

FAR 37.6 Service Contracts

37.600 Scope of subpart.

This subpart prescribes policies and procedures for use of performance-based contracting methods.

37.601 General.

Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. Performance-based contracts--

- (a) Describe the requirements in terms of results required rather than the methods of performance of the work;
- (b) Use measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see 46.103(a) and 46.401(a));
- (c) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407); and
- (d) Include performance incentives where appropriate.

37.602 Elements of performance-based contracting.

37.602-1 Statements of work.

(a) Generally, statements of work shall define requirements in clear, concise language identifying specific work to be accomplished. Statements of work must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility (see 11.106). In the case of task order contracts, the statement of work for the basic contract need only define the scope of the overall contract (see 16.504(a)(4)(iii)). The statement of work for each task issued under a task order contract shall comply with paragraph (b) of this subsection. To achieve the maximum benefits of performance-based contracting, task order contracts should be awarded on a multiple award basis (see 16.504(c) and 16.505(b)).

(b) When preparing statements of work, agencies shall, to the maximum extent practicable--

- (1) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);
- (2) Enable assessment of work performance against measurable performance standards;
- (3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and

(4) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.

37.602-2 Quality assurance.

Agencies shall develop quality assurance surveillance plans when acquiring services (see 46.103 and 46.401(a)). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

37.602-3 Selection procedures.

Agencies shall use competitive negotiations when appropriate to ensure selection of services that offer the best value to the Government, cost and other factors considered (see 15.304).

37.602-4 Contract type.

Contract types most likely to motivate contractors to perform at optimal levels shall be chosen (see Subpart 16.1 and, for research and development contracts, see 35.006). To the maximum extent practicable, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see Subpart 16.4). These incentives shall correspond to the specific performance standards in the quality assurance surveillance plan and shall be capable of being measured objectively. Fixed-price contracts are generally appropriate for services that can be defined objectively and for which the risk of performance is manageable (see Subpart 16.1).

37.602-5 Follow-on and repetitive requirements.

When acquiring services that previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate performance-based contracting methods to the maximum extent practicable. This will facilitate the use of fixed-price contracts for such requirements for services. (See 7.105 for requirement to address performance-based contracting strategies in acquisition plans. See also 16.104(k).)