

## 37.103 Contracting officer responsibility.

(a) The *contracting officer* is responsible for ensuring that a proposed contract for services is proper. For this purpose the *contracting officer shall*-

(1) Determine whether the proposed service is for a personal or *nonpersonal services contract* using the definitions at [2.101](#) and [37.101](#) and the guidelines in [37.104](#);

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with-

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in [37.104\(b\)](#), and

(iii) Any further documentation that the *contracting agency may* require.

(b) *Nonpersonal services contracts* are exempt from the requirements of paragraph (a)(3) of this section.

(c) Ensure that *performance-based acquisition* methods are used to the maximum extent practicable when acquiring services.

(d) Ensure that contracts for *child care services* include requirements for criminal history background checks on employees who will perform *child care services* under the contract in accordance with [34 U.S.C. 20351](#) and agency procedures.

(e) Ensure that service contractor reporting requirements are met in accordance with [subpart 4.17](#), *Service Contracts Inventory*.

**Parent topic:** [Subpart 37.1 - Service Contracts-General](#)