

Performance-Based Service Acquisition

Contracting for the Future



**Interagency Task Force on
Performance-Based Service Acquisition**

July 2003

**Executive Office of the President
Office of Management and Budget
Office of Federal Procurement Policy**

Foreword

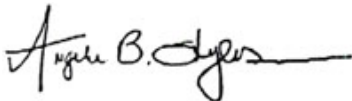
Performance-based service acquisition (PBSA) has been articulated in regulation, guidance, and policy for over two decades. During that time, agencies have made moderate progress in implementing PBSA, also known as performance-based service contracting and performance-based contracting, but have experienced difficulties in applying PBSA effectively.

In April 2002, the Office of Federal Procurement Policy (OFPP) convened an interagency working group to establish a broader understanding of the requirements of PBSA, and to identify ways to increase agency use of PBSA. The attached report includes recommendations for changes to current regulations and guidance that will give agencies more flexibility in applying PBSA effectively, appropriately, and consistently.

The group focused their efforts on three areas of change: 1) modifying the Federal Acquisition Regulation (FAR) to give agencies flexibility in applying PBSA, 2) modifying reporting requirements to ensure that PBSA is applied appropriately, and 3) improving the quality, currency, and availability of guidance. There are six recommendations that support these changes, and the report includes a brief discussion on each of these recommendations. OFPP supports these recommendations and will establish an action plan to ensure they are implemented swiftly.

Members of the interagency working group represented major service contracting agencies such as the Department of Defense (DOD), General Services Administration, the Department of Health and Human Services, Treasury Department, Department of Energy, Department of Veterans Affairs, Department of Commerce, Department of Transportation, National Space and Aeronautics Administration, Environmental Protection Agency, U.S. Nuclear Regulatory Commission, and others.

Special thanks should be given to the following people for their participation in the development of this report: Ronne Rogin, formerly of the Treasury Department, William Timperley, DOD, and Lesley Field, OFPP.

A handwritten signature in black ink that reads "Angela B. Styles". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Angela B. Styles
Administrator

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I. Executive Summary

A. Modifying the FAR.

Recommendation No. 1: Modify the FAR Part 2 to include definitions for: 1) performance work statement, 2) quality assurance surveillance plan, 3) statement of objectives, and 4) statement of work to support changes to Part 37. Modify FAR Parts 11 and 37 to broaden the scope of PBSA and give agencies more flexibility in applying PBSA to contracts and orders of varying complexity.

B. Modifying Reporting Requirements and Procedures.

Recommendation No. 2: Modify the list of eligible service codes for PBSA, as articulated in the Federal Procurement Data System (FPDS) or FPDS – Next Generation (FPDS-NG) manual, to more accurately reflect services to which PBSA can be applied. Agencies are not prohibited from using PBSA on other contracts, but for the purposes of data collection, agencies will not be evaluated on their application of PBSA to efforts that are not considered eligible service contracts.

Recommendation No. 3: Revise FPDS instructions to ensure agencies code contracts and orders as PBSA if more than 50 percent of the requirement is performance based, as opposed to the current 80 percent requirement.

Recommendation No. 4: Allow agencies that do not input data to FPDS to submit supplemental reports in order to accurately reflect their progress toward meeting the goals.

Recommendation No. 5: Consider allowing agencies to establish interim goals, but expect agencies to apply PBSA to 50 percent of their eligible service contracts (see recommendation 2 above) by 2005, in line with DOD policy.

C. Improving Guidance.

Recommendation No. 6: OFPP should rescind its 1998 Best Practices Guide and consider developing web-based guidance to assist agencies in implementing PBSA. This guidance should be kept current and should include practical information, such as samples and templates that agencies would find useful. The website should include “The 7-Steps to Performance-Based Services Acquisition Guide” and may include elements of existing guidance. The working group will explore the development a web-based PBSA site for guidance, samples, and templates.

Questions and/or comments may be addressed to Lesley Field (Lfield@omb.eop.gov), OFPP, or Bill Timperley (William.Timperley@osd.mil), Office of the Secretary of Defense.

II. Recommendations and Discussion

A. Modifying the FAR.

Recommendation No. 1: The following revisions to the FAR are proposed:

1. Add the following definitions to section 2.101:

2.101 Definitions.

“Performance Work Statement” (PWS) means a statement in the solicitation that identifies the technical, functional and performance characteristics of the agencies requirements.

“Quality Assurance Surveillance Plan” (QASP) means a plan for assessing contractor performance in order to ensure accomplishment of the government’s performance objectives stated in the contract and compliance with the appropriate inspection clauses. The level of surveillance should be commensurate with the dollar amount, risk, and complexity of the requirement.

“Statement of Objectives” (SOO) means an alternative to a performance work statement (PWS); it is a summary of key agency goals, outcomes, or both, that is incorporated into performance-based service acquisitions in order that competitors may propose their solutions, including a technical approach, performance standards, and a quality assurance surveillance plan based upon commercial business practices.

“Statement of Work” (SOW) means a statement that defines the government’s requirements in clear, concise language identifying specific work to be accomplished.

2. Revise section 11.101 to clarify the order of precedence for requirements documents by incorporating the use of statements of objectives, as follows:

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

- (1) Documents mandated for use by law.
- (2) Performance- or functionally-oriented documents (see 37.602-1).
- (3) Detailed design-oriented documents.
- (4) Standards, specifications, and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

3. Revise section 37.102(a) to clarify that PBSA is not generally compatible with procurements using term type contracts (as defined in 16.306(d)), as follows:

37.102 Policy.

(a) Performance-based contracting (see Subpart 37.6) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts, agencies must-

(1) Use performance-based contracting methods to the maximum extent practicable, except for-

(i) Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see Part 36);

(ii) Construction (see Part 36);

(iii) Utility services (see Part 41);

(iv) Services that are procured using term type contracts (see 16.306(d)); or

(v) Services that are incidental to supply purchases; and

(2) Use the following order...

4. Revise Subpart 37.6 to read as follows:

37.600 Scope of subpart. (No change)

37.601 General.

(a) The principal objective of performance-based services acquisition (PBSA) is to express government needs in terms of required performance objectives, rather than the method of performance, to encourage industry-driven, competitive solutions. Either a performance work statement (PWS) or a statement of objectives (SOO) may be used.

(b) PBSA contracts shall include-

(1) Measurable performance standards. These standards may be objective (e.g., response time) or subjective (e.g., customer satisfaction), but shall reflect the level of service required by the government to meet mission objectives. Standards shall enable assessment of contractor performance to determine whether contract results and objectives are being met, and

(2) Quality assurance surveillance plans (QASPs). The level of surveillance described in the plan should reflect the complexity of the acquisition. Plans should enable the contracting officer to fulfill the obligations of the government in accordance with 46.407(f). The contracting officer may rely on the inspection clauses in the contract or order, as appropriate. For example, a contracting officer may appropriately rely on the inspections clause in a simplified acquisition purchase or order without requiring a detailed QASP.

(c) PBSA contracts may include incentives to promote contractor

achievement of the results or objectives articulated in the contract. Incentives may be of any type, including positive, negative, monetary, or non-monetary. (See 37.602-2 (b) and (c).)

37.602 Elements of performance-based services acquisition.

37.602-1 Performance work statements (PWSs) and statements of objectives (SOOs).

- (a) Statements of work (SOWs) for PBSA contracts or task orders may be either PWSs or SOOs.
- (b) When preparing PWSs, agencies shall, to the maximum extent practicable-
 - (1) Describe the work in terms of the purpose of the work to be performed rather than either "how" the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);
 - (2) Establish performance standards and measures for the program; and
 - (3) Enable assessment of work performance to determine whether results, objectives, and obligations are being met.
- (c) SOOs shall, at a minimum, include the following information with respect to the acquisition:
 - (1) Purpose.
 - (2) Scope or mission.
 - (3) Period and place of performance.
 - (4) Background.
 - (5) Performance objectives, goals and outcomes.
 - (6) Any operating constraints.

37.602-2 Quality assurance.

- (a) Agencies shall develop QASPs to ensure the results, objectives, and obligations of the contract are being met. Plans shall recognize the responsibility of the contractor to carry out its quality control obligations (see 46.105) and shall include measurable performance standards corresponding to the desired results or objectives. QASPs shall focus on achievement of desired results or objectives and not on the methodology used by the contractor to achieve them. Agencies are encouraged to take advantage of best commercial practices in the development of plans.
- (b) In accordance with 46.407(f), invoice payment amounts may be adjusted via an equitable price reduction to reflect the actual level of services received. Deductions shall not be arbitrary or punitive.
- (c) Incentives, if used, shall correspond to the performance standards set forth in the contract or order, either in a QASP or in a clause incorporated in accordance with Part 46. (See 37.601(b)(4).)

37.602-3 Selection procedures. (No change)

37.602-4 Contract type.

Agencies shall follow the order of precedence set forth in 37.102(a)(2) for selecting contract and order types. In applying the order of precedence, the agency shall use the contract type most likely to motivate contractors to perform at optimal levels (see Subpart 16.1).

37.602-5 Follow-on and repetitive requirements. (No change)

Discussion of Proposed FAR Changes: The interagency working group discussed the general description of PBSA and the required elements. Use of the term "PBSA" is proposed to provide common terminology throughout the government. FAR section 37.601 currently reads as follows:

Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. Performance-based contracts—

(a) Describe the requirements in terms of results required rather than the methods of performance of the work;

(b) Use measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans.....;

(c) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements.....; and

(d) Include performance incentives where appropriate.

This description is restrictive and does not allow an agency to apply performance-based principles (or receive credit for goaling purposes) if the work is described in terms of outcomes, but one of the other elements (e.g., a price decrement formula) is not present. After considerable discussion, the working group is recommending changes to FAR Subpart 37.6. The proposed changes will allow more agency discretion while still adhering to the basic concept of PBSA.

Additionally, the complexity of QASPs should reflect the complexity of the acquisition. If appropriate, the contracting officer may rely on the 'Inspection of Services' clauses, as prescribed in FAR Part 46.

Discussion on excluding term contracts from the requirement to use performance based requirements: Term type contracts should be excluded from the requirement to use PBSA because, under these contracts, the contractor only guarantees to provide its best efforts. Payment is predicated on effort and not necessarily on outcome. This is generally in conflict with PBSA, which requires an outcome and where payment is contingent upon achieving that outcome in accordance with prescribed performance standards.

Discussion on adding new definitions: One of the perceived obstacles to PBSA is the difficulty associated with converting statements of work from the traditional, familiar style to one that uses a performance-based approach. Utilization of a SOO allows program personnel to summarize their requirements, identify constraints, and request that offerors submit not only a performance-based solution, but also a set of metrics and a QASP. (See "The 7 Steps Guide to Performance-Based Service Acquisition," Step 4, at <http://www.acqnet.gov>.) These documents require government review and approval, but using a SOO can assist agencies in applying PBSA more easily. Several different agencies have used this approach successfully, and many more are beginning to adopt the practice.

PWS is often referenced in the FAR, but the group found that the definition is not included in Part 2. The proposed definition comes from the revised OMB Circular A-76. SOW is often referenced in the FAR, but the definition was not included in Part 2.

Discussion on Order of Precedence: This change makes it clear that it is appropriate to use either performance or functional specifications. Section 2711(a)(2) of the Competition in Contracting Act of 1984 (41, U.S.C 253(a)(3)), states in pertinent part that, ". . . the type of specification included in a solicitation shall depend on the nature of the needs of the executive agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of -

(A) function, so that a variety of products or services may qualify;

(B) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards..."

B. Modifying Reporting Requirements and Procedures.

Recommendation No. 2: The FPDS service codes listed below are recommended for removal from the "eligible services" categories listed in the FPDS manual (<http://www.fpdc.gov/fpdc/rm2002.pdf>). If this recommendation is adopted, agencies can implement this change immediately as it does not require a coding change to FPDS, but only a change to the FPDS manual.

- General Science and Technology R&D - AJ1_ through AJ9_
- Medical R&D - AN11 through AN14 (this leaves in AN15-16; there are different stages of research)
 - AN21 through AN24 (Retain final two stages of R&D as eligible)
 - AN31 through AN34 (Retain final two stages of R&D as eligible)
 - AN41 through AN44 (Retain final two stages of R&D as eligible)
 - AN51 through AN54 (Retain final two stages of R&D as eligible)
 - AN61 through AN64 (Retain final two stages of R&D as eligible)
 - AN71 through AN74 (Retain final two stages of R&D as eligible)
 - AN81 through AN84 (Retain final two stages of R&D as eligible)
 - AN91 through AN94 (Retain final two stages of R&D as eligible)
- Social Services R&D - AQ11 through AQ14 (Retain final two stages of R&D as eligible)
- AQ91 through AQ94 (Retain final two stages of R&D as eligible)
- Purchase of Structures and Facilities – E***
- Hazardous Substance Cleanup - F108
- Oil Spill Response - F112
- Non-nuclear Ship Repair, East and West - J998 and J999
- Medical Services (not facility-related) - Q501-Q527
- Education and Training Services – U001-U099
- Lease or Rental of Equipment – W0**
- Lease or Rental of Facilities – X***

Add a new service code for design/build projects for FY 04. If this recommendation is adopted, FPDS (or the successor to FPDS, FPDS-NG) will have to be modified; therefore this change would not go into effect until October 1, 2003.

Discussion on "Eligible Services." The proposed changes to FAR section 37.601 in recommendation #1 naturally led to a discussion of other changes. One area is the definition of "eligible services." Currently, the FAR only exempts construction, architect and engineering services, and utilities from PBSA requirements. The working group believed that the large universe of potential performance-based service acquisitions could result in "force-fitting" some requirements when doing so might not be in the government's best interest. For example, pure medical research, where the outcome is truly unknown and the contractor's success or failure may be a poor indicator of results achieved, is not a good fit. The working group queried a number of different agencies and departments, and this report recommends additional exclusions from the universe of eligible service contracts that are currently contained in the FPDS manual. Further,

the working group recommends that a new service code be developed for "design-build" projects, which the group thinks are appropriate for a performance-based management approach.

The working group believes that reducing the universe of eligible (i.e., appropriate) services will increase use of PBSA. Relieving agencies of the requirement to force-fit nearly all service acquisitions to be PBSA, when this may not be appropriate or desirable, will improve agency application of PBSA. The group thinks that for those services where a performance-based approach is used, there should be a high return on the investment of time and resources. A PBSA approach can be used for many types of services, but only those eligible services will be reported.

Recommendation No. 3: Revise the FPDS/FPDS-NG instructions (Amendment 4, block 20) as follows: "If more than 50 percent of the requirement is performance-based, then the contract or order may be coded as a performance-based acquisition."

Discussion on Reporting. All federal agency contract specialists must complete a data entry form for every procurement action, for transmission to FPDS. Current coding instructions for SF-279, block 20, dictating an 80 percent standard (i.e., 80 percent of the dollars) to determine whether an action is performance-based. This language has been carried over to the proposed FPDS replacement system, FPDS-NG. With the increase in multi-purpose contracts (e.g., supplies and services), the working group thinks that agencies should apply PBSA to more contracts, some of which might not lend themselves to the 80 percent rule. The group recommends making a change in the instructions as follows: "If more than 50 percent of the requirement is performance-based, then the contract or order may be coded as a performance-based acquisition."

Recommendation No. 4: Allow agencies that do not input data to FPDS to submit supplemental reports in order to accurately reflect their progress toward meeting the goals.

Discussion on non-FPDS actions: Some agencies do not feed data to FPDS, and others have contracts that are not covered by the FAR and, therefore, are not recorded in FPDS. However, PBSA principles can be applied to many of these contracts, and these agencies should be able to count these actions toward their goals. Further, agencies that transfer funding to another agency for a contract or task order action should receive PBSA credit, not the contracting agency. Clarification of this point should reduce instances of dual reporting.

Recommendation No. 5: Consider allowing agencies to establish interim goals, but expect agencies to apply PBSA to 50 percent of their eligible service contracts (see recommendation 2, above) by 2005, in line with DOD policy.

Discussion on Meeting the Performance Goals. Because there is so much momentum for PBSA now, the group supports the idea of goals. The group recommends that OFPP consider following DOD's lead by setting a goal that PBSA be applied to 50 percent of eligible service contracts by 2005. Based upon the actual percentages attained by the various agencies for FY02 and the pace of implementation of these recommendations, OFPP should consider allowing agencies to establish interim goals for future years.

C. Improving Guidance.

Recommendation No. 6: OFPP should rescind its 1998 Best Practices Guide and consider developing web-based guidance to assist agencies in implementing PBSA. This guidance should be kept current and should include practical information, such as samples and templates that agencies would find useful. The website should include "The 7-Steps to Performance-Based Services Acquisition Guide" and may include elements of existing guidance. The working group will explore the development a web-based PBSA site for guidance, samples, and templates.

Discussion on Government-Wide Guidance. Since OMB first mandated the use of PBSA, no new government-wide guidance has been issued for agencies to follow. The group thinks that the current OFPP guide is outdated and should be rescinded. In the absence of current government-wide guidance, there has been a proliferation of department- and agency-wide guides. As a result of a Procurement Executive Council's initiative to improve guidance, the Department of Commerce gathered a team of experts from six different agencies to develop more current guidance; contractor support was also used. The result was the release of "The 7 Steps to Performance-Based Services Acquisition Guide," which provides basic information to assist agencies in using PBSA. However, more guidance is needed to accommodate the needs of the acquisition community. If this recommendation is accepted, the next phase of effort for the working group is to establish a credible, current, on-line presence for PBSA guidance.

III. Additional Discussion on PBSA

Although the working group does not offer specific recommendations regarding cost savings and incentives, it believes a discussion on these topics is appropriate.

Cost Savings: The working group thinks that the acquisition community should work together to re-shape the expectation that PBSA will save money. While it may be possible to save money on non-professional types of services, or by the use of share-in-savings techniques, the government spends most of its service contracting dollars where contractors are chosen by "best value" techniques, not low price. There is little current data to support monetary savings, and if such data did exist, it would be extremely difficult to isolate the exact reasons the savings occurred. The working group does agree that we are seeing improved quality of performance and improved customer satisfaction.

Incentives: Just as contractors deserve incentives for outstanding performance, federal employees deserve recognition for their efforts in changing the way they work with contractors. In discussing various methods of incentivizing contractor performance, the group considered both the government view and the industry view of incentives. Contractor feedback indicates that while the contractor may have monetary or non-monetary incentives in the contract, the government personnel managing the contract appear to have no stake in how well the contractor performs. The lack of incentives on the government side might result in a failure to excel on the contractor side. The working group recommends that government managers consider including successful program management in individuals' performance standards. The intended result would be to provide an incentive for government program managers to team with contractors for mutually beneficial results. Consideration should also be given to creating an award for outstanding achievement in this area.

Documents Reviewed for This Effort: In addition to reviewing individual agency guidance, OFPP's "Guide to Best Practices for Performance-Based Service Contracts" (1998), and the old OFPP Pamphlet No. 4, "A Guide to Writing and Administering Performance Statements of Work for Service Contracts" (1980), the Task Force also reviewed a report prepared by Dr. Lawrence Martin, PricewaterhouseCoopers Endowment for the Business of Government. That report, "Making Performance-Based Contracting Perform: What the Federal Government Can Learn from State and Local Governments," provides a number of innovative approaches that have been successful at the state and local level. The working group met with Dr. Martin; the exchange of ideas and viewpoints was thought provoking, and the ideas presented were considered in preparation of this report. The group also reviewed OFPP's "Solicitation/Contract/Task Order Review Checklist," dated August 1997, as well as "The 7 Steps to Performance-Based Services Acquisition Guide.