

## 37.102 Policy.

(a) *Performance-based acquisition* (see [subpart 37.6](#)) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts or orders, agencies *must*-

(1) Use *performance-based acquisition* methods to the maximum extent practicable, except for-

(i) *Architect-engineer services* acquired in accordance with [40 U.S.C. 1101 et seq.](#);

(ii) *Construction* (see [part 36](#));

(iii) *Utility services* (see [part 41](#)); or

(iv) Services that are incidental to supply purchases; and

(2) Use the following order of precedence (Public Law 106-398, section 821(a));

(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.

(b) Agencies *shall* generally rely on the private sector for *commercial services* (see OMB Circular No. A-76, Performance of Commercial Activities and [subpart 7.3](#)).

(c) Agencies *shall* not award a contract for the performance of an inherently governmental function (see [subpart 7.5](#)).

(d) Non-personal *service contracts* are proper under general *contracting* authority.

(e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through *service contracting* in a manner that ensures full understanding and responsive performance by contractors and, in so doing, *should* obtain assistance from *contracting* officials, as needed. To the maximum extent practicable, the program officials *shall* describe the need to be filled using *performance-based acquisition* methods.

(f) Agencies *shall* establish effective management practices in accordance with Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in *service contracting*.

(g) Services are to be obtained in the most cost-effective manner, without barriers to *full and open competition*, and free of any potential conflicts of interest.

(h) Agencies *shall* ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

(i) Agencies *shall* ensure that *service contracts* that require the delivery, use, or furnishing of *products* are consistent with [subpart 23.1](#) (see [23.104\(c\)](#)).

(j) Except for DoD, see [15.101-2\(d\)](#) for limitations on the use of the lowest price technically

acceptable source selection process to acquire certain services.

**Parent topic:** Subpart 37.1 - Service Contracts-General