

DECISION

J. Mitchell
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548
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FILE: B-191865**DATE:** November 13, 1978**MATTER OF:** Charles R. Hobbs Corporation

- DIGEST:**
1. Where there is truly an independent contract that does not establish an employer-employee relationship between the agency and the contractor as determined in accordance with Chapter 304, Federal Personnel Manual (FPM), section 1-4, payment need not be limited to the highest rate under the General Schedule which is payable by an agency as prescribed in 5 U.S.C. 3109.
 2. When contracting for expert or consultant services, which are truly independent contracts (no employer-employee relationship), voucher based on purchase order contract may be certified for payment; however, in future formal contract procedures should be used.

This decision is issued pursuant to a request dated May 4, 1978, reference 1386 (520), from William S. Downey, an authorized certifying officer, Bureau of Land Management, Department of the Interior. The request involves the certification for payment of a voucher representing fees charged for services rendered pursuant to a contract evidenced by a Standard Form 147 (Order for Supplies or Services).

The certifying officer states that the Bureau of Land Management has been approached by various individuals and firms seeking to provide various management training courses and workshops. These contractors provide the services and materials after being advised by the agency of the goals and objectives to be achieved but develop and present the material without supervision or technical direction by the agency. The fees charged by the contractors for the expert and consultant services often exceed the compensation limitation of 5 U.S.C. 3109.

The voucher enclosed with the request represents payment for services to the Charles R. Hobbs Corporation. These services were follow-on consulting and additional workshops conducted in connection with previously given workshops on time management.

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The contract for these services is a Standard Form 147 (purchase order for supplies and services) and merely states a daily fee of \$300 for services provided from September 12 through 15, 1977, plus expenses of lodgings, meals and travel. There is no breakdown of the fee which shows the value of the handout materials presented or the actual charge for the service.

The certifying officer asks whether this contract falls within the purview of 5 U.S.C. 3109 and whether speakers or instructors in training sessions are subject to the salary limitation of 5 U.S.C. 3109. He also asks if there is any guidance in defining speakers or instructors as compared to expert and consultant in appropriate laws and regulations.

Section 3109 of title 5, United States Code, provides that the head of an agency when authorized by an appropriation or other statute, may procure by contract the temporary or intermittent services of experts or consultants or an organization thereof without regard to certain provisions of law which would otherwise be applicable. Appropriations of the Department of the Interior are available to obtain the services of experts and consultants in accordance with the provisions of 5 U.S.C. 3109. See section 104, Public Law 95-74, and Public Law 94-373. Thus the agency is specifically permitted to procure such services by contract or appointment. With respect to procurement of the services from individuals in circumstances amounting to employment that section makes the provisions of title 5, United States Code, governing appointments in the competitive service, classification of positions and pay under the General Schedule inapplicable. However, a limitation is contained in the statute which precludes payment in excess of the daily equivalent of the highest rates payable under the General Schedule unless an appropriation act or other statute authorizes a higher rate. This restriction is applicable when services are procured from an individual as an employee. When services are procured on other than an employment basis the effect of 5 U.S.C. 3109 is to provide an exception from the formal advertising requirement applicable to Government contracting.

On the other hand, the limitation of 5 U.S.C. 3109 concerning the rate of compensation is not applicable to a contract for expert

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or consultant services, which results in an independent contractor relationship. That is, it does not establish an employer-employee relationship between the Government and the contractor. See 26 Comp. Gen. 188 (1946). Guidelines for determining whether an employer-employee relationship exists are provided in section 1-4, Chapter 304 of the Federal Personnel Manual (FPM).

Although the information provided in the request is not complete, it appears that the contract between the Bureau of Land Management and the Hobbs Corporation for conducting management workshops is truly an independent contract which does not create an employer-employee relationship. Compare 28 Comp. Gen. 296 (1948); 24 id. 414 (1944). Thus, the limitation on salary provided in 5 U.S.C. 3109, is not for application to the arrangement with the Charles R. Hobbs Corporation.

In this regard, the only evident contractual agreement between the Bureau and Hobbs is a standard Form 147, purchase order, stating the fees and expenses. Where, as here expert or consultant services are obtained on an independent contract basis (no employer-employee relationship), a formal contract procedure should be used. See B-174226, March 13, 1972. However, since it appears that the agreement with the Hobbs Corporation was truly an independent contract and was performed satisfactorily, we will not object to the certification of the voucher on the basis of the purchase order in this case if otherwise proper.

Concerning the question relating to whether speakers or instructors may be classified as experts or consultants, criteria governing such determinations are provided in Chapter 304, FPM, subchapter 1-2.

The voucher and accompanying documents are returned to the certifying officer for processing.

R. J. Kellum
Deputy Comptroller General
of the United States