

**DRAFT**

Final Panel Working DRAFT

December 2006

## CHAPTER 2

# IMPROVING IMPLEMENTATION OF PERFORMANCE-BASED SERVICE ACQUISITION (PBSA) IN THE FEDERAL GOVERNMENT

## REPORT OF THE ACQUISITION ADVISORY PANEL

December 2006

**TABLE OF CONTENTS**

- I. Introduction and Background
  - A. Introduction To Performance-Based Service Acquisition
  - B. Current Federal Implementation of Performance-Based Acquisition
  - C. PBSA Regulatory Guidance and Recent Efforts to Improve the FAR's PBSA Provisions
- II. Statement of the Issue and Findings: Why Has Performance-Based Services Acquisition Not Been Fully Implemented in the Federal Government?
- III. Recommendations: Improving Implementation of Performance-Based Acquisition in the Federal Government

Appendix One: Bibliography of PBSA Reports and Studies

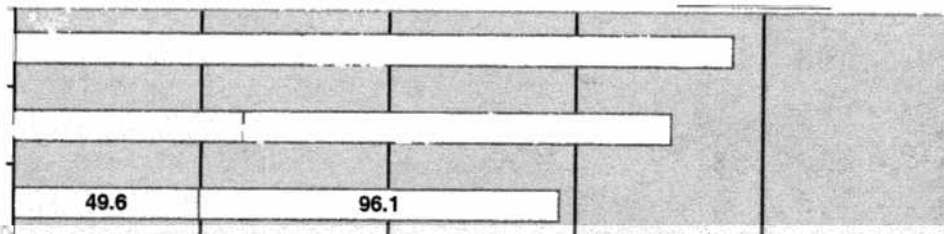
Appendix Two: FINAL PBSA Rule and Side-by-Side Comparison











## DRAFT

### Final Panel Working DRAFT

December 2006

At one time, PBSA was confined to basic, non-technical and support services such as security, laundry, grounds maintenance, and facility maintenance. Today, use has expanded considerably, particularly in the information technology (IT) arena. The Department of Health and Human Services website, for example, outlines a broad range of services as suitable for performance-based contracting methodologies:<sup>8</sup>

U.S. Department of Health and Human Services – Services Suitable for PBSA		
Facility support services e.g., security, laundry, grounds maintenance, facility maintenance, equipment repair, other than IT		
Administrative and clerical support, e.g., data entry, court reporting, typing, editing, distribution		
Aircraft maintenance and test range support		Transportation, travel and relocation services
Logistics/conference support	Medical services	Research and Development
Research support services	Telephone call center operations	Training
Environmental remediation	Technical assistance	Management support
IT and telecommunications services to include maintenance and support services		
Studies and analyses		Surveys

Growing experience with performance-based contracts has also helped agencies to identify services that are not well suited to PBSA. In August 2003, for example, the U.S. Department of Agriculture added to FAR and OFPP lists the following services as offering limited opportunity for PBSA:

- Hazardous Substance Cleanup;
- Education and Training Services; and
- Lease or Rental of Equipment/Facilities.<sup>9</sup>

Government officials anticipate continued refinement in their understanding of what services are suitable for PBSA's. In testifying before the panel, David Sutfin, Chief, GovWorks Division of the Department of Interior noted, "...the proper application of performance based contracting is an area where I think we're all weak, and we need help. Not every service contract lends itself to a performance based contract, and there is, I think, a rush now to use this contracting technique without fully understanding when it works and when it doesn't work: what are the risks inherent in using performance based contracting and what are the advantages?"<sup>10</sup>

<sup>8</sup> KNOWnet, the Acquisition SuperSite,

<http://www.knownet.hhs.gov/acquisition/performdr/LAI/UnitOne/program.htm>

<sup>9</sup> Memorandum from \_\_\_\_\_ to \_\_\_\_\_, *USDA Transports & Logistics*, (Aug. 19, 2003).

<sup>10</sup> AAP Pub. Meeting (June 14, 2005) Tr. at 327















## DRAFT

### Final Panel Working DRAFT

December 2006

well, this sounds fabulous, but my contracting officer will never do this. Then thirdly, boy, great ideas, but our general counsel will never let this happen. We need to get those people together in a room and make sure everybody's on the same page. Until that happens, we're not going to see a lot of changes."<sup>30</sup>

#### *Private sector experience and transformational change*

The Panel received compelling testimony on current contracting practices in the private sector, where PBSA is being used to achieve transformational business process change. Private sector practitioners chiefly discussed functional outsourcing (e.g. an entire corporate Human Resources function). Several witnesses emphasized the importance of an organization identifying and understanding its high-level strategic objectives. Those objectives support the definition of program outcomes. Witnesses stressed that, in order to be successful in achieving strategic goals, entities must let go of current and past practices to make room for fundamental change.

Mr Robert Zahler, testified that, "Too much time is spent focusing on the inputs to these processes, and not enough time on the outputs: what do you want from the result? ...Classic RFPs in my industry – and I think probably in the Federal side, also – spend enormously too much time documenting historical facts: what did we do, how did we do it, what did it cost. They have some high-level stuff of maybe what they want in the future, but all too little of that. Rather, the RFP should say, "Here are my objectives. Here are my requirements. Here's how I want to interrelate with you. Come back and give me a solution."<sup>31</sup>

Mr. Michael Bridges, an attorney with General Motors (GM), said they even go as far as trying to keep current practitioners out of the procurement process. The purpose is two fold: 1) to give competitors freedom to suggest a broad range of end-to-end solutions and, 2) to ensure the selected supplier has authority in the day-to-day management of new systems and processes. "We have attempted to avoid the *how* of contracting. Very much back to our model: we are not the experts. We expect the integrators who come into GM and want to bid on major services projects to bring that expertise. You know, with the 2,000 egos ... we try to keep them out of that process and let our suppliers provide that expertise. So to the point that was made a moment ago, the *how* is left to the suppliers as much as possible, and we feel that the best way to do that is to stay out of the day-to-day management. Bid at a high level in terms of high level, firm fixed price requirements and turn the suppliers loose to deliver the value that they feel they need to deliver to get that done and innovate to add to margin."<sup>32</sup>

Todd Furniss, Chief Operating Officer of the Everest Group, also emphasized the need to move beyond current practices. "So you can see that if you're focused on the myopic, you can actually do something quite counterproductive to corporate objectives. In fact, one of the terms

---

<sup>30</sup> *Id.* at 178.

<sup>31</sup> AAP Pub. Meeting (Apr. 19, 2005) Tr. at 28..

<sup>32</sup> AAP Pub. Meeting (Aug. 15, 2005) Tr. at 158. .





**Status of OFPP Implementation Recommendations**

<b>Recommendation</b>	<b>Implementation Status</b>
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.	Partially Addressed in February 2, 2006 Final Rule
2. Modify the list of eligible service codes for PBSA, as articulated in the Federal Procurement Data System (FPDS) or FPDS B Next Generation (FPDS-NG) manual, to more accurately reflect services to which PBSA can be applied.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
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.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
4. Allow agencies that do not input data to FPDS to submit supplemental reports in order to accurately reflect their progress toward meeting goals.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
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.	Original target of 50% changed to 40% by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."
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 Seven-Steps to Performance-Based Service Acquisition Guide" and may include elements of existing guidance. The working group will explore the development of a web-based PBSA site for guidance, samples, and templates.	Implemented by OFPP Memorandum of 9/7/04 entitled "Increasing the Use of Performance-Based Acquisition."

On July 21, 2004, the Civilian and Defense FAR Councils proposed amendments to the FAR to implement many, but not all of the Interagency Task Force recommendations.<sup>37</sup> The general thrust of the proposed FAR amendments was to give federal agencies more flexibility so as to encourage its consistent use where appropriate.

<sup>37</sup> 69 Fed. Reg. 43712 (July 21, 2004).



## **DRAFT**

### **Final Panel Working DRAFT**

December 2006

objective statement of agency requirements, while the Statement of Objectives may be drawn at a higher level of generality. The major distinction made in the Final rule is that if the agency drafts a statement of objectives then the contractor will prepare the performance work statement to respond to the agency request. The Final Rule also makes it clear that the SOO does not become part of the contract.

- As defined, the Statement of Objectives does not insist on complete specification in objective terms of the results desired from contract performance.

Although the Interagency Task Force had recommended an amendment to FAR 37.102 to add term type contracts to the list of exclusions from the mandate for use of performance-based contracting techniques where practicable, that recommendation did not appear in the proposed FAR revisions nor in the Final Rule.<sup>38</sup>

The proposal to amend the FAR provisions applicable to performance-based service acquisition also addressed performance standards and quality assurance surveillance plans. The proposed revisions would have provided the following:

(2) 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 performance objectives and/or desired outcomes are being met.

(d) PBSA contracts or orders may include performance incentives to promote contractor achievement of the desired outcomes and/or performance objectives articulated in the contract or order. Performance incentives may be of any type, including positive, negative, monetary, or non-monetary. Performance incentives, if used, shall correspond to the performance standards set forth in the contract or order.

The provisions in the final rule however failed to provide the same level of detail as that offered above. The February 2, 2006 provisions read as follows:

37.603 Performance standards. (a) Performance standards establish the performance level required by the Government to meet the contract requirements. The standards shall be measurable

---

<sup>38</sup> Compare 69 Fed. Reg. at 43712, with Interagency Task Force on Performance-Based Service Acquisition at 3.





**DRAFT**  
Final Panel Working DRAFT  
December 2006

services identified by OFPP. While initially the focus was on relatively low level support services with straightforward metrics, PBSA techniques today are applied to a wide variety of contracts including professional support and information technology services. IT services in particular constitute a large portion of the federal government's services funding today and require sophisticated measures to account for contractor success in achieving agency business outcomes. The HHS website described above gives a sample of the breadth of coverage.

In spite of both the breadth of service offerings eligible to use performance-based techniques and OMB's requirement to pursue the approach, the Panel has heard from a number of commenters that there remains uncertainty on when and how to use performance-based contracting methods to acquire services. Ronne Rogin, points out that there is an issue in determining where performance-based contracting has the best fit. She states that in spite of the regulatory definition, not everyone understands the best application of it. Her comments are very similar to those cited earlier in various Government Accountability Office reports.

The Panel heard similar issues raised by government staff of various agencies attempting to put performance-based contracts in place as well as from various industry associations citing the same complaint. The Multi-Association Task Force's testimony to the panel noted that "agencies do not seem to understand how to define requirements, write SOW/SOO's, identify meaningful quality baselines and measures, identify effective incentives, and manage the contract and outcomes post-award."<sup>43</sup> The Procurement Round Table (PRT) in its Position Paper, "A Proposal for a New Approach to Performance-based service acquisition" raises a similar concern about the practicality of employing "clear, specific, objective and measurable terms "when future needs are not fully known or understood, requirements and priorities are expected to change during performance and the circumstances and conditions of performance are not reliably foreseeable."<sup>44</sup> The PRT proposes to limit PBSA usage to "common, routine, and relatively simple services."<sup>45</sup> They propose a quality based selection process similar to that followed by the Brooks Architecture and Engineer Act for acquiring "long-term and complex" services.<sup>46</sup>

As noted above, the Final Rule on Performance-Based Acquisition published in the January 3, 2006 Federal Register and effective on February 2, 2006 makes a number of improvements to both the definition and to the implementation of PBSA to address some of these concerns. For example, the new rule stresses that the technique is not only a contracting effort, but also an agency management approach that requires the assistance of program officials as well as contracting staff for successful implementation. In that regard, the rule adopts the name "Performance-Based Acquisition," eliminating the word "Contracting" to buttress that point. In addition, it makes it clear that task orders as well as contracts may be performance-based and

---

<sup>43</sup> Multi-Ass'n Test. at \_\_\_\_.

<sup>44</sup> Procurement Round Table, *A Proposal for a New Approach to Performance-based service acquisition* \_\_\_\_ (DATE).

<sup>45</sup> *Id.* at \_\_\_\_.

<sup>46</sup> *Id.* at \_\_\_\_.



**DRAFT**

Final Panel Working DRAFT

December 2006

**Degree of PBSA Implementation Difficulty by Contract Type**

<b>Type of Service</b>	<b>Current Contract Type</b>	<b>PBSA Implementation Difficulty Low/Moderate/High</b>	<b>Specific Challenges</b>
Basic logistical and support services	Firm fixed price	Low	➤ None.
	CPIF or CPAF	Low	➤ None.
	CPFF or Time and Materials	Moderate	<ul style="list-style-type: none"> <li>➤ Overcoming reliance on buying hours in favor of developing performance standards.</li> <li>➤ Linking performance to meaningful incentives/disincentives.</li> </ul>
	Indefinite Quantity Contract (IQC)	Moderate	<ul style="list-style-type: none"> <li>➤ Developing relevant performance standards in advance of specific requirements.</li> </ul>
Complex professional and technical services	Firm fixed price	Moderate	<ul style="list-style-type: none"> <li>➤ Establishing outcomes and performance standards attributable to the contractor's efforts.</li> </ul>
	CPIF or CPAF	Moderate	<ul style="list-style-type: none"> <li>➤ Establishing outcomes and performance standards attributable to the contractor's efforts.</li> </ul>
	CPFF or Time and Materials	High	<ul style="list-style-type: none"> <li>➤ Establishing outcomes and performance standards attributable to the contractor's efforts.</li> <li>➤ Overcoming reliance on buying hours in favor of developing performance standards.</li> <li>➤ Linking performance to meaningful incentives/disincentives.</li> </ul>
	IQC	High	<ul style="list-style-type: none"> <li>➤ Establishing outcomes and performance standards attributable to the contractor's efforts.</li> <li>➤ Developing relevant performance standards in advance of specific requirements.</li> </ul>



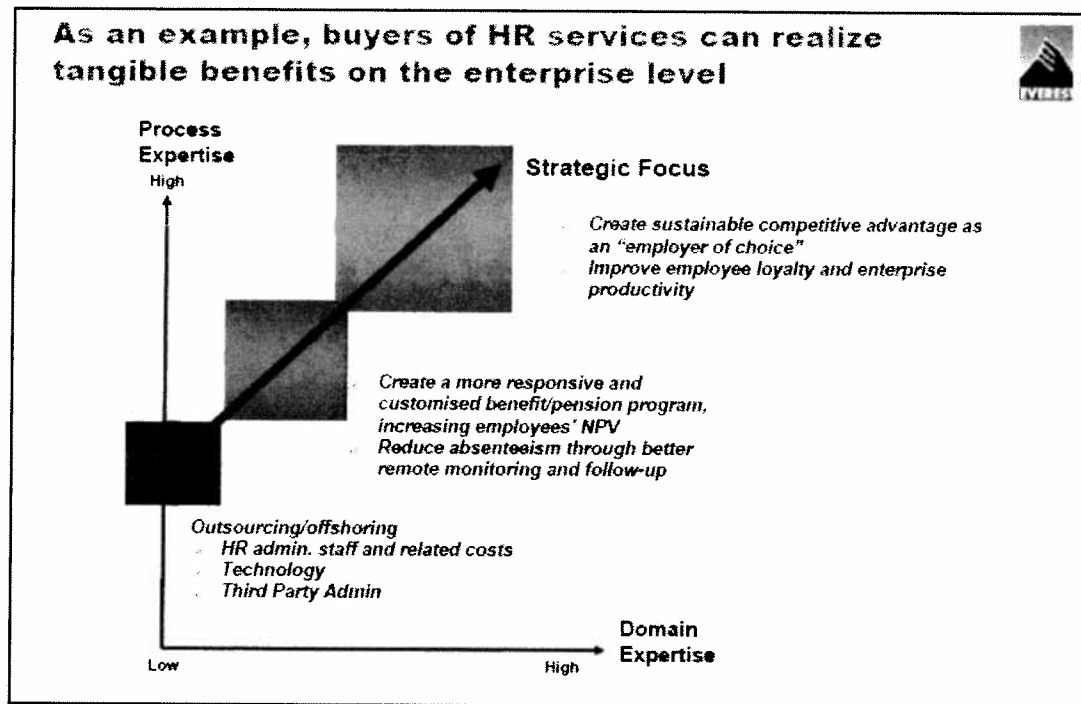




## DRAFT

Final Panel Working DRAFT

December 2006



The Panel is concerned that there may be a tendency of contractors to not be open to a broader set of responses outside the government's original statement of work. Contractors are fearful of losing the bid if they do not mimic the statement of work closely in their responses. As a result, many competitions are reduced to careful alignment of proposals with the government's specific approach and/or price shoot-outs, and the potential for innovation is largely forfeited.

The Panel concedes that defining a strategic vision and compelling an institution to coalesce around it are extremely difficult endeavors. Stove-piped organizations, and institutional and cultural conservatism greatly inhibit the ability to define and execute against strategic objectives. The right people must be involved, including senior leadership and vital stakeholders, to bring a broad perspective on what to buy, as well as which vehicle to use. If the critical parties are not at the table, it is extremely difficult to break through cultural barriers that inhibit success.

#### **Finding 4: Within Federal Acquisition Functions, There Still Exists a Cultural Emphasis on "Getting to Award."**

Many witnesses reinforced the notion that PBSA is a process that requires a significant preliminary effort to clarify agency needs, engage in innovative solutions development, and craft the right measures and incentives. This increased up-front investment of time, training and resources flies in contrast to the traditional culture of most acquisition shops under significant pressure from internal clients to get contracts awarded quickly. Client demand is exacerbated by







## **DRAFT**

### **Final Panel Working DRAFT**

December 2006

#### **Finding 7: FPDS Data Are Insufficient and Perhaps Misleading Regarding Use and Success of PBSA**

As noted previously there have been few efforts to document the use and benefits of performance-based contracting methods in a systematic fashion. The 1998 OFPP study cited earlier offers some information on PBSA benefits but that is now considerably out of date. In addition, reviews of contracts described as performance-based have raised questions about whether all performance-based elements as noted in the FAR definition were in fact being used. A number of GAO studies moreover have called into question the cost and performance benefits purportedly achieved through performance-based techniques. Clear data on both usage and effects are needed to address fully the benefits and provide agencies and OFPP a stronger basis for continuing to promote its use.

#### **Panel-Initiated Review of Selected Federal Contracts**

To further test the conclusions on usage provided by the ad hoc studies available, the Panel initiated its own review of agency PBSA contracts with a goal of making its own determination of how effectively the PBSA methodology has been applied.

Based on a Federal Procurement Data System –Next Generation (FPDS-NG) report on fiscal year 2004 transactions coded as performance-based, the Panel selected orders and contracts from the top ten contracting agencies. A total of 80 orders or contracts were selected randomly using the following general guidelines:

1. Actions reported in excess of \$20 Million, where possible
2. Actions falling generally within the service codes of management and professional or Information Technology (IT) to allow for comparisons

The Office of Federal Procurement Policy (OFPP) requested the pertinent documentation for a total of 80 orders and contracts in a memo dated March 17, 2006 to the following agencies:

- Department of Defense
- Department of Agriculture
- Department of Energy
- General Services Administration
- Health and Human Services
- Department of Homeland Security
- Department of Interior
- Department of Justice
- National Aeronautics and Space Administration
- Department of Veteran's Affairs

Due to various circumstances and mutual agreement to remove several contracts from the request, an actual total of 76 orders and contracts were requested. The Panel received and reviewed 64 of the 76 requested transactions. Nine of the 64 were missing documentation

**DRAFT**  
**Final Panel Working DRAFT**  
**December 2006**

necessary to complete the assessment, and although the Panel staff had initiated a follow up request for information, none was received. Therefore, the following analysis is based on a total of 55 reviewed orders and contracts submitted by 10 agencies or 72% of the sample.<sup>56</sup> All agencies responded.

The review evaluated requirements, metrics and standards, surveillance plans, and the inclusion of any incentives. Similar to the findings in the September 2002 GAO study, the Panel-initiated review found a range in the degree to which the contracts exhibited PBSA characteristics. A total of 36%<sup>57</sup> of the contracts reviewed to date contain the elements of a PBSA. Another 22% required significant improvement in one or more of the elements characteristic of a PBSA.

Of the orders and contracts coded as performance-based in FPDS-NG and reviewed, 42% were clearly not performance-based. This assessment often came directly from the agency in responding to the request. One agency response noted “You may include all contracts referenced under Paragraph B and C as NOT PBSA (4 Total).” Another agency stated “Reviewed: determined not to be performance based.” And yet another agency said they had researched a particular contract finding that “It is not a PBSA contract. The 279 was erroneously coded in the FPDS-NG system at the time of initial award. I have corrected all of the 279s<sup>58</sup> to avoid any further misinformation.”<sup>59</sup>

The largest weakness found, in those that required significant improvement in one or more elements of a PBSA, was in the metrics and standards. Although requirements were often stated as outcomes appropriately, some more prescriptive than others, the measures were not adequately linked to the specific outcome, and/or the quality attribute being measured was inadequate or insufficient (e.g. timeliness). Although timeliness is a valid attribute, it is insufficient as a stand alone performance measure, as any contract expectation is on-time delivery. It was clear throughout these orders and contracts that a performance-based approach was intended but the execution was lacking to some degree. The greatest success appears to be within the Information Technology (IT) Service Contracts where service level agreements (SLAs) define performance levels and objective measurements and standards.

Another repeating shortfall was in the Quality Assurance Surveillance Plan (QASP) area. There appears to be some confusion with respect to the difference between a QASP and a contractor submitted Quality Control Plan (QCP). In some cases, where a QCP was submitted by the contractor as a requirement of the contract, there was no correlating translation, QASP or otherwise, for government surveillance. It was often unclear as to how the performance data would be collected or monitored.

---

<sup>56</sup> Contracts other than requested or agreed to for substitution were not included herein.

<sup>57</sup> Percentages rounded.

<sup>58</sup> Refers to the Standard Form 279 used for reporting transactions to FPDS-NG.

<sup>59</sup> Information provided to Panel staff.







## DRAFT

### Final Panel Working DRAFT

December 2006

Definition: Transactional Performance-Based Acquisitions typically use a Performance Work Statement approach for acquiring services. Under this model, the agency identifies a baseline need/problem, and has already substantially determined what work is to be done. In this case, the agency is more concerned with ensuring that work being done meets certain cost, quality or timeliness attributes. The agency is willing to assume the risk that the work being done may not solve the baseline need/problem.

Under this approach measurable performance standards would relate to the quality and attributes of the work actually done, with limited or no measurement on impact of work on agency's need/problem.

The guidance should provide explicit examples of cases where Transformational vs. Transactional PBSA models would be used, as well as examples of cases of acquisitions that would not be ripe candidates for PBSA. In compiling these examples, OFPP should depict actual agency experiences in using PBSA in different service areas. Ideally the complete implementation of Recommendation 10 will help create an evolving database of PBSA examples.

- **Provide an Agency PBSA “Opportunity Assessment” Tool:** The Panel recommends the guidance include a self-assessment tool that would include standardized questions an agency should consider when evaluating its acquisition portfolio for PBSA opportunities. Among other factors pertinent to PBSA, the self-assessment tool included in the guidance should help an agency analyze a service to determine:
  - a) whether a performance-related baseline problem exists (cost, quality, timeliness, impact to agency mission)
  - b) the level of risk associated with the service not being optimally provided (importance to mission of the service being provided optimally);
  - c) the level of confidence the agency has in its own “work statement” to solve the baseline problem;
  - d) the amount of risk the agency wants to assume for managing the service impact on its own vs. shifting to a vendor;
  - e) the readiness of the Program to measure the impact of the service on its program performance goals/mission, as well as the readiness of Program staff to participate in a PBSA process

The creation of a PBSA Opportunity Assessment Tool reflects the Panel's view that implementing this new approach to acquisition in government will take time—requiring a more prioritized and strategic approach to when to use PBSA models. By focusing on “low hanging fruit” agencies can build competency and experience in PBSA and achieve early “wins” for the taxpayer.

**DRAFT**  
Final Panel Working DRAFT  
December 2006

In devising this guidance, OFPP should seek the input of the OFPP PBSA Inter-Agency Working Group that it has already established.

***Recommendation 3:***

***Publish a Best Practice Guide on Development of Measurable Performance Standards for Contracts***

OFPP should issue a “Best Practice Measures Guide” on the development and selection of performance measures for PBSA contracts. This recommendation is driven by testimony taken by the Panel, as well as numerous reviews of individual PBSAs, that has underscored the difficulty agencies face in devising and selecting good performance measures to include in both PBSA solicitations as well as inclusion in contract awards.

As part of OMB Circular A-11, OMB has already issued general guidance on the development of performance measures. However, this guidance relates to programmatic performance, rather than performance standards for individual contracts. The Panel believes that a Best Practice Measures Guide is critical to providing instruction and illustration in the use of measures as part of PBSA.

In developing a Best Practice Measures Guide, the following criteria should be as a minimum addressed to guide agency selection of PBSA performance measures:

- **Measurement “Chain” or “Logic Model”** Performance measures should be defined using a structured framework (such as a Value Chain or Logic Model) that define expected performance from an acquisition: starting first with the outcomes the agency seeks to achieve with the acquisition and then proceeding to demonstrate alignment between the specific outputs and/or activities conducted under a PBSA contract and those outcomes.
- **Baseline & Outcome Measure(s)**: PBSA’s should be grounded in at least one or more measures that directly assess the agency’s baseline need/problem relating to the service being acquired. Baseline measures will not only help provide a “starting point” of current performance from which vendors can analyze and propose innovative solutions, but also can be used during and after an acquisition to indicate whether a service has had the desired outcome on the agency. Common baseline measures will largely assess how an acquisition has resulted in the program being able to:
  - Achieve improved performance toward program goals, including improved service levels or impact to agency customers, and/or
  - Address a major cost management issue facing the program, resulting in cost savings or enhanced ability by the program to operate in a more economical or efficient manner.

For Transactional PBSAs, baseline measures might not be included in the final contract awarded, but would be helpful to include in a Performance Work Statement to improve the



## **DRAFT**

### **Final Panel Working DRAFT**

December 2006

likely that contract management and monitoring measures will evolve over time, while the baseline outcome measures will remain the same.

#### **Recommendation 4:**

**Modify FAR Parts 7 and 37 to Include an Identification of the Government's Need/Requirements by Defining a "Baseline Performance Case" in the PWS or SOO. OFPP should issue guidance as to the content of Baseline Performance Cases.**

The Panel received consistent testimony indicating that the private-sector considers the definition of client needs/requirements upfront in an acquisition is one of the most important aspects of PBSA. There are questions whether the federal government has been consistent in clearly defining its needs/requirements up front—a deficiency that some believe may have led to poorly executed contracts and in some cases contract failures. In addition, the importance of conducting extensive market research before proceeding with a PBSA was underscored by numerous private sector experts.

The Panel recommends that the FAR be revised to require that agencies publish a formal "Baseline Performance Case" as part of its use of a PBSA. As part of the OFPP guidance, the Baseline Performance Case would include:

- **Outcome Performance Measures:** Identifying and explaining performance measures that capture the outcome sought by an agency in a particular service area (as defined in the guidance required in Recommendation #4)
- **Baseline Performance State:** Using the outcome performance measures, the agency would assess the current level of performance in a particular service area. In addition to measuring the baseline, some qualitative description of the performance problems/needs would be provided.
- **State-of-Practice:** The agency would describe the current "state-of-practice" in the service area as determined from its market research. Stating the assumptions of the agency in this regard would allow outside bidders to identify areas of innovation that the agency might have missed in reviewing potential private and public-sector solutions to its need/requirement.
- **PBSA Approach:** Based on the analysis described above, the agency would then select and justify either the use of a Transformational PBSA or a Transactional PBSA.
- **SOO or PWS:** The agency would include the SOO or PWS as part of the "Baseline Performance Case" and solicit proposals from vendors.

The creation of a Baseline Performance Case (to include the SOO and PWS) would provide the much-needed structure and discipline to ensure that the federal government improves its definition of performance needs/requirements up front in an acquisition.

## **DRAFT**

### **Final Panel Working DRAFT**

December 2006

#### **Recommendation 5:**

##### **Improve Post-Award Contract Performance Monitoring and Management, Including Methods for Continuous Improvement and Communication through the Creation of a “Performance Improvement Plan” that would be Appropriately Tailored to the Specific Acquisition**

One of the challenges of long-term complex service contracts is the fact that needs change over time and that as a result performance priorities may also need to be adjusted to reflect these changing circumstances. In addition, as some have noted, relationships play a key role in the assessment of contractor performance. Responsiveness and customer satisfaction are as important in many cases as technical achievement. Many practitioners have stressed the need for effective ongoing communications between the government and the contractor to ensure that contractor performance remains on target in meeting the mission needs of the agency.

To reflect that need for addressing shifting priorities and again to respond to Finding Five regarding the need for improved post-award contract management, the Panel recommends that contractors be required to develop and submit at pre-determined milestones a Performance Improvement Plan (PIP) that agency staff would assess and approve. This plan would serve as a means for ensuring that both the agency and the contractor are regularly communicating and assessing the need, both for continuous improvement and responsiveness to shifting priorities. The PIP should, at a minimum, do the following:

- Include reporting of required performance standards under the QASP,
- Identify gaps in performance along with an explanation for them,
- Suggest changes in work product to achieve improved performance and reflect changing circumstances, and
- Identify eligibility for contract incentives, if any.

#### **Recommendation 6:**

##### **OFPP Should Provide Improved Guidance on Types of Incentives Appropriate for Various Contract Vehicles**

As the Panel noted in Finding Six, the use of incentives remains troublesome, with confusion existing about what types of incentives are appropriate and with some expressing difficulties in being able to acquire the additional up front funding to meet these requirements. A number of agency PBSA guides including that of the Office of the Secretary of Defense address the types of incentives available and offer tips on how best to use them.

However there is no useful database for identifying the level of use of various types of incentives in PBSA efforts, nor does there exist in-depth guidance for practitioners on how best to apply them. A continuing theme of many of the witnesses who have appeared before the panel is that more guidance and more training are needed for the basic elements of PBSA to be





## **DRAFT**

### **Final Panel Working DRAFT**

December 2006

- 4. Select Transformational or Transactional PBSA Model**  
This step reflects the two categories of PBSA suggested by the Panel—as part of an effort to move beyond a one-size-fits-all use of PBSA and provide clarification on when to use a SOO vs. PWS.
- 5. Focus on Key Performance Indicators**  
This refinement reflects the Panel’s desire to limit the number of performance measures included in a PBSA contract to a “sampling” or representative index of measures.
- 6. Select the Right Contractor**  
This step remains the same.
- 7. Manage, Monitor and Improve Performance**  
This step would be modified to include the establishment of milestones for the vendor to prepare “Performance Improvement Plans” as well as the agency’s review and use of those plans to monitor and improve performance.

#### **Recommendation 8:**

**Contracting Officer Technical Representatives (COTR’s) in PBSA’s should receive additional training and be re-designated as Contracting Officer Performance Representatives (COPR’s).**

Both Findings Four and Five point to deficiencies in post-award contract performance monitoring and management, with contracting staff in particular continually being pressured to focus on getting to contract award. For a performance-based contract to be successful, both elements of the process must be pursued: identifying desired business results up front and then being able to monitor performance.

The Panel believes that improvements in workforce capacity and capability regarding contract oversight in particular may make a significant difference in seeing that performance-based acquisitions are successfully carried out. One way to recognize the importance of this performance monitoring role and to shift the culture is, in circumstances where that individual is overseeing PBSAs, to re-designate the COTR as a COPR. Making this change highlights the distinctive nature of the position while affording those filling it with sufficient education and training to meet demanding oversight requirements. In addition to the traditional contract management and monitoring responsibilities of a COTR, the COPR would also assist the Integrated Project Team and CO in

- Soliciting input from program and technical staff regarding the approach to be used for acquisition performance management,
- Creating a baseline performance case,
- Developing the SOO or PWS and,

## **DRAFT**

Final Panel Working DRAFT

December 2006

- Selecting key performance measures.

In addition, the Panel recommends that program staff and line contracting officers associated with performance-based acquisitions be given advanced training in performance management—particularly in the development of performance measures and post-award contract performance monitoring and management. Specifically for the creation of the COPR, the Defense Acquisition University and the Federal Acquisition Institute should jointly develop a formal educational certification program for those occupying this new position. For Transformational PBSA's, every effort should be made to see that key staff receive appropriate training and skill sets.

### **Recommendation 9:**

#### **Improved Data on PBSA Usage and Enhanced Oversight by OFPP on Proper PBSA Implementation Using an “Acquisition Performance Assessment Rating Tool” A-PART.**

Under Finding Seven, the Panel noted the lack of good data on the use and success of PBSA across the government. In addition, where agencies have purported to have conducted performance-based acquisitions, the Government Accountability Office in a number of cases has questioned whether the procurement would actually meet the criteria included in the Federal Acquisition Regulation. As one way to regularize and make more consistent the Administration's ability to oversee and assess the performance of PBSA's, the Panel recommends that OFPP see that a tool similar to the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) is developed.

OMB uses the PART as a systematic method for measuring program performance across the Federal government. It essentially includes a series of questions that help the evaluator to see whether the program is in fact meeting the mission requirements it was designed to support. The use of the PART has helped improve the clarity of OMB guidance on the Government Performance and Results Act (GPRA) as well as engaged OMB more aggressively in reviewing its implementation.

In a similar vein, the Panel is recommending that OFPP develop a checklist that reflects how well a particular acquisition comports with the basic elements of the seven steps guide. Using this methodological and accountable approach to PBSA implementation not only provides better data, but also helps agencies learn how to implement PBSA in a more structured and accountable manner. The Panel feels this rigor is needed in the early stages of PBSA's implementation until agencies are comfortable and competent in the use of the tool. This requirement would sunset after three years, unless OMB and agencies felt the use of the A-PART process should continue.

Using the A-PART, agencies should then fill out the questions upon award of a performance-based contract and maintain the information on file. Each year OFPP should sample the A-PART documents to see if PBSA implementation is in fact being handled properly

## **DRAFT**

### **Final Panel Working DRAFT**

**December 2006**

in each agency, with revised guidance provided to the agencies based on the results of these annual assessments.

In addition, OMB guidance on FPDS reporting should be revised to reflect the distinction between Transformational and Transactional performance-based acquisitions (including both contracts and task orders) as described in Recommendation One.

#### **Recommendation 10:**

**OFPP should undertake a systematic study on the challenges, costs and benefits of using performance-based acquisition techniques five years from the date of the Panel's delivery of its final report.**

While the Panel has heard many witnesses point to either the benefits or shortfalls of adopting performance-based techniques for acquiring services, there has been no systematic government-wide effort to assess fully the merits of the process. As noted previously by the Panel, the last such study was conducted by OFPP in 1998 and while the results were positive, some questioned the validity of its findings. As such the Panel recommendations should not be interpreted as offering a long-term endorsement of PBSA. Rather the Panel aims are directed at improving current implementation and at providing a solid fact-based record for a more thorough assessment of its value.

In light of the concerns raised by so many witnesses on the lack of training and guidance for carrying out performance-based acquisitions, the Panel believes that a concerted effort to address these deficiencies should help to make performance-based acquisitions more effective. However, a systematic review would offer a much more solid basis for concluding whether significant cost and programmatic benefits are in fact achieved through the adoption of performance-based acquisition methods.

As part of this review, OFPP should use the FPDS to identify the various types of performance-based acquisitions in use across the agencies, and examine selected A-PARTS assessments and agency Performance Improvement Plans to assess their contributions to improving the effectiveness of performance-based acquisition awards.



## **DRAFT**

### **Final Panel Working DRAFT**

**December 2006**

8. Federal Acquisition Streamlining Act of 1994. See, among others, 10 USC 2220 and 41 USC 263.
9. Government Performance and Results Act of 1993
10. Clinger-Cohen Act of 1996
11. “Guide to Best Practices for Performance-Based Service Contracting” 1998
12. Department of Energy: Lessons Learned Incorporated in Performance-Based Incentive, July 23, 1998 <http://www.gao.gov/archive/1998/rc98223.pdf>
13. National Laboratories: DOE Needs to Assess the Impact of Using Performance-Based Contracts, May 3, 1999 <http://www.gao.gov/archive/1999/rc99141.pdf>
14. Contract management: Trends and Challenges in Acquiring Services, May 22, 2001 -GAO Testimony before the Subcommittee on Technology and Procurement Policy, Committee on Government Reform, House of Representatives. <http://www.gao.gov/new.items/d01753t.pdf>
15. GAO-02-179t Contract management: Improving Services Acquisitions, October 30, 2001 <http://www.gao.gov/new.items/d02179t.pdf>
16. “Guidance Needed for Using Performance-Based Service Contracting” GAO, September 20, 2002 <http://www.gao.gov/new.items/d021049.pdf>
17. President’s Management Agenda <http://www.whitehouse.gov/omb/budget/fy2002/mgmt.pdf>
18. GAO Report 03-443 Federal Procurement: Spending and Workforce Trends, April 30, 2003. <http://www.gao.gov/new.items/d03443.pdf>
19. “Performance-Based Service Acquisition – Contracting for the Future” Interagency Task Force on Performance-Based Service Acquisition, July 2003 <http://www.whitehouse.gov/omb/procurement/0703pbsat.pdf>
20. Section 1431 of the Services Acquisition Reform Act of 2003, Additional Incentive for use of Performance-based Contracting for Services and Section 1433, Clarification of Commercial Services Definition (Title XIV of the National Defense Authorization Act for Fiscal Year 2004). <http://reform.house.gov/UploadedFiles/Title%20XIV%20of%20H.R.%201588%20Conference%20Report.pdf>
21. FAR Case 2004-004, Incentives for the Use of Performance-Based Contracting for Services. This case implements Section 1431 and 1433 of the Services Acquisition Reform Act of



<p style="text-align: center;"><b>APPENDIX TWO:</b> <b>FINAL PBSA Rule and Side-by-Side Comparison</b></p>
--

**FEBRUARY 2, 2006 EFFECTIVE PBSA FAR REGULATION**

**SUBPART 37.6—PERFORMANCE-BASED ACQUISITION 37.604**

**Subpart 37.6—Performance-Based Acquisition**

37.600 Scope of subpart. This subpart prescribes policies and procedures for acquiring services using performance-based acquisition methods.

37.601 General. (a) Solicitations may use either a performance work statement or a statement of objectives (see 37.602). (b) Performance-based contracts for services shall include— (1) A performance work statement (PWS); (2) Measurable performance standards (i.e., in terms of quality, timeliness, quantity, etc.) and the method of assessing contractor performance against performance standards; and (3) Performance incentives where appropriate. When used, the performance incentives shall correspond to the performance standards set forth in the contract (see 16.402-2). (c) See 12.102(g) for the use of Part 12 procedures for performance-based acquisitions.

37.602 Performance work statement. (a) A Performance work statement (PWS) may be prepared by the Government or result from a Statement of objectives (SOO) prepared by the Government where the offeror proposes the PWS. (b) Agencies shall, to the maximum extent practicable— (1) Describe the work in terms of the required results 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) Enable assessment of work performance against measurable performance standards; (3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work. (c) Offerors use the SOO to develop the PWS; however, the SOO does not become part of the contract. The SOO shall, at a minimum, include— (1) Purpose; (2) Scope or mission; (3) Period and place of performance; (4) Background; (5) Performance objectives, i.e., required results; and (6) Any operating constraints.

37.603 Performance standards. (a) Performance standards establish the performance level required by the Government to meet the contract requirements. The standards shall be measurable and structured to permit an assessment of the contractor’s performance. (b) When offerors propose performance standards in response to a SOO, agencies shall evaluate the proposed standards to determine if they meet agency needs.

**FAR 7.103(r):**

(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602-5) should occur for follow-on acquisitions.

**FAR 7.103(r):**

(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods (see 37.602-5) should occur for follow-on acquisitions.

**FAR 7.103(r):**

**DELETED** "and, therefore, fixed-price contracts" from the statement "For services, greater use of performance-based acquisition methods and, therefore fixed-price contracts\*\*\* should occur for follow-on acquisitions" because the Councils believe the appropriate contract type is based on the level of risk and not the acquisition method.



**DRAFT**  
**Final Panel Working DRAFT**  
**December 2006**

<p><b>FAR 16.505(a)(3):</b></p> <p>(3) Performance-based work statements must be used to the maximum extent practicable if the contract or order is for services (see 16.203(a)).</p> <p><b>FAR 16.505(a)(3):</b></p> <p>used to the maximum extent practicable to</p>	<p><b>FAR 16.505(a)(3):</b></p> <p>(3) Performance-based acquisition methods must be used to the maximum extent practicable if the contract or order is for services (see 16.203(a)).</p> <p><b>CHANGED</b> performance work statements must be used to the maximum extent practicable to</p> <p><b>CHANGED</b> performance-based acquisition methods must be used to the maximum extent practicable to</p>
<p><b>FAR 37.000:</b></p> <p>This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of performance-based contracting to the maximum extent practicable and prescribes policies and procedures for use of performance-based contracting methods (see subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).</p>	<p><b>FAR 37.000:</b></p> <p><u>This part prescribes policy and procedures that are specific to the acquisition and management of services by contract or orders. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of performance-based acquisition to the maximum extent practicable and prescribes policies and procedures for use of performance-based acquisition methods (see subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).</u></p> <p><u><b>FAR 37.000</b></u></p> <p><b>ADDED</b> “or orders” after “contracts” to clarify the Subpart applies to contracts and orders</p> <p><b>Various Subparts in Part 37:</b>  <b>CHANGED</b> the terminology from “performance-based service acquisitions” to “performance-based service acquisitions” to “performance-based acquisitions” since Part 37 only relates to service acquisitions.</p>

***FAR 37.102(e)***

ADDED a requirement that the agency program officials describe the need to be filled using performance-based acquisition methods to the maximum extent practicable to facilitate performance-based acquisitions.

**FAR 37.602(b):**

(b) When preparing statements of work, agencies shall, to the maximum extent practicable --

(1) Describe the work in terms of "what" is to be the required output rather than either "how" the work is

*FAR 37.602(b):*

**DRAFT**

Final Panel Working DRAFT

December 2006

(4) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.	
--	--