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Performance-Based Contracting – A Hidden Risk

In March of 2005 the Services Acquisition Reform Act Advisory Committee of the Office of Management and Budget set a government-wide goal of having 40 percent of contracts be performance-based. In a March 2005 meeting they gave the recommendation to define two distinct categories of performance-based acquisition.

- Transformational use where the government knows the problem or problems to be addressed but places the risk on the contractor to develop a solution that will meet performance goals.
- Transactional use describes acquisitions where the government knows how the work should be approached and sets performance metrics tied closely to the tasks to be performed.

Historically contractors performed to government-dictated specifications and avoided liability for incidences surrounding its products or services based on the "doctrine of sovereign immunity." With the move to transformational acquisitions where the contractor develops the product or service solution to meet the governments desired results there is a significant realignment of risk and liability.

While most contractors recognize the risk of being able to do what they say they will do and to provide the level of performance that the government requires, many are not recognizing the hidden risk of improper liability coverage. If you have the same level of insurance coverage now as you did five years ago chances are your insurance coverage is not what it should be. Contact your risk assessment advisor immediately.