Contractor Use of Government Vehicles

Panelists:
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Moderator:
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Federal Employee

• Oath
• I, [name], do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.
• 5 U.S.C. §3331
Contract Employee

- Contractor employees have no such oath.
- They follow the direction of their employer and the terms of the contract.
As a Federal Fleet Manager, What Should I take into Consideration?

• Is it advantageous to the government?
• Has the Contracting Officer authorized it?
• Has the contractor provided proof of insurance and a valid State license for the type of vehicle being operated?
• If using GSA Fleet leased vehicles, is the contractor obtaining and paying for the vehicles directly to GSA Fleet or using a leased vehicle provided by my agency? Or, is the contractor using an agency owned vehicle?
• How should I educate the agency drivers (Federal and Contractors) on their responsibilities to obey State and local traffic laws?
• Do the agency drivers (Federal and Contractors) know what to do if a vehicle breaks down or is in an accident?
• Who do you call for questions about contractor use of GOVs and POVs in your agency?
Regulatory Resources

- Federal Register (www.gpoaccess.gov/fr)
- Code of Federal Regulations (www.gpoaccess.gov/cfr)
- Federal Acquisition Regulation (FAR) (www.gsa.gov/far)
- Individual Agency Regulation (many can be found in simple internet search)
Regulatory Resources

- **Federal Tort Claims Act**
- **Government contractor insurance requirement**: (FAR 51.202(a)(2):
- **Agency, contractor, and personal liability**
- **Government Accountability Office (GAO)**
  - Reports and Testimonies (www.gao.gov)
  - Search Comptroller General Decisions
Applicable Regulations

• 41 CFR (FMR) 102-34 Motor Vehicle Management (Government-wide)
• 41 CFR 101-39 - GSA Fleet
  • Customer Leasing Guide in Fleet Drive-Thru
• 41 CFR 102-5 - Home-to-Work Transportation
• FAR Subpart 51.2-Contractor Use of Interagency Fleet Management (GSA Fleet) (applicable only if the contractor is leasing vehicles directly from GSA Fleet)
• 5 CFR 930, Subpart A—Motor Vehicle Operators (OPM reg; OPM covers drivers, not vehicles)
• Agency/Bureau FMR Supplements
Yes, Government contractors may use Government motor vehicles when authorized in accordance with the Federal Acquisition Regulation (FAR), GSA Fleet procedures, and the following conditions:

(a) Government motor vehicles are used for official purposes only and solely in the performance of the contract;

(b) Government motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and Part 102-5;

(c) Contractors must:
   (1) Establish and enforce suitable penalties against employees who use, or authorize the use of, Government motor vehicles for unofficial purposes or for other than in the performance of the contract; and
   (2) Pay any expenses or cost, without Government reimbursement, for using Government motor vehicles other than in the performance of the contract.
(a) Authorized contractors and subcontractors shall use related GSA Fleet services solely for official purposes.

(b) To the extent available, authorized contractors and subcontractors may use GSA Fleet services on a reimbursable basis to provide maintenance, repair, storage, and service station services for Government-owned or -leased equipment which is not controlled by a GSA Fleet management center, or for authorized contractor-owned or -leased equipment used exclusively in the performance of Government contracts.

(c) Contractor use of GSA Fleet services will be allowable only to the extent provided in Federal Acquisition Regulation, 48 CFR part 51, subpart 51.2.

(d) Use of GSA Fleet vehicles in the performance of a contract other than a cost-reimbursement contract requires preapproval by the Administrator of GSA.
• Are authorized government contractors covered under Federal Tort Claims Act while operating a GOV?
  – No. When authorized cost-reimbursement Government contractors or subcontractors use vehicles assigned to an agency, they must obtain their own insurance. The insurance policy should cover bodily injury and property damage with limits of liability as required by the customer agency (FAR 51.202(a)(2)).

• What is my personal liability as a Federal employee or authorized contractor?
  A. You are bound by state and local traffic laws. You must obey all motor vehicle traffic laws of the state and local jurisdiction, except when the duties of your position require otherwise. You are personally responsible if you violate state or local traffic laws. If you are fined or otherwise penalized for an offense you commit while performing your official duties, but which are not required as part of your official duties, payment is your personal responsibility. Several regulations cover agency and driver responsibilities.
    1. State and local traffic laws. 41 CFR 102-34.235
  B. Each agency handles personal liability a little differently; contact your agency’s general counsel for specific guidance.

• Contact your local FSR for information on a contractor use request of GSA Fleet vehicles. contractoruserquests@gsa.gov
51.201 Policy

(a) If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, GSA Fleet vehicles and related services, including-

(1) Fuel and lubricants,
(2) Vehicle inspection, maintenance, and repair,
(3) Vehicle storage, and
(4) Commercially rented vehicles for short-term use.

(b) Complete rebuilding of major components of contractor-owned or -leased equipment requires the approval of the contracting officer in each instance.

(c) Government contractors shall not be authorized to obtain GSA Fleet vehicles and related services for use in performance of any contract other than a cost-reimbursement contract, except as otherwise specifically approved by the Administrator of the General Services Administration at the request of the agency involved.
**Federal Acquisition regulation (FAR)**

**Subpart 51.2-Contractor Use of Interagency Fleet Management System (IFMS) Vehicles (GSA Fleet)**

### 51.202 Authorization

(a) The **contracting officer** may authorize a cost-reimbursement contractor to obtain GSA Fleet vehicles and related services, if the contracting officer has-

1. Determined that the authorization will accomplish the agency’s contractual objectives and effect demonstrable economies;

2. Received evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of a GSA Fleet vehicle;

3. Arranged for periodic checks to ensure that authorized contractors are using vehicles and related services exclusively under cost-reimbursement contracts;

4. Ensured that contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts;

5. Received a written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of GSA Fleet vehicles and services not related to the performance of the contract; and

6. Considered any recommendations of the contractor.
Federal Acquisition regulation (FAR)
Subpart 51.2-Contractor Use of Interagency Fleet Management System (IFMS) Vehicles (GSA Fleet)

51.202 Authorization

(b) The authorization shall-

(1) Be in writing;
(2) Cite the contract number;
(3) Specify any limitations on the authority, including its duration, and any other pertinent information; and
(4) Instruct the contractor to comply with the applicable policies and procedures provided in this subpart.

(c) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(d) Contracting officers authorizing contractor use of GSA Fleet vehicles and related services subject their agencies to the responsibilities and liabilities provided in 41 CFR 101-39.4 regarding accidents and claims.
Federal Acquisition regulation (FAR)
Subpart 51.2-Contractor Use of Interagency Fleet Management System (IFMS) Vehicles (GSA Fleet)

• 51.203 Means of obtaining service.
  – contractoruserequests@gsa.gov

• 51.204 Use of GSA Fleet vehicles and related services.

• 51.205 Contract clause.
  – The contracting officer shall insert the clause at 52.251-2, GSA Fleet Vehicles and Related Services, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize the contractor to use GSA Fleet vehicles and related services.


INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)
The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 102-34.
Federal Motor Carrier Safety Act

• Only Federal employees driving government owned or leased vehicles are exempt from the certain portions of the Federal Motor Carrier Safety Act (FMCSA).

• **Federally owned and operated vehicles (not for hire contractors) are not subject to the Federal Motor Carrier Safety Regulations (49 CFR 390-399) which includes medical requirements and Hours Of Service because they are not considered “in commerce” as governmentally owned and operated vehicles and drivers. The CDL and Drug and Alcohol Regs (49 CFR 382 and 383) would apply if they are operating certain size vehicles.**

• Note- if a contractor is driving a government vehicle and not an actual federal employee that contractor must comply with all the rules of the FMCSA.

• [https://www.fmcsa.dot.gov/regulations](https://www.fmcsa.dot.gov/regulations)
Sec. 4. Text Messaging While Driving by Government Contractors, Subcontractors, and Recipients and Sub recipients.

• Each Federal agency, in procurement contracts, grants, and cooperative agreements, and other grants shall encourage contractors, subcontractors, and recipients and sub recipients to adopt and enforce policies that ban text messaging while driving company-owned or rented vehicles or GOV, or while driving POV when on official Government business or when performing any work for or on behalf of the Government.

• Agencies should also encourage Federal contractors, subcontractors, and grant recipients and sub recipients to:
  – consider new rules and programs,
  – reevaluate existing programs to prohibit text messaging while driving,
  – conduct education, awareness, and other outreach for employees about the safety risks associated with texting while driving.
  – These initiatives should encourage voluntary compliance with the agency's text messaging policy while off duty.
Can a contractor drive a GOV?

Yes, if the regulatory and agency requirements are met!

Applicable regulations:
- 41 CFR 102-34.21
- FAR 51.2- Contractor Use of GSA Fleet Vehicles
- 41 CFR 101-39.202 Contractor Authorized Services

Considerations:
- Has the contracting officer authorized use of GOV’s?
- Does the contractor have liability insurance?
- Do drivers have state drivers license for applicable vehicle type?
Can I transport a non-Federal passenger in my GOV?

Yes, if it is for official use.

- Official use is performing your mission as defined & authorized by the agency
- Official use can include transporting a non-Federal passenger
- **Federal Tort Claims Act covers Federal employees in scope of employment**
- Contact your agency fleet manager and/or general counsel for internal/agency policy guidance
Where do I go for policy questions in my agency?

- Agency Fleet/Personal Property Manager
- Agency General Counsel’s Office
- Contracting Officer with regards to contractor use of government resources
- Agency Directives and Guidance Documents
SAMPLE AGENCY POLICY

• Contractor Travel in Government Vehicles
  • Generally contractor personnel are not allowed to use government vehicles.
  • If use is in government’s best interest must be in the contract and only if it is in compliance with FAR:
    – Number of vehicles required is predictable and constant
    – Proposed contract will bear entire cost of vehicle use
    – Vehicles will be used only on specific contract
    – Prospective contractors do not or would not be expected to have existing and continuing capability to provide vehicles from their own resources
    – Substantial savings to the government are expected
  • Contractor may be a passenger in GOV
    – If no appearance of favoritism
  • Government employees generally may not ride in contractor vehicles!
Contractors are required to follow the policies and procedures stated in PS 5401 Use of Agency Vehicles and PS 5205 Employee Use of Privately-Owned Vehicles except for the areas stated below:

A. USE OF GOVERNMENT-OWNED VEHICLES (GOVs)

1. Approval - Contractors may use a GOV for local and out-of-town travel if such use is allowed in their contract. Contractors must have specific authorization for the use of a GOV prior to each instance of using the vehicle. Contractors must receive approval from their COTR to use GOVs and must restrict their use for official purposes only; namely, in performance of the contract duties. All contractors are required to read or be issued a copy of this Policy Statement and PS 5401. Contractors are required to sign a statement acknowledging receipt (see Appendix F) of said policies. Contractors are forbidden from allowing other persons to operate GOVs. The following steps shall be followed in seeking authorization:
   a. Complete a “Contractor Request for Use of Government Vehicle” form and submit it to the appropriate COTR for signature. The form is available from the COTR or the Intranet;
   b. Indicate on the request form the purpose and each destination for which the government vehicle will be used;
   c. When possible the COTR must submit the form to the appropriate Site Coordinator 24 to 48 hours in advance of need;
   d. For out-of-town travel only, the contractor must request and receive an approved Agency Travel Authorization, prior to travel;
   e. The contractor should maintain a copy of the vehicle request form at all times while operating an Agency vehicle; and
   f. Upon return of the vehicle, complete the section of the form relating to mileage and fuel, and submit it to Fleet Coordinator.
Questions?

Vehicle.policy@gsa.gov