

and prescribes policies and procedures for use of performance-based contracting methods (see subpart 37.6). Additional guidance for research and development services is in part 35; architect-engineering services is in part 36; information technology is in part 39; and transportation services is in part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see subpart 22.10).

[62 FR 12694, Mar. 17, 1997, as amended at 62 FR 44815, Aug. 22, 1997]

Subpart 37.1—Service Contracts—General

37.101 Definitions.

As used in this part—

Child care services means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

Nonpersonal services contract means a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

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.

Service contract means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas

in which service contracts are found include the following:

- (1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- (2) Routine recurring maintenance of real property.
- (3) Housekeeping and base services.
- (4) Advisory and assistance services.
- (5) Operation of Government-owned equipment, facilities, and systems.
- (6) Communications services.
- (7) Architect-Engineering (see subpart 36.6).
- (8) Transportation and related services (see part 47).
- (9) Research and development (see part 35).

[48 FR 42365, Sept. 19, 1983, as amended at 53 FR 43392, Oct. 26, 1988; 59 FR 67051, Dec. 28, 1994; 62 FR 44815, Aug. 22, 1997; 66 FR 2133, Jan. 10, 2001]

37.102 Policy.

(a) Performance-based contracting (see Subpart 37.6) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts, agencies must—

- (1) Use performance-based contracting methods to the maximum extent practicable, except for—
 - (i) Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see part 36);
 - (ii) Construction (see part 36);
 - (iii) Utility services (see part 41); or
 - (iv) Services that are incidental to supply purchases; and
- (2) Use the following order of precedence (Public Law 106-398, section 821(a));
 - (i) A firm-fixed price performance-based contract or task order.
 - (ii) A performance-based contract or task order that is not firm-fixed price.
 - (iii) A contract or task order that is not performance-based.
- (b) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Performance of Commercial Activities and subpart 7.3).