

**U.S. Nuclear Regulatory Commission
Division of Contracts and Property Management
Office of Administration**

A Short Guide to Performance-based Contracting

Why tell me about Performance-based Contracting?

Effective May 2, 2001, the Federal Acquisition Regulation (FAR) Federal Acquisition Circular (FAC) 97-25 was changed to reflect that Performance-based contracting (PBC) (see FAR Subpart 37.6) is the preferred method for acquiring services including those acquired under supply contracts. The FAR may be accessed at www.arnet.gov/far.



In a March 9, 2001 memorandum to Heads of Agencies, Sean O’Keefe, Deputy Director, OMB stated that for FY 2002, the Performance-based contracting goal is to award contracts over \$25,000 using Performance-based contracting techniques for not less than 20% of the total eligible service contracting dollars.

What is a Performance-based contract?

“Performance-based contracting” means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

Performance-based contracting methods are intended to ensure that required performance is achieved and that total payment is related to the degree to which services performed meet contract standards.

What are the exceptions to using Performance-based contracting?

- (i) Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see FAR Part 36);
- (ii) Construction (see FAR Part 36);
- (iii) Utility services (see FAR Part 41); or
- (iv) Services that are incidental to supply purchases.



What is the order of precedence for using Performance-based contracts?

Order of Three:



- (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.

What makes a contract performance-based?

Performance-based contracts contain
(see FAR 37.601):



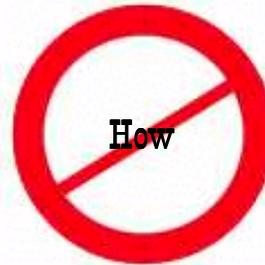
- (a) Requirements described in terms of results required rather than the methods of performance of the work;
- (b) Measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) used to assess work performance;
- (c) Quality assurance surveillance plans (see FAR Part 46.103(a) and FAR Part 46.401(a));
- (d) 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 FAR Part 46.407); and
- (e) Performance incentives where appropriate.

What is unique about Performance-based statements of work (SOW)?

-Defines requirements in clear, concise language identifying specific work to be accomplished in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided; and

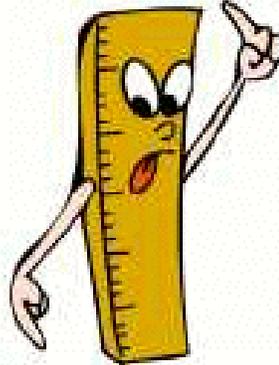
What

Not



How

-Relies on the use of measurable performance standards, acceptance criteria, and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.



-For IT services, FAR 39.104 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services unless the contracting officer first determines that the needs of the agency cannot be met without such a requirement or the needs of the agency require the use of a type of contract other than a performance-based contract. The contractor will tell us how the work will be done and by whom.

What other considerations should I keep in mind?

Quality Assurance

In accordance with FAR 46.103 and FAR 46.401, quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans, which require the contractor to ensure that quality work is performed, should specify:

- (1) All work requiring surveillance by the Government (what);
- (2) The method of surveillance (how); and,
- (3) The place or places where the Government reserves the right to perform quality assurance surveillance (where.)



These plans should:

- recognize the responsibility of the contractor (see FAR 46.105) to carry out its quality assurance obligations,
- contain measurable inspection and acceptance criteria corresponding to the performance standards in the statement of work, and
- focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

Government contract quality assurance surveillance shall be performed when necessary to determine that the supplies or services conform to contract requirements.

FAR 46.401 states that the Program Office Receiving from the activity responsible for prescribing contract quality requirements for a quality assurance surveillance plan.

Incentives

To the maximum extent, performance incentives, either positive or negative or both shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see FAR 16.4). These incentives should correspond to specific performance standards in the quality assurance surveillance plan and should be capable of being measured objectively.

How should I get started when I have a requirement?

Call the Division of Contracts and Property Management Contracting Officer or Contract Specialist who will be handling the procurement. They will work with you to develop a clear, performance-based statement of work.



To learn more about Performance-based contracting, visit the Internet at the "Where in Federal Contracting" web site at <http://www.wifcon.com/procurementplanning.htm>. The website consolidates performance based sites from many Government agencies.