

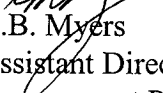


U.S. Department of Justice

Washington, D.C. 20530

April 29, 2005

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: 
H.B. Myers
Assistant Director
Procurement Policy and Review

SUBJECT: DOJ Procurement Guidance Document 05-04
Increasing the Use of Performance-Based Service Acquisitions (PBSA)

The purpose of this document is to remind you of the requirement to utilize performance-based contracting for the acquisition of services, to the maximum extent practicable. To that end, we ask that you continue to emphasize and encourage this contracting method. In addition, it implements OFPP recommendations and suggestions regarding the use and tracking of PBSA. Finally, PGD 98-4, "Performance-Based Service Contracting" and PGD 99-1, "Performance-Based Service Contracting Updates" are hereby rescinded, effective immediately.

The Department has made some progress in implementing the use of PBSA. However, we need to improve our implementation of this contracting method in order to meet the Office of Federal Procurement Policy (OFPP) 40% goal for the use of PBSA. Based on a brief analysis of FPDS data, the department as a whole is reporting use of PBSA at between 20% and 30% of eligible contracts. The data shows that some bureaus have awarded a few or no PBSA contracts while others report that a substantial number of PBSA contracts were awarded. This suggests both that information in the FPDS is incomplete or inaccurate and that too few services acquisitions are awarded utilizing performance-based methods.

You should take immediate steps to verify the data entered into the FPDS and make sure that it is accurate and complete. In addition, increase the use of PBSA whenever practicable. Suggestions and guidance from OFPP follow:

General Guidance on the Use of PBSA. OFPP issued a report, "Performance-Based Service Acquisition: Contracting for the Future" in July 2003, developed by an interagency task force that outlined recommendations to improve the quality and increase the use of Performance Based Service Acquisition (PBSA). OFPP implemented some of the task force's suggestions effective October 1, 2004. The report is located at: www.whitehouse.gov/omb/procurement/0703pbsat.pdf. OFPP rescinded its 1998 "Guide to Best Practices for Performance-Based Service Contracting".

Agencies are encouraged to use the "Seven Steps to Performance Based Service Acquisition Guide", available at www.acqnet.gov. The guide is regularly updated by an interagency team, led by the General Services Administration (GSA). It reflects new policies and best practices, and includes PBSA samples that have been reviewed and recommended by the team.

Target Achievement Level. OFPP has determined that agencies should apply PBSA methods on 40 percent of eligible service actions over \$25,000, to include contracts, task orders, modifications, and options, awarded in fiscal year (FY) 2005, as measured in dollars. OFPP, in consultation with the Chief Acquisition Officers Council will reevaluate the target achievement levels for future years based on agencies FY 2005 performance.

FPDS Reporting Changes/Exclusions. The Federal Acquisition Regulation (FAR) encourages use of PBSA to the maximum extent practicable except for the exclusions identified in FAR 37.102:

- (i) Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see Part 36), Product Service Code C***;
- (ii) Construction (see Part 36), Product Service Code Y***;
- (iii) Utility services (see Part 41), Product Service Code S1**;
- (iv) Services that are incidental to supply purchases.

OFPP has determined that if more than 50 percent of the requirement is performance-based, as measured in dollars, the service action may be coded as PBSA. With the increase in multi-purpose and hybrid service actions, agencies are encouraged to apply PBSA methods to more of their eligible service actions and should be recognized for these efforts. The Federal Procurement Data System-Next Generation (FPDS-NG) instructions will be changed accordingly. As PBSA use increases and performance goals improve, this percentage may change.

There are other types of services that may not lend themselves to outcome-oriented requirements. OFPP has determined that for reporting purposes only, the following service areas will be excluded from the list of eligible service contracts used to determine how many PBSA actions agencies are awarding:

- (1) Research and development (R&D) to include Basic Research, Applied Research, Advanced Technology Development, Demonstration and Validation, and Engineering and Manufacturing Development, Product Service Code A**1 through A**5;
- (2) Professional Medical Services (not facility-related), Product Service Code Q501 through Q527; and
- (3) Tuition, Registration & Membership Fees, Product Service Code U005.

Agencies are not precluded from using PBSA for these types of services listed above, if a performance-based approach best meets the government's needs. This change should not require

a modification to agency reporting systems, but will be used to query FPDS-NG to assess agency use of PBSA. The FPDS instructions will be revised to incorporate these exclusions.

Supplement Reports. OFPP uses FPDS-NG to assess agency PBSA performance. Some PBSA efforts may go unreported, as some agencies are not required to submit all contract data to FPDS-NG. OFPP requests that agencies provide supplement reports to accurately assess all agency efforts to achieve PBSA performance goals. Bureaus may report additional PBSA data to the Procurement Policy and Review Group (PPRG) to be forwarded to OFPP, or they may consider using FPDS-NG as a supplemental reporting tool. See <http://www.fpds.gov> for more information. Advise PPRG of the method your Bureau intends to use. The first report which will reflect FY 2005 activity is due to PPRG or FPDS-NG December 31, 2005. It shall include the total dollars obligated in the following categories:

- (1) PBSAs funded by the agency but awarded by another agency;
- (2) PBSAs awarded by the agency but funded by another agency;
- (3) PBSAs awarded by and funded by the agency; and
- (4) All eligible service acquisition awarded by the agency.

Recognize PSBA Use. Agencies are encouraged by OFPP to recognize employees and teams that successfully develop and implement PBSAs. To promote the use of PBSA techniques on eligible service actions, GSA established two awards to acknowledge the PBSA efforts of acquisition professionals: (1) the GSA Excellence in Performance-Based Service Acquisition Award, and (2) the Government-wide Award for Excellence in Performance-Based Service Acquisition. The awards recognize the PBSA efforts of acquisition professionals, and other agencies may consider using these awards as a model. More information on the awards can be found at www.acqnet.gov.

Additional Considerations. OFPP may ask agencies to submit PBSA Management Plans that outline the agency's approach to increase the use of PBSA techniques on eligible service contracts and develop core PBSA skills within the acquisition workforce.

Please contact Anne D. Hudson, DOJ Performance Based Service Acquisition Program Manager on 202/616-3759 if you have any technical questions about this Guidance Document or PBSA matters in general.