

INFLUENCING CONTRACTOR HIRING

If, in the performance of a contract, a contractor employee demonstrates a skill set that the Government desires, then it may be acceptable to later hire that individual as a government employee in an appropriately competed hiring action. The problem arises if we direct the contractor to hire a specific individual or if we influence contractor hiring in order to circumvent civil service rules. The practice of "try before you buy" in the context of trying out employees as contractors before hiring them into the government is sometimes done because managers are trying to find the best employees to fill a certain job or because it offers a temporary work around as a result of delays in the civil service hiring process. Regardless of the motive, Federal Employees should not direct or suggest to a contractor whom to hire or fire.

When a Federal employee directs contractors to hire individuals or when they exercise relatively continuous supervision and control over contractor employees, the result can be the conversion of an otherwise legal contract into an illegal Personal Services Contract (PSC). The Federal Acquisition Regulation (FAR) 37.104 prohibits PSC. It may also give the contractor employee standing to pursue Complaints against the Government at the Equal Employment Opportunity Commission (EEOC) even though the individual is not on the federal payroll. Moreover, a Federal Employee may not use their public office for their private gain or for the private gain of friends or other persons. 5 C.F.R. § 2635.702. For example, a Federal employee's friend is looking for a job. She knows her support contractor is hiring in her friend's area of expertise. She can pass on public information about this job opening to her friend, but she cannot ask the contractor to interview or hire her friend.