

37.400

Contractor to Government in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the government to transfer title to the contractor for increments of property only upon receipt of those payments.

(c) The contracting officer shall insert the clause at 52.237-6, Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if (1) the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (2) the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property only upon receipt of those payments. This determination may be appropriate, for example, if it encourages greater competition or participation of small business concerns.

Subpart 37.4—Nonpersonal Health Care Services

SOURCE: 54 FR 5056, Jan. 31, 1989, unless otherwise noted.

37.400 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.

37.401 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers under authority of 10 U.S.C. 2304 and 41 U.S.C. 253. Each contract shall—

(a) State that the contract is a nonpersonal health care services contract, as defined in 37.101, under which the

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contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at 52.237-7, including the maintenance of medical liability insurance.

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparent successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

[62 FR 237, Jan. 2, 1997]

37.403 Contract clause.

The contracting officer shall insert the clause at 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in part 13.

Subpart 37.5—Management Oversight of Service Contracts

SOURCE: 62 FR 12694, Mar. 17, 1997, unless otherwise noted.

Federal Acquisition Regulation

37.601

37.500 Scope of subpart.

This subpart establishes responsibilities for implementing Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting.

37.501 Definition.

Best practices, as used in this subpart, means techniques that agencies may use to help detect problems in the acquisition, management, and administration of service contracts. Best practices are practical techniques gained from experience that agencies may use to improve the procurement process.

37.502 Exclusions.

(a) This subpart does not apply to services that are

- (1) Obtained through personnel appointments and advisory committees;
- (2) Obtained through personal service contracts authorized by statute;
- (3) For construction as defined in 2.101; or
- (4) Obtained through interagency agreements where the work is being performed by in-house Federal employees.

(b) Services obtained under contracts below the simplified acquisition threshold and services incidental to supply contracts also are excluded from the requirements of this subpart. However, good management practices and contract administration techniques should be used regardless of the contracting method.

[62 FR 12694, Mar. 17, 1997, as amended at 66 FR 2133, Jan. 10, 2001]

37.503 Agency-head responsibilities.

The agency head or designee should ensure that—

- (a) Requirements for services are clearly defined and appropriate performance standards are developed so that the agency's requirements can be understood by potential offerors and that performance in accordance with contract terms and conditions will meet the agency's requirements;
- (b) Service contracts are awarded and administered in a manner that will provide the customer its supplies and services within budget and in a timely manner;

(c) Specific procedures are in place before contracting for services to ensure compliance with OFPP Policy Letter 92-1, Inherently Governmental Functions; and

(d) Strategies are developed and necessary staff training is initiated to ensure effective implementation of the policies in 37.102.

[62 FR 12694, Mar. 17, 1997, as amended at 65 FR 36014, June 6, 2000]

37.504 Contracting officials' responsibilities.

Contracting officials should ensure that "best practices" techniques are used when contracting for services and in contract management and administration (see OFPP Policy Letter 93-1).

Subpart 37.6—Performance-Based Contracting

SOURCE: 62 FR 44815, Aug. 22, 1997, unless otherwise noted.

37.600 Scope of subpart.

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

[62 FR 44815, Aug. 22, 1997, as amended at 65 FR 36014, June 6, 2000]

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.