



**Department of Energy
Acquisition Regulation**

No. 2005-13
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ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE Procurement Executive.

Subject: **Performance-Based Service Acquisition**

References:

FAR 37.6	Performance-Based Contracting
DEAR 970.1100-1	Performance-Based Contracting
DOE Acquisition Guide Chapter 37.2	Performance-Based Service Acquisition
DOE Acquisition Guide Chapter 70.8	Performance-Based Contracting

When is this Acquisition Letter (AL) Effective?

This AL is effective 10 business days from the date of issuance.

When Does this AL Expire?

This AL remains in effect until superseded or canceled.

Who is the Point of Contact?

Contact Mr. David Leotta of the Office of Contract Management at (202) 287-1363 or david.leotta@hq.doe.gov.

Visit our website at www.pr.doe.gov for more information on Acquisition Letters and other policy issues.

What is the Purpose of this AL?

The purpose of this AL is to establish administrative requirements within contracting offices to ensure that performance-based contracting (PBC) approaches and techniques are used to the maximum extent practicable, consistent with Federal and Department of Energy (DOE) policies. This AL does not apply to the National Nuclear Security Administration (NNSA) activities, unless otherwise directed by NNSA officials.

What is the Background?

The Floyd D. Spence National Authorization Act for Fiscal Year (FY) 2001 established the statutory preference for PBC in Federal acquisitions. The Federal Acquisition Regulation (FAR) Part 37.102 establishes a preference to use performance-based contracting to the maximum extent practicable when acquiring eligible services (See FAR 37.102 regarding eligible services). PBC is addressed in the FAR in areas related to acquisition planning (FAR Part 7-105), contract structure (including the development of the Statement of Work) (FAR Part 37.602-1), contract type (FAR Part 37.602-4), contract management planning and Quality Assurance Surveillance Plans (QASP) (FAR Part 37.602-2). In summary, the objectives of Federal and Departmental policies on the use of PBC are that agencies will use PBC methods to the maximum extent practicable when acquiring eligible services, and that acquisition strategies, methods, and techniques will be carefully selected to best facilitate PBC.

What is the Guidance Provided by this AL?

Within DOE, the application and use of PBC remains a management priority and is the preferred method for acquiring eligible services, consistent with the objectives noted above.

Contracting Officers are responsible for ensuring that PBC approaches and techniques are employed to the maximum extent practicable in requirements for eligible service acquisitions. However, the Contracting Officer's responsibilities must be supported by effective management and organizational tools and controls. It is critical that contracting offices establish and maintain local procedures for the management of PBC implementation to: (1) provide management visibility and attention to ensure that the PBC methods are used to the maximum extent practicable; (2) ensure that adequate and appropriate training is provided in a timely manner for contracting professionals, requirements initiators, and Contracting Officer Representatives (CORs) involved in the award and administration of PBCs; (3) ensure that acquisition planning activities fully consider and apply PBC methods; and (4) provide for periodic assessment of contract awards and reporting data.

What Actions are Necessary to Promote PBC?

Each Procurement Director (PD) shall establish and maintain local procedures to manage PBC, to include:

- PD approval of the non-use of PBC for an eligible service contract requirement. This is to be a non-delegable approval requirement;

- The review of Acquisition Plans (AP) to ensure that the use of performance-based contracting is addressed. The review shall ensure that the AP addresses:
 - The extent to which the proposed procurement/contract uses performance based contracting techniques;
 - How performance objectives and measures will be developed and how they are linked to strategic and tactical goals; and
 - How the contractor's performance will be assessed and if a quality assurance plan will be required of the contractor.
- The designation of a point of contact within the contracting office responsible for promoting the use of PBC;
- Monitoring PBC performance goals contained in the Balanced Scorecard (BSC) for the Federal Procurement system to ensure goals are being achieved and that contract reporting is accurate;
- Assessing annually non-PBC service contract awards to include recommendations as to requirements that may have the potential to be converted and what would be necessary to accomplish that conversion.
- Periodic formal and informal training for contracting staff, requirements initiators, and CORs responsible for the award and administration of PBCs, such as:
 1. Training in advance of the designation of a Source Evaluation Board or Technical Evaluation Committee;
 2. Specific training focused on the development of a Performance Work Standard (PWS) and QASP;
 3. Contract administration to ensure compliance with terms and conditions of the contract and maintaining formal documentation of contractor performance.
- Periodic random sampling and analysis of Contract Management Plans and QASPs to ensure that they are being prepared in accordance with policies and guidance and that, where applicable, Headquarters review and approval is being obtained.