

Federal Acquisition Regulation

37.000

used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.

[48 FR 42356, Sept. 19, 1983, as amended at 60 FR 34759, July 3, 1995; 68 FR 28084, May 22, 2003]

PART 37—SERVICE CONTRACTING

Sec.

37.000 Scope of part.

Subpart 37.1—Service Contracts—General

- 37.101 Definitions.
- 37.102 Policy.
- 37.103 Contracting officer responsibility.
- 37.104 Personal services contracts.
- 37.105 Competition in service contracting.
- 37.106 Funding and term of service contracts.
- 37.107 Service Contract Act of 1965.
- 37.108 Small business Certificate of Competency.
- 37.109 Services of quasi-military armed forces.
- 37.110 Solicitation provisions and contract clauses.
- 37.111 Extension of services.
- 37.112 Government use of private sector temporaries.
- 37.113 Severance payments to foreign nationals.
- 37.113-1 Waiver of cost allowability limitations.
- 37.113-2 Solicitation provision and contract clause.
- 37.114 Special acquisition requirements.
- 37.115 Uncompensated overtime.
- 37.115-1 Scope.
- 37.115-2 General policy.
- 37.115-3 Solicitation provision.

Subpart 37.2—Advisory and Assistance Services

- 37.200 Scope of subpart.
- 37.201 Definition.
- 37.202 Exclusions.
- 37.203 Policy.
- 37.204 Guidelines for determining availability of personnel.
- 37.205 Contracting officer responsibilities.

Subpart 37.3—Dismantling, Demolition, or Removal of Improvements

- 37.300 Scope of subpart.

- 37.301 Labor standards.
- 37.302 Bonds or other security.
- 37.303 Payments.
- 37.304 Contract clauses.

Subpart 37.4—Nonpersonal Health Care Services

- 37.400 Scope of subpart.
- 37.401 Policy.
- 37.402 Contracting officer responsibilities.
- 37.403 Contract clause.

Subpart 37.5—Management Oversight of Service Contracts

- 37.500 Scope of subpart.
- 37.501 Definition.
- 37.502 Exclusions.
- 37.503 Agency-head responsibilities.
- 37.504 Contracting officials' responsibilities.

Subpart 37.6—Performance-Based Contracting

- 37.600 Scope of subpart.
- 37.601 General.
- 37.602 Elements of performance-based contracting.
- 37.602-1 Statements of work.
- 37.602-2 Quality assurance.
- 37.602-3 Selection procedures.
- 37.602-4 Contract type.
- 37.602-5 Follow-on and repetitive requirements.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42365, Sept. 19, 1983, unless otherwise noted.

37.000 Scope of part.

This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of performance-based contracting to the maximum extent practicable 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

37.101

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.

48 CFR Ch. 1 (10-1-03 Edition)

(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).

(c) Agencies shall not award a contract for the performance of an inherently governmental function (see subpart 7.5).

(d) Non-personal service contracts are proper under general contracting authority.

(e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed.