

## **Performance Work Statement (PWS)**

### **A Discussion on Compliance Documents and Reference Documents**

Historically, the requirement document developed in support of Government acquisition efforts (often referred to as Statements of Work, Performance Work Statements, Performance Requirements Documents, etc) would include a section outlining any mandatory publications a contractor must follow to meet the requirements of the resulting contract. Once again, it's important to understand that a contractor is contractual bound to follow all mandatory publications listed in the requirements document. In addition, the Government would normally provide a list of reference or advisory publications and/or documents for the contractors' benefit. These reference publications were not mandatory from a contractual and performance standpoint; however, by referencing these documents, a contractor might be able to gain a better understanding of the required services.

Keeping the PWS layout structure in mind, the following two sections are used to list any and all mandatory and advisory documents, respectively:

- Compliance Documents (list anything “mandatory” in nature)
- Reference Documents (list anything “advisory” in nature)

Unfortunately, when one looks at past Government solicitations for the acquisition of commercial services or products, it becomes painfully obvious that the Government imposed many, many mandatory publications that often restricted industry's ability to propose better industry standards and best practices. Within the DoD, this is also true, because many of these mandatory publications would dictate exactly “how” a contractor must provide the required services or products. In addition, these mandatory publications would often cite military-unique performance standards. Of course, it didn't take too long for the Government to figure out they would need to adopt a new philosophy to ensure the adoption of commercial practices in meeting desired results and outcomes.

The birth of this new philosophy can be found in the Federal Acquisition Streamlining Act (FASA) of 1994. This act was passed by Congress to make Government acquisitions simpler, faster, and less laborious for all parties concerned. Its central premise is that the commercial industry already provides to the private sector most of the goods and services that the Government needs (the Yellow Pages serves as a good reminder of this). Moreover, free market incentives mandate that these vendors keep current with the state-of-the-art to continually ensure their products are most competitive (eg, better, cheaper, higher quality, etc). Thus, the emphasis under FASA is that the Government focus on “what” it needs in terms of results and “outcomes” rather than tell the contractor how the job must get done. Again, compliance publications that tell a contractor “how” to do something should be minimized.

Indeed, to the maximum extent possible, commercial standards, practices, terms, and conditions should be used in describing services and performance requirements in the PWS. With this in mind, as a general rule of thumb, the only time a publication should be listed as mandatory in the Compliance Document section of the PWS is if it pertains to one or more of the following criteria:

- Security
- Safety
- Environmental
- Reporting (ie, mandatory reporting requirements)
- No Commercial Standard

Remember, under the rules of an A-76 cost comparison study, the Government’s Most Efficient Organization (MEO) benefits from the waiver/removal of compliance documents as well. How? A contractor is bound by the direction provided in the cited compliance documents. This could restrict any innovation or creativity the contractor might have otherwise revealed through their technical approach/bid. The same thing is true for the MEO. In other words, the MEO’s ability to come up with new, innovative approaches to accomplishing the workload in the PWS would also be stifled by the inclusion of compliance documents.

With this background information in place, hopefully, the importance of minimizing the inclusion of compliance documents is now clear. Now, in those cases where it is absolutely necessary to include a Government directive in the compliance document section, it should be listed by specific document, chapter, and paragraph. For example:

**Compliance Documents**

<b>Availability Source*</b>	<b>Publication Number</b>	<b>Title</b>
Technical Library	AR 5-20, Ch. 2, Para. 2.1	CA Program

\* Web Address if available on-line, or Technical Library

In the example above, by listing this Army Regulation down to the specific chapter and paragraph, we are letting potential bidders and the Government’s Management Study Team know that “only” Ch. 2, Para. 2.1 is mandatory. On the other hand, by default, it lets all interested parties know that the other sections of AR 5-20 are not mandatory. The goal in being as specific as possible (ie, down to chapter and paragraph) is two-folded. First of all, it forces the functionals in the activities under study to take a hard look at their governing directives to determine which portions, if any, should be included in the PWS as compliant in nature. Secondly, it leads to the goal of “minimizing” the use of compliant documents; thereby, removing potential improvement barriers from the path of industry bidders or the Management Study Team.

In regards to the “Availability Source” column, we must identify whether the listed documents will be available for review in the Technical Library (this is usually set up and run by a contracting officer) or electronically via the Internet. If available for downloading from a public Internet site, the specific URL or web address must be listed in this column. Remember, a contractor must be able to access any web address listed (some sites are restricted to just .gov or .mil users). With the goal of keeping the acquisition effort as paperless as possible, hopefully, most of the documents will be accessible through an Internet site.

In regards to the Reference Document section, as another general rule of thumb, whatever doesn't end up in the Compliance Document section should go in the Reference Document section. Once again, from a contractual standpoint, reference documents are “advisory” in nature and do not have to be followed.

In light of acquisition reform initiatives and the Government's strong desire for best practices and innovation, we should strive to minimize the all-to-often overly prescriptive language found in many Government publications, regulations, etc.