be divulged to anyone except as otherwise provided by Department of Justice and USMS policies and procedures.
9. The guard will be responsible for adhering to the USMS policies and procedures pertaining to the handling and transporting of prisoners, the use of firearms, the use of deadly force, and other applicable policy and procedures that pertain to the assignment or to federal law enforcement officers.
10. The guard shall report to work physically fit, mentally alert, and appropriately groomed.
11. The guard shall have no history of alcohol and/or drug abuse.

Specific Requirements:

The guard will be required to perform guard services of the type set forth below at the request of the chief deputy U.S. marshal or his/her designee:

1. Assist with application of restraints and maintaining daily inventory of restraints,
2. Assist in detainee meal distribution,
3. Assist in the guarding of detainees while boarding, being transported, and disembarking from vehicles and aircraft,

4. Assist in the guarding and processing of detainees in the cellblock, courtroom, and during judicial proceedings,
5. Assist in the guarding and transportation of detainees to and from medical appointments or while hospitalized for medical treatment,
6. Assist with the pre-check of emergency and evacuation equipment,
7. Assist with the monitoring of detainee needs,
8. Assist with the handling of detainee property,
9. Assist with detainee searches,
10. Provide security within the USMS district office cellblock, including monitoring security equipment and patrolling the areas adjacent to the cellblock,
11. Search and secure cellblock, and
12. Guard seized assets as specified by the USMS.

Standards:

All guards are required to comply with the following standards:

1. Be courteous and demonstrate good manners.
2. Maintain a respectful and helpful attitude in all endeavors.
3. Maintain a neat, clean, and professional appearance, and comply with the security dress standards while on duty.
4. Report to work physically fit and mentally alert. Immediately make appropriate notification to the chief deputy marshal or his/her designee if unable to perform per the Statement of Work.
5. Prior to the assignment, report any circumstances which may adversely affect the mission to the chief deputy U.S. marshal or his/her designee.
6. If guards should be detained or become aware that they are under investigation by any federal, state, or local agency, for any legal or

ethical violation, they must report this to the chief deputy marshal and the contracting officer, no later than the next working day.

7. Guards shall ensure that weapons are properly secured in a safe place to prevent theft, tampering, or misuse when not being carried.
8. Guards will not engage in any discussions concerning Department of Justice or USMS internal matters, policies, grievances, or personalities with family members. In additions, guards will not discuss the above or financial, personal, or family matters, with prisoners/detainees, witnesses, protectees, any known associate of the above, or the public. Guards will not entertain, socialize, enter into business arrangements with, give legal advice or grant special favors to, or accept gifts or payment from detainees, friends or family members of the above.
9. Guards will not accept or solicit gifts, favors, or bribes in connection with the performance of the Statement of Work.
10. Guards will not allow detainees or the friends and family members of detainees into their home or living quarters (temporary or permanent).
11. Guards will not visit the duty site during non-duty hours unless authorized to do so by the chief deputy marshal or his/her designee.
12. Guards will not disclose any official information, except to the chief deputy U.S. marshal, his/her designee, or other officials having a need to know, or make any news or press releases without the express permission of the contracting officer. This does not prohibit protected whistle-blowing activities.
13. Guards will refrain from any discussions concerning duty assignments, manpower, weapons, security precautions, or procedures in the presence of detainees.
14. Guards will comply with applicable federal, state, and local laws while in performance of the Statement of Work.
15. Guards will not knowingly file false or misleading statements or conceal material facts in connection with performance of the

Statement of Work, travel vouchers, time sheets, or any record, investigation, or other proper proceeding.

16. Guards will not discriminate against or sexually harass any person.
17. Guards will ensure that all financial obligations are met.
18. Guards will abide by all ethical standards of the Department of Justice regarding conflict of interest, outside activities, gifts, and use of federal property.
19. Guards will not bid on or purchase in any manner, directly or through an agent, any property being offered for sale by the USMS or by others serving on behalf of the USMS.
20. Guards will refrain from any activity which would adversely affect the reputation of the Department of Justice and the United States Marshals Service.
21. Guards will avoid personal contact with persons known to be convicted felons or person known to be connected with criminal activities.
22. Guards will avoid any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct and habitual, excessive use of intoxicants or non-prescribed drugs. Contract guards will abstain from the consumption of alcoholic beverages while on duty. Guards will not report for work under any conditions, which impairs the ability to perform as expected.
23. Guards will always demonstrate the highest standards of personal and moral conduct.
24. Guards will not operate a government vehicle, or any other vehicle while on government business, in an improper manner or under the influence of intoxicants or drugs.
25. Guards will not misuse official authority, credentials, communications equipment, or weapons.
26. Guards will not make false statements about fellow guards or officials with knowledge of the falseness of the statement or with reckless disregard of the truth.

27. Guards will report violations of prescribed rules, regulations, and any violations of statute or law to the chief deputy marshal or his/her designee.
28. Guards will comply with all USMS security procedures or regulations.
29. Guards will not close or desert any post/area prior to release by the chief deputy U.S. marshal or his/her designee. Guards will remain at the assigned post/area until properly relieved or until the time that post/area is secured.
30. The Guard will not fail, unnecessarily delay, or refuse to carry out a proper assignment that is directed by a supervisor.
31. Guards will maintain proper care and custody of issued government property and the property of others.
32. Guards will refrain from surreptitiously recording conversations between any USMS employees or contractors.
33. Guards will conduct only official business on government property and telephones.
34. Guards will refrain from neglecting duties. This includes sleeping on duty, unreasonable delays or failures to carry out assigned tasks, conducting personal affairs during duty hours, and refusing to render assistance or cooperate in upholding the integrity of the work site security.
35. Guards will refrain from use of abusive or offensive language, quarreling, intimidation by words, actions, fighting, and participation in disruptive activities, which interfere with normal and efficient government operations.

36. Within three days of completion of the contract guard's contract with the USMS, the contractor will be required to return all USMS-issued equipment/property to the chief deputy marshal or his/her designee.

Payment for Services:

The guard shall submit to the USMS or its designee, a written request for reimbursement on a bi-weekly basis or upon the completion of each assignment. The appropriate USMS form (USM-7 or the USMS Time and Attendance form) must list the trip number, the number of hours of guard services worked, and the days on which the services were performed. The guard is responsible for submitting in a timely manner the appropriate USMS-7 or Time and Attendance form to a supervisory deputy marshal for approval and payment.

Special Conditions:

All guards will serve at the discretion of the chief deputy marshal or his/her designee.

The guard shall perform the services stated herein with the full knowledge that the authority vested in him or her can be exercised only in furtherance of the objectives of this written Statement of Work and extend so far as may be necessary to faithfully fulfill the terms of this Statement of Work.

The guard is providing services under this contact as an independent contractor, and no master/servant, employer/employee, or agency relationship is created by this contract. The guard shall be reimbursed at the hourly negotiated rate set forth in the OF-347, subject only to withholding of federal and state taxes as required by 26 U.S.C 3402(a).

The Guard agrees that he/she is not an employee of the USMS or its designee and is not entitled to pension benefits, health benefits, or other federal employee benefits or services.

I have read and understand this Statement of Work, for the performance of guard services for the United States Marshals Service, and am in agreement with the Statement of Work as written. I understand that I am not an employee of the United States Government and I shall not represent that I am employed by the United States Government, Department of Justice, or the United States Marshals Service. I understand that all contracted working hours will be on an on-call/as-needed basis.

Print ENTIRE Name

Signature

Date

USMS FIREARMS POLICY

The following are excerpts from USMS policy on the use of firearms by personal services contract guards.

Requirement For Training and Qualification: All USMS employees who are authorized to carry firearms will be trained in their use and will qualify and be familiarized with them according to the chart below. This requirement applies to all authorized firearms used by an employee.

All others who carry firearms under the authorization of the USMS (guards, special deputy U.S. marshals, etc.) will also be qualified by a USMS firearms instructor or, if they are employed by another law enforcement agency, by their own agency’s instructors and policies. Court Security Officers will be qualified according to the terms of the current CSO contract.

Required Qualifications/Familiarizations: It is the responsibility of each employee to successfully qualify with the firearms they are authorized to carry.

The following chart describes the minimum required firearms qualifications and familiarizations for operational personnel:

FIREARM TYPE	COURSE OF FIRE	SCHEDULE	PARTICIPANTS
Handgun: Primary-duty handgun	Qualification: 210 out of 300 (70%)	At least once every six months	All employees authorized to carry primary-duty handguns
Primary-duty handgun/other weapon (as determined by course of fire)	Tactical familiarization course (exact course selected by firearms instructor)	At least once every six months at the time of the primary-duty handgun qualification	All employees authorized to carry primary-duty handguns
Remington 870 shotgun	Familiarization	At least once every six months	All employees authorized to carry firearms

Districts are authorized and encouraged to conduct additional familiarization at their discretion.

Employees Required to Carry Handguns While On Duty

- a. All USMS employees who are authorized to carry firearms will carry approved primary-duty handguns when on duty unless relieved by proper authority.
- b. Such employees may opt to carry an approved secondary or backup handgun while on duty.
- c. When carrying firearms, either on or off duty, employees will have their issued badges and credentials.
- d. Carrying unauthorized firearms is strictly prohibited.

Off-Duty Carriage of Weapons

Court Security Officers (CSOs) and guards are not authorized to carry firearms or non-lethal devices off duty.

Use of Force Policy/Firearms Policy

Before being authorized to carry a firearm, each employee will be instructed in, and issued a copy of, the use of force and firearms policy directives. The issuance and instructions will be documented on Form USM-333, Weapons Qualification and Familiarization/Authorization to Use Personally Owned Weapons.

Authorized Weapons: Personally Owned Handguns

Each personally owned weapon must be approved in writing by a USMS supervisor (GS-13 or above) on Form USM-333, Weapons Qualifications and Familiarization/Authorization to Use Personally Owned Weapons.

Mandatory Qualifications/Training

Firearms Instruction: Certified USMS firearms instructors will conduct all qualifications, familiarization, proficiency demonstrations and other firearms training provided by the USMS. Training provided by outside vendors/agencies is **not** subject to this requirement.

Firearms Inspection: Prior to qualification, the firearms instructor will inspect each firearm to ensure it meets USMS safety and mechanical requirements.

Weapons Qualification Record: The firearms instructor will record all firearms qualifications, familiarization, tactical familiarization courses, inspections and verifications on Form USM-333, *Weapons Qualification and Familiarization/Authorization to Use Personally Owned Weapons*, and submit the form to a USMS supervisor (GS-13 or above) for authorization. A copy will be provided to the employee.

APPENDIX VI

U.S. MARSHAL QUESTIONNAIRE
Personal Service Contract Guards

NAME:

DISTRICT:

		YES	NO
1.	<p>Does the district employ the use of independent contractors as personal services contract guards?</p> <p>If yes, please describe what duties these contractors perform.</p> <p>Does the district also utilize a vendor guard company contract?</p> <p>If yes, please explain how the company guards are used. (Note: if your district does not use independent contractors as personal services contract guards the remaining questions can be answered as not applicable).</p>		
2.	<p>How many personal service contract guards does the district currently employ? Please provide a breakdown of the number of guards by categories per USMS policy directive 9.31 – Use of Personal Services Contract Guards.</p> <p>Category 1:</p> <p>Category 2:</p> <p>Category 3:</p> <p>Category 4:</p> <p>Category 5:</p> <p>TOTAL</p>		
3.	<p>Please describe the methodology used by the district to schedule and assign work hours for independent contractors in order to maximize coverage and minimize overtime?</p>		
4.	<p>a. What is the hourly wage rate for independent contractors in your district?</p> <p>b. What methodology was used to determine the wage rate, e.g., DOL prevailing wage rate?</p>	\$	

5.	Does the district utilize both armed and unarmed independent personal services contract guards?	YES	NO
	If so, what percentage of your contract guards are unarmed and are they paid at the same hourly rate as the armed contract guards?		
6.	How much money was allocated for independent personal services contract guards (Sub Object 1101) in your district budget for FY 03? \$	\$	
	How much was actually spent?	\$	
7.	Is the district satisfied with the budgeting and funding for contract guards? Yes/No	YES	NO
	How can this process be improved?		
8.	<ul style="list-style-type: none"> When (months/years) has the district run out of money for independent personal services guards in the past 4 years (since FY 2000)? <p>MONTH:</p> <p>YEAR:</p> <p>What was the impact on the district, e.g., reallocation of resources from competing priorities?</p>		
9.	Describe the procurement process for independent contract guards, i.e., advertisement, word of mouth, on-site recruiting, sealed bid, etc.		
10.	<p>a. Please describe the training provided to independent contract guards by the district.</p> <p>b. What are the differences, if any, in training between armed guards and unarmed guards?</p> <p>c. How often is training conducted?</p>		
11.	<p>a. How are personal service contract guards evaluated on their performance?</p> <p>b. Who evaluates their performance?</p>		

12.	If the district is not satisfied with a contract guard's performance what action is taken?		
13.	In your opinion, should contract guard candidates be required to meet the same physical fitness requirements as deputy marshals? Please explain your answer.	YES	NO
14.	What is your current staffing requirement for operational deputy marshals based on the Workforce Equalization Model (WEM)?		
15.	What is your actual staffing for operational deputy marshals?	#	
	How many operational vacancies currently exist in your district (not including reservists called to active duty)?	#	
16.	Does the district use personal service contract guards to augment its deputy marshal force or to fill in for staffing shortages?		
17.	In your district, which do you believe to be the best method for procuring contract guards: independent contract guards, guard company contracts, or cooperative agreements?		
18.	Overall, are you satisfied with the use of independent contract guards in your district?	YES	NO
	What recommendation(s) would you make to improve the process?		

APPENDIX VII

AUDITEE'S RESPONSE



U.S. Department of Justice


United States Marshals Service

Office of the Director

Washington, DC 20530-1000

May 2, 2005

MEMORANDUM TO: Guy K. Zimmerman
Assistant Inspector General
for Audit

FROM: Benigno G. Reyna 
Director

SUBJECT: Response to Draft Evaluation Report - United States Marshals
Service's Use of Independent Contractors as Guards

Thank you for the opportunity to comment on the draft audit report entitled: United States Marshals Service's Use of Independent Contractors as Guards. We have reviewed the report and are in agreement with all of the recommendations. We will be taking the necessary steps to implement the changes. It should be noted that some of the recommendations will require the concurrence and assistance of the Department of Justice, Office of Management and Budget, and Congress.

My staff has asked me to commend your office on the constructive way this audit was conducted and the level of understanding of this complex issue that was evident in the recommendations. Should you have any questions or concerns regarding this response, please contact Isabel Howell, Audit Liaison, at (202) 307-9744.

Attachment

cc: Matthew P. Grady
Acting Regional Audit Manager

Isabel Howell
Audit Liaison

Richard P. Theis, Acting Director
DOJ Audit Liaison Office

United States Marshals Service Response to OIG Draft Report:
The United States Marshals Service's Use of Independent Contractors As Guards

Recommendation 1:

Ensure the use of formal procurement procedures in the districts to remedy the inconsistencies, inefficiencies, and misuse of authority cited in this report.

USMS Response: (*Agree*) The USMS will be issuing a detailed memorandum to all offices reminding them of the importance of following all procurement procedures and other policies related to the use of independent contractors as guards. The recently re-instituted internal audit process will rigorously review district compliance with these policies.

Recommendation 2:

Consider obtaining guard services currently provided by independent contractors through the following alternative methods: 1) expanded use of guard company contracts, 2) expanded use of intergovernmental agreements with local jails or cooperative agreements with local law enforcement agencies, and 3) use of part-time or temporary employees.

USMS Response: (*Agree*) The USMS agrees that no single approach for obtaining guard services is suitable for all districts. A review of individual district usage will be conducted to determine which of the three recommended alternatives or combination of alternatives is best suited for each district. The USMS will then calculate the increased cost of expanding the use of guard company contracts and include that cost as part of its Fiscal Year 2007 budget request to the Department of Justice. Where appropriate, the USMS will contact local jails and law enforcement agencies to seek their assistance in providing guards through intergovernmental/cooperative agreements. In addition, the USMS will determine if OPM regulations make it practical to utilize part time and/or temporary positions to provide guard services. If it is practical, the USMS will seek these positions in its Fiscal Year 2007 budget submission to the Department of Justice.

Recommendation 3:

Revise the independent contractor fitness-for-duty requirements to reflect the physical requirements needed to adequately perform contractor assignments.

USMS Response: (*Agree*) The USMS will conduct a comprehensive review of its policies on the use of independent contractors as guards. In addition to revising the fitness for duty requirements, the USMS will look at all other requirements as well with an eye toward streamlining all aspects of the program.

Recommendation 4:

Require that contracting officers maintain complete contract files documenting each independent contractor's qualifying experience, the qualification category under which he or she is hired, fitness-for-duty, and a completed limited background investigation.

USMS Response: *(Agree)* See response to Recommendation 1.

Recommendation 5:

Institute a formal evaluation process of independent contractors to include, at the minimum, having supervisors perform written evaluations of independent contractors on an annual basis.

USMS Response: *(Agree)* See response to Recommendation 1.

Recommendation 6:

Develop and implement in the districts a system to track and document annual independent contractor training.

USMS Response: *(Agree)* See response to Recommendation 1.

Recommendation 7:

Ensure that independent contractors required to carry firearms qualify every six months.

USMS Response: *(Agree)* See response to Recommendation 1.

APPENDIX VIII

OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION SUMMARY OF ACTIONS NECESSARY TO CLOSE REPORT

The USMS's response to the audit (Appendix VII) describes the actions taken or plans for implementing our recommendations. This appendix summarizes our response and the actions necessary to close the report.

Recommendations:

1. **Resolved.** In its response, the USMS stated that it plans to issue a memorandum to all offices concerning proper procurement procedures and other policies related to the use of independent contractors as guards. The USMS indicated that corrective actions required in recommendations 4 through 7 will be incorporated into its policy memorandum. In order to close this recommendation, please provide by June 30, 2005, copies of procedural guidance to the field and a list verifying compliance with the aforementioned policy memorandum. Include in the list the district, name and title of certifying official, and the date of certification.
2. **Resolved.** In its response, the USMS stated that it will conduct a review of individual district guard usage in conjunction with its Fiscal Year 2007 budget request to determine the best alternative(s) for providing the necessary guard services. In order to close this recommendation, please provide the results of the review and implementation plans, pending approval of the FY 2007 budget request. In addition, during the exit conference the feasibility of expanding the scope of the USMS's CSO contracts was discussed. Please provide an update on your negotiations with the Administrative Office of the United States Courts regarding this matter.
3. **Resolved.** In its response, the USMS stated that it will conduct a review of its policies on the use of independent contractors as guards, with regard to revising the fitness-for-duty requirements. In order to close this recommendation, please provide the OIG with the results of the review and documentation showing that revised fitness standards have been implemented.
4. **Resolved.** See actions required for recommendation 1.

5. **Resolved.** See actions required for recommendation 1. In addition, please provide a copy of the form developed to document evaluations.
6. **Resolved.** See actions required for recommendation 1. In addition, please provide the OIG with the description of the system developed for tracking independent contractor training by June 30, 2005, and the timeframe for implementation.
7. **Resolved.** See actions required in recommendation 1.