



# ACQUISITION LETTER

## AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) subsection 901.301.70.

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<u>CITATION</u>	<u>CONTENT</u>	<u>TITLE</u>
Office of Federal Procurement Policy - Policy Letter 91-2		Service Contracting
FAR 7		Acquisition Planning
FAR 10		Specifications, Standards, and Other Purchase Descriptions
FAR 15.605		Evaluation Factors
FAR 46		Quality Assurance

I. Purpose. The purpose of this AL is to provide policy and general guidance on the use of performance-based contracting concepts in Department of Energy contracts for both services and the management and operation of its weapons production and research sites and facilities.

II. Background. The February, 1994, Report of the Contract Reform Team recommended that the Department of Energy move away from traditional approaches to contracting for services and the management and operation of its weapons production and research sites and facilities to approaches that rely on performance-based contracting principles. The Department's traditional approach to contracting relied heavily on cost-reimbursement contracts, contained overly broad work statements, and lacked meaningful incentives for motivating contractors to excellent performance. The central theme of the Contract Reform Team's recommendations for performance-based contracting, particularly for contracts for the management and operating of Departmental sites and facilities, is the use of results-oriented statements of work; clear, objective performance standards and measurement tools; incentives to encourage superior contractor performance; and the providing of services at the prime or subcontract level on a fixed price basis where appropriate.

Part 10 of the FAR provides general policy relating to the development of statements of work and specifications:

- o Agencies must describe their requirements in a manner that promotes full and open competition;
- o Agencies shall use market research, when practical to promote full and open competition;
- o Agencies may use restrictive specifications only to the extent necessary to meet their minimum needs; and
- o Descriptions must reflect the agency's minimum needs and market availability.

FAR 10.002(a)(4) recognizes that work requirements can be expressed in terms of (1) function, (2) performance, and (3) design. Paragraph (b) of Section 10.002 establishes a preference for functional and performance specifications over design specifications. For purposes of performance-based contracting, either the functional or performance approach to work definition is acceptable. In either case, however, the objective is to describe the Department's expectations in terms of "what is to be done" rather than "how it is to be done." Statements of work for services should focus on the objectives of the contract as expressed in terms of technical performance/functions, reporting requirements, schedule, and cost.

**COMPONENTS OF AN EFFECTIVE PERFORMANCE-BASED  
STATEMENT OF WORK**

- o Defines Contract Goals and Objectives
- o Technical and Schedule Requirements Expressed in Terms of the Desired Results/Outcomes
- o Establishes a Basis for Performance Measurement
- o Establishes Deliverables and Other Reporting Requirements
- o Mandatory Requirements Should Be Limited to Government's Actual Minimum Needs

An effective system of advance procurement planning is an important component in implementing performance-based contracting because it offers a means of identifying early in the acquisition cycle those requirements best suited for performance-based strategies and methodologies. An efficient advance planning process enhances the ability of requirements personnel to define requirements and develop performance work statements, measures, criteria and incentives.

(i.e., overly restrictive statements of work) is generally not an issue in service and management and operating contracts awarded by the Department. Similarly, overly vague work statements may hinder competition by limiting the offeror's understanding of the requirement and increasing cost and performance risk.

6. Selection of Contract Type. Care must be exercised in selecting the appropriate type of contract. Part 16 of the FAR provides guidance to contracting personnel on the selection of contract type. A performance-based work statement does not, in and of itself, result in the selection of one type of contract over another type. Conversely, one particular type of contract does not preclude the use of performance-based contracting methodologies. In all cases, contract selection remains a decision based on such factors as performance and cost risk, extent of price competition, period of performance, and technical complexity.

Because of the inherent performance and cost uncertainties in many of the contracts awarded by the Department for technical and management services and for the operation of its production and research sites, cost-reimbursement contracts may remain the primary award vehicle. However, this situation does not negate the need for using performance-based contracting methods in these contracts. In many cases, the performance-based contracting can be achieved through applying, as appropriate, the following methodologies:

- o award of more than one contract for the same work statements with competition among contractors for specific work at the time it is identified;
- o results-oriented task statements of work efforts;
- o fixed or firm priced tasks orders and delivery orders;
- o performance criteria and measures assigned to individual orders;  
and
- o the use of contract performance as the prime determinant of whether to exercise an option to extend the contract.

## PERFORMANCE-BASED CONTRACTING CONCEPTS AND METHODS

1. General. In fulfilling the objectives of the Department of Energy's policy, to use, to the maximum extent practicable, the full range of performance-based contracting concepts and methods, contract requirements should be structured to:

- o maximize the use of results-oriented statements of work that express the Department's performance expectations in terms of outcomes or functions;
- o permit the evaluation and selection of contractors on the basis of managerial and technical excellence at fair and reasonable prices; and
- o as appropriate, assign maximum performance risk to the contractor through the careful selection of contract type and the use of objective performance standards and measures.

### KEY ATTRIBUTES OF PERFORMANCE-BASED CONTRACTING METHODS

- o Outcome-Oriented Work Statements
- o Objective Performance Standards and Measures
- o Positive and/or Negative Incentives
- o Quality Assurance

The requirements of the FAR and the DEAR relating to acquisition planning, using of performance specifications, developing evaluation and selection criteria, and Government acceptance are well-known and will not be repeated in this AL.

2. Application of Performance-Based Contracting Concepts and Methods. The Department of Energy requires a wide variety of services from the private sector to assist in technical and management support activities vital to the fulfillment of its mission. The Department's requirements for these types of services are usually recurring in nature (i.e., the need for a particular service continues beyond the instant contract), fluctuate greatly in response to varying mission activities, and require a broad spectrum of technical and managerial expertise. The Department has relied on cost-reimbursement term contracts or indefinite-delivery-indefinite quantity contracts for acquiring many of its sophisticated technical and management services. These types of contracts are characterized by a lengthy period of performance (of up to 5 years), broad statements of work, and the authorization of work (and contractor cost incurrence) through ordering instruments such as delivery

**A. Requirements Organizations.**

1. Identify contract requirements that may be suitable for performance-based contracting methods.

2. Establish and maintain baseline information to be used to measure both contractor performance and contracting improvements resulting from the use of performance-based contracting methods.

3. With regard to individual requirements-

a. Develop accurate and complete statements of work that, to the maximum extent practicable, define the Government's desired performance in terms of outcome, results or final work product.

b. Develop criteria and metrics that can be used to measure a contractor's performance in terms of quality, timeliness, and cost.

4. Ensure that requirements initiators and Contracting Officer Technical Representatives receive appropriate training in developing performance-based statements of work and administering performance-based contracts.

**B. Contracting Organizations.**

1. Act as advocates for, and assist in the development of, performance-based, results-oriented statements of work.

2. Determine the acquisition method (i.e., sealed bids, competitive proposals) and develop the Invitation for Bids or the Request for Proposals.

3. Review statements of work to ensure adequacy, including: definition of the requirement in terms of outcome, results, or final work product; representative of the Government's minimum needs; sufficiently detailed to permit contract enforcement.

4. Determine the appropriate contract type and ensure that solicitation provisions and contract clauses are compatible with the requirements and do not inhibit full and open competition.

5. Provide technical guidance and support to requirements staff in such areas as the development of performance-based, results oriented work statements, acquisition approach, and development of evaluation and selection criteria.