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Statement of

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before the

Committee on Homeland Security

United States House of Representatives

"Performance-Based Acquisition: Creating Solutions or Causing Problems?"

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Chairman Thompson, Ranking Member King, and members of the Committee, I represent Acquisition Solutions, Inc. (Acquisition Solutions), a company that helps public-sector organizations leverage the acquisition process to better achieve government missions. I commend the Chairman and Ranking Member for holding this hearing to examine how the Department of Homeland Security can best use the principles of performance-based acquisition (PBA) to secure our Nation, its people, and our infrastructure and economy.

Thank you for this opportunity to testify on a topic for which we have an abundance of both experience and passion. Our commitment to performance-based approaches to acquisition in the public sector extends back many years. Acquisition Solutions' research, training, and consulting work with acquisition professionals over the past decade have yielded insights into best practices—as well as practices or factors that increase risk—in implementing performance-based acquisition. My testimony today offers a basic overview of the key tenets of PBA, challenges to its implementation, and keys to success based not only on our corporate experience but also on the insight and knowledge obtained from government acquisition professionals who have front-line practical experience implementing PBA.

Inasmuch as this is Public Service Recognition Week, let me also take a moment to recognize all those dedicated public servants who support the government's acquisition processes. While not the topic of this hearing, today's acquisition workforce confronts many challenges that also affect the government's ability to implement PBA. We all owe a debt of gratitude to these hard-working professionals who do their best every day to meet the complex demands of today's dynamic federal acquisition process.

What Is Performance-Based Acquisition?

What is performance-based acquisition? The Federal Acquisition Regulation (FAR) defines PBA as "an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed."

> For example, an agency sought help promoting a federal program to increase public participation. The agency established an objective of increasing public participation by 5 percent annually and solicited proposals for help in promoting the program to achieve that objective. In the words of the agency project manager, "[F]ederal bureaucrats don't know much about advertising. That's not what we do. So let's hire people who know what they're doing, who are tried and tested." Several vendors competed for the contract offering a variety of approaches to the promotional campaign as well as to how to track results. The winning contractor has proven an exemplary partner, and the contract has enabled the agency to exceed its goals for increased participation.

The key, of course, is holding the contractor accountable for achieving the results proposed and ensuring that the results proposed are consistent with the program's performance objectives.

The FAR defines performance-based acquisitions as having three mandatory elements: (1) work stated in terms of outcomes or results, rather than a stated method of performance; (2) measurable performance standards and (3) a method of assessing contractor performance. A recommended fourth element is the use of appropriate performance incentives. The first three elements comprise a "litmus test" for determining whether a solicitation or contract truly is performance-based. The FAR permits agencies to use either a performance work statement (PWS) or a statement of objectives (SOO). In response to a SOO, offerors develop performance work statements to reflect their respective proposed solutions to achieve the stated objectives.

The Performance-Based Seven Steps Process

Acquisition Solutions was the industry partner on the interagency team that developed the original Seven Steps to Performance-Based Acquisition guide (focused on the acquisition of services). That innovative methodology prescribed the following seven steps for success with PBA:

1. Establish an integrated project team
2. Describe the problem that needs solving
3. Examine private-sector and public-sector solutions
4. Develop a performance work statement or statement of objectives
5. Decide how to measure and manage performance
6. Select the right contractor
7. Manage performance

The Office of Federal Procurement Policy has endorsed the Seven Steps approach to PBA as guidance to promote the use of PBA throughout the federal government.

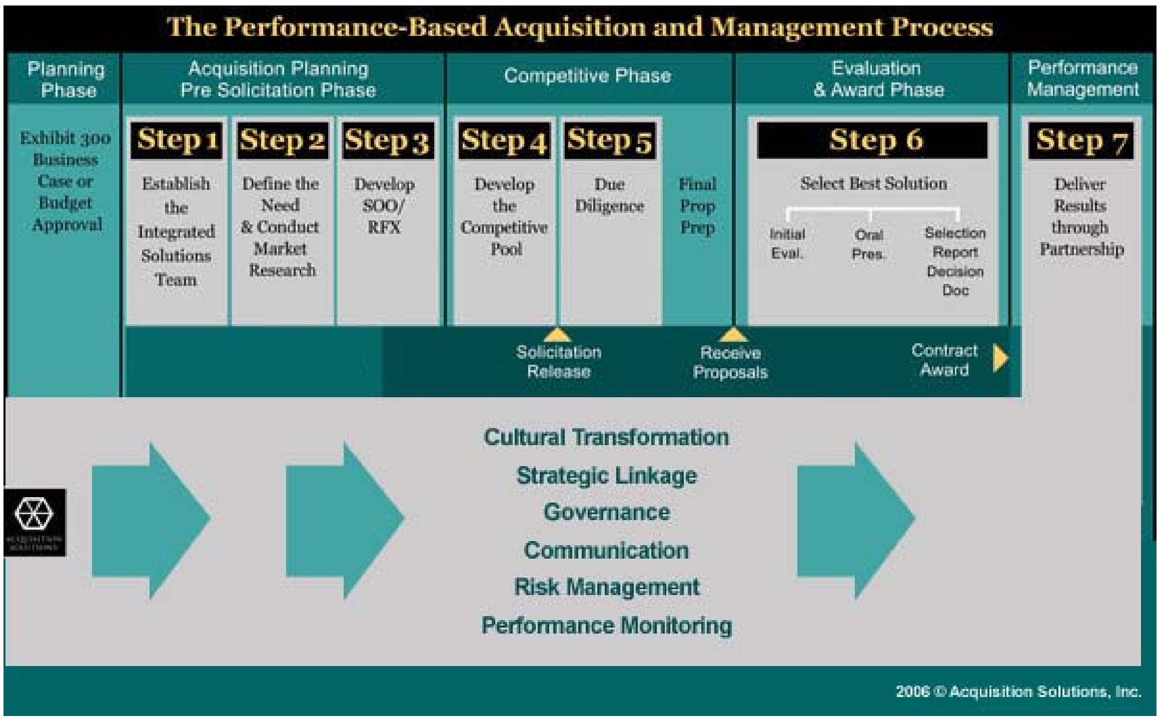
The intent of the Seven Steps guide is to make the concept of performance-based acquisition accessible and logical for all and to shift the paradigm from traditional "acquisition think" and simple contract compliance to an environment of collaborative, performance-oriented teamwork with a focus on program performance, improvement, innovation, and accountability.

Performance-based acquisition offers the potential to dramatically transform the nature of service delivery and permit the federal government to tap the enormous creative energy and innovative nature of private industry. How can this be done? By implementing the Seven Steps approach—combined with what we call the Six Disciplines of Performance-based Project Management:

1. Cultural Transformation
2. Strategic Linkage
3. Governance
4. Communication
5. Risk Management
6. Performance Management

We emphasize the Six Disciplines of Performance-based Project Management because contract award represents just the beginning of the acquisition life cycle—success is defined by achievement of the program objective.

The following chart represents the sequence of the Seven Steps as refined by and interwoven with the Six Disciplines.



In short, the Seven Steps methodology takes a life-cycle approach that operates on the premise that agencies fare best when they contract for ***results*** instead of mere ***compliance*** with predetermined government solutions. The acquisition process should focus on ***what*** the contractor must deliver to support mission accomplishment, not dictate ***how*** the contractor should accomplish the work.

> In the marketing contract example mentioned previously, the agency described its objective as a 5 percent increase in public participation in the program and looked to the marketing industry for ***how*** to promote the program to generate that increase. The agency monitors performance against the desired results of the

marketing program, that is, in terms of its effect on participation levels. The agency and the contractor identify issues and opportunities through constant communication. They work together to resolve issues and capture opportunities. The contract has enabled the agency to exceed expectations for increasing participation in the program.

Opportunities and Challenges

So if the legal and regulatory intent for performance-based acquisition are clear—to structure an acquisition around the results to be achieved—and there is a defined methodology and defined disciplines for performance, why are there challenges? Federal policy has encouraged performance-based contracting for more than 25 years. Yet progress has been slow for many reasons.

PBA offers a structured, collaborative process to reduce risk in complex acquisitions. Legislative reforms have mandated a more mission-focused acquisition process and offered the potential to speed the contracting process, but they did not make federal acquisition simpler. The scale, scope, and urgency of programs are greater than ever before. Addressing these monumental challenges in compressed time frames often demands service-based solutions that involve developmental components and draw on contributions across many industry sectors, which compels multiple contractors to join in complicated teaming alliances. Acquisition success also often requires communications on highly sensitive and controversial topics that involve coordination with many stakeholder groups, including specific constituencies both inside and outside the government. Following the Seven Steps process with the Six Disciplines of Performance-based Project Management promotes alignment around objectives that all stakeholders agree constitute "success" and increases transparency in the process, which lays the foundation of accountability for both the government and the contractor.

PBA creates an opportunity for cultural transformation, to focus on results. Making the shift to focus on outcomes versus specified tasks or levels of effort requires a transformation in culture, perspective, and thinking. Without training and other support for implementing PBA techniques, many government acquisition professionals still follow a procurement process that first requires the development of a detailed statement of work or a specification that prescribes how the contractor should perform the work and then rely on monitoring compliance with that specification to manage execution. Many who take on this task believe a "tight spec is a good spec," that the contractor must be told exactly what to do, how to do it, what labor categories to provide, what minimum qualifications to meet, and how many hours to work. But what if the contractor follows the government's instructions to the letter and the result is still unacceptable? It is the government's tightly specified "solution" that is at fault, not the contractor's performance. The government and, ultimately, the public bear the risk and consequences of failure.

PBA focuses on achieving clarity and consensus on objectives that foster alignment of all stakeholders around common goals to enable acquisitions to move forward efficiently to successful execution. In the rush to "get to award"—a rush sometimes imposed on acquisition professionals—agencies often do not invest enough time up front to define clear objectives that take into account all stakeholder interests. Getting alignment on objectives facilitates defining requirements and establishing metrics directly linked to delivering results that all stakeholders agree constitute "success."

Recognizing that the contracting community cannot implement performance-based contracting on its own, changes made to FAR part 37 in January 2006 mandated that program offices describe government needs using PBA methods. These changes acknowledged that, in fact, many stakeholders have an impact on the execution of any program, particularly in the case of large and complex services acquisition programs.

Laws, policies, and regulations have transformed the acquisition process dramatically, to operate with a mission-based and program-based focus. Accordingly, acquisition teams must get input and draw on the skills of individuals from many different functional areas. In addition to technical and contracting staff, for example, program, financial, public affairs, and oversight offices add value to successful acquisition teams. These individuals add fresh perspective, insight, energy, and innovation to the process—but they may lack some of the background and experience in contracting and program management that acquisition often requires.

On the industry side, many companies have been frustrated by a system that doesn't allow them to offer or deliver their best solutions. However, others have become comfortable with the old process of simply giving the customers what they ask for—not necessarily what they need. Under that traditional approach, accountability for program results rests solely with the government, and the contractor is accountable only for meeting the contract specifications. Performance-based acquisition practices call for a different understanding of acquisition by both government and industry, one that promotes a more equitable allocation of risk and responsibility, where success requires a partnership between the government and the contractor to deliver results.

Planning for and investing in post-award management lays the foundation for an effective partnership for PBA success in the critical delivery phase of the acquisition life cycle. The intense focus on contract formation and award too often leads agencies to underestimate the challenge of managing to deliver results, as well as the need to identify, assess, monitor, and manage risks in performance. We are struck by the fact that when challenges emerge, many involve managing the implementation of contracts after award. Unfortunately, the federal government is at least as short on experienced program and project managers as it is short on contracting officers and contract specialists.

> Regarding particularly complex contracts, federal acquisition professionals have shared sentiments such as, "This was new. It was developmental. It was risky.

> And we assumed up front that [being] performance based, the contractor comes in, proposes a solution, we evaluate the solution, we accept it, we provide money for it, we set up an incentive fee structure, and then we take a step back. Well, as it turns out there was no taking a step back. As a matter of fact one of the issues is that it required more resources to manage than anyone expected."

To help improve the acquisition community's understanding of PBA, including managing risk in complex programs, Acquisition Solutions has stimulated discussions and debate focused on the experiences of those who have awarded performance-based acquisitions and dealt with the challenges of managing performance.

> In one example, the government program manager shared that "We knew that we needed to find a way to manage costs and schedule, and we talked about an Earned Value Management System. But I think that we really didn't put it into place. I would say those elements that were really needed for this type of [contract] … from a risk management plan to an issue resolution to a change management plan. We needed to have put [those] in place before hand, and started that, other than just talking about and setting up a framework."

We have captured these experiences to share through publications and at conferences with the larger community seeking to understand and implement performance-based acquisition. Indeed, these lessons learned can apply to conducting and managing complex procurements *of any type.*

Keys to Performance-Based Success

Let me summarize some of the key findings and observations we have collected with respect to PBA.

Take time to analyze and understand the real requirement and real objectives

Start with the end in mind. One practitioner said, "We didn't know at the beginning whether we had a project management requirement, an information technology requirement, or an engineering requirement." As it turned out, the requirement was all those things and more. Another observed that this is really hard work and may at times require a champion with highly developed facilitation skills. He observed, "People who can't define requirements also can't define objectives." Following the Seven Steps process and investing the time up front to get clarity and consensus on objectives facilitates defining clear requirements and establishing metrics that promote alignment, to enable the acquisition team to move forward to meet those objectives efficiently and effectively.

Take time with market research, especially if the acquisition will lead to transformational change

Learn from the experiences of others to determine what has worked well and what has not. Market research with industry and similarly situated organizations provides federal agencies with a powerful tool to avoid “reinventing the wheel”—to capitalize on past success and avoid pitfalls that others have suffered. In our discussions with federal PBA practitioners, one practitioner credited his agency’s *year* of market research as important to transformational change management. But agencies often believe they already have done their homework. Another practitioner observed that his agency had at first considered more market research to be wasted time, but it ultimately helped inform the development of the statement of objectives and “it paid off in the end.” The highly successful performance-based acquisition won kudos from the program office.

Plan for post-award contract management at the start

FAR 7.105 provides that written acquisition plans must address contract administration, but mission-critical performance-based buys require much more comprehensive planning. We also find higher PBA success rates when agencies employ performance-based project management disciplines from the outset and maintain continuity of the project team throughout the acquisition life cycle. I have described an approach to performance-based management that sets forth six disciplines: cultural transformation, strategic linkage, governance, communication, risk management, and performance monitoring. Planning for—and beginning to execute—these disciplines begins early in the acquisition life cycle.

For example, doing a performance-based acquisition lays the foundation for cultural transformation. It takes training and readiness on many levels: an understanding of performance-based techniques, a ready attitude, a well-prepared team (with structure, policies, and a communications plan), and the management skills to oversee performance-based contract work. Other success factors include (1) evaluating the competing contractors’ proposed approaches to contract performance management and measurement, and (2) keeping the critical members of the government team on the project after award. Strategies for governance, risk management, and performance monitoring are especially important during the pre- and post-award phases. To ensure a smooth start up and to lay the foundation for delivery success, the acquisition plan must include investment to ensure that the agency has adequate resources to staff program and contract management functions from the outset after award.

Take necessary steps to ensure clarity in what the government is buying under the contract in terms of performance, cost, and schedule.

Pay close attention to the contractor’s proposed work breakdown structure to ensure that it reflects a thoughtful plan with adequate resources to manage performance risks and deliver results in line with agency objectives. This evaluation is critical. One practitioner said, “Once contract performance was under way, we weren’t sure what we agreed to.” That required a lot of discussions. Another said, “The contractor submitted a work breakdown structure that didn’t address refinement of the requirements.” Another observed that “a critical part of a performance-based evaluation is the quality of the contractor’s work breakdown structure and what it conveys about performance risk. Is it comprehensive, and does it identify a well-conceived approach to getting the desired outcome results? Does it reflect an understanding of the agency’s objectives?”

Are you buying the work activities—*generally not under a performance-based contract*—or are you buying the results of those activities, in the terms of performance metrics, specified results or outcomes, or service-level agreements? Payment should be tied to results, not moving through a list of planned activities. Another practitioner noted, “If the contract is structured for payment based on results, and not for activities, then the contractor is on the hook to achieve the results. The risk of performance is the contractor’s.” Metrics must be established before contract award, preferably in the heat of competition, and link directly to achieving the desired results.

Make sure the contractor’s incentives are aligned with what’s best for the agency and the program

There is an old adage that says, “What gets measured gets done.” It is critical, therefore, to take care in crafting the incentives for a performance-based contract, so that the incentives appropriately motivate the contractor to deliver the desired results. Even better than aligned objectives are objectives that become an inherent part of the contractual structure.

> One practitioner told us, “The best incentive is one that is built in. A great example was a contract for loan servicing. The objective was for a loan-servicing contractor to ensure that mortgage loan payments were collected from the debtors on time. We were giving a lot of thought to how we should incentivize the contractor to reduce the delinquent loans. Then we learned [through market research with industry leaders] that the industry practice is that the loan server only gets paid for performing loans! In the commercial market, they receive a percentage of every loan payment and therefore have a built-in incentive to maximize the number of performing loans. This negated the need for extensive award or incentive fee boards and calculations. This was a real eye-opener ... and clearly an inherent incentive.”
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> Another practitioner said, “One way to ensure that incentives are appropriate to the effort is to encourage offerors to propose them. Many times, the incentives proposed will be more closely aligned with the desired outcomes than those the government would have crafted. It also is a great method to see if the offerors really understand the linkage between what they recommend be measured and the government’s objectives. What they identify as measures and metrics, where they set the bar for performance, and the linkage between the metrics and the government’s objectives are powerful discriminators in the source selection.”

Consider the life-cycle implications of the solution

Some solutions have a long cost or logistics tail in their implementation. “We made companies responsible for design and development without considering maintenance,” said one federal practitioner. As a result, every vehicle delivered under that contract has multiple pumps, of various configurations and manufacturers, creating a logistics nightmare. “You must consider configuration standardization and control, maintainability, and logistics.”

Start right, provide resources, and manage through it

To ensure a smooth start up and lay the foundation for delivery success, agencies must devote adequate resources to staff program and contract management functions from the outset after award. Begin thinking about managing the contract early in the acquisition planning phase, and culminate the plans with a formal contract management plan that is reviewed during the contract’s kick-off meeting immediately after award. Use that meeting to reiterate the governance model, communications strategy, risk management process, and performance monitoring approach.

From the moment of contract award, ask, “How are *we* going to be successful?” Monitor contractor performance beginning the day of contract award. If it appears there is not a shared understanding of performance, fix it immediately. In the cases discussed at our forum in which performance problems emerged, agency teams recognized the problem within the first few months and began to take action to correct it. One practitioner said his team had used monitoring tools and had found out faster than they would have otherwise that “the ship was about to hit the shoals.”

Manage risk

Organizations that practice PBA are more attuned to identifying, assessing, and managing risk than are compliance-based organizations. Under the compliance model, risk often is ambiguous; the contract simply requires the contractor to perform. However, if the government directs the work or micromanages the contractor, who is responsible for failures? This question frequently is the crux of performance delays and contract disputes. Performance-based acquisition focuses on achieving results and highlights the need to manage risk. In the PBA environment, the government and contractor work together to identify, assess, and mitigate risks before problems occur.

The risks most likely to have a significant impact on the project need to be identified through analysis and should be prioritized, and someone needs to be assigned to develop mitigation actions. Then the risks must be tracked and reported on a regular basis.

Understand and plan for the impact that budgetary issues can have on your performance-based contract

While it is current policy that firm-fixed-price contracts are the preferred contract type (versus time-and-materials [T&M] contracts), there are some significant challenges inherent in funding a major fixed-price acquisition. Civilian agencies cannot incrementally fund fixed-price contracts. Yet the funding process often is not designed to fund major services acquisitions—such as systems acquisitions—up front.

> One federal PBA practitioner noted, “We have a carefully negotiated quality assurance surveillance plan based on ‘go live’ . . . so I can order pieces if I had to, but I’d lose the built-in incentives.” She concluded that there is a “huge gap between theory and reality.” These are unintended consequences from the budget cycle. The result is that federal agencies continue to struggle with adjusting contracts to accommodate different funding levels from Congress—these changes result in longer performance periods and changed requirements, which increase costs.
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> Another said, “Having to fully fund fixed-price contracts, we got that in spades. We were shifting from cost plus to a fixed price, so we had been incrementally funding. Then the [contracting officer] says, ‘you know you can’t incrementally fund this fixed-price contract.’ We ‘reworked the stream’ and now award in September so we can fund the next year’s entire body of work.”
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> A third practitioner indicated he had moved all his agency’s contract starts to January to avoid funding difficulties associated with continuing resolutions.

Perhaps the greatest challenge is imposed by finance organizations that insist on quarterly (or in some instances monthly) allocations of operations and maintenance budgets. While this may be easier for the finance organizations, it raises havoc with contracting. Quarterly allocations force cost-plus or T&M contract types, as they are the only ones that can be incrementally funded. In addition, this funding allocation quadruples (or worse) the number of transactions the contracting office must process.

Agencies also have encountered a “color of money” issue. In one case, an agency evaluated and selected one offer as high technical, low cost, but despite major efforts to find a way to take advantage of the solution, the agency team was unable to “rewicker the funding stream” to match the solution. One way to avoid this situation is to release funding information to contractors so you receive executable proposals.

Get offerors to develop quality assurance surveillance plans

Several practitioners told us that having each competing offeror develop a quality assurance surveillance plan (QASP) for monitoring and measuring performance was the “key” to their successful performance-based acquisitions. Rather than the government teams developing metrics for success and a plan for monitoring progress against those metrics, they required the contractor to put forward the metrics and plan. The measures proposed provide insight into how well the contractor understands the agency objectives and requirements while the rigor of the proposed monitoring plan provides a gauge of the offeror’s commitment to delivering a solution to meet those objectives.

“It was a good competition,” said one practitioner. “We got good cost, good technical, and a good QASP. It really showed who was serious. The performance-based acquisition unseated the long-term incumbent. Competition is your only friend.” Another said, “You get a good idea if they are serious based on what they put into their QASP.”

Ensure the government’s team is trained and incentivized to manage the contract post-award

Program and contracting personnel must understand the government’s role and every incentive to promote the contractor’s success in meeting shared objectives. Meeting today’s complex challenges requires a combined effort from government and industry, with federal agencies providing domain expertise about the mission and constraints on delivery to enable industry to tailor technology and leading practices to deliver the optimal solution. All members of the post-award management team – program and contracting – should have training in PBA principles to ensure operation from shared perspective focused on working with the contractor to ensure results. Maintaining continuity on the government team and ensuring succession planning plays a critical role in enabling the government to take a consistently collaborative approach to managing performance throughout the acquisition life cycle.

For developmental-type efforts, the program team will be the source for most of the requirements. The implementation contractor will be working closely with the government, especially during the requirements build-out process. *The quality of the end package is directly determined by the quality of the requirements and the software development process and resources being applied.* Discipline is a must on both sides. “It does no good to have a [Capability Maturity Model] level 5 developer, if you are a level 0 user,” said one practitioner.

Employing the Six Disciplines of Performance-Based Management from the start and maintaining continuity on the government team throughout the acquisition life cycle helps agencies improve post-award contract management. In November 2006, the Partnership for Public Service issued an excellent report on this critical issue, titled “Creating Momentum in Contract Management.” Many federal agencies, including the Department of Homeland Security, participated in this project, and the Government Accountability Office participated as an observer on the working group that developed the report. Implementing the practices and recommendations included in that report would represent a big step forward.

Conclusion

Performance-based acquisition is all about accountability and results. The Seven Steps to Performance-Based Acquisition endorsed by the Office of Federal Procurement Policy establishes a road map to successful PBA that has been proven to increase the chances for success. This road map includes the key elements of focusing on objectives and results; encouraging open communications through market research and enabling industry to provide solutions; and laying a solid foundation for effective post-award performance-based program management.

Contract award is not the end; it is the beginning of contract performance. A performance-based or result-oriented approach does not mean the government can abdicate responsibility for results. Rather, PBA contemplates that the government will focus intensely on what it knows best—its objectives—and look to industry partners to propose solutions—based on their experiences and knowledge of the marketplace—that will best meet those objectives. Yet, the ultimate key is held by the agency in its conduct of contract performance management.

It is precisely because today's projects are so large and complex—and because the workforce needs to be sure their time is focused on increasing the chances for a successful outcome—that performance-based acquisition is such an important tool. In complex programs it often is impossible to know detailed requirements up front and therefore unrealistic to expect a straight path to the ultimate solution. Delivering results requires a collaborative partnership—the government working with the contractor to overcome challenges and seize opportunities throughout performance to achieve a shared goal.

Performance-based contracting and program management processes work when applied as intended with discipline and rigor. They keep the focus on mission outcomes and align government and the industry service provider in accountability for achieving common objectives to serve the public interest.