Subpart 1437.1 - Service Contracts - General

Parent topic: PART 1437 - SERVICE CONTRACTING

1437.102 Policy.

The HCA is responsible for establishing internal review and approval procedures for service contracts in accordance with OFPP Policy Letter 93-1, Management Oversight of Service Contracting. Special attention shall be directed to avoidance of contracting for inherently governmental functions, as well as contract administration in the area of incurred cost monitoring to complement work progress monitoring.

1437.103 Contracting officer responsibility.

(a) While recognizing that program officials are responsible for accurately describing the need to be filled or the problem to be solved through the service contract, COs shall:

(1) Award and administer contracts in a manner that will provide the customer with quality services on time and within budget;

(2) Ensure that requirements are clearly defined and appropriate performance standards are included in the contract;

(3) Utilize the checklist in paragraph (b) of this section, or bureau substitute, to ensure compliance with general policies and the specific guidance in OFPP Policy Letters 92-1, Inherently Governmental Functions, 91-2, Service Contracting, and 89-1, Conflicts of Interest Policies Applicable to Consultants;

(4) Work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards;.

(b) Following is a checklist to aid analysis and review of requirements for service contracts.

(1) *General.*

(i) Is the statement of work complete, with a clear-cut division of responsibility between the contracting parties?

(ii) Is it stated in terms the market can satisfy?

(iii) Does the statement of work encompass all commercially available services that can meet the actual functional need (eliminates any nonessential preferences that may thwart full and open competition)?

(iv) Is the statement of work performance-based to the maximum extent possible (i.e., is the acquisition structured around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or a broad and imprecise statement of work? Does the statement of work follow OFPP Pamphlet IV, A Guide to Writing and Administering Performance Statements of Work for Service Contracts (Supplement 2 to OMB Circular A-76)?, as described in

OFPP Pamphlet IV?)

(2) *Inherently governmental functions.* If the response to the first question below is affirmative, the contract requirement is for an inherently Governmental function that Government officials must perform. If the response to the second question below is affirmative, the contract may be for an inherently governmental function.

(i) Is the requirement for a function that is listed in Appendix A of OFPP Policy Letter 92-1?

(ii) If the function is not listed in Appendix A, do any of the factors in the totality of the circumstances analysis discussed in section 7(b) of the Policy Letter 92-1 indicate that the function may be inherently governmental?

(iii) Are Government employees currently performing the task to be contracted out? If so, has OMB Circular A-76 been consulted?

(3) *Cost effectiveness.* If the response to any of the following questions is negative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner.

(i) Is the statement of work written so that it supports the need for a specific service?

(ii) Is the statement of work written so that it permits adequate evaluation of contractor versus in-house cost and performance?

(iii) Are the choices of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan appropriate to ensure good contractor performance to meet the user's needs?

(iv) If a cost reimbursement contract is contemplated, is the acquisition plan adequate to ensure that the contractor will have the incentive to control costs under the contract?

(v) Is the acquisition plan adequate to address the cost effectiveness of using contractor support (either long-term or short-term) versus in-house performance?

(vi) Is the cost estimate, or other supporting cost information, adequate to enable the contracting office to effectively determine whether costs are reasonable?

(vii) Is the statement of work adequate to describe the requirement in terms of what is to be performed as opposed to how the work is to be accomplished?

(viii) Is the acquisition plan adequate to ensure that there is proper consideration given to quality and best value?

(4) *Control.* If the response to any of the following questions is negative, there may be a control problem.

(i) Are there sufficient resources to evaluate contractor performance when the statement of work requires the contractor to provide advice, analysis and evaluation, opinions, alternatives, or recommendations that could significantly influence agency policy development or decision-making?

(ii) Does the quality assurance plan provide for adequate monitoring of contractor performance?

(iii) Is the statement of work written so that it specifies a contract deliverable or requires progress reporting on contractor performance?

(iv) Is agency expertise adequate to independently evaluate the contractor's approach, methodology, results, options, conclusions or recommendations?

(v) Is the requirement for a function or service absent from the list in Appendix B of OFPP Policy Letter 92-1? If it is similar to a function or service on that list, greater management scrutiny may be required.

(5) *Conflicts of Interest.* If the response to any of the following questions is affirmative, there may be a conflict of interest.

(i) Can the potential offeror perform under the contract in such a way as to devise solutions or make recommendations that would influence the award of future contracts to that contractor?

(ii) If the requirement is for support services (such as system engineering or technical direction), were any of the potential offerors involved in developing the system design specifications or in the production of the system?

(iii) Has a potential offeror participated in earlier work involving the same program or activity that is the subject of the present contract wherein the offeror had access to source selection or propriety information not available to other offerors competing for the contract?

(iv) Will the contractor be evaluating a competitor's work?

(v) Does the contract allow the contractor to accept its own products or activities on behalf of the Government?

(vi) Will the work under this contract put the contractor in a position to influence government decision-making, *e.g.,* developing regulations that will affect the contractor's current or future business?

(vii) Will the work under this contract effect the interests of the contractor's other clients?

(viii) Are any of the potential offerors, or their personnel who will perform the contract, former agency officials who - while employed by the agency - personally and substantially participated in the development of the requirement for, or the procurement of, these services within the past two years?

(6) *Competition.* If the response to any of the following questions is negative, completion may be unnecessarily limited.

(i) Is the statement of work defined so as to avoid overly restrictive specifications or performance standards?

(ii) Is the contract formulated in such a way as to avoid creating a continuous and dependent arrangement with the same contractor?

(iii) Is the use of an indefinite quantity or term contract arrangement appropriate to obtain the required services?

(iv) Will the requirement be obtained through the use of full and open competition?

1437.170 Special service contract requirements.

The following types of services shall be acquired as specified in the following Departmental regulations:

(a) Aircraft-related services and maintenance shall be acquired as prescribed in 353 DM;

(b) Audiovisual services, including motion pictures, slide shows and videotape recordings, shall be acquired as prescribed in 471 DM 1;

(c) Information-technology services shall be acquired as prescribed in 376 DM 4;

(d) Guard services for safeguarding classified information shall be acquired as prescribed in 442 DM 8;

(e) Printing services shall be acquired as prescribed in 314 DM 1;

(f) Contracts which require collection of identical information from ten or more members of the public shall be cleared as prescribed in 381 DM 12.