

SUPPORT SERVICE CONTRACTING



Guiding Principles

- Inherently Governmental functions may only be performed by Government personnel.
- Avoid the appearance of personal services relationships.
- Use a Statement of Objectives and a Performance Based Work Statement
- Assess performance through a quality assurance surveillance plan
- Practice appropriate management oversight to preserve agency control.

[Reference: FAR Part 37]

Overview

This section provides a guide for use in the planning and acquisition of support services contracts.

Background

Support service contracts are a significant portion of the Department's total contracting effort. These types of contracts must be carefully developed and administered to ensure that contractors do not perform inherently Governmental functions or personal services.

The purpose of the attached guide is to furnish Department personnel guidance addressing the acquisition and use of support service contracts. This guide will help contracting, program, and other personnel in the development and award of more definitive contracts which, in turn, will permit qualitative measurement of contractor performance.

SUPPORT SERVICE CONTRACTING A GUIDE FOR DOE PERSONNEL

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Introduction

Approximately 20 percent of all DOE contract funds, excluding management and operating contract funds, were obligated for support services in each of the past two fiscal years. The services acquired included professional and technical services provided to program offices, library services, employee health services, audit services, elevator maintenance, ADP support, hearing officers, and the services of temporary help agencies. The size, diversity, and number of contract actions involved indicate the need for successfully planning, negotiating, awarding and administering this class of contracts.

This Guide will provide key information to those Department personnel acquiring support services. It is hoped that use of the Guide will result in improved support service contracting. Part I provides an Overview to furnish basic information regarding support service contracting. This part identifies types of services that are inherently Governmental functions that should never be contracted out and also discusses personal service contract prohibitions. Basic information regarding contract administration and the Service Contract Act is also provided. Part II provides information on the development of support service contracts. Coverage ranges from acquisition planning through drafting statements of work. Information is provided on performance-based service acquisition, including suggestions on developing performance work statements and statement of objectives for this contract type.

Part III identifies special circumstances which may arise in support service contracting as a result of the Federal Acquisition Streamlining Act of 1994. These special circumstances include the use of commercial contract terms and conditions for the acquisition of commercial services and the use of multiple award, task order contracts for the acquisition of advisory and assistance services.

Part IV provides a summary of pertinent parts of the Guide and includes a series of appendices containing more detailed information, various checklists, and a bibliography.

PART I - AN OVERVIEW

Support Service Contracts

Basic Ideas

Support services are those services and activities required by the Government to support the development and execution of assigned functions and programs. Support services do not include the exercise of discretionary Government authority which is the essence of an inherently Governmental function and should only be performed by Government personnel. Appendix A contains definitions of terms which are frequently used in support service contracting. When contracting for support services, agencies must avoid contracting for inherently Governmental services. Some examples of inherently Governmental functions are listed on the following page. Inherently Governmental functions are discussed at Subpart 7.5 of the Federal Acquisition Regulation (FAR).

Government personnel must also avoid the creation or appearance of a personal service relationship with contractor personnel which could indicate circumvention of the rules covering the employment of civil service employees. Use common sense and be sensitive to appearances. A useful brochure on this subject is also available. It is titled "Contracting For Support Services - what You Need To Know.." It is available at

<http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Regulations+and+Guidance?OpenDocument>

Government versus Contractor Performance

Governmental Functions

An inherently Governmental function is one which is so closely related to the public interest as to mandate performance by Government employees. These activities require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. Inherently Governmental functions generally fall into two categories: 1) the act of governing or 2) monetary transactions and entitlements. The first category would include the armed services, the courts, public roadways, etc. The second would include tax collection, money supply, control of banking, etc. Services or products in support of these Government functions are considered commercial activities.

The following examples illustrate services that should not be obtained under contract.

- Speaking before groups as a representative of the Department
- Initiating official documents intended to represent Departmental policy
- Drafting work assignments under a contract featuring task orders or assignments
- Procuring ADP equipment for use in Government facilities

The Department's management and operating contractors shall not be directed to award subcontracts to provide support service to a Departmental office; or, asked to provide support service if the service is outside their primary mission.

Appendix B provides examples of functions that should be performed only by Department of Energy personnel. Further examples may be found at FAR 7.503(c).

Commercial Activities

A commercial activity, as described in OMB Circular A-76, Performance of Commercial Activities, is one which provides a service or product which could be obtained from a commercial source. Public policy is for commercial activities to be provided by the private sector whenever possible.

Appendix C provides a listing of services that are considered commercial services based on guidance contained in OMB Circular A-76.

An important distinction between inherently Governmental functions and commercial activities is that inherently Governmental functions are not permitted to be contracted out unless they are authorized by special statute whereas commercial functions should generally be performed only by the private sector.

Federal employees may perform commercial functions under certain circumstances. Circumstances under which Government performance of commercial functions could be justified might include when proposed commercial prices are unreasonable or there is a lack of commercial sources; e.g., when commercial sources refuse to perform in a geographically isolated location. Conversely, services in support of Government functions which may be similar to inherently Governmental functions, may be appropriately contracted for if sufficient management controls are in place to assure the contractor does not take over a Government function and the Government does not abrogate its responsibilities.

Appendix D lists services which are not inherently Governmental in nature but which may approach that category. Contracting for these types of services requires diligent attention to ensure that performance of the work does not require the contractor to perform inherently Governmental functions

Personal Service Contracts

The civil service laws and regulations of the U.S. Government impose requirements concerning Federal employees and establishes the conditions and descriptions of Federal employment. Personal services shall not be obtained by contract unless Congress has specifically authorized the acquisition of personal services.

A personal service contract results when Government personnel assume the role of instructing, supervising, or controlling a contractor employee's work. When DOE exercises direct

supervision and control over contract personnel, the services become personal and are therefore improper.

The following examples illustrate situations in which the services obtained have become personal services.

- When DOE restricts contractor employee qualifications to a particular person.
- When DOE will review the performance of individual contractor personnel rather than review the final product or service.
- When the contractor employees are used interchangeably with DOE personnel to perform the same or similar functions.

The Federal Acquisition Regulation provides adequate guidance and procedural information which, if appropriately followed, should ensure that contracts for support services do not enter the realm of personal services. Appropriate care and attention can prevent personal service problems.

Service Contract Act

There are several labor statutes which apply to Federal contracts. See Part 22 of the FAR for full coverage. The one most likely to affect a support service contract is the Service Contract Act (SCA). Under SCA, contractors are required to comply with certain minimum wage levels and working conditions if they employ workers in certain labor categories (generally the trades or nonprofessional labor categories). The Secretary of Labor is authorized to administer the SCA and enforce its requirements. The SCA applies to any Government contract over \$2,500 when its principal purpose is to furnish services through the use of service employees.

SCA does not cover service contracts that are performed (a) exclusively by executive-level, administrative, or professional personnel, or (b) primarily by bona fide executive, administrative, or professional employees, when service employees are only a minor factor in the performance of the contract.

Contract Administration

Contract administration under every contract is important but a support service contract requires especially diligent attention. A support service contract is labor intensive. This necessitates attention to the amount and types of labor being used under the contract to ensure that the appropriate skills are assigned to accomplish the work while still staying within the budgeted hours and dollars. As the work progresses, it may be necessary to furnish technical direction to ensure that the work stays within the intended scope of the contract or to better define the scope. It is also necessary to monitor the costs incurred to ensure that individual cost items are appropriate to the work being performed.

The type of contract involved will determine the focus of contract administration. For example, a performance-based contract will necessarily focus on performance measured against the

contract's performance management criteria. A multiple award, task order type contract adds a new dimension to contract administration by introducing "contract award" responsibilities into the traditional contract administration duties.

Task assignment contracts are very common in support service contracting. They present their own difficulties in proper contract administration. Appendix E is included to describe contract administration under this type of contract.

PART II - DEVELOPING THE SUPPORT SERVICE CONTRACT

“Laws, policies, and regulations have dramatically changed the acquisition process into one that must operate with a mission-based and program-based focus.” As a result of the Government Performance and Results Act of 1993 agencies are required to establish and manage to mission-related performance goals and objectives; in relation to this requirement, Performance Based Acquisition is the preferred method for acquiring mission related services (Public Law 106-398, § 821). The Department is committed to continued progress in support service contracting through the use of Performance Based Service Acquisition (PBSA).

DOE’s efforts involve widespread use of PBSA to the maximum extent practicable. There is one of two ways to describe the Government’s need under PBSA- a performance work statement (PWS) or a statement of objectives (SOO). In terms of organization of information, a statement of work (SOW) -like approach is suitable for a performance work statement, e.g., introduction, background information, scope, etc., recognizing that the PWS may be adapted as appropriate. The use of the statement of objectives is an emerging methodology that requires competing contractors to develop the statement of work, performance metrics and measurement plan, and quality assurance plan, which are evaluated before contract award. Acquisition planning and market research are integral components in assisting and maintaining our current PBSA success and building on it requires continued emphasis on the total acquisition approach.

Acquisition Planning

Advance acquisition planning is vital to the improvement of support service contracting. Acquisition planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition. Advance planning must be a team effort involving program, contracting, legal, finance, and other personnel. During this period the program and contracting personnel must combine their capabilities to develop the most definitive statement of work possible, develop comprehensive cost estimates, and otherwise develop the procurement package to define the Government’s needs in sufficient detail to be understood by offerors and to permit qualitative measurement of the performance of the successful offeror(s). If a performance-based contract is to be used, this is the time to develop performance objectives and measurement criteria.

The requirements must be written in clear, understandable language and describe the requirements as precisely as possible. These actions will help to ensure that DOE obtains an acceptable end product.

Market Research

Market research means collecting and analyzing information about capabilities within the market to satisfy Government requirements. FAR Part 10 describes policies and procedures for conducting market research to determine the most suitable approach to acquiring supplies or

services. Market research is required for all acquisitions by the new Federal Acquisition Streamlining Act. The extent of market research to be conducted should be appropriate to the circumstances of the service being acquired. Factors such as urgency, estimated dollar value, complexity, and past experience in acquiring the service may impact the extent of market research involved. Procedures for conducting market research are found at Parts 10 and 12 of the FAR.

Drafting Statements of Work

Overview

The statement of work defines the overall objective of the contract and describes the Government's minimum support service requirements. An organized approach to preparing a statement of work is essential. The statement of work defines the overall objective of the services, details the tasks that must be completed, and the labor skills required to achieve that objective. It should ensure that the objective can be met within budget and schedule.

Personnel responsible for drafting the statement of work should ensure that objectives and performance requirements in the statement of work are complete and clearly written in conventional language to the extent practical. Complete elimination of technical language is not required, but it should be reduced to essentials required to describe the effort required. To ensure that inherently governmental functions are not performed, the statement of work shall contain language that reserves these functions for Government officials and causes contractor employees and products to be clearly identified. See FAR 11.106.

The writer of a statement of work should be aware that statements of work are often read and interpreted by persons of varied backgrounds. Therefore, strive to write the statement of work clearly and concisely.

Suggested Statement of Work Content

Include a description of the required objectives and desired results including the Government's minimum requirements.

Provide background information helpful to a clear understanding of the requirements.

Include a detailed description of the technical requirements and tasks; and a description of reporting requirements and any other deliverable items, such as data, experimental hardware, mockups, prototypes, etc..

Writing Style

Use short sentences with simple and concise language.

Use active rather than passive voice.

Use terms consistently.

Mandatory and permissive language should be used properly.

Avoid use of pronouns.

Abbreviations and acronyms should only be used after first being defined.

Define who is responsible.

Avoid establishing a requirement that is dependent on actions by an entity who is not a party to the contract.

A checklist has been included at Appendix F to help in drafting and reviewing the statement of work.

To assist contracting activities in using performance-based service acquisition concepts, the next section of this chapter has been developed entitled "Performance Based Service Acquisition." The guide section provides information on performing a needs assessment, how to write a performance work statement, statement of objectives, and what should be included in a quality assurance surveillance plan. Sample performance work statements are also provided as tools to assist in the preparation of project specific work statements. NOTE: the performance incentive guidance provided in Chapter 70 of the Acquisition Guide was developed for specific use with management and operating contracts. However, use of this guide in the service contract environment is not precluded.

Performance-Based Service Acquisition

Law and regulation establish a preference for performance based service acquisition which provides for a more commercial like structure (See FAR 37.102). In keeping with this guiding principle, it is the policy of the Department of Energy to use Performance Based Service Acquisition where practicable. Through the use of PBSA methods, the Department will realize mission related program and project success via better competition and mission related solutions, more focus on intended results, better value and enhanced performance, and a number of other benefits.

PBSA places emphasize on the outcome rather than the process employed to achieve a final result. PBSA requires structuring all aspects of an acquisition around the purpose of the work to be performed with contract requirements that are-

- clear;
- specific; and have
- objective terms with measurable outcomes.

These components provide for objective assessment of contractor performance providing contractors with the freedom to determine how best to meet the Government's needs giving due consideration to appropriate levels of performance and accompanying measures of success while achieving established standards of accountability for the chosen acquisition approach.

Additional, guidance on the implementation of PBSA can be found in the Seven Steps to Performance Based Services Acquisition Guide located at <https://www.acquisition.gov/sevensteps/index.html> . The guide breaks down performance based service acquisition into seven simple steps.

- Establish an integrated solutions team (See DOE O 413.3 and DOE M413.3-1)
- Describe the problem that needs solving
- Examine private sector and public sector solutions
- Develop a statement of objectives (SOO) or performance work statement (PWS)
- Decide how to measure and manage performance
- Select the right contractor
- Manage performance

The intent of the Seven Steps guide, in part, is to create a shift from traditional contract compliance to collaborative and innovative performance-oriented mission related solutions.

The following areas are key components that help to define PBSA requirements and demonstrate a unique set of characteristics that clearly distinguish PBSA procurements:

Needs Assessment: In the management of PBSA contracts, the first consideration is what goal or outcome is to be achieved as a result of the acquisition. Addressing this factor is the first task performed by the Integrated Project Team (IPT) which describes the problem that needs to be solved and establishes the agreed upon solution that links to the agency mission. *Note: In certain instances, DOE Project Acquisition Strategy requires that a minimum of three alternative solutions be developed by the IPT (see DOE M 413.3-1).* This is a collaborative effort and is a first step after the team is assembled. At this stage a determination will be made of the current level of performance versus the intended effect the acquisition needs to have on the mission or program goal and objectives. This assessment will allow for the acquisition to be described in terms of how it supports mission based performance goals establishing a clear link between acquisition and mission. The needs assessment sets a high-level acquisition framework.

Performance Work Statement: The PWS is the instrument that captures the conclusions arrived at during the needs assessment process, e.g., job analysis (apply the "so what test"), performance objectives, performance standards, etc. The PWS is a document that identifies the agency's requirement in clear, specific and objective terms. Elements of a performance work statement are: 1) a statement of the required services in terms of output, 2) a measurable performance standard for the output, and 3) an acceptable quality level or error rate.

Statement of Objectives: Is a short document, under five pages, that provides basic high level performance objectives of the acquisition which offerors are required to support. This document is to be used in the solicitation in place of the SOW or PWS and may be converted to a more definitive work statement as proposed by the contractor or developed by the agency. The statement of objectives (SOO) establishes how the acquisition relates to the agency mission and what problem is to be solved or outcome achieved. The core of the information in the SOO is derived from the needs analysis describing what problem needs to be solved, what mission related function is to be addressed, program authorization documents, the results of discussions with project owners and stakeholders, etc. The SOO maximizes the offeror's ability to plan their own program for meeting the Government's acquisition requirement.

Quality Assurance Surveillance Plan: Is a tool for assessing contractor success as it relates to achieving the desired outcome. Plans may be developed by the agency that include metrics, level of quality, performance standard, etc., and recognize the responsibility of the contractor as discussed in FAR 37.602; however, whenever possible a commercial Quality Assurance Surveillance Plan (QASP) may and should be relied upon for quality indicators of specific performance objectives. For example, the International Standards Organization (ISO) has established quality standards series ISO 9000 which are quality management standards that apply to most organizations in most business areas, e.g., manufacturing, servicing, computing, electronics, etc. Commercial standards may be used in contracts that have a direct relationship to a specific performance standard and were designated for use in the solicitation. In addition, since QASP are intended to be living documents which are to be revised or modified as the situation warrants, contractual language for negotiated changes to metrics and measures should be included in all PBSA contracts. The language should be designed to preserve the government's right to review and revise as necessary.

Contract Type Order of Precedence: Legislation has designated an order preference for Performance Based Service Acquisition which provides for the use of simplified commercial procedures. The order is as follows:

- Firm-fixed price performance-based contract or task order.
- Non-firm-fixed price performance based contract or task order.
- Contract or task order that is not performance-based.

While, historically firm-fixed price was the preferred contract type for PBSA it was not always the best motivator of performance. Contract type choice should be used as a motivator of superior performance, e.g., when risk is minimal or predictable use firm-fixed price, when risk is questionable or changeable make the most appropriate contract type selection other than firm-fixed.

PART III - SPECIAL CIRCUMSTANCES

Commercial Items

The Federal Acquisition Streamlining Act of 1994 (FASA) promoted the acquisition of "commercial items" and made many changes in the acquisition of services, including support services. Three Parts of the FAR were significantly revised to implement the Act's preference for the acquisition of commercial items and services. The revised Parts were Parts 10, Market Research, 11, Describing Agency Needs, and 12, Acquisition of Commercial Items.

The Act requires that agencies perform extensive market research to determine whether a commercial service is available that could fulfill its need. If such a commercial service is available, the agency must acquire that service utilizing customary commercial terms and conditions to the maximum extent possible.

For services to be considered commercial and therefore subject to the policies and procedures of FAR Part 12, the services must be for:

- installation services, maintenance services, repair services, or training services in support of a commercial item; or,
- be a type of service that is offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed.

Multiple Award Task Order Contracts

The Federal Acquisition Streamlining Act of 1994 also established a preference for the use of multiple award, task or delivery order contracts for indefinite quantity requirements. It mandated the use of that form of contract for advisory and assistance service requirements exceeding \$12,500,000 (including all options) and 3 years.¹ An indefinite quantity, task order contract is one which does not specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract. When multiple awards are required and/or appropriate, the Federal Acquisition Streamlining Act of 1994 provides that each contractor must be given a fair opportunity to be considered for each task order issued.

In the past, support services, in this Department, have routinely been purchased through level of effort, task assignment contracts awarded to a single vendor on a cost reimbursement basis. While there are exceptions to the required use of the multiple award contracts, we should expect such contracts to become more common. Multiple award task order contracts will require significantly more administrative effort as there will not only be the competition for the contracts but also a series of selections for the award of individual task orders. Monitoring the activity of

¹ Dollar threshold is subject to change. see FAR 16.503(d) for current threshold.

multiple task orders may also increase the administrative responsibilities of the Government personnel.

Detailed coverage of this new aspect of support service contracting may be found at Chapter 2 of Acquisition Letter 96-03, the Federal Acquisition Streamlining Act Implementation Handbook.

PART IV - SUMMARY AND USER AIDS**Summary**

Support service contracting is a significant portion of the Department of Energy's overall contract program. Support service contracting has two sensitive aspects:

- inherently Governmental functions may not be contracted out; and,
- contract personal services, that is those featuring employer-employee type relationships between Government and contractor personnel, are illegal.

If the market research reveals that the required support service is a service provided in the commercial market place on a firm fixed price basis and the service falls within the definition provided at FAR 2.101, it will generally be necessary to acquire the service on a fixed price basis under commercial contract terms and conditions.

Support service requirements for advisory and assistance services exceeding \$12,500,000 (including all options) and 3 years² must generally be acquired by the use of multiple award, task order contracts. Use of the multiple award approach is encouraged below the mandated threshold.

The appendices of this Guide contain several excerpts from OMB and OFPP Policy Letters providing guidance regarding the distinctions of inherently Governmental and commercial functions. Also included are checklists to aid in assessing the adequacy of draft statements of work for support service requirements. In addition, definitions of terms important to support service contracting and a bibliography are included. The latter should help the reader locate more detailed guidance concerning support service contracting.

² Dollar threshold is subject to change. see FAR 16.503(d) for current threshold.

APPENDIX A**DEFINITIONS**

Commercial items, as defined in the Federal Acquisition Streamlining Act of 1994, means installation services, maintenance services, repair services, training services and other services if in support of a commercial item and services offered and sold competitively in substantial quantities in the commercial marketplace for specific tasks performed and under standard commercial terms and conditions.

Inherently Governmental Function means a function that is so intimately related to the public interest as to mandate performance by Government employees. An inherently Governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Government functions normally fall into two categories: the act of governing, i.e., the discretionary exercise of Government authority, and monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to (1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise; (2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise; (3) Significantly affect the life, liberty, or property of private persons; (4) Commission, appoint, direct, or control officers or employees of the United States; or (5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical 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.

Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees (see FAR 37.104).

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. The contract can cover

services performed by either professional or nonprofessional personnel whether on an individual or organizational basis.

Support services are of the following types:

Technical support services include, but are not limited to, determining feasibility of design consideration; development of specifications, system definition, system review and reliability analyses; trade-off analyses; economic and environmental analyses, which may be used in DOE's preparation of environmental impact statements; test and evaluation, survey or reviews to improve the effectiveness, efficiency, and economy of technical operations.

Management support services include, but are not limited to, analyses of workload and work flow; directives management studies; automated data processing; manpower systems analyses; assistance in the preparation of program plans; training and education; analyses of Department management processes; and any other reports or analyses directed toward improving the effectiveness, efficiency, and economy of management and general administrative operations.

Maintenance and operations services include, but are not limited to, general housekeeping and custodial services, physical security, fire fighting, logistics, and maintenance.

APPENDIX B**INHERENTLY GOVERNMENTAL FUNCTIONS****Developed by the Office of Management, Budget and Evaluation, DOE**

1. Assignment and evaluation of organizational responsibilities.
2. Establishment of employment goals and priorities.
3. Selection and direction of Federal employees.
4. Evaluation of Federal employee performance.
5. Development of budget policy, guidance and strategy.
6. Determination of acquisition strategy and development of acquisition plans.
7. Selection of procurement sources.
8. Control and disbursement of Government funds.
9. Determination of the success or failure of DOE management activities.
10. Determination of reporting requirements.
11. Determination of requirements and/or approval of final design of management information systems.
12. Determination of requirements for, and approval of final design of, program or project management systems.
13. Determination of environmental impacts of energy policies and projects.
14. Determination of economic barriers and tradeoffs for particular energy technologies.
15. Establishment of technical performance criteria for energy technologies.
16. Promulgation of any regulation.
17. Determination of the legality of proposed policies.
18. Final determination(s) regarding performance of DOE projects.
19. Determination and advocacy of legislative initiatives on behalf of DOE.
20. Representation of DOE in policy matters.
21. Determination of energy production and consumption targets.
22. Establishment of performance goals, priorities and schedules.
23. Establishment of assumptions for scientific and economic models.
24. Determination of final agency action on claims for or against the United States.
25. Contract award and/or administration functions.
26. Development and formulation of program goals, policy, strategy and guidance.
27. Conduct of hearings and appeals.

Another more general list may be found at FAR 7.503(c).

APPENDIX C

COMMERCIAL ACTIVITIES

From Old OMB Circular A-76, Attachment A

EXAMPLES OF COMMERCIAL ACTIVITIES

Audiovisual Products and Services

- Photography (still, movie, aerial, etc.)
- Photographic processing (developing, printing, enlarging, etc.)
- Film and videotape production (script writing, direction, animation, editing, acting, etc.)
- Microfilming and other microforms
- Art and graphics services
- Distribution of audiovisual materials
- Reproduction and duplication of audiovisual products
- Audiovisual facility management and operation
- Maintenance of audiovisual equipment

Automatic Data Processing

ADP services - batch processing, time-sharing, facility management, etc.

- Programming and systems analysis, design, development, and simulation
- Key punching, data entry, transmission, and teleprocessing services
- Systems engineering and installation
- Equipment installation, operation, and maintenance

Food Services

- Operation of cafeterias, mess halls, kitchens, bakeries, dairies, and commissaries
- Vending machines
- Ice and water

Health Services

- Surgical, medical, dental, and psychiatric care
- Hospitalization, outpatient, and nursing care
- Physical examinations
- Eye and hearing examinations and manufacturing and fitting glasses and hearing aids
- Medical and dental laboratories
- Dispensaries
- Preventive medicine
- Dietary services

Veterinary services

Industrial Shops and Services

- Machine, carpentry, electrical, plumbing, painting, and other shops
- Industrial gas production and recharging
- Equipment and instrument fabrication, repair and calibration
- Plumbing, heating, electrical, and air conditioning services, including repair
- Fire protection and prevention services
- Custodial and janitorial services
- Refuse collection and processing

Maintenance, Overhaul, Repair, and Testing

- Aircraft and aircraft components
- Ships, boats, and components
- Motor vehicles
- Combat vehicles
- Railway systems
- Electronic equipment and systems
- Weapons and weapon systems
- Medical and dental equipment
- Office furniture and equipment
- Industrial plant equipment
- Photographic equipment
- Space systems

Management Support Services

- Advertising and public relations services
- Financial and payroll services
- Debt collection

Manufacturing, Fabrication, Processing, Testing, and Packaging

- Ordnance equipment
- Clothing and fabric products
- Liquid, gaseous, and chemical products
- Lumber products
- Communications and electronics equipment
- Rubber and plastic products
- Optical and related products
- Sheet metal and foundry products
- Machined products
- Construction materials
- Test and instrumentation equipment

Office and Administrative Services

- Library operations
- Stenographic recording and transcribing
- Word processing/data entry/typing services

- Mail/messenger
- Translation
- Management information systems, products and distribution
- Financial auditing and services
- Compliance auditing
- Court reporting
- Material management
- Supply services

Other Services

- Laundry and dry cleaning
- Mapping and charting
- Architect and engineer services
- Geological surveys
- Cataloging
- Training -- academic, technical, vocational, and specialized
- Operation of utility systems (power, gas, water steam, and sewage)
- Laboratory testing services

Printing and Reproduction

- Facility management and operation
- Printing and binding -- where the agency or department is exempted from the provisions of Title 44 of the U.S. Code
- Reproduction, copying, and duplication
- Blueprinting

Real Property

- Design, engineering, construction, modification, repair, and maintenance of buildings and structures; building mechanical and electrical equipment and systems; elevators; escalators; moving walks
- Construction, alteration, repair, and maintenance of roads and other surfaced areas
- Landscaping, drainage, mowing and care of grounds
- Dredging of waterways

Security

- Guard and protective services
- Systems engineering, installation, and maintenance of security systems and individual privacy systems
- Forensic laboratories

Special Studies and Analyses

- Cost benefit analyses
- Statistical analyses
- Scientific data studies
- Regulatory studies

- Defense, education, energy studies
- Legal/litigation studies
- Management studies

Systems Engineering, Installation, Operation, Maintenance, and Testing

- Communications systems - voice, message, data, radio, wire, microwave, and satellite
- Missile ranges
- Satellite tracking and data acquisition
- Radar detection and tracking
- Television systems - studio and transmission equipment, distribution systems, receivers, antennas, etc.
- Recreational areas
- Bulk storage facilities

Transportation

- Operation of motor pools
- Bus service
- Vehicle operation and maintenance
- Air, water, and land transportation of people and things
- Trucking and hauling

APPENDIX D**FUNCTIONS REQUIRING INCREASED MANAGEMENT OVERSIGHT****FAR 7.503(d)**

(See FAR 37.114 for additional insights)

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Contractors providing technical evaluation of contract proposals.
9. Contractors providing help in the development of statements of work.
10. Contractors providing support in preparing responses to Freedom of Information Act requests.
11. Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information [other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)].
12. Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
13. Contractors participating in any situation where it might be assumed that they are agency employees or representatives.
14. Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
15. Contractors serving as arbitrators or providing alternative methods of dispute resolution.
16. Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
17. Contractors providing inspection services.

18. Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

APPENDIX E**ADMINISTRATION OF TASK ASSIGNMENT CONTRACTS**

A task assignment contract features a budget of dollars and labor resources which may be brought to bear on the required work based on specific task assignments. The task assignments allocate the basic contract's budget of dollars and labor resources and provide detailed guidance regarding the task to be performed.

Individual task assignments will, generally, be developed by the contracting officer's representative in the program office. Contractors should not be requested to develop task assignments. The task assignment should contain a specific description of the work to be performed, reports or products to be delivered, a period of performance, an estimate of the hours expected to be consumed, and an estimate of the cost of the task. When developing individual task assignments, the contracting officer's representative must ensure that they are within the work scope of the basic contract and that they are within the contract's budget of costs and labor types.

Upon receipt of the task assignment, the contractor will develop a proposal or task plan for accomplishing the task. The task plan must be reviewed by the contracting officer's representative to ensure that the plan will accomplish the intent of the task assignment and that it is within the contract's overall cost and labor budget constraints. If apparent problems are detected by this review, they must be discussed to ensure an understanding of the contractor's plan. At this time, it may be necessary to modify the task assignment if its performance, when combined with budget allocations of other task assignments, would exceed the contract's overall cost and labor budget constraints.

While all these activities associated with the assignment of new task assignments evolve, the contracting officer's representative must perform the normal day to day contract administration functions for other task assignments already issued. These include such duties as issuing technical direction, monitoring technical, schedule and cost performance, reviewing invoices and the like.

Successful contract administration in the support service area demands attention to the following types of duties.

- Keep a copy of the basic contract, its modifications, and all task assignments, including modifications to them, readily available and be familiar with and understand them.
- When developing new task assignments ensure that they are within the scope of work and overall cost and labor constraints of the basic contract. Specify the task assignment's deliverables and their due dates.
- Ensure that individual task assignments can be completed within the term of the basic contract.

- Ensure that the cost and labor estimates of a proposed task plan, when accumulated with those of existing task assignments, do not exceed the limitations of the contract.
- Alert the contractor and contracting officer concerning perceived problems involving budget or performance.
- Before authorizing the use of Government furnished property under a task assignment, ensure that it is provided for in the basic contract to assure accountability.

Task assignment contracts differ somewhat from office to office due to the differing nature of the work to be performed. Local operating procedures spelling out responsibilities of the various personnel should be followed closely.

APPENDIX F**CHECKLIST FOR STATEMENT OF WORK PREPARATION**

Ideally, the scope of work should be performance based. The key elements of a performance based work statement are: 1) a statement of the required services in terms of output, 2) a measurable performance standard for the output, and 3) an acceptable quality level or allowable error rate. It also specifies a standard of performance for the required tasks and the quality level the government expects the contractor to provide.

The statement of work should be sufficiently specific to permit the offeror to identify required resources (labor, materials, equipment, timing of deliveries, travel requirements, specific place of performance, etc.).

Contractor duties must be stated clearly enough to permit the technical representative to determine whether they have been completed.

Support service requirements must be defined in such a manner as to:

- avert the creation of employer-employee relationships; and,
- retain inherently Governmental functions for performance by DOE.

The statement of work must be written so that there is no question about the contractor's obligations, e.g., "the contractor shall do this work," not "this work will be required." The duties/interfaces of contractor and Government personnel must be clear.

General information should be separated from direction so that background information, suggested procedures, and the like are clearly distinguishable from contractor responsibilities.

Each task should have a completion date. If elapsed time is used, it should specify calendar days or workdays.

The section headings and content should be compatible.

Extraneous materials should be removed.

All obligations of the Government should be carefully delineated. If Government-furnished equipment is to be provided, state the nature, condition, and availability of the equipment.

Loopholes should be eliminated.

The requirements must be completely described. Specify "when" and "where" as well as "what."

Ambiguous, subjective, or "catch-all" statements should be eliminated.

The statement of work should not favor a particular source(s).

The work should be divided into tasks when possible and, when possible, feature a formal work breakdown structure.

Any necessary approvals must be stated.

All reports and documentation must be specified.

BIBLIOGRAPHY

Contracting for Support Services - What You Need To Know As A Federal Employee. This is a useful DOE brochure available at http://management.energy.gov/policy_guidance/1384.htm

Federal Acquisition Regulation (FAR) This is the Government wide regulation on contracting matters. It is officially published as Chapter 1 of Title 48 of the *Code of Federal Regulations*. Especially relevant to support service contracting are:

- Part 6 Competition Requirements;
- Subpart 7.3 Contractor versus Government Performance;
- Subpart 7.5 Inherently Governmental Functions;
- Part 10 Market Research;
- Part 11 Describing Agency Needs;
- Part 12 Acquisition of Commercial Items;
- Subpart 15.3 Source Selection;
- Part 16 Types of Contracts;
- Subpart 22.10 Service Contract Act of 1965; and,
- Part 37 Service Contracting.

Department of Energy Acquisition Regulation (DEAR) This is DOE's supplement to the FAR. This is published as Chapter 9 of Title 48 of the Code of Federal Regulations. Subpart 909.57, Organizational Conflicts of Interest, should be reviewed as it differs from the FAR.

OMB Circular A-76, Performance of Commercial Activities Contains procedures for determining whether commercial activities should be performed under contract with the commercial sector or performed in-house.

Office of Federal Procurement Policy Letter 93-1, Management Oversight of Service Contracting, http://www.whitehouse.gov/omb/procurement_index_policy/

Office of Federal Procurement Policy publication, Seven Steps to Performance-Based Services Acquisition provides detailed guidance on the implementation of performance-based service acquisition. Download at: <https://www.acquisition.gov/sevensteps/index.html>

DOE Acquisition Guide Chapter 37.1 Support Service Contracting

DOE Acquisition Guide Chapter 37.2 Performance Based Service Acquisition (Draft)