

April 9, 1991

POLICY LETTER 91-2 TO THE HEADS OF EXECUTIVE AGENCIES AND DEPARTMENTS

SUBJECT: Service Contracting

1. Purpose. This Policy Letter establishes policy for the Government's acquisition of services by contract. It emphasizes the use of performance requirements and quality standards in defining contract requirements, source selection, and quality-assurance. This approach provides the means to ensure that the appropriate performance quality level is achieved, and that payment is made only for services which meet contract standards.
2. Authority. This Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. section 405.
3. Definitions.
 - a. "Performance-based contracting" means structuring all aspects of an acquisition around the purpose of the work to be performed as opposed to either the manner by which the work is to be performed or broad and imprecise statements of Work.
 - b. "Services" are defined as the performance of identifiable tasks rather than the delivery of an end item of supply. "Services" also include tasks that are delivered under a contract where the primary purpose is to provide supplies. For the purpose of this Policy Letter architect-engineer services acquired in accordance with the Brooks Act (P.L. 92-582, as amended) and for construction are excluded.
4. Background. Each year the government contracts for a significant amount of services. Such services range from the routine maintenance of facilities or equipment to highly sophisticated technical and management assistance such as the design, development and furnishing of systems, or expert assistance for management and program activities. Attempts to apply contracting methods which are inappropriate to the services being acquired have often resulted in unsatisfactory performance and contract administration problems, as reflected in several internal agency investigations and evaluations, General Accounting Office Reports, and OFPP studies. These reports criticized unnecessarily vague statements of work, insufficient use of firm pricing arrangements, the lack of quantifiable performance standards, and the inadequacy of quality assurance surveillance. In addition, there is concern that the Government underemphasizes quality vs. price in the acquisition of services. The use of performance-based service contracting methods enhances the Government's ability to acquire services of the requisite quality and to ensure adequate contractor performance.

5. Policy. It is the policy of the Federal Government that (1) agencies use performance-based contracting methods to the maximum extent practicable when acquiring services, and (2) agencies carefully select acquisition and contract administration strategies, methods, and techniques that best accommodate the requirements. In addition, agencies shall justify the use of other than performance-based contracting methods when acquiring services, and document affected contract files. Performance-based contracting methods consist of the following:

a. Statement of work. When preparing statements of work, agencies shall, to the maximum extent practicable, describe the work in terms of “what” is to be the required output rather than “how” the work is to be accomplished. To assist in refining statements of work, consideration shall be given to issuing draft solicitations.

b. Quality assurance. Agencies shall, to the maximum extent practicable, assign contractors full responsibility for quality performance. Agencies shall develop formal, measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards and surveillance plans to facilitate the assessment of contractor performance and the use of performance incentives and deduction schedules. Agencies shall, to the maximum extent practicable, avoid relying on cumbersome and intrusive process-oriented inspection and oversight programs to assess contractor performance.

c. Selection procedures. Agencies shall use competitive negotiations for acquisitions where the quality of performance over and above the minimum acceptable level will enhance agency mission accomplishment and be worth the corresponding increase in cost. This approach will apply to most technical and professional services. In such instances, contracting activities shall give careful consideration to developing evaluation and selection procedures that utilize quality-related factors such as: technical capability; management capability; cost realism; and past performance. These factors shall receive increased emphasis to the extent requirements are more complex and less clearly defined. The desired relative importance among these factors and between these factors and price shall be determined, and they shall be applied as stated in the solicitations. To ensure application of cost realism, cost proposals shall be reviewed to assess offerors’ understanding of the requirements and consistency with their technical proposals. Special attention shall be directed to limited opportunities for technical leveling and technical transfusion. Technical leveling and technical transfusion discourages offerors from proposing innovative methods of performance and often result from repeated discussions and the submission of revised offers based on these discussions. Opportunities for discussions and revisions of offers shall be limited to the extent practicable. Sealed bidding shall be used when the goal of the acquisition is to achieve the desired service at the lowest price with minimum stated acceptable quality.

d. Contract type. Contract types most likely to motivate contractors

to perform at optimal levels shall be chosen. Fixed price contracts are appropriate for services that can be objectively defined and for which risk of performance is manageable. In most instances, services that are routine, frequently acquired, and require no more than a minimal acceptable level of performance fall into this category. For such acquisitions, performance-based statements of work and measurable performance standards and surveillance plans shall be developed and fixed price contracts shall be preferred over cost reimbursement contracts. Cost reimbursement contracts are appropriate for services that can only be defined in general terms and for which the risk of performance is not reasonably manageable. Complex or unique services for which quality of performance is paramount frequently fall into this category. Furthermore, to the maximum extent practicable, contracts shall include incentive provisions to ensure that contractors are rewarded for good performance and quality assurance deduction schedules to discourage unsatisfactory performance. These provisions shall be based on measurement against predetermined performance standards and surveillance plans.

e. Repetitive requirements. When acquiring services which previously have been provided by contract, agencies shall rely on the experience gained from the prior contract to incorporate performance-based acquisition methods. For such follow-on requirements, statements of work shall further describe the services in terms of “what” is to be performed, and performance standards and surveillance plans shall be more definitive than those for the prior acquisition. Where appropriate, conversion from a cost reimbursement to fixed price arrangement shall be accomplished and, whenever possible, incentive provisions and quality assurance deduction schedules shall be introduced.

f. Multiyear contracting. Agencies with statutory multiyear authority shall consider the use of such authority when acquiring services. The use of such authority will increase competition by offering a more stable, long-term contracting environment. It will also encourage offerors to invest in the development and implementation of innovative and efficient methods of performance by ensuring recoupment of these investments.

6. Responsibilities.

a. Federal Acquisition Regulatory Council. The Federal Acquisition Regulatory Council shall ensure that Government-wide regulations to conform to the policies established herein are promulgated in the first Federal Acquisition Circular issued 120 days after the effective date of this Policy Letter. These regulations shall include a framework for individually tailoring the source selection method, type of contract, and contract administration techniques to fit the requirement, and for agencies to document the reasons(s) for not using performance based contracting methods as prescribed by that framework.

b. Heads of Agencies. Heads of agencies are encouraged to implement the policies established herein and initiate any necessary staff

training upon the effective date of this Policy Letter.

7. Information Contract. For information regarding this Policy Letter contract Stanley Kaufman, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395-6803.

8. Effective Date. This Policy Letter is effective 30 days after the date of issuance.

(signed by)

Allan V. Burman
Administrator