



**Advanced Purchase Card Management
GSA SmartPay® Training Forum
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Welcome everyone. This class is GSA SmartPay Advanced Purchase Card Management. This class is geared for experienced A/OPCs who are looking for more in-depth information on how to work within the gray areas of your program. The prerequisite for this class is GSA SmartPay Purchase Management Essentials.

I'm Shauna Weatherly, Business Management Specialist with the GSA Center for Charge Card Management (CCCM). My primary role is working as the Contracting Officer's Representative (COR) for the SP3 Master Contracts with both Citibank and U.S. Bank. But prior to coming to the GSA SmartPay program in 2016, I was a Warranted Contracting Officer for over 25 years and have been DAWIA Contracting or FAC-C Level III certified since 2001, or 20 years and still have current FAC-C and FAC-COR Level III certifications. My area of expertise as a Contracting Officer was service contracting. I gained that experience in several roles, a few being –

- Senior Contingency Contracting Officer deployed to Kabul, Afghanistan (2008 Global War on Terror)
- Branch Chief for both Construction / Architect-Engineer and Services / Supplies Branches with the US Army Corps of Engineers, Sacramento District;

- Chief of Contracting, US Army Corps of Engineers, Tulsa District;
- Director of the National Aerospace and Facilities Management Contract Awards and Director of the Aviation, Medical & Training Acquisition Contract Awards, both with the Federal Aviation Administration, Mike Monroney Aeronautical Center in Oklahoma City; and
- Senior Contracting Officer and Acquisition Workforce Training and Development Coordinator for what is now called the Travel, Transportation, and Logistics Category Contracting Office at GSA.

I have used the purchase card since the program began and I've held every role from cardholder to supervisory oversight of a Department of Army field office level program, surviving several charge card program audits during that time. As GSA SmartPay's purchase card Subject Matter Expert, I am regularly asked to assist with answers to purchase card questions and review purchase card policies and those questions are how this course came into being. We know not every question is an easy book answer. In this presentation I hope to share my knowledge from over 34 years of acquisition and card experience and provide you with regulatory guidance and best practices to use as a reference as you manage your own programs. We've got a lot to cover so let's get started!

Learning Objectives

- ☐ Analyze transactions and apply the correct micro-purchase thresholds based on the definition of supplies, construction, and services
- ☐ Apply statutory exemptions, when applicable
- ☐ Operate within “gray areas” to support mission needs
- ☐ Understand reporting requirements
- ☐ Apply best practices for program oversight
- ☐ Be aware of recent purchase card audit findings



LEARNING OBJECTIVES

This course picks up where the GSA SmartPay Purchase Essentials class leaves off and is a deeper dive into subjects that A/OPCs deal with on a daily basis. We've had a lot of interest in a class that takes a more detailed look at how to classify purchases for the appropriate application of micro-purchase thresholds (or MPTs). Hopefully this class will help you as A/OPCs when providing guidance to your cardholders and Approving Officials, and give you ideas about documentation, and assist in your overall decision-making so purchase card buys are defensible in case of audits.

All this considered, please note that nothing we say here today overrules agency and/or local policies for the use and management of the purchase card program at the agency level. We will be speaking strictly from the view point of what FAR and the OMB Circular A-123 Appendix B dictate, with some CFR and labor law information thrown in, as well as best practices. This is all in an effort to help maximize the use of the program under ever-increasing MPTs. And what does maximizing the use of the program get you? STREAMLINED BUYING and REFUNDS!

Here is a quick run down of the learning objectives we will cover in our session today. By the time we are done, you should be able to –

- Analyze transactions and apply the correct micro-purchase thresholds based on the definition of supplies, construction, and services;
- Apply statutory exemptions, when applicable;
- Operate within “gray areas” to support mission needs;

- Understand reporting requirements;
- Apply best practices for program oversight (touching on those required by OMB Circular A-123 Appendix B, *A Risk Management Framework for Government Charge Card Programs*, and others in practice at various levels within the management framework); and
- Be aware of recent purchase card audit findings.

We will not discuss innovative uses or other specifics on tools available to include use of data. GSA offers classes at the forum that cover those subject areas for A/OPCs in great detail. We recommend taking those courses in conjunction with program specific courses to learn more.

Definitions and Thresholds

(FAR Subparts 2.101)

If acquiring...	MPT* is...
Construction subject to Construction Wage Rate Requirements (CWRR)	\$ 2,000
Services subject to Service Contract Labor Standards (SCLS)	\$ 2,500
Supplies; Services not subject to SCLS	\$ 10,000
Supplies or Services from institutions of higher education (20 U.S.C 1001(a)) or related / affiliated nonprofit entities, or nonprofit research organizations or independent research institutes.	\$ 10,000 (or higher per Head of the Agency)
Support of a Contingency Operation (<u>except Construction</u>)	
• Awarded, performed, or purchased in the U.S.	\$ 20,000
• Awarded, performed, or purchased outside the U.S.	\$ 35,000

*Convenience checks are limited to half the MPT or the cardholder's single transaction limit, whichever is less.

DEFINITIONS AND THRESHOLDS (FAR SUBPART 2.101)

The micro-purchase thresholds are found in the Federal Acquisition Regulation (or FAR) Subpart 2.101 under "micro-purchases".

Every five years a review of FAR thresholds by the FAR Council to determine if any thresholds should be changed due to inflation. The year 2020 was a review year and the only change that impacts the Government Purchase Card (GPC) program was the increase for purchases made in support of a contingency operation (except construction) that are awarded, performed, or purchased outside of the United States (U.S.). Effective October 1, 2020, the threshold increased from \$30,000 to \$35,000 for this inflationary adjustment.

While dollar thresholds in the FAR are reviewed every five (5) years for inflation, the MPT exceptions and lower thresholds for construction and services are established by statute. The construction MPT exception and lower threshold of \$2,000 is set by the Construction Wage Rate Requirements (CWRR), formerly known as the Davis-Bacon Act of 1931 (as amended). The MPT exception and lower threshold of \$2,500 applies to services covered by the Service Contract Labor Standards (SCLS) statute, formerly known as the McNamara-O'Hara Service Contract Act (SCA) of 1965 (as amended). These thresholds have been in place since the Acts were signed into law and are not subject to increases for inflation. These thresholds can only be increased by Congress in the form of an amendment to the laws.

While we try to maximize the use of the card the micro-purchase processes because of the time and cost savings and potential refunds to be earned, FAR Subpart 13.201(b) tells us

the cards “shall be the preferred method to purchase and pay for micro-purchases”; a micro-purchase being a purchase at or below the thresholds you see here. We walk through the basic definitions of construction, services, and supplies in the GSA SmartPay Purchase Essentials course as a starting point, but there is a lot of gray area around how to apply those definitions when it comes to real life buying scenarios. There are statutory exemptions for purchase of certain services. It can be very confusing on whether a service falls into the category of construction or services for the purposes of applying these thresholds in compliance with labor laws. When the MPT was lower and was held at or just above these statutory exemptions, it wasn’t as tricky and the stakes weren’t as high. But as the MPT has increased well beyond the statutory exemptions, more guidance is needed to help A/OPCs—many of who are not formally trained in acquisition law or processes—to be better able to define what is being acquired and correctly apply MPTs.

When to Make the Decision

Within the confines of the MPT and/or authority of the cardholder, purchase cards can be used as...

Procurement Mechanism

Acquire and pay for goods and services by means other than use of an existing contract. (i.e., Open Market)

Ordering Mechanism

Order goods and services under an existing contract only if authorized by the contract itself.

Payment Mechanism

Pay for goods and services acquired by other means when the Contractor agrees to accept contract payment(s) using the card.

WHEN TO MAKE THE DECISION

Since the bulk of this course is making the decision about categorizing a purchase as either “construction”, “service” or “supply”, we are talking about when we use the purchase card as a PROCUREMENT MECHANISM under FAR Subpart 13.301. For any open market purchase of any value, the Government must make a determination prior to the purchase of how to classify the need (i.e., the products and services being purchased). This is done to determine –

- (1) the processes to be used to make the purchase as dictated by FAR, typically based on the definition of the need, but could be another policy for those transactions which may not be considered FAR-based actions, such as training,,
- (2) any applicable statutory exemptions, and
- (3) any additional requirements that must be met because of the determination (i.e., applicability of other laws such as labor law (wage determinations), requirements of the vendor, etc.).

Using the card as a PROCUREMENT MECHANISM means the cardholder is held to the MPTs we talk about on the previous page, or their single purchase limit (SPL), whichever is lower. I have been asked many times, “Is it okay to have cardholders merely provide wage determinations if they want to use the card over the statutory limitations and lower MPTs for services and construction.” The answer is “NO”. Cardholders CANNOT use the purchase card over the MPT as a PROCUREMENT MECHANISM on the open market...period.

When using the purchase card as an ORDERING MECHANISM both over and under the micro-purchase threshold, it can only be used to order under existing contracts such as GSA Schedules, agency Indefinite Delivery Indefinite Quantity contracts, etc. Existing contracts have already been classified as a “service”, “construction”, or “supply” acquisition so there is no need to make that decision on how to categorize a purchase for orders under existing contracts. The terms and conditions of the existing contract will dictate if and how orders may be placed, by whom, and at what thresholds the purchase card may be used as an ordering mechanism. Over the MPT, only warranted contracting officers or duly appointed Ordering Officers may place orders because a variety of FAR requirements exist, some of which mandate contractors are granted “fair opportunity” for each order available (i.e., making sure all contractors under a specific solicitation receive a fair opportunity to compete for orders). Contracting Officers and Ordering Officers have been trained in these processes and are aware of how to deal with those situations.

When using the purchase card as a PAYMENT MECHANISM, transactions are not classified as a construction, service, or supply because the card is not being used as the procurement instrument; a contract action has already been executed by other means (i.e., formal contract, purchase order, task or delivery order, etc.) and the decision on how that purchase was classified has already been made. The single purchase limit and monthly purchase limits of the cardholder and the terms and conditions of the contract action are what governs is what dictates if the purchase card may be used as a payment method.

With these parameters in mind for today’s discussion, let’s walk through some questions to ask yourself when making the decision how to define a need. If you have questions about the use of the card, please use the GSA SmartPay Purchase Management Essentials class as a refresher.

Primary Purpose & Preponderance of the Work

- What is the primary need and/or purpose of the buy?
- What do you most hope to accomplish?
 - If the work combines construction, services, and/or supplies, which is most important?
 - Can the work be separated or is it so merged or fragmented a distinction cannot be made?
 - What is the mix of the work compared to the price for each type?

Preponderance of the Work: The percentage of the work in terms of quantity or price does not always determine the primary purpose. Judgement must be applied!

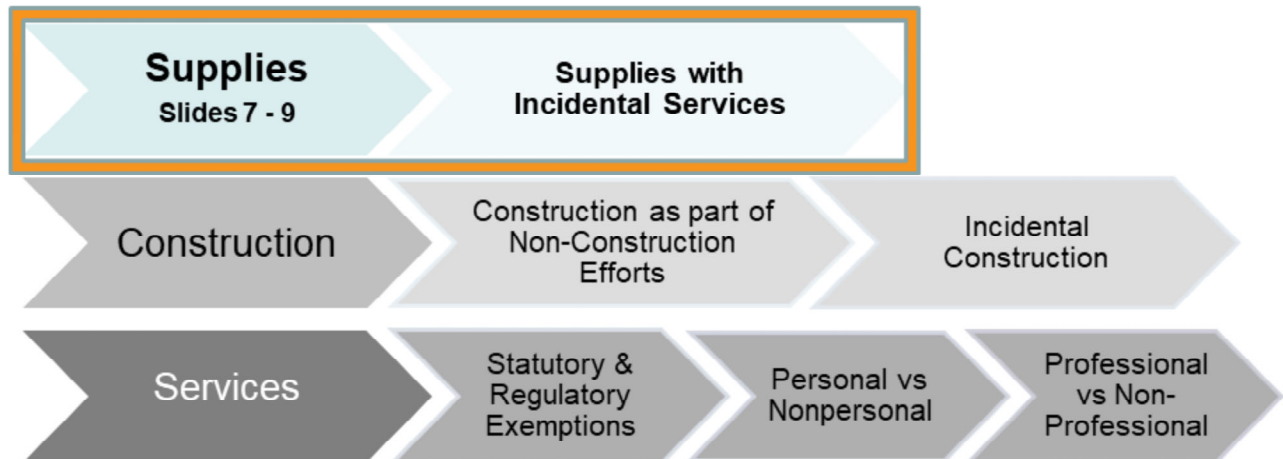


PRIMARY PURPOSE & PREPONDERANCE OF THE WORK

In making the decision on how to categorize a purchase, we can start by asking ourselves, "What is the primary need and/or purpose of the buy?" What do you most hope to accomplish? Is it to build a boat dock? Is it to install cabling for better internet service? Is it to buy a trailer to haul equipment? If the work involves a combination of construction, services, and/or supplies, which is most important? Can the work be separated or is it so merged or fragmented a distinction cannot be made? What is the mix of the work compared to the total price?

Judgement must be used when answering these questions and there is no hard and fast rule as to the precise meaning of "primary purpose". While price should be considered in the primary purpose, it is rarely the defining factor. Don't merely equate percentages of work in terms of the total dollar value and say "Well, I have a project where 70% of the cost is supplies and materials and the rest is a service (or construction), so I have a supply buy." It's not that simple.

Decision Flow to Categorize a Purchase



DECISION FLOW TO CATEGORIZE A PURCHASE

When asked which MPT applies when using the purchase card as a PROCUREMENT MECHANISM, sometimes there can be a lot of gray area in the decision. We aren't always buying things that, on the surface, clearly fall in to a category – particularly as the MPT increases or when applying a higher MPT in the case of contingency buying. The Center for Charge Card Management (or CCCM) fields questions and helps agencies navigate how best to classify different purchases when it comes to the application of the appropriate MPT. However we are not experts in every agency's procurement rules so we will always recommend checking with your own contracting experts and counsel for additional guidance.

The general decision flow on this slide, along with a series of “yes” and “no” questions we will review in the upcoming slides, can be used by A/OPCs to provide guidance and assistance to cardholders. Use the decision flow and questions to also help make sense of documentation that may be part of a transaction log when reviewing purchases after the fact as part of a program review, audit, or fraud / case management. The decision flow can be used rather quickly to determine how to employ the MPTs and possible supporting documentation to collect as part of the purchase decision, help identify when a buy may need to move to the Contracting Officer for purchase, and most importantly avoid unauthorized commitments and ratification actions.

When we start with the decision on how to define a need, it is easiest to compare your need to the definition of supplies first, then construction, and lastly services. Whatever doesn't fall into the first two categories, most often—but not always—falls into services (and we will talk about those exceptions too).

Supplies

Characteristics

Tangible item	“Off-the-shelf”	Can be depreciated
Can be repaired	Can be thrown away	Can be rebuilt
Can be maintained	Can be held in stock	Can be salvaged
Can be returned	Can be recycled	Can be property
Can be transported	Can be touched	Can be overhauled
Can be bought using an NSN	Can be bought through a distributor	

FAR 2.101: “Supplies” means all property except land or interest in land....and the alteration or installation of the foregoing.

CHARACTERISTICS OF SUPPLIES

Our starting point on the decision flow is supplies. When it comes to determining how to classify a need into one of our categories, deciding if the need is a supply is the easiest place to start.

The characteristics of items of supply are listed here. If it is a tangible item that can be overhauled, depreciated, repaired, thrown away (or disposed of), rebuilt, maintained, held in stock, salvaged, returned, recycled, classified as “property”, transported, touched, “off-the-shelf”, or bought using a National Stock Number (NSN) or through a distributor, then it is a supply. Supplies are things like materials -- rock or sand, equipment, software, hardware, accessories, and tools. Supplies can also be component parts that comprise an end item like memory cards, circuits, gears, nuts and bolts, bushings, housings, etc.

(NOTE: Remember...FAR Subpart 2.101 defines supplies as, “all property except land or interest in land....and the alteration or installation of the foregoing.”)

**Will only end items of supply
be provided by the vendor?**

YES	NO
The purchase is a Supply and the purchase card can be used at or below the MPT.	Further determine if the primary purpose of the work is Supplies, Construction, or Services.

THE EASIEST QUESTION FIRST

Keeping in mind the primary purpose or intent of the work the definition of a supply, the first and easiest question to ask when looking at the primary purpose of a purchase is: "Will only end items of supply be provided by the vendor?"

If the answer is "yes", the purchase falls into the category of supplies and the purchase card can be used at or below the MPT found at FAR 2.101, presently \$10,000. If the answer is "no", then we must decide if the buy could still fall under the definition of supplies or does the buy fall outside of supplies and instead under the classification of construction or services.

Supplies with Incidental Services

(FAR Parts 12, 22, and 37)

If the services included as part of a supply buy are...	Then...
Specifically for installation of the supply item	<p>Services are considered incidental.</p> <p>The purchase card can be used at or below the MPT for supplies.</p>
Included in the price for the end item of supply as part of the vendor's normal pricing <u>or</u> priced separately and based on a published catalog / price list available for inspection or substantiated through –	
<ul style="list-style-type: none"> • independent sources (i.e., comparable with prices of other vendors for same/similar work), <u>or</u> • the Government's knowledge of the work; <u>and</u> 	
Of the type offered to the general public; <u>and</u>	
Not the primary purpose or intent of the work.	

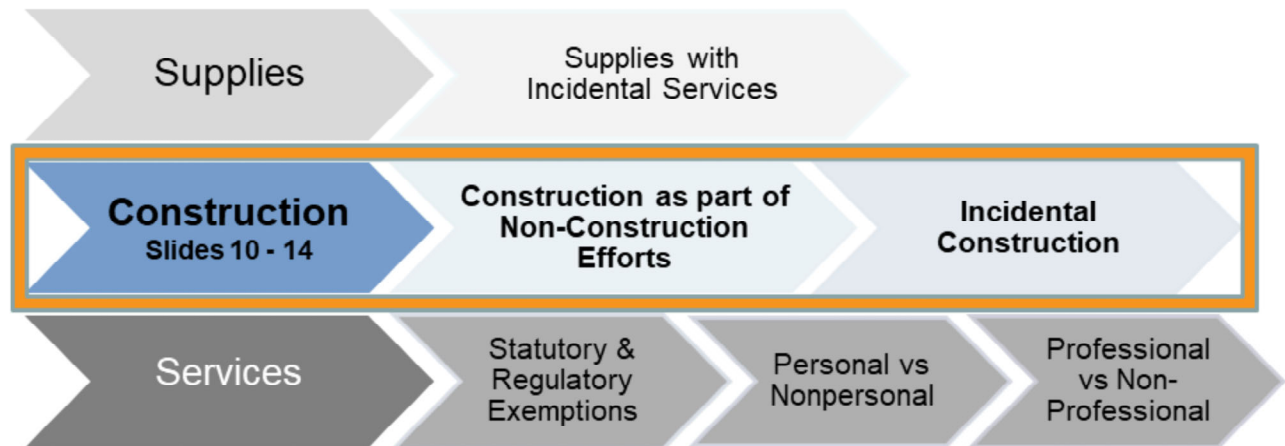
SUPPLIES WITH INCIDENTAL SERVICES (FAR PARTS 12, 22, AND 37)

When buying end items of supply such as a piece of large or heavy equipment, incidental services may exist and be associated in the receipt of that item. For example, generators or set of heavy duty batteries may need to be installed. Many times, vendors will include the installation as part of the total price of the supply item. They may also include other things like set-up, testing, or an hour with your staff to teach you how to run or operate the equipment.

If the services are specific to the installation of the supply item, the purchase card can be used up to the MPT for supplies. If the services are part of the vendor's normal pricing and of the type offered to the general public, this is acceptable and the "service" portion of the work does not need to be separately priced – you do not need to ask the contractor to separately price the services, **if all-inclusive pricing is how the vendor normally prices their items** (i.e., as part of their normal catalog or published list pricing). However, if the vendor prices incidental services separately, then there are a few things to consider. Are the services based on a published catalog or price list available to view? If not, can the prices for the services be substantiated through independent sources like comparable pricing of other vendors or the Government's knowledge of the work (i.e., what it should cost)? Are the services of the type offered to the general public as part of normal business? Services should not be the primary purpose or intent of the work.

Determining a supply purchase is probably the simpler decision to make between our categories. But we have a case study to review later that may prove otherwise.

Decision Flow to Categorize a Purchase



DECISION FLOW TO CATEGORIZE A PURCHASE - CONSTRUCTION

The next category to consider in our decision flow is Construction. Under this category we must not only consider the characteristics of construction and the primary purpose of the work but whether construction is a part of non-construction efforts (such as supplies and services) and if there is incidental construction included in a supply or service buy. The difference between these two considerations is subtle but important.

Relates to buildings, structures, works, or other real property (to include land and all improvements, structures and fixtures thereon)		
Involves laborers or mechanics whose duties are manual or physical in nature, employed by a construction company, subcontractor, or similar type of contractor at a “building” or “work” site without limitations		
Transportation of materials and supplies between sites (does not include solely delivery of materials or supplies to a site)		
Public buildings and public works	Remodeling, painting*, and decorating of new or existing structures	Dismantling, demolition, and removal of improvements*

CHARACTERISTICS OF CONSTRUCTION

Once we determine that the supplies are not the primary purpose or need, the next step in our decision flow is to test for construction. As we discuss in the Purchase Essentials course, “Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property and includes improvements of all types. “Real Property” is defined in 41 CFR 102-71.20 as “land, together with the improvements, structures, and fixtures located thereon, including prefabricated moveable structures...under the control of any Federal agency...”. FAR 22.401 makes the distinction that work on a “building” or “work” site generally indicates a construction activity, different from manufacturing, furnishing of materials, or servicing / maintenance work.

The characteristics of construction include, but are not limited to work that:

- Occurs on / in Buildings, Structures, Work Sites, or Other Real Property (to include land and all improvements, structures, and fixtures thereon)
- Involves laborers or mechanics whose duties are manual or physical in nature, employed by a construction company, subcontractor, or similar type of contractor at a building or work site without limitations
- Transportation of materials and supplies between work sites, but does not include solely delivery of materials or supplies to a site
- Involves Public Buildings and Public Works. “Public building” or “public work” means building or work the construction, completion, or repair of which is carried out directly by authority of, or with the funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.
- May include Dismantling, Demolishing, or Removing Improvements (see next slide)

- May include Remodel, Paint, or Decorate of Existing Structures (see next slide)

Construction does not include building , manufacture of, production, furnishing, construction, alteration, repair, processing, or assembling aircraft and vessels.

Construction

(FAR Subparts 22.401 & 22.402)

If the primary purpose of the work is...	Then...
Constructing, altering, repairing or improving buildings, structures, or other real property	<p>The purchase is for Construction.</p> <p>The purchase card can be used at or below the MPT for construction.</p>
Remodeling, painting*, or decorating as part of construction or as part of an alteration or repair of an existing structure	
*Painting over 200sf or >32 hours when <u>not</u> otherwise part of construction, alteration, repair, or improvement	
Dismantling, demolition, or removal of improvements with follow-on construction at the same site	

CONSTRUCTION (FAR SUBPART 22.401 & 22.402)

We know that the MPT for construction is set at \$2,000 due to the need to enforce wage, fringe and benefits floors through wage determinations mandated by the Construction Wage Rate Requirements (CWRR) statute (formerly known as the Davis-Bacon Act (DBA)) and other related acts. FAR Subparts 22.401 and 22.402 also say that for the purposes of applying Construction Wage Rate Requirements (CWRR), “construction, alteration, and repair” means –

- “...all types of work done by laborers and mechanics, whose duties are manual or physical in nature, employed by a construction contractor or his/her subcontractors on a particular building or work at the site thereof...” and gives examples such as remodeling, painting and decorating and transportation of materials and supplies between work sites, among others;
- Dismantling, demolition, or removal of improvements when construction at the same site is anticipated by another contract; or
- Painting, remodeling, or decorating when performed in connection with the original construction or as part of alteration or repair of an existing structure.

If you can say “yes” to any of these questions when it comes to the primary purpose or intent of the work, it is “construction”. If the work is solely construction, not part of a service or supply buy, you can stop here and apply the MPT for construction to the buy. If there are services or supplies co-mingled with construction, then we have other considerations.

Cardholder may NOT simply provide copies of Department of Labor Wage Rates Determinations to contractors performing work subject Construction Wage Rate Requirements (CWRR) and call it good. Remember, the purchase card cannot be used

over the MPT as a procurement mechanism to buy goods and services on the open market. There are other statutes that kick in over the MPT for Construction that require clauses that cover areas such as Contract Work Hours and Safety Standards, Convict Labor, Payrolls and Basic Records, Apprentices and Trainees, Subcontracts and Applicable Labor Standards, etc. This is why use of the purchase card over the MPT for construction is limited to trained warranted Contracting Officers and duly appointed Ordering Officers.

Construction as part of Non-Construction Efforts

(FAR Subpart 22.402(b)(1))

If the construction work is...	Then...
<ul style="list-style-type: none"> Performed as part of non-construction efforts (supply or service), and On a public building or public work, and Physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required. 	<p>The purchase card can be used <u>if</u> –</p> <ol style="list-style-type: none"> The portion of the work that is construction is equal to or less than the MPT for construction and The total value of the purchase is equal to or less than the MPT for the classification of the non-construction efforts (supplies or services).

CONSTRUCTION AS PART OF NON-CONSTRUCTION EFFORTS (FAR SUBPART 22.402(b)(1))

Non-construction buys may involve some construction work. Even when construction is co-mingled with other requirements if it is easily distinguishable and separate from the other known non-construction efforts, we still have to be mindful of the MPT for construction (presently \$2,000). Ask yourself if the construction work is –

- Performed as part of non-construction efforts (supply or service); **AND**
- Performed on a public building or public work; **AND**
- Physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required.

If the answer to all three of these questions is “yes”, then the purchase card should only be used if –

- The construction portion of the work is less than the MPT for construction **AND**
- The total value of the purchase is equal to or less than the MPT for the classification of the non-construction efforts (either supplies (MPT presently \$10,000), services subject to the SCLS (MPT presently \$2,500), or services exempt from the SCLS such as those with a statutory, regulatory, or professional services (MPT presently \$10,000). See the slides on how to classify a service purchase later in this presentation for more information.

Over the MPT for construction and the purchase must be made by a warranted Contracting Officer and include the Construction Wage Rate Requirements (CWRR) wage determination as well as other terms and conditions required by statute.

Incidental Construction

(FAR Subpart 22.402(b)(2))

If the construction work is...	Then...
<ul style="list-style-type: none"> • <u>Simple</u> installation or alteration at a public building or public work and required as part of furnishing supplies or equipment under a supply contract; <u>or</u> • So merged with non-construction work or so fragmented in terms of the locations or time spans in which it is to be performed that it is not capable of being segregated as a separate requirement. 	<p>The purchase card can be used over the MPT for construction and at or below the MPT for services or supplies, as applicable, based on the primary purpose of the work.</p>

INCIDENTAL CONSTRUCTION (FAR SUBPART 22.402(b)(2))

In the case of buying services or large equipment as a supply, there may be instances which construction services are also required. To be truly "incidental" in its nature, construction work must be limited to simple installation or alteration at a public building or public work that is required as part of furnishing supplies or equipment under a supply contract. Or, the "incidental construction" must be so merged with non-construction work, or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate requirement. In either case, Construction Wage Rate Requirements (CWRR) do not apply and the MPT threshold for construction is not applicable. The purchase card can be used over the MPT for construction and at or below the MPT for services or supplies, as applicable, based on the primary purpose of the work.

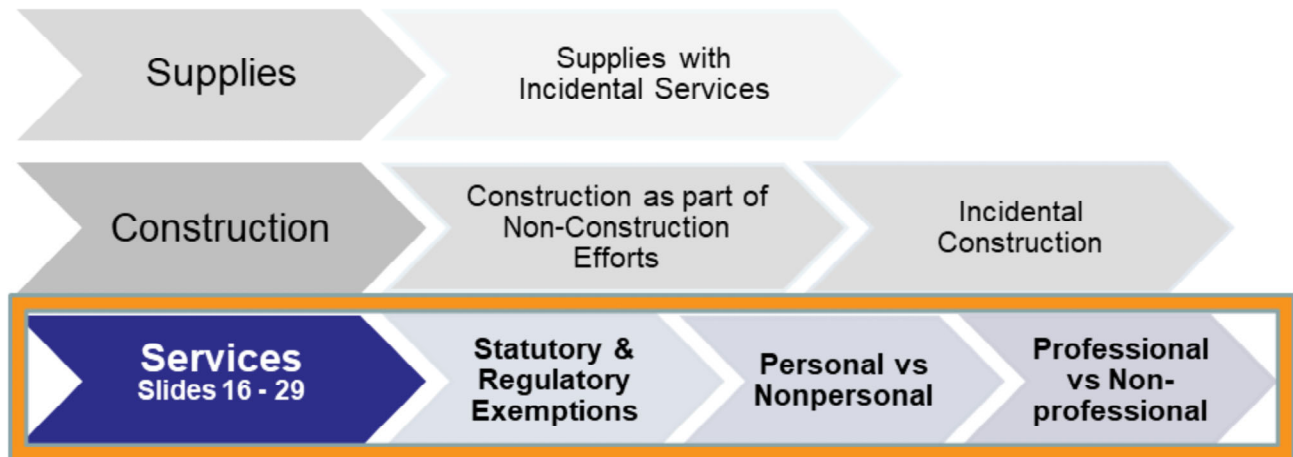
Important Notes:

1. The word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract.
2. If incidental construction is deemed "substantial and segregable", such in the case of installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the MPT applies for that portion of the work (previous slide applies).

When work is co-mingled between construction and any other item (services, supplies, R&D) it is always wise to consult your Contracting Officer or legal counsel for assistance. Incidental construction is one of the "gray areas" mentioned early that we all must work within. **Ask questions when you find yourself in the gray area.** Using FAR, agency

policies and procedures, and other advice from acquisition experts, document your decision and either make (or don't make) the purchase. It takes a little effort but doing the work up front, and/or having a process by which to run these types of things through your acquisition and legal experts saves a lot of grief at audit time, and possible disciplinary action.

Decision Flow to Categorize a Purchase



DECISION FLOW TO CATEGORIZE A PURCHASE - SERVICES

The last category to consider in our decision flow is Services. Under this category we must not only consider the characteristics of services and the primary purpose of the work but the statutory exemptions for certain services, whether the services are personal versus nonpersonal in nature, and if the work will be performed by professional or non-professional personnel, or a combination thereof.

Services

Characteristics

For discrete task(s)	Can be labor hours
Not “off-the-shelf”	Can be a solution
Can be an idea	Can be a specific effort
May not have a tangible end item or deliverable	May be performed on an end item of supply
Cannot be ordered by part number	Cannot be duplicated identically
Can be written or oral	

CHARACTERISTICS OF SERVICES

A “service” also has certain characteristics that make it so. A service is a discrete task, hours, or specific effort, not “off-the-shelf”, can be a solution, idea, or for a specific effort. Services may not have a tangible end item or deliverable. Services can also be performed on an end item of supply already owned by the Government. Services are not ordered by a part number and not capable of being duplicated identically. Services can be written (documents, reports, presentations) or oral (advice, technical expertise, counsel). The word “service” is a noun (i.e., the action of doing work for someone) and a verb (i.e., having your car serviced). Services are things like documents, advice, a report, innovative solution, or performing according to a process; an effort.

<div> <div>Services</div> <div>(FAR Subpart 37.101)</div> </div>	
If the primary purpose of the work...	Then...
Engages the time or effort of a contractor whose primary purpose is to perform an identifiable task	<p>The purchase is a Service.</p> <p>The purchase card can be used at and below the MPT for Services.</p>
Is to maintain, repair/rehab, or service supplies, systems, or equipment already owned by the Government	
Is for dismantling, demolition, or removal of improvements <u>without</u> further construction at the same site	
Is performance of routine recurring maintenance of real property	
Painting an area less than 200sf or <32 hours not otherwise part of a construction project	
Is to provide communications (radio, telephone, cable services)	
Is to provides utilities	

SERVICES (FAR SUBPART 37.101)

In the Purchase Essentials course, we discuss that “Services” are defined as directly engaging the time / effort of a contractor whose primary purpose is to perform a task rather than furnish an end item of supply. We talked about dismantling, demo, and removal of improvements under the definition of construction with the caveat that those efforts are only construction when there is a follow-on construction contract at the same site. You’ll notice here that when there is no follow-on construction at the same site that dismantling, demo, and removal now become a “service”.

Services include the maintenance of real property – such as janitorial services and things like elevator maintenance (not modernization, that’s an improvement), routine installation support services, transportation of freight / personnel, and communications. However, as we touched on discussing construction, the definition of painting is based on the total square feet (SF) painted, not dollar value. If painting less than 200 SF and not part of a construction project (stand-alone), it is considered services and subject to the MPT threshold for services (currently \$2,500) but considered construction if at or over 200 SF, regardless of the price or hours worked.

Services are also either nonpersonal or personal and can be performed by either professional or nonprofessional personnel, both individually or on an organizational basis.

**Statutory &
Regulatory
Exemptions**

Statutory Exemptions from SCLS
(FAR Subpart 22.1003-3)

Transport of Freight or Personnel where Tariff Rates are in Effect	Services subject to the Communications Act of 1934
Services Performed outside of the U.S. or its Territories	Employment Contracts for Direct Services to a Federal agency by Individuals
Public Utility Services	

The MPT for Services Exempt from SCLS Wage Requirements is \$10,000

STATUTORY EXEMPTIONS FROM SCLS (FAR SUBPART 22.1003-3)

FAR Subpart 22.1003-1 says that the Service Contract Labor Standards (SCLS) (formerly known as the Service Contract Act of 1965 (as amended)) applies to all services over the MPT, except as exempted in FAR 22.1003-3 and -4, and is applicable only to those services performed in the United States. Exempted services are typically offered and sold regularly and provided by the contractor to the general public on a commercial basis in substantial quantities as part of the contractor's normal business operations. Prices for these services are based on established and regularly maintained catalog or market prices, and are either published or available for inspections by customers.

Services exempted from SCLS by statute include:

- Transport of freight or personnel where tariff rates are in effect or on regularly scheduled routes or via commercial services (not including charter services) NOTE: This exemption typically does not apply to contracts for ambulance or taxicab services as they are usually not deemed common carriers or governed by published tariff rates (see 41 USC 356(3) and 29 CFR 4.118);
- Services subject to the Communications Act of 1934, such as services of radio, telephone, or cable companies (see 47 USC 151, *et seq.* 41 USC 356(4) and 29 CFR 4.119);
- Public utility services (see 41 USC 356(5) and 29 CFR 4.120);
- Employment contracts providing direct services to a Federal agency by an individual or individuals; and
- Any services performed outside of the United States or its territories (the SCLS applies to the 50 states, District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental

Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guan, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, Canton Island, and the Northern Marianas (see 41 USC 357(d) and 29 CFR 4.112(a)).

**Statutory &
Regulatory
Exemptions**

Regulatory Exemptions from SCLS
(FAR Subpart 22.1003-4)

Shipping of Mail by Common Carrier, not Part of a Supply Purchase	Maintenance, Calibration, or Repair of Certain Equipment
Parking Spaces	Financial Services
Hotel / Motel Services	Real Estate Services
Transportation of Persons by Common Carrier	Relocation Services to Assist Federal Employees or Military Personnel
Automotive or Other Vehicle Maintenance Services	

The MPT for Services Exempt from SCLS Wage Requirements is \$10,000

REGULATORY EXEMPTIONS FROM SCLS (FAR SUBPART 22.1003-4)

The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerance, and exemptions to and from any or all provisions of the SCLS statute except for wage and fringe benefit determinations, only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid serious impairment of Federal Government business and such action will protect prevailing labor standards.

In addition to the statutory exemptions on our previous slide, FAR 22.1003-4 includes a list of administrative limitations, variations, tolerances, and exemptions provided for by the Secretary of Labor. Regulatory exemptions from SCLS include:

- Shipping by common carrier, when the government packs the item for a company like UPS or FedEx to pick up and ship (NOTE: Does not include shipping as part of a supply purchase. Shipping by itself, if not under one of the exemptions shown, is a service subject to the SCLS and the lower MPT for services.);
- Maintenance, Calibration, or Repair of Certain Equipment, specifically defined in the FAR as --
 - ADP, office, word processing systems,
 - scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (see FAR Subpart

- 22.1003-4(c)(ii) for details related to specific Product or Service Codes (PSCs)),
 - office/business machines, when services are performed by the manufacturer or supplier of the equipment (see 29 CFR 4.123(e)(2)(i)(D));
- Automotive (fleet of vehicles) or other vehicle (e.g., aircraft) normal maintenance services (other than contracts to operate a government motor pool) (see 29 CFR 4.123(e)(2)(i)(A));
- Financial services involving the issuance and servicing of cards and card services (see 29 CFR 4.123(e)(2)(i)(B));
- Hotel and motel services for conferences of a limited duration (e.g., 1-5 days) that may include lodging, meals, and space (e.g., conference rooms) as part of the contract. (see 29 CFR 4.123(e)(2)(i)(c))
 - NOTE 1: DoD Government Charge Card Guidebook Section A.2.4 states that GPC purchases are travel related expenses are prohibited. This includes travel related expenses for Lodging in Kind (LIK), Subsistence in Kind (SIK), and Junior Reserve Officer's Training Corps (JROTC).
 - NOTE 2: This exemption does not cover contracts for lodging on an as-needed or continuing basis (e.g., lodging for military recruits or for employees attending training at a training center over a longer period of time.); and
- Real estate services, including real property appraisal services related to housing Federal agencies or disposing of real property owned by the Government (see 29 CFR 4.123(e)(2)(i)(F));
- Transportation by common carrier of persons by air, motor vehicle, rail, marine vessel on regularly scheduled routes or via standard commercial services (not including charter services) (see 29 CFR 4.123(e)(2)(i)(E));
- Relocation services for the move of military or civilian employees or their family, including real estate brokers and appraisers (but does not include actual moving / storage of household goods or related services) (NOTE: Moving services are covered and subject to the SCLS and lower MPT for services. "Moving" includes storage and "moving from one building to another or further distances", packing, and crating. Intra-office moves are also covered by the SCLS and subject to the lower MPT for services.) (see 29 CFR 4.123(e)(2)(i)(G)); and
- Parking Spaces.

Personal vs. Nonpersonal

Definitions

Nonpersonal services: Work is performed independently, to include oversight and management of work assignments, quality, and personnel.

- Contractor PM assigns work to the contractor's team with the outcome being a final deliverable for Government acceptance.

Personal services: Characterized by an employer-employee relationship between the Government and contractor's personnel that is created either through the terms of the requirements or the way that the work is administered (FAR Subpart 37.101).

- Government COR assigns work tasks directly to individual contractor personnel and manages the workload balance between contractor support staff.

Only Agencies authorized by 5 U.S.C. 3109 may buy personal services

PERSONAL VS. NONPERSONAL SERVICES - DEFINITIONS

When purchasing services, cardholders need to be aware of the limitations on the purchase of personal services, so let's talk about the difference between nonpersonal and personal services.

Nonpersonal services are services where the personnel rendering the services are not subject, either by the terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees. The work is performed independently by the contractor, to include oversight and management of work assignments, quality, and contractor personnel.

Personal services are characterized by the employer-employee relationship between the Government and contractor's personnel that is created either through the terms of the requirements or the way that the work is administered. Placing an order for a specific article or service that includes the right to reject the finished product or result is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee; that does not create an employer-employee relationship.

Only agencies authorized by 5 USC 3109 may buy personal services. If provided a specific statutory authority to make a purchase of personal services, it is recommended that a review and opinion of legal counsel be obtained before completing the purchase. See FAR Subpart 37.103(a)(1)-(3) for guidance on obtaining legal counsel. 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. If an agency is authorized under 5 U.S.C. 3109 to purchase personal services, it must –

- Limit services to an intermittent basis or temporary NTE 1 year; **and**
- Submit an annual report to the Office of Personnel Management (OPM) with the number of days the contractor was employed and the full amount paid during the period.

Personal vs. Nonpersonal

Personal or Nonpersonal? (FAR Subpart 37.101 and 37.104)

If the service...	Then it is...
Is performed independently, in all aspects, by contractor personnel.	NONPERSONAL
Requires the Government to maintain relatively continuous supervision and control over contractor personnel.	PERSONAL
Creates an employer-employee relationship.	PERSONAL
Includes Government supervision of a substantial number of contractor employees.	PERSONAL
Is an inherently governmental function.	PERSONAL
Is performed in the same or similar agencies by civil service personnel.	PERSONAL
Is for private sector temporary help.	NONPERSONAL *

SERVICES - NONPERSONAL OR PERSONAL? (FAR SUBPART 37.101 AND 37.104)

There are the key questions to ask to determine if a service is personal in nature or not. When it comes to personal services, judgement should be made on a case-by-case basis. The key question is: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract? Sporadic, unauthorized supervision might reasonably be considered not relevant, while continuous Government supervision is relevant.

FAR Subpart 37.104(d) lists descriptive elements that should be used as a guide in assessing whether a service is personal in nature:

- Performance on site.
- Principal tools and equipment furnished by the Government.
- Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
- Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.
- The need for the type of service provided can reasonably be expected to last beyond 1 year.
- The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to-
 - Adequately protect the Government's interest;
 - Retain control of the function involved; or

- Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

Personal services of individual experts or consultants are limited by the Classification Act. The Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (*e.g.*, benefits, taxes, conflicts of interest). Therefore, the cardholder and A/OPC should coordinate with legal counsel and the cognizant civilian personnel office before completing such a purchase.

***Temporary Help:** Per FAR Subpart 37.112, the Government may purchase services from temporary help service firms for the brief or intermittent use of skills of private sector temporaries. Services of this type shall not be regarded or treated as personal services and shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Prior to purchasing temp services, agencies must insure they have authority under, and meet the criteria and conditions of, 5 CFR Part 300 Subpart E, *Use of Private Sector Temporaries*, as well as meet all agency requirements and follow agency procedures.

Professional vs Nonprofessional

The Fair Labor Standards Act (FLSA) (29 CFR 451)

The SCLS and FLSA interact in three key ways:

SCLS states no contractor or subcontractor shall pay any employee engaged in performing work on a covered contract less than the minimum wage specified in the FLSA.	SCLS provides the definition of a “service employee” as “<i>any person engaged in the performance of a covered contract <u>except those persons who individually qualify for an FLSA exemption as bona fide executive, administrative, or professional employees as defined in 29 CFR 541.</u></i>”	SCLS recognizes that other federal laws, such as the FLSA, may require overtime compensation to be paid to service employees working on or in connection with contracts subject to the SCLS.
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PROFESSIONAL VS. NONPROFESSIONAL – THE FAIR LABOR STANDARDS ACT (FLSA) (19 USC 201)

We’ve already talked about classifications of services that are exempt from the Service Contract Labor Standards (SCLS) either by statute or regulation. However, services may also be exempt from the SCLS based on the services performed **AND** the classification of the personnel who perform the work.

The SCLS defines “service employees” as persons engaged in the performance of a covered contract except those persons who individually qualify for an FLSA exemption as a bona fide executive, administrative, or professional employee, as defined in 29 CFR 451.” There are also exemptions for computer employees and certain highly compensated employees.

(NOTE: Non-management maintenance employees such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and other laborers are not exempt from the FLSA no matter how highly paid they might be.)

What that means to you is—if the service being performed and the personnel performing the work are individually exempt under the FLSA—services up to the overall MPT of \$10,000 may be purchased with the purchase card.

We can classify the types of work and the personnel that perform them as “Professional” or “Nonprofessional”.

BACKGROUND: The Fair Labor Standards Act (FLSA) (29 USC 201, et seq.) prescribes standards for the basic minimum wage and overtime pay that may affect Service Contract Labor Standards (SCLS)-covered actions. The FLSA interacts with the SCLS in three key ways:

1. Section 2(b)(1) of the SCLS provides that no contractor or subcontractor shall pay any employee engaged in performing work on a covered contract less than the minimum wage specified under section 6(a)(1) of the FLSA (See 29 CFR 4.159).
2. Section 8(b) of the SCLS defines the term “service employee” as any person engaged in the performance of a contract or that portion of a contract subject to the SCA except those employees in bona fide executive, administrative, or professional capacities as those terms are defined in the FLSA regulations found at 29 CFR 541. (See 41 USC 357(b) and 29 CFR 4.113).
3. Section 6 of the SCLS recognizes that other federal laws, such as the FLSA, may require overtime compensation to be paid to service employees working on or in connection with contracts subject to the SCLS. (See 41 USC 355, 29 CFR 4.180 – 4.182, and 29 CFR 778).

Professional vs Nonprofessional

(29 CFR Part 541)

If the service...	Then it is...
Is completed by carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, or other workers paid on an hourly basis such as labors, administrative staff, technicians, or apprentices ("blue collar").	NONPROFESSIONAL Covered by the SCLS (MPT \$2,500)
Is performed <u>solely</u> by persons with knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction, or instructors of the same ("white collar").	PROFESSIONAL Not Covered by SCLS (MPT \$10,000)
Requires invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.	PROFESSIONAL Not Covered by SCLS (MPT \$10,000)

PROFESSIONAL VS. NONPROFESSIONAL SERVICES (29 CFR PART 541)

"Professional services" are classified as such because the primary duty is the performance of work by persons requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Architects, engineers, archeologists, chemists, biologists, accountants, lawyers, doctors of medicine or dentistry, actuaries, physicists, computer systems analysts, computer programmers, software engineers, and other similarly skilled computer workers, or instructors of the same are considered to provide "professional" services. (NOTE: see the Administrative Procedure Act Section 13(1)(17) for specifics on computer related positions.)

To be considered professional services, we don't look at only the work to be performed but who performs it. Persons performing professional services must do so "customarily and regularly" as part of their primary duties, meaning that the professional services occur normally as part of their primary duties and reoccur every workweek; not isolated or one-time tasks.

For the purposes of determining exemption from SCLS as a "professional" service, the profession must be considered exempt under Section 13(a)(1) of the Fair Labor Standards Act (FLSA). Exemption from the FLSA means that the employee doing the work is not subject to a minimum wage and overtime requirements and is employed in a bona fide executive, administrative, or professional (EAP) capacity. Per the Code of Federal Regulations, specifically 20 CFR Part 541, job titles alone are insufficient to establish the

exempt status. The exempt or nonexempt status is determined on the basis of whether the salary and duties of the person doing the work meet the requirements therein.

So what does all that mean when purchasing services? If the work will be performed **solely** by personnel who fall within the bounds of “professional” services, then you may exceed the MPT exemption (presently \$2,500) for services covered by the SCLS but not exceed the MPT of \$10,000. If only part of the work falls within the bounds of “professional services” there are other considerations, which will be covered on a later slide.

When in doubt, it is again always wise to seek the advice of an acquisition expert like a Contracting Officer or legal counsel (ideally the agency’s labor and/or wage attorney) if the work does not clearly fall into the categories seen here.

Salary Requirements

- Meets / exceeds salary and/or compensation threshold of \$684/week (\$455/week in U.S. Territories except for American Samoa (\$380/week))

Duties Primary duties must include:

- Primary duty is management of a recognized department or subdivision
- Directs the work of two or more full-time employees
- Has the authority to hire / fire other employees

Other Business Owner as a Bona Fide Executive

- A Business Owner may meet the exemption as a bona fide executive if they own at least a 20% interest in the organization in which they are employed, regardless of the organization of the business (e.g., corporate, partnership, etc.) and are actively engaged in its management.

PROFESSIONAL VS. NONPROFESSIONAL – FLSA INDIVIDUAL EXEMPTIONS – BONA FIDE EXECUTIVE (29 CFR 541.100)

The term “employee employed in a bona fide executive capacity” in section 13(a)(1) of the Fair Labor Standards Act (FLSA) shall mean any employee:

(1) Compensated on a salary basis pursuant to § 541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

(2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

(3) Who customarily and regularly directs the work of two or more other employees; and

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

NOTE: The phrase “salary basis” is defined at 29 CFR § 541.602; “board, lodging or other facilities” is defined at 29 CFR § 541.606; “primary duty” is defined at 29 CFR § 541.700; and “customarily and regularly” is defined at 29 CFR § 541.701.

Examples of management duties: selecting / training / appraising / disciplining employees, plans / apports work, determines technical and/or materials to be used / purchased / stocked / sold, plan / controls budget, and monitoring performance.

A Business Owner may qualify for the exemption as a bona fide executive if they own at least a 20% interest in the organization in which they are employed, regardless of the organization of the business (e.g., corporate, partnership, etc.) and are actively engaged in its management.

**Professional vs
Nonprofessional**

FLSA Exemption – Administrative
(29 CFR 541.200)

Salary

Requirements

- Meets / exceeds salary and/or compensation threshold of \$684/week (\$455/week in U.S. Territories except for American Samoa (\$380/week))

Duties

Primary duties must include:

- Office or non-manual work directly related to the management or general business operations of the employer or employer's customers
- Exercise of discretion and independent judgement with respect to matters of significance

Other

Examples of Functional Areas

- Tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, computer network, internet / database administration, legal and regulatory compliance, and similar activities and advisers / consultants thereof

**PROFESSIONAL VS. NONPROFESSIONAL – FLSA INDIVIDUAL EXEMPTIONS –
ADMINISTRATIVE (29 CFR 541.200)**

The term “employee employed in a bona fide administrative capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities;

(2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

(3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

The term “salary basis” is defined at § 541.602; “fee basis” is defined at § 541.605; “board, lodging or other facilities” is defined at § 541.606; and “primary duty” is defined at § 541.700.

Functional areas include: tax, finance, accounting, budgeting, auditing, insurance, quality

control, purchasing, procurement, advertising, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, computer network, internet / database administration, legal and regulatory compliance, and similar activities and advisers / consultants thereof

The phrase “discretion and independent judgment” must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term “discretion and independent judgment” does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

Salary Requirements

- Meets / exceeds salary and/or compensation threshold of \$684/week (\$455/week in U.S. Territories except for American Samoa (\$380/week)).
- Teachers (29 CFR 541.303(g)) and lawyers / doctors (29 CFR 541.304(d)) are exempt from these salary requirements.

Duties Primary duties must include all three elements:

- Performs work that requires advanced knowledge;
- Is in a field of science or learning; and
- Knowledge is customarily acquired by a prolonged course of specialized intellectual instruction

Other Creative Professionals

- Primary duty requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

**PROFESSIONAL VS. NONPROFESSIONAL – FLSA INDIVIDUAL EXEMPTIONS –
PROFESSIONAL (29 CFR 541.300)**

The term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the Act shall mean any employee:

(1) Compensated on a salary or fee basis pursuant to § 541.600 at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging or other facilities; and

(2) Whose primary duty is the performance of work:

- (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

The term “salary basis” is defined at § 541.602; “fee basis” is defined at § 541.605; “board, lodging or other facilities” is defined at § 541.606; and “primary duty” is defined at § 541.700.

The phrase “work requiring advanced knowledge” means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of

discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

The phrase “field of science or learning” includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

The phrase “customarily acquired by a prolonged course of specialized intellectual instruction” restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word “customarily” means that the exemption is also available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry. However, the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.

Creative Professionals (29 CFR 541.302):

To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training.

To qualify for exemption as a creative professional, the work performed must be “in a recognized field of artistic or creative endeavor.” This includes such fields as music, writing, acting and the graphic arts.

The requirement of “invention, imagination, originality or talent” distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. The duties of employees vary widely, and exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Determination of exempt creative professional status, therefore, must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen-play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an “animator” of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.

Teachers (29 CFR 541.303):

The term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term “educational establishment” is defined in § 541.204(b).

Exempt teachers include, but are not limited to: Regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.

The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

The requirements of § 541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

Practice of Law or Medicine (29 CFR 541.304):

The term “employee employed in a bona fide professional capacity” in section 13(a)(1) of the Act also shall mean any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof and any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.

The requirements of § 541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

Salary Requirements

- Meets / exceeds salary and/or compensation threshold of \$684/week or \$27.63/hour (\$455/week in U.S. Territories except for American Samoa (\$380/week)).

Duties Primary duties must include:

- Application of systems analysis techniques and procedures including consulting with users to determine hardware/ software / system functionality specifications;
- Design, development, documentation, analysis, creating, testing, or modification of computer systems or programs;
- Design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- Combination of the above.

Other Examples

- Examples: Computer Systems Analysts, Computer Programmers, Software Engineers, or similarly skilled workers in the computer field.

**PROFESSIONAL VS. NONPROFESSIONAL – FLSA INDIVIDUAL EXEMPTIONS –
COMPUTER EMPLOYEES (29 CFR 541.400)**

Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.

The section 13(a)(1) exemption applies to any computer employee who is compensated on a salary or fee basis at a rate of not less than \$684 per week (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the U.S. Virgin Islands by employers other than the Federal government, or \$380 per week if employed in American Samoa by employers other than the Federal government), exclusive of board, lodging, or other facilities. The section 13(a)(17) exemption applies to any computer employee compensated on an hourly basis at a rate of not less than \$27.63 an hour. In addition, under either section 13(a)(1) or section 13(a)(17) of the Act, the exemptions apply only to computer employees whose primary duty consists of:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
- (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

The term “salary basis” is defined at § 541.602; “fee basis” is defined at § 541.605; “board, lodging or other facilities” is defined at § 541.606; and “primary duty” is defined at § 541.700.

The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in § 541.400(b), are also not exempt computer professionals. (29 CFR 541.401)

Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under bona fide executive or professional definitions. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption. (29 CFR 541.402)

Professional vs Nonprofessional

Professional or Nonprofessional?

(29 CFR Part 541)

If the work is performed by...	It is...
Accounting Clerk or Bookkeeper	NONPROFESSIONAL
Paralegal or Legal Assistant	NONPROFESSIONAL
Computer Analyst	PROFESSIONAL
Hardware or Software Engineer	PROFESSIONAL
Interpreter	NONPROFESSIONAL
Stenographer	NONPROFESSIONAL
Consultant or Advisor (See also FAR Subpart 37.2, Advisory & Assistance Services)	DEPENDENT ON THE WORK
Law Enforcement, Emergency Response, Rescue	NONPROFESSIONAL

PROFESSIONAL OR NONPROFESSIONAL? (29 CFR PART 541)

As mentioned before, the Fair Labor Standards Act (FLSA) gives exemptions to some “learned professionals”. Learned professionals must perform work requiring advanced knowledge in a field of science or learning, and knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction. This slide shows a few types of “learned professionals” and what the FLSA says as to whether they are considered exempt from the FLSA (ergo the SCLS and the lower \$2,500 MPT for services) or not.

To qualify for exemption, the employee’s “primary duty” must be the performance of exempt work. The term “primary duty” means the principal, main, major, or most important duty that the employee performs with the general test being that an employee who spends more than 50% of their time performing exempt work satisfies the primary duty requirement.

- Account clerk or bookkeeper – performs routine work and do not require a 4-year or advanced degree. Certified public accountants generally meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals. (29 CFR 541.301(e)(5));
- Paralegal or Legal Assistant – an advanced degree is not required for entry into the field, however, some paralegals possess general 4-year advanced degrees

or training from a 2-year college or equivalent institution, unless the paralegal or legal assistant possesses an advanced specialized degree in another professional field and applies advanced knowledge from their field in the performance of their duties, generally the FLSA exemption does not apply. (Example: if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for FLSA exemption.) (29 CFR 541.301(e)(7));

- Computer Analyst – primary duties consist of an advanced knowledge or application of systems analysis techniques and procedures, consulting with users to determine hardware, software, or system functional specifications (29 CFR 541.400);
- Hardware or Software Engineer – primary duties consist of design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, to include creation of prototypes, and may be related to operating systems (29 CFR 541.400);
- Interpreter – typically an advanced degree is not required for entry into the field but could be if necessary for the type of interpretation being done (linguist interpreter);
- Stenographer – an advanced degree is not required for entry into the field;
- Consultant or Advisor – This goes back to our definitions of professional services. It depends on the work and who performs the work. Merely calling giving oneself a title such as “consultant” or “advisor” does not confer advanced knowledge gained from an prolonged course of intellectual study, and does not automatically trigger the FLSA exemption which classifies services as professional or nonprofessional. These services must be reviewed on a case-by-case basis and classified appropriately based on the information found in the SCLS and FLSA.
- Law Enforcement, Emergency Response, & Rescue -- The exemptions to 29 CFR 541 Section 13(a)(1). The section 13(a)(1) exemptions **do not apply to:**

(1) Police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

(2) Such employees do not qualify as exempt executive employees because their primary duty is not management of the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof as required under § 541.100. Thus, for example, a police officer or fire fighter whose primary duty is to

investigate crimes or fight fires is not exempt under section 13(a)(1) of the Act merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(3) Such employees do not qualify as exempt administrative employees because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under § 541.200.

(4) Such employees do not qualify as exempt professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as required under § 541.300. Although some police officers, fire fighters, paramedics, emergency medical technicians and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in such occupations.

When in doubt, consult your agency labor advisor and/or legal counsel.

Professional vs Nonprofessional

Mix of Services

(41 USC 357(b), 29 CFR 4.113(a)(3), 29 CFR 4.156)

If there is a mix of professional and nonprofessional services and...	For example...	Then...
The portion of the work that is nonprofessional services <u>does not exceed</u> \$2,500	Program Manager (P) \$ 1,000 Software Engineer (P) \$ 5,000 Web Technician (NP) \$ 2,000	SCLS does not apply
The portion of the work that is nonprofessional services <u>exceeds</u> \$2,500 regardless of the aggregate value of the professional services	Program Manager (P) \$ 1,000 Software Engineer (P) \$ 5,000 Web Technician (NP) \$ 2,000 Admin Clerk (NP) \$ 1,000	SCLS does apply

MIX OF SERVICES (41 USC 357(b), 29 CFR 4.113(a)(3), 29 CFR 4.156)

What happens if you have a mix of professional and nonprofessional services? It comes down to how much of the nonprofessional work – in terms of dollars, not percentages – is being performed. If the nonprofessional services does not exceed \$2,500 (the MPT over which the SCLS kick in for SCLS-covered services), you can purchase the services up to the full MPT of \$10,000. If the nonprofessional services exceed \$2,500, regardless of the aggregate value of the professional services, the lower MPT of \$2,500 applies.

Examples have been provided. Obtaining that information is typically the responsibility of the requestor at most agencies, not your cardholder's responsibility to obtain. Your cardholders should have this type of information available when there is doubt about the types of services – professional or nonprofessional – in order to determine the appropriate MPT to applies.

Case Studies



CASE STUDIES

Now that we've covered the decision flow process to classify a purchase as a supply, construction, or service buy, let's put these questions to the test in some real-world scenarios. The case studies we will cover are actual purchases made by A/OPCs at various levels within agencies and organizations who were seeking assistance about the classification of a purchase.

Case Study #1 – It's Just Batteries and Cables

NEED: Solution to address on-going multichannel signal relay issues at the local project office, similar to work done two years ago at another office. Vendor quote is broken out by labor totaling \$7,759.85 and supplies totaling \$2,223.15. The Vendor provided the list of supplies and materials needed along with labor required to install and optimize the system. The Requestor argues the MPT of \$10,000 applies because the services are incidental. The Cardholder isn't comfortable making that decision without getting your opinion.

Description	Quantity	Rate	Amount
Labor - Applications Systems Analyst/ Programmer – Senior	27	110.10	2,972.70
Labor - Communications Installer	67	71.45	4,787.15
Crestron battery pack	2	50.00	100.00
Intellic HDMI Slim 70M, POH, IR and Control HDBaseT Extender - Transmitter	3	218.75	656.25
Intellic HDMI Slim 70M, POH, IR and Control HDBaseT Extender - Receiver	3	218.75	656.25
HDMI wall plate	6	13.30	79.80
Clearone Voip Interface VH20	1	702.00	702.00
Misc Materials	1	28.85	28.85
CW hdmi cable 3ft	7	0.00	0.00
CW hdmi cable 6 ft	7	0.00	0.00
TOTAL			\$9,983.00

CASE STUDY #1 – IT'S JUST BATTERIES AND CABLES

Need / Background:

This cardholder received a request to purchase batteries and cables along with a transmitter/extender and receiver capable of extending multichannel audio signals up to 70 meters at a total price of \$9,983.00. The cardholder is new to his office and his supervisor asked him to fully utilize his newly increased single purchase limit of \$10,000 to the max extent possible as he receives requests. The requestor is arguing the services are installation of an end item of supply and the \$10,000 MPT applies. But, the cardholder notices labor as an itemized cost for this effort and has concerns so is seeking your input about how to classify the work and which MPT applies. The vendor's quote for the work is provided as shown on this slide. Where do you begin?

Background:

First...let's consider the information from the requestor and the quote so we understand the primary purpose or need. The Requestor indicated that the same work was performed two years ago in another office in the region and the intended outcome (i.e., primary purpose) is a solution to extend multichannel relays for audio signals in the office. The supplies, if they were purchased separately, cannot be installed by Government personnel. The quote is itemized and contains two lines for labor; Application Systems Analyst / Programmer (Senior) totaling \$2,972.70 and Communications Installer totaling \$4,787.15. Labor is approximately 78% of the total price (or \$7,759.85). Supplies and miscellaneous materials comprise the remaining 22% of the total price (or \$2,223.15). When talking to the requestor, he insisted the services are incidental to the purchase of the batteries, cable, and other supplies. Let's follow our decision flow to determine the primary purpose or intent.

Case Study #1 – It's Just Batteries and Cables Tests for Supplies

Description	Quantity	Rate	Amount
Labor - Applications Systems Analyst/ Programmer - Senior	27	110.10	2,972.70
Labor - Communications Installer	67	71.45	4,787.15
Crestron battery pack	2	50.00	100.00
Intellic HDMI Slim 70M, POH, IR and Control HDBaseT Extender - Transmitter	3	218.75	656.25
Intellic HDMI Slim 70M, POH, IR and Control HDBaseT Extender - Receiver	3	218.75	656.25
HDMI wall plate	6	13.30	79.80
Clearone Voip Interface VH20	1	702.00	702.00
Misc Materials	1	28.85	28.85
CW hdmi cable 3ft	7	0.00	0.00
CW hdmi cable 6 ft	7	0.00	0.00
TOTAL			\$9,983.00

1. Will only end items of supply be provided by the vendor? **NO**

2. Are the services specifically for installation of the supply item? **YES, in part**

3. Are the services –

a) 1) included in the price for the supply? **NO**

2) based on a catalog / price list? **NO**

3) substantiated through independent sources or Government's knowledge of the work? **YES**

b) Of the type offered to the public? **YES**

c) Not the primary purpose or intent of the work? **NO**

The work is not SUPPLIES or SUPPLIES WITH INCIDENTAL SERVICES

CASE STUDY #1 – IT'S JUST BATTERIES AND CABLES - TEST FOR SUPPLIES

In this case, the work can be separated clearly between the services and supplies needed. It is not so merged or fragmented that a distinction cannot be made.

Could the services be considered incidental to the supply purchase? The amount of the services alone does not dictate the type of purchase. In this case the labor is separately priced and appears to be of the type generally offered to the public. However, the Requestor indicated that the work is meant to provide a solution to ongoing issues with multichannel signal relays (i.e., "primary purpose and intent of the purchase").

Tests for Supplies

The quote includes both end items of supply and services (i.e., labor for installation); we are not buying only end items of supply. Therefore, the answer to our first test for supplies – "will only end items of supply be provided by the vendor (Slide 8)" -- is NO. Since we have services, we must then decide if we have incidental services as part of a supply purchase (Slide 9). We must ask --

- Are the services specifically for installation of the supply item? Our answer here is YES, in part. We have one line that reads "Labor – Communications Installer". We still have to consider the services provided in the line "Labor – Applications Systems Analyst / Programmer – Senior". For that labor we then must ask each of the questions below:
 - Are the services priced as part of the quote either –
 - (1) included in the price for the end item of supply? (NO); **OR**

- (2) based on a published catalog or price list available for inspection? (NO); **OR**
- (3) substantiated through independent sources (i.e., comparable with prices of other vendors for same / similar work) OR the Government's knowledge of the work? (YES)

In addition we must ask, are the services –

- Of the type offered to the public? (YES), **AND**
- Are services the primary purpose or intent of the work? (NO). The Requestor indicated that the work is meant to provide a solution to ongoing issues with multichannel signal relays (i.e., “primary purpose and intent of the purchase”). The “Labor - Applications Systems Analyst / Programmer – Senior” is not involved in installation and their role is to analyze the output of the installed supplies and optimize the existing system to maximize the multichannel signal relays.

While the amount of the services alone does not dictate the type of purchase, in this case the labor is separately priced (segregable) and the primary purpose and intent of the purchase is to provide a solution which is a characteristic of a service. The work is not supplies or supplies with incidental services. For this reason we must continue on with the tests for construction and services.

Case Study #1 – It's Just Batteries and Cables Tests for Construction

Description	Quantity	Rate	Amount
Labor - Applications Systems Analyst/ Programmer - Senior	27	110.10	2,972.70
Labor - Communications Installer	67	71.45	4,787.15
Crestron battery pack	2	50.00	100.00
Intellic HDMI Slim 70M, POH, IR and Control HDBaseT Extender - Transmitter	3	218.75	656.25
Intellic HDMI Slim 70M, POH, IR and Control HDBaseT Extender - Receiver	3	218.75	656.25
HDMI wall plate	6	13.30	79.80
Clearone Voip Interface VH20	1	702.00	702.00
Misc Materials	1	28.85	28.85
CW hdmi cable 3ft	7	0.00	0.00
CW hdmi cable 6 ft	7	0.00	0.00
TOTAL			\$9,983.00

Does the work –

- Alter, repair, or improve real property? **NO**
- Include remodeling, painting, or decorating? **NO**
- Involve dismantling, demolition, or removal of improvements? **NO**
- Involve laborers or mechanics whose duties are manual or physical in nature and employed by a construction company, subcontractor or similar type of contractor at a “building” or “work” site? **NO**

The work is not CONSTRUCTION.

CASE STUDY #1 – IT'S JUST BATTERIES AND CABLES - TEST FOR CONSTRUCTION

Next, we test for construction.

Tests for Construction

As shown on Slide 12, we now ask --

- Does the work construct, alter, repair or improve real property? **NO**
- Does it include remodeling, painting or decorating? **NO**
- Is there any dismantling, demolition or removal of improvements involved? **NO**
- Does the work involve laborers or mechanics whose duties are manual or physical in nature employed by a construction company, sub, or similar type of contractor at a building or work site? **NO**

In this case, the answer to these questions is “NO”. As a result, we know we don’t have “construction” or “supplies with incidental construction”. This means our next and last decisions involve services.

Case Study #1 – It's Just Batteries and Cables Tests for Services

Does the work --

- Engage the time or effort of a contractor whose primary purpose is to perform a task? **YES**
- Maintain, repair/rehab, or service supplies, systems, or equipment already owned by the Government? **NO**
- Dismantle, demolish, or remove improvements without further constructions at the same site? **NO**
- Involve routine recurring maintenance of real property? **NO**
- Include painting an area less than 200sf/<32 hours, not part of a construction project? **NO**
- Provide communications services? **NO**
- Provide utilities? **NO**

Statutory / Regulatory Exemption: **NO**

Personal vs Nonpersonal:

- Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**, services are nonpersonal.

Professional vs Nonprofessional:

- Is the work performed by a bona fide executive, administrative, professional, or computer employee? **YES, in part**. However, the work is not solely performed by professional personnel (a stipulation for the professional services exemption in the FLSA). Nonprofessional services (installer) exceeds the \$2,500 MPT for SCLS-covered work.

CASE STUDY #1 – IT'S JUST BATTERIES AND CABLES - TEST FOR SERVICES

Lastly, we test for Services.

Tests for Services

As found on Slide 17, we ask --

- Does the work engage the time or effort of a contractor whose primary purpose is to perform a task or provide a solution? **YES**. This confirms our earlier question about primary purpose.

Answers to the remaining questions are NO. NOTE: The bullet "Does the work provide communications services?" is answered as "NO" because the statutory exemption in FAR Subpart 22.1003-3(d) is for furnishing services by radio, telephone, or cable companies subject to the Communications Act of 1934. The work in this case is not a service provided by such a company.

- Does the work fall under a statutory or regulatory exemption from the Service Contract Labor Standards (SCLS) (Slides 18 and 19)? The work is not one of the listed statutory or regulatory exemptions so it is not excluded from the SCLS based on statute.
- Is the work Personal or Nonpersonal (Slides 20 and 21)? Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**. We know we have nonpersonal services.

- Is the work considered Professional or Nonprofessional Services? We have one labor category that is an Applications Systems Analyst / Programmer which falls under the classification of professional services (computer employee) and exceeds the hourly rate threshold of \$27.63/hour (quoted rate is \$110.10/hour). However, we can't forget that we have another category that is a Communications Installer that ***is \$4,787.15 of the \$9,983.00 total price (48%) which is not considered "professional" and is covered by the SCLS. The work is not solely performed by individuals that fall within the professional services exemption provide for in the Fair Labor Standards Act (FLSA).***

Case Study #1 – It's Just Batteries and Cables Solution

The need is a Service subject to the SCLS and lower MPT of \$2,500.
The cardholder cannot make this \$9,983 purchase using the purchase card.

Tests for Supplies

Services being provided are only partially for installation of an end item of supply.

Tests for Construction

Does not fit the definition of Construction

Tests for Services

- Meets characteristic of a Service.
- No statutory or regulatory exemption.
- Only partially performed by a bona fide professional (computer employee); the FLSA exemption does not apply.

CASE STUDY #1 – IT'S JUST BATTERIES AND CABLES - SOLUTION

Solution:

Based on our answers –

- The test for supplies shows us that installation services are only partially for installation of the supply item and do not fit the test for supplies with incidental services.
- The test for construction shows us we do not have construction, by definition.
- The tests for services shows us that a “solution” is a characteristic of a service, does not meet a statutory or regulatory exemption, and the services are only partially performed by a bona fide professional (computer employee) so the exemption in the Fair Labor Standards Act (FLSA) does not apply.

Therefore, we can determine that the need is a Service subject to the Service Contract Labor Standards (SCLS) and the lower MPT of \$2,500. Since the total price of this action is \$9,983.00, the cardholder cannot make this purchase using the purchase card because it exceeds the MPT of \$2,500. The action should be forwarded to the contracting office for further processing.

Case Study #2 – Construction or Not?

NEED: A concrete pad is needed for testing as part of a Research & Development (R&D) project. The cost is \$2,200 all inclusive (labor and materials). The concrete pad will be destroyed in 2 years after testing is completed.

The Cardholder believes the work is a service and the purchase can be made up to the \$2,500 MPT for Services (non-professional), but his Approving Official isn't sure and wants your opinion.

From: Walt Smith <walt.smith@agency.gov>
To: Lee Turner <lee.turner@agency.gov>
FV: Concrete Pad for Testing Project Thu Apr 8, 2021 14:00 (EDT)

Hi Lee,
This looks good. Can we make the buy with the p-card at this price?
Please get a read from the A/OPC before we proceed.
Thanks,
Walt

Walt Smith, Senior Project Manager
Public Works Division

-----On Wed Apr 7, 2021 at 14:55 (EDT)-----
Jeanine Carson <jeanine.carson@agency.gov> wrote:
To: Lee Turner <lee.turner@agency.gov>, Walt Smith <walt.smith@agency.gov>
SUBJECT: Concrete Pad for Testing Project

Good afternoon Lee,

We decided on TONTON Concrete to install a concrete pad for testing that begins in August.
Please contact POC Chad Davis and confirm the quoted price of \$2,200 inclusive (labor and materials).
Please use the fund cite associated with Project RMC-Test2-2021.
We need the pad completed no later than 6/15/2021.

Specifications: 8'x8' concrete pad at 4" thickness laid over a 6" compacted base course meeting ASTM C 33, uniformly graded, and reinforced with wire woven mesh. Concrete content, slump, and strength shall meet the minimum Public Works standard (PW.agency.gov specifications page, concrete sub-menu). Pad should be centered in the South Quadrant no closer than 60 yards from the back entrance to Building C and no less than 50 yards from the fence line equally in all other directions. After we complete testing in 2 years, we plan to use our own personnel and equipment to remove the pad.

Please call with any questions.

Jeanine

Jeanine Carson, Project Engineer
R&D Support Branch, Public Works Division

CASE STUDY #2 – CONSTRUCTION OR NOT?

For our next case study we will decide if a need is construction or not.

Need / Background:

A concrete pad is needed for testing as part of a Research & Development (R&D) project. The cost is \$2,200 inclusive of labor and materials. The concrete pad will be destroyed in 2 years after testing is completed. The Cardholder believes the work is a service and the purchase can be made up to the \$2,500 MPT for Services (non-professional), but his Approving Official isn't sure and wants your opinion. Where do you begin?

Background:

First...let's exam the email so we understand the work requested. The Requestor indicated that an 8'x 8' concrete pad should be centered in the south quadrant and provided specifications and distances for placement. The Requestor indicates that the pad is for testing and will be removed by Government personnel in two years once testing is complete. The price is all inclusive of labor and materials at \$2,200, which is \$200 over the construction MPT of \$2,000 but \$300 under the services MPT of \$2,500. The pad must be completed by 6/15/2021.

Tests:

Let's start our test questions.

Case Study #2 – Construction or Not? Tests for Supplies

1. Will only end items of supply be provided by the vendor? **NO**
2. Are the services specifically for installation of the supply item? **NO**
3. Are the services –
 - a) 1) included in the price for the supply? **NO**
 - 2) based on a catalog / price list? **NO**
 - 3) substantiated through independent sources or Government's knowledge of the work? **NO**
 - b) Of the type offered to the public? **NO**
 - c) Not the primary purpose or intent of the work? **NO**

The work is not SUPPLIES or SUPPLIES WITH INCIDENTAL SERVICES

From: Walt Smith <walt.smith@agency.gov>
To: Lee Turner <lee.turner@agency.gov>
FW: Concrete Pad for Testing Project Thu Apr 8, 2021 14:00 (EDT)

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Walt

Walt Smith, Senior Project Manager
Public Works Division

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Please contact POC Chad Davis and confirm the quoted price of \$2,200 inclusive (labor and materials).
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We need the pad completed no later than 6/15/2021.

Specifications: 6'x6' concrete pad at 4" thickness laid over a 6" compacted base course meeting ASTM C 33, uniformly graded, and reinforced with wire woven mesh. Concrete content, slump, and strength shall meet the minimum Public Works standard ([PW agency.gov](#) specifications page, concrete sub-menu). Pad should be centered in the South Quadrant no closer than 50 yards from the back entrance to Building C and no less than 50 yards from the fence line equally in all other directions. After we complete testing in 2 years, we plan to use our own personnel and equipment to remove the pad.

Please call with any questions.
Jeanine

Jeanine Carson, Project Engineer
R&D Support Branch, Public Works Division

CASE STUDY #2 – CONSTRUCTION OR NOT? - TEST FOR SUPPLIES

Tests for Supplies

In this case, we are not purchasing an end item of supply. While materials are part of the purchase, the materials are not the primary purpose or intent of the buy. Our answers to all questions for supplies are NO. Therefore, we do not have a supply purchase.

Case Study #2 – Construction or Not? Tests for Construction

Does the work –

- Alter, repair, or improve real property? **NO**
- Include remodeling, painting, or decorating? **NO**
- Involve dismantling, demolition, or removal of improvements? **NO**
- Involve laborers or mechanics whose duties are manual or physical in nature and employed by a construction company, subcontractor or similar type of contractor at a “building” or “work” site? **NO**

The work is not CONSTRUCTION.

From: Walt Smith <walt.smith@agency.gov>
To: Lee Turner <lee.turner@agency.gov>
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SUBJECT: Concrete Pad for Testing Project

Good afternoon Lee,

We decided on TONTON Concrete to install a concrete pad for testing that begins in August.
Please contact POC Chad Davis and confirm the quoted price of \$2,200 inclusive (labor and materials).
Please use the fund cite associated with Project RMC-Test2-2021.
We need the pad completed no later than 6/15/2021.

Specifications: 8'x8' concrete pad at 4" thickness laid over a 6" compacted base course meeting ASTM C 33, uniformly graded, and reinforced with wire woven mesh. Concrete content, slump, and strength shall meet the minimum Public Works standard (PW.agency.gov specifications page, concrete sub-menu). Pad should be centered in the South Quadrant no closer than 60 yards from the back entrance to Building C and no less than 50 yards from the fence line equally in all other directions. After we complete testing in 2 years, we plan to use our own personnel and equipment to remove the pad.

Please call with any questions.
Jeanine

Jeanine Carson, Project Engineer
R&D Support Branch, Public Works Division

CASE STUDY #2 – CONSTRUCTION OR NOT? - TEST FOR CONSTRUCTION

Tests for Construction

- Does the work construct, alter, repair or improve real property? NO. The definition of “construction” is construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property and includes improvements of all types. The concrete pad is not construction, alteration, or repair of a real property, which is defined as “land, together with the improvements, structures, and fixtures located thereon”. The temporary concrete pad is not an appreciable improvement to real property.
- Does it include remodeling, painting or decorating? NO
- Is there any dismantling, demolition or removal of improvements involved? NO. Not as part of this purchase.
- Does the work involve laborers or mechanics whose duties are manual or physical in nature employed by a construction company, sub, or similar type of contractor at a building or work site? NO. While laborers may be involved and employed by a similar type of contractor, they are not being employed at a building or work site. In 29 CFR 5.2(i) such efforts on a “building” or at a “work site” (building, road, bridge, railway, subway, sewer, pump station, canal, levee, etc.) generally indicates a construction activity. In 29 CFR 5.2(l) and the DOL Field Office Handbook, Chapter 15, “site of the work” is deemed to be “...the physical place or places where the building or work called for in the contract will remain and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project”; it is not “anywhere work is performed.” In this case the pad is not part of a “building” or “work” because the site is not established

specifically for the performance of the contract / project.

In this case, the answer to these questions is “NO”. As a result, we know we don’t have “construction” or “supplies with incidental construction”. This means our next and last decisions involved services and determining if there is a statutory, regulatory, or other exemption to the SCLS that applies and whether the service is considered personal vs nonpersonal and professional vs nonprofessional.

Case Study #2 – Construction or Not?

Tests for Services

Does the work --

- Engage the time or effort of a contractor whose primary purpose is to perform a task? **YES**
- Maintain, repair/rehab, or service supplies, systems, or equipment already owned by the Government? **NO**
- Dismantle, demolish, or remove improvements without further constructions at the same site? **NO**
- Involve routine recurring maintenance of real property? **NO**
- Include painting an area less than 200sf/<32 hours, not part of a construction project? **NO**
- Provide communications services? **NO**
- Provide utilities? **NO**

Statutory / Regulatory Exemption: **NO**

Personal vs Nonpersonal:

- Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**, services are nonpersonal.

Professional vs Nonprofessional:

- Is the work performed by a bona fide executive, administrative, professional, or computer employee? **NO**. Services are subject to the SCLS.

CASE STUDY #2 – CONSTRUCTION OR NOT? - TEST FOR SERVICES

Tests for Services

- Does the work engage the time or effort of a contractor whose primary purpose is to perform a task or provide a solution? **YES**. This confirms our earlier question about primary purpose. Answers to the remaining questions on the left side are **NO** to things such as are the services for maintenance and repair of real property or government equipment or systems, etc.
- Does the work fall under a statutory or regulatory exemption from the Service Contract Labor Standards (SCLS)? **NO**. The work is not one of the listed statutory or regulatory exemptions so it is not excluded from the SCLS based on statute.
- Is the work Personal or Nonpersonal? Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**. We know we have nonpersonal services.
- Is the work considered Professional or Nonprofessional Services? **NO**. None of the services performed are by bona fide executive, administrative, professional, or computer employees. The services are therefore covered by the SCLS and subject to the lower \$2,500 MPT.

Case Study #2 – Construction or Not? Solution

The need is a Service subject to the SCLS and lower MPT of \$2,500.
The cardholder can make this \$2,200 purchase using the purchase card.

Tests for Supplies

End items of supply are not being provided.

Tests for Construction

- Not construction, alteration, or repair of real property.
- Laborers are not employed at a "building" or "work" site.
- The site of the work is not established specifically for the performance of the project (29 CFR 5.2(l)).

Tests for Services

- Meets the characteristic of a Service.
- No statutory or regulatory exemption.
- Not performed by a bona fide executive, administrative, or professional (or computer employee); the FLSA exemption does not apply.

CASE STUDY #2 – CONSTRUCTION OR NOT? - SOLUTION

Solution:

Based on our answers –

- The test for supplies is simple; we are not asking the vendor to provide end items of supply.
- The test for construction shows us we do not have construction, by definition. The work is not construction, alteration, or repair of real property (i.e., building or work). While the work is performed by laborers, they are not being employed at a building or work site, generally indicating a construction activity. The site of the work was not established specifically for the performance of the contract or project.
- The tests for services shows us that the work meets the characteristic of a service though it does not meet a statutory or regulatory exemption, and the services are not performed by a bona fide executive, administrative, or professional (or computer employee) so the Fair Labor Standards Act (FLSA) and SCLS exemptions do not apply.

Therefore, we can determine that the need is a Service subject to the Service Contract Labor Standards (SCLS) and the lower MPT of \$2,500. Since the total price of this action is \$2,200, the cardholder can make this purchase using the purchase card because it does not exceed the MPT of \$2,500.

BUT...Could this be argued the other way as construction and not services? Possibly. These types of decisions are where the tolerances of your agencies policies and processes come in to play. What if the concrete pad was not going to be demolished? Or, what if the

pad was closer to the building and the plan was to use it later as a slab foundation to construct a prefab storage shed? Usually in the case of construction, there is time to ask questions of your legal counsel and contracting office before going it alone. Taking that extra time is prudent and necessary.

Case Study #3 – Shut the Front Door

Replace Door Bldg 589 (West)

Wayne Friend <wfriend@overland.com>

Apr 22, 2019 08:45:00

TO: John Thomas <john.thomas.mil@facility.mil>

Hi John,

As we discussed, our COR will not allow my folks to replace the door at Bldg 589 (West) under our O&M contract. We are, however, happy to help the Government out and install the door under a separate PO for a total price of \$2,125.00. We accept the government p-card for payment.

Let me know if we can help you out. I'm aware that the BG uses this door every day and has been frustrated that it's still not replaced -- he mentions it to me at every Ops meeting. :)

Vr,
Wayne Friend
O&M Site Manager
Overland Maintenance and Operations

NEED: Installation of a metal and glass double door purchased by the Government a month ago. The Requestor assumed the Base O&M Contractor would be able to install the door but the COR said the work was outside the scope of their contract. However, the O&M Contractor has offered to install the door separate from their contract for \$2,125.00.

The Cardholder believes the work is construction and exceeds the MPT threshold of \$2,000 but wants your opinion.

CASE STUDY #3 – SHUT THE FRONT DOOR

Let's move on to our third case study.

Need / Background:

A government facility needs a door replaced. The Requestor had the Cardholder purchase a large metal and glass double door last month without installation, assuming the Base Operations and Maintenance (O&M) Contractor could perform the work and save the Government some money. However, the COR overseeing the O&M Contractor has indicated the work doesn't fall within the scope of their contract. The Requestor has now brought the Cardholder an email from the O&M Contractor saying they are willing to do the work as a separate transaction if the Government would like to use its purchase card. The O&M Contractor quoted a flat price of \$2,125 for installation. The Cardholder called the A/OPC concerned that she will not be able to make the purchase because the price exceeds the MPT for construction. Where do you begin?

Again, let's ask ourselves the series of test questions to determine the primary purpose or intent.

Case Study #3 – Shut the Front Door Test for Supplies

Replace Door Bldg 589 (West)

Wayne Friend <wfriend@overland.com>

Apr 22, 2019 08:45:00

TO: John Thomas <john.thomas.mil@facility.mil>

Hi John,

As we discussed, our COR will not allow my folks to replace the door at Bldg 589 (West) under our O&M contract. We are, however, happy to help the Government out and install the door under a separate PO for a total price of \$2,125.00. We accept the government p-card for payment.

Let me know if we can help you out. I'm aware that the BG uses this door every day and has been frustrated that it's still not replaced -- he mentions it to me at every Ops meeting. :)

Vr,
Wayne Friend
O&M Site Manager
Overland Maintenance and Operations

1. Will only end items of supply be provided by the vendor? **NO**
2. Are the services specifically for installation of the supply item? **YES**, however the supply item was purchased separately and is not part of this transaction.

Further tests for supplies are not required

The work is not SUPPLIES or SUPPLIES WITH INCIDENTAL SERVICES.

CASE STUDY #3 – SHUT THE FRONT DOOR – TESTS FOR SUPPLIES

Looking first at our test for supplies...

Tests for Supplies

The quote includes only installation; we are not buying only end items of supply. Therefore, the answer to our first test for supplies – will only end items of supply be provided by the vendor-- is NO.

We do have installation services specific to an item of supply, BUT the supply item in question was purchased separately. Since we have services with no item of supply, there are no further tests required. The work is not supplies or supplies with incidental services.

Case Study #3 – Shut the Front Door Tests for Construction

Replace Door Bldg 589 (West)

Wayne Friend <wfriend@overland.com>

Apr 22, 2019 08:45:00

TO: John Thomas <john.thomas.mil@facility.mil>

Hi John,

As we discussed, our COR will not allow my folks to replace the door at Bldg 589 (West) under our O&M contract. We are, however, happy to help the Government out and install the door under a separate PO for a total price of \$2,125.00. We accept the government p-card for payment.

Let me know if we can help you out. I'm aware that the BG uses this door every day and has been frustrated that it's still not replaced -- he mentions it to me at every Ops meeting. :)

Vr,

Wayne Friend

O&M Site Manager

Overland Maintenance and Operations

Does the work –

- Alter, repair, or improve real property? **NO**
- Include remodeling, painting, or decorating? **NO**
- Involve dismantling, demolition, or removal of improvements? **NO**
- Involve laborers or mechanics whose duties are manual or physical in nature and employed by a construction company, subcontractor or similar type of contractor at a building or work site? **NO**

The work is not CONSTRUCTION.

CASE STUDY #3 – SHUT THE FRONT DOOR – TESTS FOR CONSTRUCTION

Next, let's look at the test for construction.

Tests for Construction

Running down the list of questions to determine if the work is construction we can tell from the information provided by the requestor that replacing the door is not construction, alteration, repair or improvement of a building, structure, or other real property, and does not fall under remodeling / decorating, dismantling, demolition, or removal of improvements.

While laborers may be used, they are not employed by a construction company, sub, or similar contractor at a building or work site. We are only concerned about removing the existing door and installing a new door we already own in its place.

While a new door may seem like an improvement, FAR 2.101 defines an "improvement" as things like sewer, mains, power lines, streets, docks, etc. A new door in this case, while an improvement in functionality, is not an "improvement" under the definitions for construction. As such, the work is not construction.

Case Study #3 – Shut the Front Door Tests for Services

Does the work --

- Engage the time or effort of a contractor whose primary purpose is to perform a task? **YES**
- Maintain, repair/rehab, or service supplies, systems, or equipment already owned by the Government? **NO**
- Dismantle, demolish, or remove improvements without further constructions at the same site? **NO**
- Involve routine recurring maintenance of real property? **NO**
- Include painting an area less than 200sf/<32 hours, not part of a construction project? **NO**
- Provide communications services? **NO**
- Provide utilities? **NO**

Statutory / Regulatory Exemption: **NO**

Personal vs Nonpersonal:

- Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**, services are nonpersonal.

Professional vs Nonprofessional:

- Is the work performed by a bona fide executive, administrative, professional, or computer employee? **NO**

CASE STUDY #3 – SHUT THE FRONT DOOR – TESTS FOR SERVICES

Lastly, our tests for services.

Test for Services

Looking again at the questions for services, and by process of elimination, the work is a service because it engages the time or effort of a contractor whose primary purpose is to perform a task; meeting the definition of “services”.

- Does the work fall under a statutory or regulatory exemption from the Service Contract Labor Standards (SCLS)? The work is not one of the listed statutory or regulatory exemptions so it is not excluded from the SCLS based on statute.
- Is the work Personal or Nonpersonal? Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**. We know we have nonpersonal services.
- Is the work considered Professional or Nonprofessional Services? **NO**. We have no professional services that meet the Fair Labor Standards Act (FLSA) exemption as part of this action. The work will be completed by laborers paid on an hourly basis (“blue collar”) so the work is not a professional service.

Case Study #3 – Shut the Front Door Solution

The need is a Service subject to the SCLS and lower MPT of \$2,500.
The cardholder can make this \$2,125 purchase using the purchase card.

Tests for Supplies

- End items of supply are not being provided.
- Services are for installation of an end item of supply purchased separately.

Tests for Construction

- Services do not fit the FAR Subpart 2.101 definition of “improvements”.
- While services are performed by laborers, personnel are not employed by a construction company, subcontractor, or similar company at a building site or work site.

Tests for Services

- A “discrete task” and “specific effort” are characteristics of a Service.
- Does not meet a statutory or regulatory exemption.
- Services are not performed by individuals classified as bona fide professionals under the FLSA exemption.

CASE STUDY #3 – SHUT THE FRONT DOOR - SOLUTION

Solution: Based on our answers –

- The tests for supplies are not met because the supply (the door) was purchased separately.
- While the services are to install a door which some may consider an improvement, it does not meet the definition of “improvements” found in FAR Subpart 2.101. Services are also performed by laborers, but they are not employed by a construction company, subcontractor, or similar company at a building site or work site. Therefore, by definition, the work is not construction.
- The tests for services shows us that a “discrete task” and a “specific effort” are characteristics of a service. The service does not meet a statutory or regulatory exemption and the services are not performed by a bona fide professional under the Fair Labor Standards Act (FLSA) exemption. Therefore, we can determine that the need is a Service subject to the Service Contract Labor Standards (SCLS) and the lower MPT of \$2,500.

NOTE: This example should not be interpreted that all doors being replaced fall under “services” buys. Doors range from office doors to aircraft hangar doors and some are easily replaced while others may require retrofitting or other construction-like efforts to be installed.

If your requirement is more along the lines of an aircraft hangar door or includes other skills or types of tasks to fit or install the door, it may merit a closer look and consideration as construction.

Case Study #4 – Land Use Permits



Need: Fort Sill Army Base is home to the Army Training and Doctrine Command (TRADOC). The Base uses small parcels of State land during training exercises to stage emergency vehicles, requiring the purchase of Land Use Permits every five (5) years. The permits cost \$4,000. The MPT has increased since the last purchase and the Commander wants to use the purchase card to complete this transaction.

The Cardholder is struggling to classify the purchase into a category (construction, service, or supply) for the purposes of correctly applying the MPT and is asking for your opinion.

CASE STUDY #4 – LAND USE PERMITS

For our final case study, let's really get into the gray areas.

Need / Background: Fort Sill Army Base is home to the Army Training and Doctrine Command (TRADOC). The base uses parcels of State land to conduct training and it requires the purchase of Land Use Permits every five (5) years. The cardholder has been tasked to buy the permits, which cost \$4,000. The MPT has increased from \$3,500 to \$10,000 since the last purchase and the Commander wants to use the purchase card to complete this transaction. The cardholder is looking for your opinion on how to classify this purchase for the purposes of applying the appropriate MPT.

Let's run through our tests and see how best to classify this transaction.

Case Study #4 – Land Use Permits Test for Supplies



1. Will only end items of supply be provided by the vendor? **NO**
2. Are the services specifically for installation of the supply item? **N/A**

Further tests for supplies are not required

The purchase does not meet characteristics of a supply. Therefore the permits are not considered SUPPLIES or SUPPLIES WITH INCIDENTAL SERVICES.

CASE STUDY #4 – LAND USE PERMITS – TESTS FOR SUPPLIES

Test for Supply – The work is not a supply because we are not buying an item that meets the characteristics of a supply. While the paper permit itself is a tangible item, what we are buying is access which is intangible.

Case Study #4 – Land Use Permits Test for Construction



Does the work –

- Alter, repair, or improve real property? **NO**
- Include remodeling, painting, or decorating? **NO**
- Involve dismantling, demolition, or removal of improvements? **NO**
- Involve laborers or mechanics whose duties are manual or physical in nature employed by a construction company, subcontractor or similar type of contractor at a building or work site? **NO**

The work is not **CONSTRUCTION**.

CASE STUDY #4 – LAND USE PERMITS – TEST FOR CONSTRUCTION

Test for Construction – The work does not involve alteration, repair, or improvement of real property and does not meet any of the other tests for construction.

Case Study #4 – Land Use Permits Test for Services

Does the work --

- Engage the time or effort of a contractor whose primary purpose is to perform a task? **NO**
- Maintain, repair/rehab, or service supplies, systems, or equipment already owned by the Government? **NO**
- Dismantle, demolish, or remove improvements without further constructions at the same site? **NO**
- Involve routine recurring maintenance of real property? **NO**
- Include painting an area less than 200sf/<32 hours, not part of a construction project? **NO**
- Provide communications services? **NO**
- Provide utilities? **NO**

Statutory / Regulatory Exemption: **NO**

Personal vs Nonpersonal:

- Is an employer-employee relationship established between the vendor and Government by either the work itself or nature in which it is administered? **NO**, services are nonpersonal.

Professional vs Nonprofessional:

- Is the work performed by a bona fide executive, administrative, professional, or computer employee? **NO**

CASE STUDY #4 – LAND USE PERMITS – TEST FOR SERVICES

Test for Services -- The work also does not meet the characteristics of a service. The purchase does not engage the time or effort of a contractor whose primary purpose is to perform a task. We are not paying for the effort to process the permit but the access the permit grants the Base to use the land temporarily. The work does not meet the other tests for services and is not covered by any statutory, regulatory, or Fair Labor Standards Act (professional vs nonprofessional services) exemption.

Case Study #4 – Land Use Permits Solution

The need (i.e., access) does not include work by personnel covered by either the Construction Wage Rate Requirements (CWRR) or Service Contract Labor Standards (SCLS). Therefore the \$10,000 MPT threshold is appropriate.
The cardholder can make this \$4,000 purchase using the purchase card.

Tests for Supplies

The purchase does not have the characteristics of nor meets the definition of a Supply.

Tests for Construction

The purchase does not have the characteristics of nor meets the definition of Construction.

Tests for Services

The purchase does not have the characteristics of nor meets the definition of a Service.

CASE STUDY #4 – LAND USE PERMITS - SOLUTION

Solution: Based on our answers – what do you do when your purchase doesn't fit easily into a category?

The FAR definitions of service or supply do not always provide clarity in every situation. The purpose of the permit, however, may provide some clarity – are we buying the "right" to use the land or legal access to the land from an intangible "service" perspective? In this case the solution is to acknowledge that the principal purpose is access to State lands.

The need is not tangible. The paper itself is of no value without the access (or intangible) thing it provides; access.

The need does not require performance of work by personnel covered by the Construction Wage Rate Requirements (CWRR) as stipulated in FAR 22.403-1 and therefore is not subject to CWRR and the lower MPT of \$2,000 for covered construction.

The need also does not require performance of work by personnel covered by the Services Contract Labor Standards (SCLS) as stipulated in FAR 22.1003-1 and therefore not subject to SCLS and the lower \$2,500 MPT for covered services.

As a result, the \$10,000 micro-purchase threshold is appropriate and should be applied. The cardholder can make the purchase using the purchase card.

Gray Areas

Purchase of...	Then the card can be used up to the MPT, and...
Toll Cards, Passes, and Electronic Toll Collection Systems	<ul style="list-style-type: none"> Agency policy dictates if purchase cards can be used to secure toll pass accounts that require a card on file to charge per toll or replenish funds for tolls. Accounts must be in the name of the agency, not a person. Toll passes, transponders, and vouchers are considered “cash equivalents” and must be secured as such. Consideration must be given to the Advance Payment statute (31 USC 3324) – “payment cannot exceed the value of the service / good”
Subway Tokens and Metro Fare Cards (non-commuter)	Tokens and cards are not assigned to individuals, are considered “cash equivalents”, and must be secured as such.
GSA Fleet Undercover / Confidential Registration and Tags	Varies by state. Where GSA Fleet cannot accommodate state requirements or processing at the agency level is to the benefit of the agency, GSA Fleet will request agencies use their purchase card instead (<u>NOT the Fleet card</u>) for these transactions.
Parking Fees and Passes	Parking passes should be in the name of the agency.

GRAY AREAS

There can be other common purchases that fall into the gray area where there is no real direction as to the use of the card in those situations. In these cases, and within agency guidelines, the card can be used up to the MPT (\$10,000) for purchases like:

- Toll Cards, Passes and Electronic Toll Collection Systems:

Individually Paid Tolls: Individual tolls are considered an on-demand requirement, meaning that each demand (going through a toll booth) is unrelated to the demands before and after (other tolls at other locations or other tolls by other individuals). Each toll is therefore an individual requirement or transaction.

Establishing a Pre-Paid Toll Account: These accounts are considered pre-paid whereby the account automatically replenishes funds using charges against the purchase card. It is up to individual agency policy if they will allow cardholders to establish prepaid accounts with their purchase card and under what circumstances, to establish controls for use, and how such charges will be reconciled. With prepaid accounts, there is typically a monthly recurring charge if tolls have been debited to bring the account back to the required minimum dollar amount. The limits on recurring payments apply in this case and can impact the use of the card in this manner.

Agency policy dictates if purchase cards can be used to secure government accounts for toll systems that require a card on file to charge either per toll or to replenish funds. Also, in the case of EZ Passes and other accounts where cards

are kept on file for the purpose of replenishment of toll funds, the Advance Payment statute (31 USC 3324) must be considered. This statute says, “a payment under a contract to provide a service or delivery an article for the United States Government may not be more than the value of the service already provided or the article already delivered.” This means if you haven’t already received the good or service, you can’t pay for it in advance. However, there are industries where advance payment is a stipulation to receive services, such as tolls, and each agency must develop policy in these areas as part of its agency purchase card program management and oversight. For example, the Department of the Interior (DOI) includes a policy on use of the purchase card to pay for toll passes / transponders in their policy with circumstances for use.

The most recent Federal Highway Administration report on Toll Facilities in the United States can be found at: <https://www.fhwa.dot.gov/policyinformation/tollpage/>

NOTE: Tolls while on Temporary Duty Assignment (TDY) are to be paid with the GSA SmartPay Travel Card, the not purchase card.

- Subway Tokens and Metro Fare Cards (non-commuter): Offices may use the purchase card to purchase subway tokens, tickets, and metro fare cards for general use when employees commute across large metropolitan areas as part of their normal job duties such as to attend meetings, hearings, or other mission-related activities. Fare Cards should not be assigned to individuals but checked out and returned to a controller. These items are considered “cash equivalents” and should be secured as such.
- GSA Fleet Undercover / Confidential Registration and Tags: Where GSA Fleet can accommodate the state's requirements, it will provide registration and tags as a service to its leasing customers. However, when state requirements do not allow GSA Fleet to do this, or where processing the transaction at the agency level is to the benefit of the agency, GSA fleet will request that agencies use their purchase card instead (NOT the fleet card) for these transactions. For example, in Maryland, if GSA Fleet obtains the state plates on behalf of the agency, GSA gets only a 2-year registration. However, if the agency pays directly, it can get a 5-year registration for the same price as the 2-year registration. For these cases, it is more beneficial to the agency and the Government as a whole to have the agency directly perform the state plate registration process themselves. In this instance, the agency could use a purchase card for the transaction.
- Parking Fees: Parking fees and parking passes should be in the name of the agency. Parking passes should not be issued in the name of an employee. Like with toll passes, agency policy dictates if purchase cards can be used to secure government accounts for parking fees that require a card on file to charge per instance of parking use.

Classifying Equipment Rentals

Rental as a Supply:

Equipment only; no operator (e.g., rent a forklift for use by a Government employee or military member). MPT is \$10,000.

Rental as Construction:

Equipment with operators for the purpose of construction of a public building or public work. The lower MPT of \$2,000 for construction applies.

Rental as a Service: Equipment rental for non-construction effort that includes an equipment operator (e.g, forklift with a forklift operator). The lower MPT of \$2,500 for services applies.



CLASSIFYING EQUIPMENT RENTALS

How are equipment rentals classified? As a supply? Not always...

Rental as a Supply: When renting equipment only without an operator (e.g., renting a forklift delivered for general use by a Government employee or military member), the rental is classified as a supply subject to the \$10,000 MPT.

Rental as Construction: 29 CFR 4.131(d) states – "...contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the work is performed under the supervision of Government employees, would be within the exemption in section 7(1) of the [Service Contract] Act as contracts for construction subject to the Davis-Bacon Act. (See § 4.116.)..." (i.e., lower \$2,000 MPT for construction).

Rental as a Service: When renting equipment and the rental includes an equipment operator (e.g, forklift with a forklift operator), the rental is classified as a service subject to the lower MPT of \$2,500 because SCLS-covered employees will be utilized in the work effort. 29 CFR 4.131(d) states –

*"In general, contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the [Service Contract] Act. Such contracts **are not** considered contracts for furnishing equipment within the meaning*

of the Walsh-Healey Public Contracts Act."

NOTE: The Walsh-Healey Public Contracts Act does not apply to actions less than \$15,000 and therefore does not apply to micro-purchases.

PLEASE NOTE: GSA Fleet operates a Short Term Rental (STR) program for a variety of vehicle types to include forklifts, scissors / boom lifts, backhoes, dump trucks, drum rollers, excavators, refrigerated trucks and trailers, and tractors, and more. More info can be found at: <https://www.gsa.gov/buying-selling/products-services/transportation-logistics-services/fleet-management/shortterm-rentals-str>

Unenforceability of Unauthorized Obligations in Micro-Purchases (FAR Subpart 13.202)

- End User License Agreements (EULAs), Terms of Service (TOS), or other similar legal instruments or agreements
- Indemnification clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. 1341) if agreed to by the Government.
- FAR clause 52.232-39, Unenforceability of Unauthorized Obligations, **automatically applies to any micro-purchase**, including those **made with the Governmentwide purchase card**, thereby preventing violations of the Anti-Deficiency Act.
- Cardholder does not need to provide the clause to the vendor to be applicable.

UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS IN MICRO-PURCHASES (FAR SUBPART 13.202)

Now let's switch gears a little and talk about what happens when a vendor wants your cardholder to sign up to terms and conditions as part of a micro-purchase made with the card. FAR Subpart 13.202 Unenforceability of Unauthorized Obligations in Micro-Purchases addresses the Government's liability when a cardholder signs contractor terms and conditions as part of a micro-purchase. FAR 13.202 reads --

"Many supplies or services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service. For example, computer software and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Service (TOS), or other similar legal instruments or agreements. Many of these agreements contain indemnification clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. 1341) if agreed to by the Government. The clause at 52.232-39, Unenforceability of Unauthorized Obligations, automatically applies to any micro-purchase, including those made with the Governmentwide purchase card. This clause prevents such violations of the Anti-Deficiency Act (31 U.S.C. 1341)."

The clause states that indemnification of the vendor or any person or entity by the Government in terms of damages, costs, fees, or other loss or liability that would create an Anti-Deficiency Act violation is unenforceable against the Government and that no Government end-user shall be deemed to have agreed to such a clause by virtue of it

appearing in a EULA, TOS or other similar legal instrument if the agreement is invoked through click on an “I agree” box or other comparable mechanism. FAR was updated in 2013 to add this protection because trying to negotiate these indemnification clauses out of vendor license agreements on a per purchase basis would take months to accomplish and many times result in finding the most agreeable vendor to the change, not necessarily the best price or product.

Agencies should develop policies around the processes to be used when using the government purchase card as the procurement mechanism and the vendor requires a EULA, TOS, or other similar agreement with the Government.



Long-term Rentals or Lease of Land or Buildings

(GSA SmartPay® 3 Master Contract, Section C.8.14.1)

“Long-term” = Any rental agreement or lease that extends beyond a 12-month period. Cards can be used as a **PAYMENT MECHANISM**.

“Short-term” = Any rental agreement or lease with a duration of 12 months or less. Cards can be used as a **PURCHASE MECHANISM** and/or **PAYMENT MECHANISM**.

NOTES:

For both long-term and short-term leases, account holder single transaction limits and agency/ organization policies must be considered.

Leasing space is not an SCLS-covered action (29 CFR § 4.134)

LONG-TERM RENTALS OR LEASE OF LAND OR BUILDINGS (GSA SMARTPAY® 3 MASTER CONTRACT, SECTION C.8.14.1)

Long and short term leases of land or buildings is another quasi-gray area, similar to our last case study. Leasing space is not a Service Contract Labor Standards (SCLS)-covered action (29 CFR § 4.134). Per the GSA SmartPay 3 Master Contract, Section 8.14.1), “the Contractor shall have a mechanism to further restrict the use of a Purchase account for the purchase or acquisition of long-term rentals or lease of land or buildings. Long-term is defined as any rental agreement or lease that extends beyond a 12-month period and is intended for more than a temporary basis.”

In the case of long-term rentals or lease of land or buildings, the purchase card may only be used as a payment mechanism, within the accountholder’s authorized purchase limits, considering of recurring payments limitations, and consideration of agency/organization-specific policy.

Purchase cards may, however, be used as a procurement and payment mechanism in the case of short-term rentals or leases within accountholder authorized purchase limits and after consideration of agency/organization-specific policy. Short-term rentals or leases is defined as those rentals/leases with a duration less than 12 months. Examples of appropriate uses of a purchase card for rental agreements or lease of land or buildings include:

- Purchase and/or payment of a conference facility to house a five-day conference or meeting (where a Travel CBA would not be appropriate).
- Purchase and/or payment of office space to house an agency/organization for three

months during response to a natural disaster or act of terrorism.

Training – FAR-Based Action or Not?

Pub. L. 85-507, **The Government Employees Training Act (GETA)** (1958), gives each federal agency general authority for employee training.

Codified in **5 USC 4109, Section (a)(2)** of GETA says –

- “(a) The head of any agency, under the regulations prescribed under Section 4118(a)(8) of this title and from appropriations or other funds available to the agency may –
- ...(2) pay, or reimburse the employee for, all or part of the necessary expenses of the training,...including among the expenses the necessary costs of –
 - ...(C) tuition and matriculation fees;
 - (D) library and laboratory services;
 - (E) Purchase or rental of books, materials, and supplies;...”

TRAINING – FAR-BASED ACTION OR NOT?

The purchase of training has been a debated subject over the years; is it or isn't it subject to the MPT for services? In the Purchase Essentials class over the years, we have tried to provide guidance to cardholders based on the most common agency policies, but even those policies can vary greatly. Again this year we took another step back and tried to break this information down even further than in previous years to look at the governing regulations behind providing employee training of any type – college courses, training courses, webinars / seminars, registration at training conferences – and provide examples of FAR and non-FAR based training actions and the application of the MPTs.

The Government Employees Training Act (GETA), Public Law 85-507 (1958) gives each federal agency general authority for employee training. The law is codified in U.S. Code, Title 5 Government Organization and Employees, Part III Employees, Subpart C Employee Performance, Chapter 41 Training, Section 4109 Expenses of Training (5 U.S.C 4109). Paragraph (a)(2) of 5 USC 4109 says –

- “(a) The head of any agency, under the regulations prescribed under Section 4118(a)(8) of this title and from appropriations or other funds available to the agency may –
- (2) pay, or reimburse the employee for, all or part of the necessary expenses of the training,...including among the expenses the necessary costs of –
 - (C) tuition and matriculation fees;
 - (D) library and laboratory services;
 - (E) Purchase or rental of books, materials, and supplies;...”

Based on this cite, agencies may choose to decide that training, education, and professional development when authorized on the agency's training authorization form (typically the Standard Form (SF) 182 (Authorization, Agreement, and Certification of Training)) is not a FAR-based transaction, and as such the MPT for services do not apply to these types of transactions. The Department of Defense (DoD), for example, has made such a determination and has delegated certain cardholders the authority to use their purchase cards to purchase training up to a cap of \$25,000 per transaction per training request when authorized on an SF182.

Training Considerations

Has your agency determined training is not a FAR-based action?

- Approved on an SF182, Authorization, Agreement, and Certification of Training (or agency equivalent)
- Training is allowable under GETA

How is the purchase card being used?

- Procurement mechanism on the open market,
- Ordering mechanism against an existing contract, or
- Payment only mechanism for training procured by other means

What type of training is being purchased?

- Individual slot in an existing course,
- Existing commercial off-the-shelf course to be imported,
- Tailored training, or
- Subscriptions for training access

TRAINING CONSIDERATIONS

The policy for using the purchase card for training varies by agency. Along with the dollar value of the proposed transaction, other considerations must be made:

- Has your agency made a determination about the classification of various training transactions as FAR-based transactions or not?
 - Is training approved on an SF182, Authorization, Agreement, and Certification of Training (or agency equivalent)?
 - Is the training being purchased allowable under GETA?
- How is the purchase card being used? As a procurement mechanism on the open market, ordering mechanism against an existing contract, or payment mechanism to pay for training acquired by other means (e.g., contract, purchase order, etc.)?
- What type of training is being purchased – an individual slot in existing course, existing course for import to the agency, tailored training, or a subscription for training access?

Training Considerations

(continued)

Government or Non-Government Sources?

- Regularly scheduled, commercial “off-the-shelf” courses, training conference, or instruction (not tailored),
- Available to the general public, and
- Priced the same for everyone in the same category (e.g., price per student, course, program, service, or space).

Is the Training Tailored?

- Creating a new training course
- Existing course tailored specific to agency mission, regulations, policies, etc.
- When it requires a Statement of Work (SOW), considered a FAR-based action subject to the appropriate MPT for services (\$2,500 nonprofessional / \$10,000 professional)

Agency Policies Related to Training?

- Human resources
- Employee training and development
- Procurement

TRAINING CONSIDERATIONS (CONTINUED)

Procuring Training from Non-Government Sources

Training can be procured government and non-government sources. Training from non-government sources must be –

- for regularly scheduled, commercial “off-the-shelf” courses, training conference, or instruction,
- available to the general public, and
- priced the same for everyone in the same category (e.g., price per student, course, program, service, or space).

Procuring Tailored Training

While some agencies allow the purchase of tailored training up to the MPT, others require that any tailored training must be procured by a warranted Contracting Officer. Depending on the subject matter of the training -- if it is created / modified or of a type that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction, or instructors of the same -- tailored training courses may be considered “professional services”.

Tailored training usually requires a detailed Statement of Work (SOW) and other quality / policy reviews by a cadre of individuals that may include an agency training office, human resources, or other professionals. Many agencies have decided that any tailored training will be procured by their Contracting Office. Agency and local policies should govern in that

case.

Other Agency Policies Related to Training

Are there any human resources, employee training and development, or procurement policies in place related to the training purchase? Sometimes there are different types of supporting documentation required for college courses leading to a degree versus training as part of a leadership development program or industry certification.

The answers to these questions should be considered in combination with a review of specific agency-level training, human resource, employee development, and procurement regulations, particularly if your agency Government Charge Card policy is silent regarding transactions for training. The answer as to the limit for the use of the card could vary from the MPT for services of \$2,500 in the case of tailored training to an amount over the MPT of \$10,000 if established as part of agency policies.

What is the MPT? Procuring Individual Training Slots

Procuring Individual Slots Authorized by SF-182

If the agency determines --

- Training **is not** a FAR-based transaction, the purchase card may be used up to the lesser of either (1) the single purchase limit of the cardholder or (2) any training purchase threshold set by the agency; MPTs would not apply.
- Training **is** a FAR-based transaction or silent, the purchase card can be used up to \$10,000, in accordance with agency policy.

NOTE: When purchasing individual slots in existing courses, each slot may be considered its own transaction even when paid together, when allowable under agency policy.

WHAT IS THE MPT FOR COMMERCIAL OFF-THE-SHELF TRAINING?

Agencies purchase training differently depending on the agency purchase and training policies, funding, and the financial management system used. At many agencies (including GSA), the process and use of the card for training applies differently depending on if the purchase is for individual training slots in existing courses, importing a course to the agency (i.e., purchasing a retirement training webinar for the agency), or purchasing training through a subscription services for training access.

Agencies should have clear policies about whether training slots can / cannot be grouped and coordinate those decisions with auditors so that sufficient supporting documentation (i.e., SF-182s or other approvals) are part of the purchase card log. Whether purchased separately or grouped, slots for individual training can come up as a flag in purchase card audits and appear to be split purchases.

Buying Individual Training Slots in Existing Courses. In this case, each slot purchased is considered its own transaction, even when paid together. The purchase card can be used up to the cardholder's single purchase limit (SPL) in accordance with agency guidelines.

Buying Individual Training Slots

Example – Training is not a FAR-Based Action

FAR-Based or Not?	The agency has determined training authorized on the SF-182 <u>is not</u> a FAR-based action.
Agency Policy?	Cardholders may purchase training up to their Single Purchase Limit (SPL) with a cap of \$25,000 per transaction*.
SPL?	Cardholder's SPL is \$25,000*.
Training Need?	Five (5) individual slots in FAR Bootcamp at \$3,000 each slot (\$15,000 total). Each slot is authorized individually on a separate SF-182.
How the Card May Be Used...	The cardholder may (1) purchase 5 slots as separate transactions, <u>or</u> (2) combine the slots into a single \$15,000 transaction, in accordance with agency policy.

* \$25,000 is used for this example. Agency purchase card and/or training policy may allow for a limit higher than the MPT if the agency determines training is not a FAR-based action.

BUYING INDIVIDUAL TRAINING SLOTS – EXAMPLE – TRAINING IS NOT A FAR-BASED ACTION

Let's look at two examples for purchasing individual slots.

Example 1

In our first example, the agency has decided that training authorized on the SF-182 is NOT a FAR-based action. Agency policy states that cardholders may purchase training up to their single purchase limit (SPL). In this case, the cardholder's SPL is \$25,000. The cardholder has been asked to procure five (5) individual slots in FAR Bootcamp at a price of \$3,000 each. Each slot was authorized on an SF-182.

In this case, the cardholder may either (1) purchase the five slots as separate transactions or (2) combine transactions up to their SPL, if allowed by agency policy. The cardholder can combine the transactions up to their SPL because training is not considered a FAR-based action so there is no issue with splitting requirements (a FAR prohibition).

Buying Individual Training Slots Example – Silent Policy

FAR-Based or Not?	The agency has not made a determination whether training is a FAR-based action (i.e., policy is silent).
Agency Policy?	Training purchases for two or more individuals are considered separate and distinct actions. Training purchases may be combined up to the \$10,000 MPT or SPL, whichever is less.
SPL?	Cardholder's SPL is \$10,000
Training Need?	Tuition for 5 employees in a 3-course Advanced Government Contracting certificate program (\$2,000 each course; total per employee \$6,000). Each course is authorized individually on a separate SF-182.
How the Card May Be Used...	The cardholder may (1) purchase three classes for each employee's certificate in \$6,000 transactions, <u>or</u> (2) combine courses up to \$10,000 per transaction (the SPL), in accordance with agency policy.

BUYING INDIVIDUAL TRAINING SLOTS – EXAMPLE – SILENT POLICY

Example 2

In our second example, the agency has not made any determination about training and whether it is a FAR-based action. Agency policy does say that training purchases for two or more individuals are considered separate and distinct actions. Cardholders are also allowed by policy to combine training purchases up to the \$10,000 MPT or the cardholder's SPL, whichever is less. In this case, the cardholder's SPL is \$10,000. The cardholder has been asked to pay the tuition for 5 employees in a 3-course Advanced Government Contracting certificate program. Tuition is \$6,000 per individual for the three courses and each individual course is authorized on an SF-182.

In this example, even though the agency has not decided that training is not a FAR-based action, agency policy states that training purchases for two or more individuals are considered separate actions and that such purchases can be combined. Since each class was authorized on its own SF-182, the cardholder can choose if they want to combine the transactions for a single individual or more than one individual up to their SPL.

NOTES FROM THE INSTRUCTOR:

When I purchased training I always purchased each slot individually and required the vendor bill me separately. While a little cumbersome, it was very helpful when multiple fund citations were used (different accounting string for different offices) or in case folks missed the classes due to illness. Credits were easier to get and track on the individual transactions.

Whether purchased separately or grouped, slots for individual training can come up as a flag in purchase card audits and appear to be split purchases. Agencies should have clear policies about whether training slots can / cannot be grouped and coordinate those with auditors so that sufficient supporting documentation (i.e., SF-182s or other approvals) are part of the documentation supporting the purchase and must be maintained as part of the purchase log.

What is the MPT? Existing Commercial Courses to Import

Import Existing Commercial Course (Not Tailored)

Procurement Mechanism (Open Market (FAR-based Action))

- The purchase card may be used up to \$10,000, in accordance with agency policy.

Ordering Mechanism (Under an Existing Contract (FAR-based Action))

- At or below the MPT: If the cardholder is not a warranted Contracting Officer (or duly authorized Ordering Officer), the transaction is subject to the \$10,000 MPT.
- Over the MPT: The cardholder must also be a warranted Contracting Officer (or duly authorized Ordering Officer) and the use of the card as an ordering mechanism must be allowed in the contract. The transaction amount cannot exceed the lessor of either the warrant or the single purchase limit.

WHAT IS THE MPT? EXISTING COMMERCIAL COURSES TO IMPORT

Purchase of complete commercial courses are FAR-based actions. The way in which the card will be used dictates the MPT that applies.

The card can be used as a PROCUREMENT mechanism on the open market to purchase existing commercial training courses to import to an agency up to the \$10,000 MPT, in accordance with agency policy.

The card can be used only as an ORDERING mechanism by a non-warranted cardholder under the MPT when the purchase card is accepted as an ordering method in the contract terms and conditions. Over the MPT of \$10,000, if the contract terms and conditions allow it, a cardholder who is also a warranted Contracting Officer or duly authorized Ordering Officer may place orders so long as the total amount of the order does not exceed the lessor of the single purchase limit (SPL) or warrant.

Buying Existing Training Courses

<u>FAR-Based Actions</u>	<u>Example</u>	<u>Procurement Mechanism</u>	<u>Ordering Mechanism</u>	<u>Payment Mechanism</u>
< = MPT	1-day Myers-Briggs Seminar (includes 35 slots) at \$9,500	Yes	Yes	Yes
> MPT	3-day Mid-Career Retirement Course for up to 150 participants at \$30,000	No	Yes*	Yes**

* Orders over the MPT may only be placed by a Warranted Contracting Officer or duly appointed Ordering Officer who is also a cardholder with a Single Purchase Limit (SPL) sufficient to place the order, and then only when allowed under the terms and conditions of the contract. Both the cardholder limit AND the Contracting Officer / Ordering Officer authority (warrant) limit applies to the transaction. (EX: Unlimited Warrant & a single transaction limit of \$250,000, orders cannot exceed \$250,000.) Certification of funds availability is required prior to making the purchase.

** When payment by purchase card is an authorized method in the contract terms and conditions or upon agreement by the vendor. Cardholders should not exceed their Single Purchase Limit (SPL) to make a payment. Payments may be split if allowed by agency policy, though not recommended or endorsed due to audit implications.

BUYING EXISTING TRAINING COURSES

When buying existing training courses (complete, not tailored), the MPT of \$10,000 to the aggregate total price of the course. Costs may not be split up to circumvent the MPT threshold. For example, do not split costs between instructor time / labor, materials, etc.

We go over this in the GSA SmartPay Purchase Management Essentials course, but it is worth repeating here specific to training. Buying training courses is a FAR-based action and not subject to a waiver of FAR requirements unless agency procurement policy dictates.

- Example #1: You are buying a 1-day Myers-Briggs seminar for 35 employees at a total cost of \$9,500. The purchase card can be used as a PROCUREMENT, ORDERING, and PAYMENT mechanism because it falls within the \$10,000 MPT.
- Example #2: You are buying a 3-day mid-career retirement course for 150 participants held at the agency's headquarters. The cost of the course is \$30,000. Do not take the \$30,000 and divide by 150 participants to arrive at a price per student (\$200) and think you can simply pay for 150 separate slots and split those payments against the MPT. The MPT must be applied to the aggregate price of \$30,000. In this case, the cost exceeds the MPT and must be purchased using the card as an ORDERING mechanism against an existing contract or procured on the open market, both by a warranted Contracting Officer. The purchase card can also be used as a PAYMENT mechanism within the SPL of the cardholder and agency policy.

Note that orders over the MPT may only be placed by a Warranted Contracting Officer or duly appointed Ordering Officer who is also a cardholder with a Single Purchase Limit (SPL) sufficient to place the order, and then only when allowed under the terms and conditions of

the contract. Both the cardholder limit AND the Contracting Officer / Ordering Officer authority (warrant) limit applies to the transaction. (EX: Unlimited Warrant & a single transaction limit of \$250,000, orders cannot exceed \$250,000.) Certification of funds availability is required prior to making the purchase.

Use of the purchase card as a PAYMENT mechanism must be an authorized payment method in the contract terms and conditions or agreed up by the vendor. Cardholders should not exceed their Single Purchase Limit (SPL) to make a payment. Payments may be split if allowed by agency policy, though it is not recommended or endorsed due to audit implications.

What is the MPT? Tailored Training

Procuring Tailored Training

Creating a new course or tailoring an existing course to an agency.

Tailored Training is a FAR-based service that requires --

- A Statement of Work (SOW) from the Government describing the requirement or similar document (e.g., Performance Work Statement (PWS))
- The performance of work by individuals to develop training materials, guides, visual aids, and instruction using the same.

Agency policy dictates whether the purchase card can be used to procure tailored training but most training of this nature should be procured by trained acquisition professionals.

WHAT IS THE MPT? TAILORED TRAINING

Procuring tailored training courses is a FAR-based action and a service that typically requires—

- A Statement of Work (SOW) from the Government describing the requirement or similar document (e.g., Performance Work Statement (PWS))
- The performance of work by individuals to develop training materials, guides, visual aids, and instruction using the same.

Tailored training may involve creating a new course or tailoring an existing commercial off-the-shelf course to a specific agency (e.g., leadership development programs, project specific kick-off training, etc.). This type of training should be purchased via a formal contract by a warranted Contracting Officer, unless agency policy allows otherwise.

What is the MPT? Subscriptions for Training Access

Procuring Subscriptions for Training Access

- Subscription for access to on-demand training.
- The MPT applies to the dollar value of the total cost of the subscription.
- Subscriptions typically set a threshold on the number of employees who can access training as part of the flat subscription cost; costs are not usually pro-rated for actual use.

Example: Flat-rate subscription to an on-demand training site for engineers to take sample PMP exams at cost of \$9,000 (< MPT of \$10,000). Price allows access for up to 250 employees. The purchase card can be used as a PROCUREMENT and PAYMENT mechanism.

WHAT IS THE MPT? SUBSCRIPTIONS FOR TRAINING ACCESS

Procuring subscription for training access for a website or training portal is also possible.

Subscriptions for Group Training Services: In this case the purchase is a subscription for access to on-demand training and the MPT applies to the dollar value of the total cost of the subscription. Subscription services for groups or organizations typically set a threshold or limit to the number of employees who can access training services via the subscription for the flat subscription cost; the costs are not pro-rated or adjusted by the number of actual employees that access the training.

For example, you are buying a subscription to a training vendor's on-demand training site for a cost of \$9,000. Up to 2500 employees can access on-demand training under the subscription. The purchase could be made with the purchase card because it falls within the \$10,000 MPT.

Federal Procurement Data System (FPDS) Reporting

(GSA SmartPay® Smart Bulletin 26, OMB Circular A-123, Appendix B, & FAR Subpart 4.606)

Agencies must report all contract actions over the MPT awarded under an Indefinite Delivery Vehicle (IDV) (calls and orders) to include all orders placed using the GPC.

Under and Over the MPT: GSA CCCM reports purchase card data to FPDS rolled up to the agency level outside of the regular FPDS database. There is no duplicate reporting.

When agencies need to track IDV utilization via FPDS –

- ✓ Use Individual FPDS Contract Action Reports (CARs) per FAR 4.606 to report each action over the MPT.
- ✓ Use FPDS Express Reports to combine data for all actions at or below the MPT by vendor per FAR 4.606(a)(3). FPDS Express Reports, when used, must be done at least monthly.

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) REPORTING (GSA SMARTPAY® SMART BULLETIN 26 and FAR SUBPART 4.606)

If your agency is required to report to the Federal Procurement Data System, or FPDS, FAR Subpart 4.606(a)(1)(iii) states that, as a minimum, agencies must report all contract actions over the Micro-Purchase Threshold (MPT) awarded under an Indefinite Delivery Vehicle (IDV), to include all calls and orders. Examples of IDVs include Task and Delivery Order Contracts (Government-wide Acquisition Contracts (GWACs) and Multi-agency contracts), GSA Federal Supply Schedules, Blanket Purchase Agreements (BPAs), and Basic Ordering Agreements (BOAs).

Given that the GSA Center for Charge Card Management (CCCM) also reports purchase card data to FPDS, questions have been received as to whether agencies / organizations should report orders under IDVs when the order falls at or below the MPT and the order was placed using the purchase card. There have been concerns that, should an agency submit a direct report to FPDS for such an order, it could result in duplicative FPDS data reporting. The question has also been asked if coding Data Element 6N, Purchase Card as Payment Method, with “yes” would alleviate concerns of duplicate reports. The GSA SmartPay Smart Bulletin addresses these concerns.

GSA CCCM provides purchase card data to FPDS as part of its responsibilities under the Government card program under FAR Subpart 4.606(a)(2). The data CCCM reports to FPDS is housed outside of the regular database and is not co-mingled with data submitted by agencies / organizations, removing any concerns regarding duplicative reporting. CCCM reports only agency level data, such as the total numbers of transactions and total dollars.

CCCM data does not associate orders placed using the purchase card to specific IDVs. If an agency / organization requires FPDS contain that data for the purposes of tracking and monitoring IDV-specific utilization, agencies / organizations must report such orders to FPDS directly.

Agencies / Organizations have the option to consolidate FPDS reporting for orders at or below the MPT placed with the purchase card that would otherwise be administratively burdensome to report separately. The FPDS Express Reports can be used for this purpose, as outlined in FAR Subpart 4.606(a)(3). For example, an agency / organization may have a single IDV where 50% of the orders for the month were placed with the purchase card and fall at or below the micro-purchase threshold. In this situation, the agency / organization would report all orders over the MPT via separate Contract Action Reports (CARs) (which is the normal process) as required by FAR 4.606. But, the agency could also choose to combine all orders that fall at or below the MPT under a single IDV-specific FPDS Express Report for the purposes of tracking total IDV-specific utilization. When FPDS Express Reports are used to combine micro-purchases for the purposes of tracking IDV utilization, they should be submitted at least monthly.

When either FPDS CARs or Express Reports are utilized, Data Element 6N (Purchase Card as Payment Method) should be coded "yes" when the purchase card was or will be used to pay the contractor for the order(s) being reported. Data Element 6N provides an indication that the action was backed by a contract vehicle / document where paperless methods of invoicing and payment were used.

Best Practices in Program Management

(OMB Circular A-123 Appendix B, Attachment 5)

- Maximize use of reports and bank / association tools
- Leverage purchasing power using strategic solutions that permit the use of charge cards as ordering and payment solutions
- Institute internal management controls to mitigate risk of misuse and/or delinquency
- Initiate administrative or disciplinary actions for card misuse, abuse, and repeated account delinquency
- Learn from others by reviewing audit reports and findings: (<https://smartpay.gsa.gov/content/audit-repository>)



BEST PRACTICES IN PROGRAM MANAGEMENT (OMB CIRCULAR A-123 APPENDIX B, ATTACHMENT 5)

Now we are going to go over some best practices and audit finding in the management your purchase card program as found in the OMB Circular A-123, Appendix B and tips / tricks from some of your peers.

- Maximize use of reports and bank / association tools: Under the GSA SmartPay 3 contracts there are numerous mandatory reports available at the agency / organization level. They are listed in Section C.7.3.1 of the master contract found on the GSA SmartPay website. Reports such as: Approving Official Listing / Span of Control Report; Current Accounts Report, Declined Transaction Report, Delinquency Report, Fraud Analytics Report, Invoice Status Report, Pre-Suspension / Pre-Cancellation Reports, Renewal Report, Statistical Summary Report, Summary Quarterly Merchant Analysis Report and Merchant Ranking Report, Summary Quarterly Purchase Report, and Transaction Dispute Report. Ad-hoc reports are also available and if you don't know how to pull your own queries and have yet received training, contact your Level 1 A/OPC for information on how to schedule training.
- Leverage purchasing power using category strategic solutions that permit the use of charge card as ordering and payment solutions: The Federal Government spends billions of dollars each year through purchase card programs (as well as other contract mechanisms) and each transaction has the potential to increase the sourcing power of the government. Purchase program managers should be aware of any agency-specific requirements to ensure compliance with strategic sourcing. Purchase card managers

should work with the Category Managers to ensure the agency is leveraging category management solutions. It is the responsibility of agency purchase card managers to ensure that cardholders are aware of agency policies for using these contracts. Agencies/organizations should share their purchase card reports with the Category Manager and Category Management Program Management Office. The data should be analyzed by agency to evaluate purchasing patterns and assess if there are opportunities to better leverage the Government's buying power through the category management. Often, these contracts or ordering vehicles can include use of the purchase card to streamline the acquisition process and add further value through the generation of refunds.

- Initially focus on high volume, commonly used supplies (such as office supplies, tools/hardware, express delivery, relocation services, etc.) which agency personnel use or could use the purchase card to obtain;
 - Keep the program simple to start by focusing on awarding Blanket Purchase Agreements (BPA) against the GSA schedule program; considering using E-Buy to help put these in place.
 - Leverage vendors who already have highly evolved web-based ordering systems and who provide quick delivery;
 - Explore how GSA Federal Acquisition Service can assist in developing virtual store fronts to host the agencies' BPAs (e.g., GSA Advantage!);
 - Evolve the strategy as the agency gains more experience and better understands how the program supports mission needs, saves money, and improves the value of taxpayer dollars;
 - Develop a communication strategy to effectively get the word out about discounted contracts;
 - Require merchants to monitor and report on the savings achieved versus "regular" GSA schedule prices (or whatever baseline is applicable);
 - Maintain information on procurement activity usage of reduced-price contracts; and
 - Renegotiate with merchants the price and terms of high-volume commodities at the end of a fixed period of time.
- Institute internal management controls to mitigate risk of misuse and/or delinquency:
 - Implement strict internal controls that mitigate charge card risks to the greatest extent possible;
 - Perform periodic reviews of spending and transaction limits to ensure appropriateness;
 - Conduct internal charge card program reviews on a regular basis to ensure internal control mechanisms are adequate;
 - Monitor reports to identify potential split purchases;
 - Deactivate travel charge cards during periods of non-travel status;
 - Perform periodic reviews of the number of charge card accounts in use for appropriateness of number as well as evaluating the span of control for approving officials; and
 - Keep current on new and innovative solutions to detect and identify potential fraud, misuse and delinquency, such as:
 - Data analytics;
 - Blocking card use for high risk merchant category codes;
 - More restrictive spending limits during expected periods of inactivity;
 - Periodic review of cardholder accounts for continued necessity; and
 - Establishing a control to ensure that card accounts are canceled when the

employee retires or leaves the agency.

- Initiate administrative or disciplinary actions for card misuse, abuse, and repeated account delinquency: Agencies must otherwise comply with all applicable law and regulatory guidance in determining whether to impose disciplinary or adverse action in any specific case.
 - Initiate verbal counseling and warning; provide written warning; suspend or revoke charge card privileges;
 - Suspend or revoke employee security clearance;
 - Include misuse or delinquency occurrence in employee performance evaluations;
 - Suspend or terminate employment;
 - Ensure consistent enforcement of penalties; and
 - Publish actions taken by the agency for misuse of charge cards.
- Learn from others by reviewing audit reports and findings: At smartpay.gsa.gov we maintain a repository of audit reports related to charge card programs. Purchase card audits are currently posted for Department of Housing and Urban Development (HUD) for FYs 2017 and 2018, GSA for FY 2018, Department of the Interior (Nov 2019), AMTRAK (Sep 2019), Air Force Nonappropriated Fund Program (Aug 2019), and DoD Purchase (July 2019).

The audit repository can be found at: <https://smartpay.gsa.gov/content/audit-repository>

Mitigating Risks with Internal Controls

(OMB Circular A-123 Appendix B, Section 2.4)

- Assignment of Duties Separated by Individual
- Appointment Process for Cardholders and Approving Officials
- Span of Control
- Transaction Approval Process
- Reconciliation Controls
- Delinquency Controls



MITIGATING RISK WITH INTERNAL CONTROLS

There are several internal controls that can and should be instituted to mitigate risk as part of normal program management.

- Assignment of duties separated by individual. Are duties at your organization separated out for authorizing, approving, and recording transactions, receiving assets, approving statements, making payments, certifying funds, and reviews / audits, when possible?
- Appointment process for Cardholders and Approving Officials. Do you have a process for card application, issuing appointment letters to Cardholders and Approving Officials (AOs) to define roles and responsibilities, and adequate recurring training?
- Span of control. Is the number of cardholders assigned to each AO reasonable? Is the number of cardholders and AOs assigned to an A/OPC reasonable based on the volume of spend and organizational structure?
- Transaction approval process. Is there a policy in place about how purchases are approved? Are they approved prior to the purchase, and if so by whom? Should the approval always be in writing? Is there a desired / required format that lists the specific information that must be included?
- Reconciliation and delinquency controls. Are you using the canned reports available? Has your agency worked with your bank for customized alerts? Are statements being reviewed promptly? What is your audit process and how often do you audit?

OMB Circular A-123 Appendix B Section 2.4 Purchase Card Internal Controls talks to specifics of having such questions and more answered as part of agency policies for the charge card program.

Lessons Learned from Purchase Card Audits



OVERSIGHT

- Hierarchy Reviews
- Account status
- Internal audits
- Patterns of misuse and non-compliance
- Disciplinary action



DOCUMENTATION

- Written authority prior to purchase
- Purchase descriptions
- Proof of purchase authorization
- Proof of purchase
- Proof of receipt / acceptance



APPROVING OFFICIAL

- Reviews of cardholder supporting documents
- Timely Reconciliation
- Statements
- Timely refresher training



CARDHOLDER

- Improper purchases
- Timely Reconciliation
- Remove sales tax at time of purchase
- Rotate vendors
- Timely refresher training

LESSONS LEARNED FROM AUDITS

When looking through audit reports, regardless of the agency and the fiscal year, there is a pattern of findings that exists. Learning from these patterns provides direction on what areas to target in your annual review of your program management controls, purchase card policies and guides, refresher training and other training materials for cardholders, and in your day-to-day management of the program.

- **Strengthen systematic oversight and internal controls** to include regularly reviews of hierarchies, maintaining account status, internal audits of purchase card transactions / files / logs, identification of split purchases, patterns of potential misuse, noncompliance with policy, and categories of high-risk purchases and appropriate disciplinary action when misuse and abuse are found such as suspending cardholders or approving officials who fail to take training or repeat offenders.
- **Strengthen documentation** to support purchases – ensure written authority and a description of the product or service purchases is present, obtain proof of purchase (receipts / invoices), and proof the Government received supply purchases (third party receipt).
- **Educate Approving Officials on what to look for in the review of a transaction, on the cardholder's statement, and provide regular training as a refresher.**
- **Educate Cardholders** about what constitutes an improper purchase, that sales tax must be removed at time of purchase, and to rotate vendors when making repetitive purchases.

It's been said that the best way to learn is from the mistakes of others. Using those

mistakes to poke holes in your own policies, procedures, and training to make sure they are air-tight is a great way to keep your program running in top shape and sustain future audit scrutiny.

Learning Objectives – MET!

- ✓ Analyze transactions and apply the correct micro-purchase thresholds based on the definition of supplies, construction, and services
- ✓ Apply statutory exemptions, when applicable
- ✓ Operate within “gray areas” to support mission needs
- ✓ Understand reporting requirements
- ✓ Apply best practices for program oversight
- ✓ Be aware of recent purchase card audit findings



LEARNING OBJECTIVES

Here is a quick run down of the learning objectives again that we had for today. We hope you feel we've addressed all these thoroughly today and you are comfortable that you have the information you need to help make decisions, tighten your program management and oversight, and apply these things to your daily work as an A/OPC.

- Analyze transactions and apply the correct micro-purchase thresholds based on the definition of supplies, construction, and services;
- Apply statutory exemptions, when applicable;
- Operate within “gray areas” to support purchasing;
- Understand reporting requirements;
- Apply Best Practices for Program Oversight; and
- Be aware of recent purchase card audit findings.



Got Questions?

Email: gsa_smartpay@gsa.gov
Phone: (703) 605-2808
Monday - Friday, 8AM - 4PM ET
Closed Federal Holidays

Shauna Weatherly
shauna.weatherly@gsa.gov

GOT QUESTIONS?

After the forum should you have questions about this presentation or others you see this week, please feel free to contact the GSA SmartPay Support Center by email at gsa_smartpay@gsa.gov, or by phone to speak to a live person at (703) 605-2808, Monday through Friday, 8am to 4pm Eastern Time (closed on federal holidays). Or you can email me directly at shauna.weatherly@gsa.gov.

Resources

This presentation is intended as general information only and does not carry the force of legal opinion. This presentation does not override agency policy, the Federal Acquisition Regulation (FAR), United States Code (U.S.C), or the Code of Federal Regulations (CFR). The Federal Register and the Code of Federal Regulations (CFR) remain the official source for regulatory information published by the Department of Labor.

The following resources are available at the Department of Labor Wage and Hour Division homepage:

- Davis-Basic and Related Acts - <https://www.dol.gov/agencies/whd/government-contracts/construction>
- McNamara-O'Hara Service Contract Act (SCA) (now referred to as Service Contract Labor Standards (SCLS) in the FAR) - <https://www.dol.gov/agencies/whd/government-contracts/service-contracts>
- DOL Field Operations Handbook – <https://www.dol.gov/agencies/whd/field-operations-handbook>
 - Chapter 10, Fair Labor Standards Act (FLSA) Coverage: Employment Relationship, Statutory Exclusions, Geographical Limits
 - Chapter 14, The McNamara-O'Hara Service Contract Act (SCA) (i.e., Service Contract Labor Standards (SCLS))
 - Chapter 15, Davis-Bacon and Related Acts (i.e. Construction Wage Rates Requirements (CWRR))

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