

Subpart 2937.2—Advisory and Assistance Services

2937.203 Policy.

(a) HCAs having a requirement for certain advisory and assistance services are required by the Department of Labor Manual Series (*See* DLMS 2 836) to prepare a written justification for such services. Written justification must be submitted to the Assistant Secretary for Administration and Management for review by the Procurement Review Board, for Assistant Secretary for Administration and Management approval.

(b) Regardless of the type of action planned, the justification in paragraph (a) of this section must include the following:

(1) A statement of need, which certifies that the requested services do not unnecessarily duplicate any previously performed work.

(2) Nature and scope of the need, and the results expected.

(3) Extent to which in-house staff availability was assessed, and the reasons why procurement of outside services is necessary.

(4) Any additional information or data that support the requirement for a contract.

(5) Name(s) and title(s) of official(s) who will be assigned as project officer(s) to work with the contractor, and who can be contacted for additional Information.

(6) A statement that the Government policy on advisory and assistance services has been reviewed and complies with FAR 37.203.

Subpart 2937.6—Preference for Performance-Based Contracting (PBC)

2937.602 Elements of performance-based contracting.

(a) Performance-based contracting is defined in FAR 37.101 and discussed in FAR 37.6. Although FAR Part 37 primarily addresses services contracts, PBC is not limited to these contracts. PBC is the preferred way of contracting for services. (*See* exceptions listed in FAR 37.102.) Generally, when contract performance risk under a PBC specification can be shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (*e.g.*, Firm-Fixed-Price, Fixed-Price-Incentive-Fee, or Cost-Plus-Incentive-Fee) is appropriate. However, when contractor performance (*e.g.*, cost control, schedule, or quality/technical) is best evaluated subjectively using qualitative measures, a Cost-Plus-Award-Fee contract may be used.

(b) A labor hour level-of-effort contract is not considered a PBC.

PARTS 2938–2941 [RESERVED]

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 2942.1—Contract Audit Services

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2942.101 Policy.

Subpart 2942.15—Contractor Performance Information

2942.1501 Scope.

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2942.1503 Procedures.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

Subpart 2942.1—Contract Audit Services

2942.101 Policy.

The OASAM Division of Cost Determination is responsible for establishing billing rates and indirect cost rates as prescribed in FAR 42.7 for the Department of Labor.

Subpart 2942.15—Contractor Performance Information

2942.1501 Scope.

This subpart provides policies and procedures for evaluating, maintaining, and releasing contractor performance information under DOL contracts.

2942.1502 Policy.

DOL contracting officers are required to use or interface with the Past Performance Information Retrieval System (PPIRS), and specifically the National Institutes of Health's Contractor Performance System. The HCA is responsible for ensuring that a contractor performance evaluation system is generated to meet the requirements of FAR subpart 42.15, including compliance with subcontracting plans. Contracts, task orders, and delivery orders, exceeding the simplified acquisition threshold, should be formally evaluated in writing. Interim evaluations should be performed on contracts exceeding one year in duration. This will

assist contractors with improving marginal performance and identifying any major deficiencies. It will also facilitate performance evaluations at contract completion, as well as determining whether to exercise contract options, if any.

2942.1503 Procedures.

(a) In accordance with FAR 42.1502, the contracting officer will prepare an interim evaluation of a contractor's performance at least annually for submission to the Past Performance Information Retrieval System (PPIRS), and specifically the Contractor Performance System maintained by the National Institutes of Health.

(b) The contracting officer, or designee, must determine who will evaluate a contractor's performance. The contracting officer's technical representative, program manager, contract specialists or administrators, and users are candidates likely to be selected to perform the evaluation.

(c) A contractor's performance evaluation should be obtained from a person who monitored contractor performance when that individual's assignment of duties or employment terminates before physical completion of the contract. The areas of performance to be selected for evaluation should be tailored to the type of supplies or services normally acquired by the contracting activities and the type of contract. HCAs must ensure uniformity of the evaluation criteria within their contracting activities.

(d) Release of contractor performance evaluation information.

(1) Requests for performance evaluation information from the public must be processed in accordance with FOIA, as implemented by DOL under 29 CFR part 70.

(2) Release of a contractor's performance evaluation information to other Federal agencies is subject to FAR 42.1502. When the performance evaluation information is released to other federal agencies, it should be provided with a written statement that it is nonpublic information that must be