

A GUIDE TO BEST PRACTICES FOR PERFORMANCE-BASED SERVICE CONTRACTING

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TABLE OF CONTENTS

- Foreward
- Chapter 1 INTRODUCTION
- Chapter 2 BASIC DEVELOPMENTAL ELEMENTS
- Chapter 3 JOB ANALYSIS
- Organization Analysis 10
- Work Analysis 10
- Performance Analysis and Standards 11
- Directives Analysis 13
- Data Gathering 13
- Cost Analysis 14
- Incentives 14
- Chapter 4 PERFORMANCE WORK STATEMENT
- Content 17
- Style 18
- Method 18
- Chapter 5 QUALITY ASSURANCE PLAN AND SURVEILLANCE ..
- Content 21

- Style 21
- Method 21
- Quality Assurance Evaluator Requirements 23
- Surveillance Requirements 23
- Extent 23
- Chapter 6 CONTRACT TYPE
- Fixed-Price 25
- Cost-Reimbursement 25
- Time and Material/Labor Hour Contracts 25
- Previously Acquired Services 25
- Partial Use of PBSC Methods 26
- Chapter 7 CONTRACT ADMINISTRATION
- Chapter 8 CONFLICT RESOLUTION
- Partnering 29
- Ombudsman 29
- Alternative Dispute Resolution 30
- Chapter 9 CONCLUSION

- Appendix 1 User Manuals
- Appendix 2 OFPP Policy Letter 91-2
- Appendix 3 Performance-Based Service Contracting (PBSC) Solicitation/Task Order Review Checklist
- Appendix 4 Targets of Opportunity for Performance-Based Service Contracting
- Appendix 5 References
- Appendix 6 Government Agencies And Companies Offering Performance-Based Service Contracting
- Appendix 7 Tree Diagram
- Appendix 8 Sample Performance Requirement Summary
- Appendix 9 Commerce Business Daily Sample Request for Performance-Based Service Contracting
- Appendix 10 Performance-Based Service Contracting Ten Professional and Technical Services
- Appendix 11 Surveillance Activity Checklist
- Appendix 12 Model Alternative Dispute Resolution Agreement

FOREWORD

Performance-based service contracting (PBSC) emphasizes that all aspects of an acquisition be structured around the purpose of the work to be performed as opposed to the manner in which the work is to be performed or broad, imprecise statements of work which preclude an objective assessment of contractor performance. It is designed to ensure that contractors are given freedom to determine how to meet the Government's performance objectives, that appropriate performance quality levels are achieved, and that payment is made only for services that meet these levels.

This document contains best practices that have proven useful for drafting statements of work, solicitations, and quality assurance plans, and in awarding and administering performance-based service contracts. Many of these practices were identified through the government wide Office of Federal Procurement Policy PBSC Pledge Program. This document is neither mandatory regulatory guidance, nor is it intended to serve as a detailed "how to" manual. Such manuals exist already, and citations to them are included at Appendix 1.

The purpose of this publication is to assist agencies in developing policies and procedures for implementing PBSC. The practices contained herein were derived from the experiences of contracting personnel in both government and industry. This information was gathered from interviews, articles, and existing government guidance.

We wish to thank the procurement and program officials from the Executive Departments and agencies, and those representatives from the private sector, who provided information on their experiences with PBSC. We especially appreciate the participation of those agency officials who were willing to be innovative in promoting and implementing this initiative and utilizing PBSC methods by joining in the OFPP PBSC pledge program.

This is one in a series of publications on best practices developed by OFPP. Copies of these documents may be obtained from the Executive Office of the President's (EOP) Publications Office by calling 202-395-7332 or writing to the Office of Publications, 725 17th Street, NW, Room 2200, New Executive Office Building, Washington, DC 20503. Comments and suggestions should be addressed to the attention of Stanley Kaufman, New

Executive Office Building, Room 9001, Washington, DC 20503.

Deidre A. Lee - Administrator

CHAPTER 1

INTRODUCTION

OFPP Policy Letter 91-2 established the policy of utilizing a performance-based approach to service contracting. Appendix 2 contains a copy of the Policy Letter. PBSC emphasizes objective, measurable performance requirements and quality standards in developing statements of work, selecting contractors, determining contract type and incentives, and performing contract administration. Appendix 3 contains a checklist of key elements of PBSC acquisitions.

PBSC was pioneered within the Department of Defense with a great deal of success. However, this proven methodology has yet to be fully implemented governmentwide for a variety of reasons, including inexperience in writing performance-based statements of work, cultural inertia, and concerns about more open and interactive communication with industry throughout the acquisition process.

To promote implementation of this policy, OFPP initiated, in October 1994, a governmentwide pledge pilot project to encourage the use of PBSC. Services covered by the pledge ranged from janitorial and guard services to computer maintenance, and aircraft and technical support. See Appendix 4 for a list of services that provide targets of opportunity for PBSC.

The governmentwide pledge was further supported by four industry associations representing over 1,000 companies. They pledged to utilize conflict resolution mechanisms to avoid protests and disputes, identify services convertible to performance-based contracting on a fixed-price basis, work with the government to eliminate obstacles to implementing this initiative, and identify commercial contracting practices adaptable for use by the government.

As a result of the pledge, 15 agencies converted 26 contracts with an

estimated value of \$585 million to performance-based methods. The agencies reported an average 15 percent reduction in contract price in nominal dollars, and an 18 percent improvement in satisfaction with the contractors' work. Moreover, reduced prices and increased customer satisfaction occurred at all price ranges, for both nontechnical and professional and technical services, and whether the contract remained fixed-price or was converted from cost reimbursement to fixed-price. Copies of the pilot project report, "A Report on the Performance-Based Service Contracting Pilot Project," May 1996, may be obtained from the EOP Publications Office or the Acquisition Reform Network (ARNET) (www.arnet.gov).

As evidenced by the results of the pledge, incentives for agencies to implement PBSC are numerous. For program personnel, PBSC is a tool that offers improved contractor performance. For budget offices, PBSC has already demonstrated significant cost savings. For managers, PBSC improves mission attainment and implements the principles of streamlining and innovation of the National Performance Review (NPR), as well as the Government Performance and Results Act. Further, personnel who participate on PBSC acquisitions will have the opportunity to attain recognition for their successes. In addition, contractors who do well on initial PBSC efforts will gain an advantage on future solicitations where past performance is a significant evaluation factor.

Conversion to performance-based contracting for Navy aircraft maintenance resulted in immediate savings of \$25 million. Additional savings are anticipated through the positive and negative incentives contained in the contract. The proposal, evaluation and award process took 30 days less than was needed for the previous non-performance based competition. Working with industry as a team, to meet Navy aircraft maintenance requirements, resulted in dollars and time savings. So far, performance is surpassing the contract's minimum required standards.

The National Aeronautics and Space Administration (NASA) saved enough money from converting a janitorial services contract to PBSC to reinstate several tasks previously cut due to a lack of sufficient funds.

The Environmental Protection Agency (EPA) saved enough money from its first PBSC Superfund task order to fully fund the next task order.

In converting from a traditional Statement of Work (SOW) to a PBSC Performance Work Statement (PWS), some agencies have reported an increased initial up-front investment. However, the resulting savings to the agency through the use of PBSC will quickly offset the initial up-front costs. In addition, the quality improvement expected from this type of contract and the resulting expected reduction in overall contract administration costs will again offset the initial up-front costs and should provide program offices with additional resource availability.

PBSC will help to correct problems commonly associated with services contracts and identified in numerous audits, including cost overruns, schedule delays, failure to achieve specified results, and other performance problems. This document is intended to facilitate implementation of PBSC.

Appendix 5 lists references used in compiling this document.

CHAPTER 2

BASIC DEVELOPMENTAL ELEMENTS

The contract statement of work, which is referred to as the PWS, is the foundation of performance-based services. The PBSC PWS describes the effort in terms of measurable performance standards (outputs). These standards should include such elements as "what, when, where, how many, and how well" the work is to be performed. A Quality Assurance Plan (QAP), which directly corresponds to the performance standards and

measures contractor performance, is needed to determine if contractor services meet contract PWS requirements. Positive and/or negative performance incentives, based on QAP measurements, should be included. The PWS Performance Standards, QAP and Incentives are interdependent and must be compatible in form, style, and substance, and should be cross-referenced. For a procurement to be a true PBSC, it should contain a PWS, QAP, and appropriate financial incentives.

Application of only selected aspects of the total PBSC methodology is not likely to be successful, and can even cause a reduction in the value of services provided. Agencies have reported negative experiences due to the failure to define work in completion terms, to develop or enforce measurable Government quality assurance plans, and to place sufficient financial risk on the contractor.

One agency limited its implementation of PBSC to the fee portion of several major contracts. It did not use negative incentives, and payment of the cost portion of the contracts was not tied to performance requirements and standards. A GAO report found that the agency paid much higher fees, yet the contractors' performance did not improve.

Proactive management support and direction from the highest agency levels disseminated throughout the agency, including field operations, also is important to the success of PBSC. Cultural inertia and lack of experience, two large detriments to use of PBSC, can be overcome by positive agency support for PBSC.

A directive signed by the Deputy Director of the Defense Logistics Agency (DLA) was sent to all personnel stressing PBSC and the importance of program and procurement personnel working together.

The NASA Administrator emphasized the importance of PBSC in a memorandum to all NASA field centers, and NASA's Procurement Executive visited each field center to promote the use of PBSC. Now each field center is stressing the use and importance of PBSC.

The Deputy Administrator, General Services Administration (GSA), affirmed the use of PBSC in a memorandum to Senior Management and asked for their help in stressing the use of PBSC to statement of work preparers and contracting personnel involved in service contracting.

The Assistant Secretary of the Navy for Research, Development and Acquisition emphasized to the Navy acquisition community the goals of PBSC and indicated that PBSC should be adopted at all contracting activities.

Signing the PBSC pledge led the Railroad Retirement Board to establish a three-person agency executive committee that met with contracting and technical personnel to develop and manage the implementation of PBSC. The committee members included the directors of three agency bureaus: data processing, supply and service, and disability/Medicare claims processing. The three-person executive committee provided oversight to the technical and procurement staff involved in the procurement.

Training for program and contracting personnel that includes how to write both PWSs and QAPs, as well as other aspects of PBSC, is of equal

importance to the success of PBSC. Training can be accomplished by internal resources, external sources, or modifying existing training to include PBSC.

The Department of Energy (DOE) modified its project management course to include PBSC and contracted for a prototype training package exclusively for program personnel to help define their duties and roles in implementing PBSC.

DOE also developed an electronic bulletin board to advertise their best practices and lessons learned on PBSC and other procurement reform efforts.

DLA distributed diskette copies of the NAVFAC model PWSs and QAPs as guides for its field activities and encouraged them to utilize NAVFAC training courses to develop skills for writing their own PWSs and compatible QAPs.

To aid agencies in implementing PBSC, OFPP has solicited information on training programs or courses covering the development of PWSs and QAPS. Appendix 6 contains a list of these sources. While inclusion on this list is not an endorsement of any particular course or organization, we hope that the information will be helpful to agencies interested in PBSC training and that agencies will utilize these resources.

Agencies experienced in the use of PBSC have established a process that provides a useful model to follow when implementing PBSC. In general, the steps in this process are performing a job analysis, writing the PWS and QAP concurrently, and performing diligent contractor surveillance after contract award. This document addresses each of these important steps.

CHAPTER 3

JOB ANALYSIS

Job analysis involves determining what the agency's needs are, and what kinds of services and outputs are to be provided by the contractor. This is of particular importance because the services or outputs identified form the basis for establishing performance requirements, developing performance standards and indicators, writing the PWS, and producing the QAP. If the job analysis is done properly, writing the PWS and QAP will be facilitated. In general, job analysis includes: agency or activity organization, work to be performed by the contractor, performance standards, directives, data gathering, and cost.

Organization Analysis

Organization analysis involves reviewing the agency's needs and identifying the services and outputs required from the contractor. It should emphasize the outputs the contractor will produce, but should not dictate how to produce these outputs.

DOE's analysis of its protective force program resulted in a determination that it no longer needed armed and specially trained security guards. The change from armed to unarmed protective forces reduced contract payroll costs significantly. Further, contract labor hours necessary to support an armed force were eliminated. These changes resulted in an approximate annual savings of \$500,000.

Work Analysis

Work analysis involves further analyzing the required outputs by breaking down the work into its lowest task level and linking tasks in a logical flow of activities. Agencies should start with the overall service or output required from the contractor, then divide the job into all its parts and subparts, and identify the relationships among all the parts.

One method to accomplish this analysis is a tree diagram. It is a chart that divides a job into parts and subparts, each of which contributes to a final result or output, and demonstrates its relationship to the others. Appendix 7 contains a sample tree diagram.

Identifying all outputs from tasks and subtasks required of the contractor is important. Failure to do so will result in incomplete or ambiguous contractual requirements that may be difficult to enforce or lead to contractor misinterpretation and inadequate performance.

GSA reports that SOW and QAP preparation training provided by NAVFAC to GSA's pledge participants provided an excellent foundation for using job analysis techniques.

Ft. Bragg established a Process Action Team (PAT) to develop a standard format for the PWS and QAP. This was copied on a disk in WordPerfect and given to customers along with instructions on how to complete it. All the specifications were numbered and samples for technical exhibits were included. The instructions query the customers concerning their requirements. The results are then integrated into final form.

Performance Analysis and Standards

Performance analysis assigns a performance requirement to each task, which involves determining how a service can be measured and what performance standards and quality levels apply. The performance standard establishes the performance level required by the government.

Correspondingly, the acceptable quality level (AQL) establishes a maximum allowable error rate or variation from the standard.

For example, in a requirement for taxi services, the performance standard might be "pickup within five minutes of an agreed upon time." The AQL

then might be five percent, i.e., the taxi could be more than five minutes late no more than five percent of the time. Failure to perform within the AQL would result in a contract price reduction.

Under the Navy aircraft maintenance contract, requirements are stated in measurable terms such as: ground abort rate is less than five percent; 100 percent of flight schedules are met; and aircraft are 80 percent mission capable.

Agencies should insure that each standard is necessary, is carefully chosen, and not unduly burdensome. Failure to do so can result in unnecessarily increased contract costs.

The Railroad Retirement Board converted a contract for data entry services to include a performance-based statement of work. They experienced approximately 30 percent cost savings. By going through the process of developing a PBSC PWS, they identified and eliminated unnecessary requirements. The estimated type and volume of source documents to be converted decreased by 14 percent. Vendor pricing was based on a more accurate and realistic profile of work to be performed.

Care must be exercised in establishing the quality level at which performance standards are set. The minimum acceptable performance standard should rarely be 100 percent, since the standard directly affects the cost of the service. Conversely, if the quality level is too low, it may act as disincentive to good contract performance.

Where appropriate, agencies may provide either a specific performance standard or allow the contractor the option to propose different target levels of standards of service along with the appropriate price adjustment. This allows contractors an opportunity to propose what they consider to be the most cost-effective performance standard level. In order to properly evaluate alternative levels of standards proposed by the contractor, agencies need to do market research into the feasibility of accepting these alternative

levels, i.e., discussing with commercial entities their contracting methods and acceptable levels of standards for the same type of service.

In a GSA contract for custodial requirements, specification writers only identified desired quality levels. Offerors' technical proposals only identified the frequency and methods to be employed to meet the quality standard. The result was maximum flexibility for the contractors.

Standards may be published or well recognized, industry-wide standards, or may be developed by the agency. Agency standards should have industry input to ensure they are realistic and effective. This may be done through public meetings, public comment on proposed standards, or Requests for Information (RFIs) per FAR 15.405.

If there are a number of tasks and deliverables, agencies should summarize them in a performance requirements summary (PRS). A PRS usually lists tasks, deliverables, standards, and quality levels. Appendix 8 contains sample PRS tables.

Directives Analysis

All potentially relevant agency directives should be screened to determine which should be utilized, either in whole or in part. Directives that are unnecessary, or that apply only in part, should not be referenced or included in their entirety. Negative effects from excessive or inappropriate application of specifications include: confusion or errors in performing work; undermining the government's ability to enforce required performance; unjustifiable increases in the cost of performance; unwarranted dictation of how work is to be performed, and discouraging or preventing contractor use of innovative or cost-effective performance methods.

Wherever possible, agencies should excerpt required portions of directives and include them in the PWS. If this is impractical, agencies should incorporate the required portions by reference. Entire documents should not be incorporated by reference when only a portion of the document applies.

Directives may also be an information source for developing task descriptions and quality standards.

Data Gathering

Agencies should provide the contractor an estimate of the workload to be performed and the items and services that the government will furnish to the contractor for the performance of the contract. In order to make the workload estimate, a determination of the historical workload by the major performance categories must be made. In addition, agencies must clearly identify the amount and types of items and services that it will provide to the contractor, e.g., electrical, equipment, furniture.

The historical workload data gathered may be used in cost estimating and analysis, and should be used as a baseline to estimate the future work requirements to be covered in the contract. This is especially important so that the offerors in addition to the incumbent can gain sufficient familiarity with the work in order to compete effectively. Also, the estimate of the future work requirements and government furnished items is critically important as the basis for the offerors to provide realistic cost estimates.

In preparing a solicitation for telephone hotline services, EPA used its extensive workload data as an attachment to the solicitation. The data included an analysis of call volume since 1989. This enabled industry to gain a better understanding of the requirement and the magnitude of the workload. It also allowed EPA to shift the burden of having the capacity to handle surges to the contractor under a fixed-price contract. Under the previous cost type contract, EPA had been paying to keep extra operators standing by even when they weren't needed.

Needed workload data is often available from existing management information subsystems or other databases or records such as sampling or on-the-job observation. If workload data is not available, various techniques can be used to generate it. For example, agencies can provide their best estimate of the data or if there is sufficient time before the award of the

contract, the program personnel can immediately begin collecting workload data for a sufficient period of time to use for projections.

Some agencies have placed a performance requirement in the PWS for the incumbent contractor to maintain accurate workload data. This information can be used to help develop the baseline for future contract work estimates.

Agencies should place workload data and applicable documentation in a central area, e.g., a reference room where all potential offerors will have access to it and can readily use it in preparing their bids.

Cost Analysis

Estimated costs must be computed for each service or output based on available data. These costs are used in preparing the government estimate, evaluating proposals, and determining positive and negative performance incentives.

For commercial services, the marketplace should provide a sufficient baseline for cost estimating. In the development of their independent government estimates, agencies should include consideration of commercial costs of performing work in the private sector.

Incentives

Incentives should be used when they will induce better quality performance and may be either positive, negative, or a combination of both. They should be applied selectively to motivate contractor efforts that might not otherwise be emphasized, and to discourage inefficiency. Incentives should apply to the most important aspects of the work, rather than every individual task.

Where negative incentives are used, the deduction should represent as close as possible the value of the service lost. This amount is usually computed by determining the percentage of contract costs associated with each task. For example, if a given task represents 10 percent of the contract costs, then 10 percent will be the potential maximum deduction in the event of task failure. Similarly, if a task is not performed to the AQL stated in the quality standards of the contract, deductions are computed based upon tables or formulas designed to reflect the value of substandard output. For example, a

task having an AQL of five percent defects would have its unit price reduced incrementally for each percent of defects exceeding the AQL.

The Navy aircraft maintenance contract contains both positive and negative incentives. As a positive incentive, the material management function was turned over to the contractor. Material is obtained on a cost reimbursable basis, but the contractor earns a 15 percent positive incentive for cost avoidance. This "bonus" is calculated by comparing actual material costs with historical material costs adjusted by the Consumer Price Index. As a negative incentive, the contract is priced at a ready for training rate of 75 percent. To the extent this level of performance is not attained, the contract price is reduced proportionately. For example, an actual ready for training rate of 60 percent results in a 20 percent price reduction.

The definitions of standard performance, maximum positive and negative performance incentives, and the units of measurement should be established in the solicitation. They will vary from contract to contract and are subject to discussion during a source selection. Care must be taken to ensure that the incentive structure reflects both the value to the government of the various performance levels, and a meaningful incentive to the contractor. Performance incentives should be challenging yet reasonably attainable. The goal is to reward contractors for outstanding work, but not penalize them for fully satisfactorily but less than outstanding work.

The Tennessee Valley Authority (TVA) established a cash incentive for a raw water treatment service contract by creating a fee pool to which both TVA and the contractor contribute. The TVA business team evaluates the contractor's performance semiannually, and if the contractor meets the established performance evaluation criteria they are awarded their contribution to the fee pool. If they exceed the established performance evaluation criteria, they receive all or a portion of TVA's contribution to the fee pool. However, before TVA awards

any portion of its contribution to the fee pool, the contractor must have demonstrated cost savings to TVA in excess of the fee pool incentive payment (e.g., if the contractor is awarded one percent, they must have saved TVA two percent or more.

Incentives are especially useful in efforts that are complex, have a high-dollar value, or have a history of performance or cost overrun problems.

NASA's cost type Space Station contract provides that the contractor will be docked 25 cents for every dollar of cost overrun, but will earn an additional 25 cents for every dollar saved. In addition, all fee payments are provisional and are subject to recoupment if station hardware fails to perform.

Incentives should correlate with results. Agencies should avoid rewarding contractors for simply meeting minimum standards of contract performance, and create a proper balance between cost, performance, and schedule incentives. The incentive amount should correspond to the difficulty of the task required, but should not exceed the value of the benefits the government receives. Agencies need to follow-up to ensure that desired results are realized, i.e., that incentives actually encourage good performance and discourage unsatisfactory performance. Verifying the effectiveness of the incentives used is important.

NASA reduced program costs for the Space Shuttle by approximately \$350 million since FY 90 by the use of special contractual incentives. These incentives included special incentive fees, such as award fees for exceptional cost performance, and value engineering provisions. The award fee for exceptional cost performance is used to incentivize the contractor to initiate innovations, cost management, and cost reduction measures that reduce operation costs while maintaining excellent performance. The award fee is earned incrementally during performance and is in addition to and separate from any

other fees available under the contract, and is available only when the contractor earns a performance rating of excellent for the award fee period. The amount of the fee earned is based upon a formula established by the contract, and no fee can be earned during any period when the actual contract costs exceed the should-cost estimate.

Past performance "report cards" per FAR 42.15 should reflect adherence to performance requirements when a PWS has been used. Performance under PBSC provides better data for evaluation of past performance under other solicitations. A powerful incentive of excellence and customer satisfaction is created when contractors know their performance will influence future award decisions.

CHAPTER 4

PERFORMANCE WORK STATEMENTS

The key elements of a PBSC PWS are: a statement of the required services in terms of output; a measurable performance standard for the output; and an AQL or allowable error rate. These will have been established during the job analysis phase discussed in Chapter 3. The PWS describes the specific requirements the contractor must meet in performance of the contract. It also specifies a standard of performance for the required tasks and the quality level the government expects the contractor to provide.

Content

Agencies should identify only those outputs that are essential and should be a part of the PRS. Agencies should express the outputs in clear, concise, commonly used, easily understood, measurable terms. Agencies should not repeat material in the PWS that is already included in other parts of the contract.

Agencies also should not include detailed procedures in the PWS that dictate how work is to be accomplished. Instead, they should structure the PWS around the purpose of the work to be performed, i.e., what is to be

performed, rather than how to perform it. For example, instead of requiring that the lawn be mowed weekly, or that trees be pruned each Fall, state that the lawn must be maintained between 2-3" or that tree limbs not touch utility wires or buildings.

A GSA vehicle maintenance specification for service calls was changed from an hourly rate to a price-per-occurrence. This resulted in a noticeable difference in the contract price.

The Air Force found that it saved 50 percent by specifying that floors must be clean, free of scuff marks and dirt, and have a uniformly glossy finish, rather than requiring that the contractor strip and re wax the floors weekly.

Under the Navy contract for aircraft maintenance, the contractor is held to a standard of performance and is empowered to use best commercial practices and management innovation in performance. The contract does not specify how many plane captains, mechanics or parachute riggers are required to be in a crew or on the job.

To the maximum extent practicable, the PWS should be a stand-alone document, with minimal references to regulatory or other guidance. Only mandatory requirements should be referenced.

Style

Agencies should write the PWS using precise terms and clear, concise wording. Agencies should not use broad or vague statements or overly technical language. Agencies should use the active voice, task oriented statements (verb-noun sentence structure), and the emphatic form of the verb to establish a binding imperative. For example, say "The contractor

shall (or must) provide "X", rather than "X" will be provided."

To prevent misunderstandings, agencies should avoid abbreviations and acronyms as much as possible. Agencies should define any abbreviations and acronyms that are used the first time they appear in a document, and/or include them in a glossary or appendix.

Agencies should avoid using ambiguous words and phrases. For example, say "keep driveways clear of snow so that depth does not exceed two inches" or "maintain grass between two and three inches high" rather than "clear snow as required" or "mow grass as necessary."

The PWS should contain consistent terminology. Use the same words throughout the PWS when addressing the same thing. This is particularly important when referring to technical requirements.

Method

Agencies should use an interdisciplinary team approach in developing the PWS, and include, at a minimum, the contracting officer and a technical representative. The program manager, or a designee of the acquisition executive, or the Agency head should establish the team. Additional team members may include an attorney, a writing advisor, and a representative from the customer/user staff. Whenever possible, at least one team member should be experienced in PBSC contracting techniques. Once established, the team should designate a team leader to serve as a facilitator.

This team approach will result in a better final product, and limit the potential for disagreements among agency officials prior to award and during contract performance. It also serves to involve program personnel early in the acquisition process. This is important because implementation of the PBSC program resides predominantly with the program office. Program personnel are primary points-of-contact for PBSC projects. Contracting officers should actively promote the benefits of PBSC to the program offices. To this end, continued collaboration throughout the acquisition process is important.

This approach worked well for GSA where SOW preparers and contracting personnel worked as a team from the beginning. Together, they received PWS training and developed a strategy for implementing PBSC in the pledge. They plan to use this approach in addressing future needs.

EPA assembled a team to develop methods to contract for Superfund remedial projects using PBSC. The team consisted of a contracting specialist, the Remedial Section chief, and the project officer. The first project awarded using the techniques developed by the team resulted in a contract award nearly \$1 million less than the government estimate for the work.

Whenever possible, agencies should utilize Solicitations for Information Purposes (see FAR 15.405), including draft statements of work and requests for comments, to refine the PWS. Review by and input from potential sources provides an effective way to screen the PWS for accuracy, comprehensiveness, and clarity. It also serves as an excellent tool to identify aspects of the PWS that would unnecessarily restrict competition or raise costs or discourage contractor innovation. Early involvement of industry is important. Potential sources should be asked whether certain quality requirements are significant cost drivers so the government can consider whether they are worth the extra cost. Appendix 9 contains a sample Request for Comment.

The Department of Health and Human Services (HHS) had clear success issuing a draft solicitation for computer maintenance. They received useful comments from industry which led them to re-evaluate some aspects of their technical approach and recognize areas in need of

clarification. HHS experienced fewer problems with the solicitation as a result.

The Navy issued a draft RFP which solicited industry inputs or alternatives to military specifications and standards. In response to industry's submissions, many military specifications and standards were deleted from the work statement. Some were deleted with no replacement, while others were replaced with commercial standards.

To the extent possible, agencies should disseminate draft RFPs and solicitations electronically. This saves time and money and may result in greater competition. Many agencies place acquisition information on the INTERNET and have established a link to their agency home pages on the ARNET. This information may be accessed at:

<http://www.arnet.gov/AcqOpp/AcqOpp.html>.

The Department of Transportation posted the National Highway and Safety Transportation Administration's property and inventory control system RFP on the Internet. This was done in the interest of expediency, to save printing costs, and to test electronic data interchange.

NASA's Acquisition Internet Service (NAIS) includes all synopses and competitive solicitations over \$25,000. The address for this site is <http://procurement.nasa.gov/>. NAIS also allows interested businesses to designate procurement categories for which they would like to receive automatic E-mail notification.

To the extent available, agencies should utilize existing model PWSs, particularly those tested in application. Agencies often do not have to start from scratch to develop a PWS. Appendix 10 contains a list of generic PBSC documents developed by working groups consisting of agency technical and professional personnel to assist agencies in converting selected professional and technical services to PBSC methods. Copies of these documents are available from the EOP Publications Office and the ARNET.

CHAPTER 5

QUALITY ASSURANCE PLAN AND SURVEILLANCE

The QAP defines what the government must do to ensure that the contractor has performed in accordance with the PWS performance standards. This can range from a one-time inspection of a product or service to periodic in-process inspections of on-going product or service delivery. It is needed to ensure the government receives the quality of services called for under the contract, and pays only for the acceptable level of services received. Since the QAP is intended to measure performance against standards in the PWS, these interdependent documents must be coordinated. Accordingly, writing the two documents simultaneously is both effective and efficient.

Content

A good QAP should include a surveillance schedule and clearly state the surveillance method(s) to be used. The QAP development establishes how resources will be used to ensure that the government receives what it is paying for. Development of the QAP also allows the agency to clearly define the amount of contract administration resources needed.

The detail in the QAP regarding a particular task should be consonant with the importance of the task. The QAP should focus on the quality, quantity, and timeliness etc. of the performance outputs to be delivered by the contractor, and not on the steps required or procedures used to provide the product or service.

Style

The PWS and QAP may be combined into one document. This makes it easier for both the contractor and inspector to understand and administer the contract requirements.

See Chapter 4 for best practices that are equally applicable to the QAP.

Method

Selecting the most appropriate surveillance method for the effort involved is important. Agencies should take into consideration task criticality, task lot size, surveillance period, performance requirements and standards, availability of quality assurance evaluators (QAEs), surveillance value in relation to task cost/criticality, and available resources. Careful selection of appropriate surveillance methods enables the government to determine the amount of resources and associated costs needed to perform the surveillance task.

Acceptable surveillance methods include:

- **100 Percent Inspection:** This is usually only the most appropriate method for infrequent tasks or tasks with stringent performance requirements, e.g., where safety or health is a concern. With this method, performance is inspected/evaluated at each occurrence. One hundred percent inspection is too expensive to be used in most cases.
- **Random Sampling:** This is usually the most appropriate method for recurring tasks. With random sampling, services are sampled to determine if the level of performance is acceptable. Random sampling works best when the number of instances of the services being performed is very large and a statistically valid sample can be obtained. Computer programs may be available to assist in establishing sampling procedures.
- **Periodic Inspection:** This method, sometimes called "planned sampling," consists of the evaluation of tasks selected on other than a 100 percent or random basis. It may be appropriate for tasks that occur infrequently, and where 100 percent inspection is neither required nor practicable. A predetermined plan for inspecting part of the work is

established using subjective judgment and analysis of agency resources to decide what work to inspect and how frequently to inspect it.

- **Customer Input:** Although usually not a primary method, this is a valuable supplement to more systematic methods. For example, in a case where random sampling indicates unsatisfactory service, customer complaints can be used as substantiating evidence. In certain situations where customers can be relied upon to complain consistently when the quality of performance is poor, e.g., dining facilities, building services, customer surveys and customer complaints may be a primary surveillance method, and customer satisfaction an appropriate performance standard. In all cases, complaints should be documented, preferably on a standard form.

Agencies should discuss the surveillance methods to be used with the contractor to confirm that they are fully understood. Whatever form of surveillance used, agencies should take care to ensure that no undue interference with contractor operations occurs. Agencies also should avoid relying on cumbersome and intrusive process-oriented inspection and oversight programs to assess contractor performance.

The Department of Commerce included the contractor on a grounds maintenance contract as a partner in implementing the contract monitoring and reporting requirements. This resulted in a continuing dialogue between the two parties about contract performance focused on results.

Surveillance must be performed as stated in the QAP for the covered contract. It includes scheduling, observing, documenting, accepting service, and determining payment due.

QAE Requirements

QAEs must be fully qualified to meet the major responsibilities of the position: maintaining complete and accurate documentation, a good relationship with the contractor, and thorough knowledge of the contract requirements. Experience and training are essential for effective surveillance.

The QAE should be identified with a letter of assignment that includes a copy of the contract and surveillance plan. It should include cautions against making legal interpretations, imposing tasks not in the contract, supervising contractor employees, or waiving contract requirements. A copy of the letter should be provided to the Administrative Contracting Officer.

Ideally, the QAE should be dedicated full time to quality assurance activities. If this is not possible, the QAE aspect of the individual's job should be a critical element in their performance appraisal.

Surveillance Requirements

Contractors should be briefed on surveillance requirements and responsibilities at a post-award conference. Surveillance should be comprehensive, systematic, and well documented. Reviewing and discussing the contractor's plan for maintaining an acceptable quality level under the contract is important. In many cases, contractors are required to submit a Quality Control Plan to the government prior to the post-award conference.

One way to document surveillance is through use of a surveillance checklist. See Appendix 11 for a sample. Techniques include inspections, correspondence reviews, customer surveys, and audits.

When performance is deficient, the contracting officer should notify the contractor promptly and implement the agency's system to track corrective action.

Extent

The extent of surveillance is determined by the surveillance schedule established in the QAP. It should be systematic and sufficient to fairly evaluate the contractor's total performance throughout the performance period.

Where surveillance results show good performance consistently, the amount of surveillance should be adjusted accordingly. This saves the government money, reduces oversight burdens on the contractor, and recognizes the

contractor's achievement of performance.

CHAPTER 6

CONTRACT TYPE

Agencies should select contract types that are most likely to motivate contractors to perform optimally. PBSC encourages and enables the increased use of fixed-price contracts and incentives to encourage optimal performance.

Fixed-Price

Fixed-price contracts are appropriate for services that can be objectively defined in the solicitation and for which risk of performance is manageable. For such acquisitions, performance-based statements of work, measurable performance standards and surveillance plans are ideally suited. The contractor is motivated to find improved methods of performance in order to increase its profits.

Cost-Reimbursement

Cost-reimbursement contracts are appropriate for services that can only be defined in general terms or for which the risk of performance is not reasonably manageable. To the maximum extent practicable, PBSC methods should be used for these contracts. Where possible, they should include specific incentive provisions in addition to the award fee to insure that contractors are rewarded for good performance, as well as quality assurance deduction schedules to assure satisfactory performance.

Time and Material/Labor Hour Contracts

When the use of time and material/labor hour contracts is appropriate, agencies should employ PBSC methods to the maximum extent feasible.

Previously Acquired Services

When acquiring services that previously have been acquired by contract,

agencies should rely on experience, knowledge, and historical data gained from the prior contract to incorporate PBSC methods. Where appropriate, conversion from cost-reimbursement to fixed-price arrangements should be accomplished.

The OFPP report on the results of the PBSC pilot project demonstrated that converting cost-reimbursement non-PBSC contracts to fixed price PBSC contracts resulted in significantly reduced contract prices. On average, prices for these contracts fell by 21 percent in nominal dollars.

The Department of Treasury awarded a recurring base operating support services contract using PBSC. They converted from a cost-reimbursement to a fixed-price contract, and on a \$6 million requirement achieved savings of over 20 percent, including the effects of inflation. Treasury also believes the government will realize further future savings, since a cost-type contract would have required at least five audits at a cost of approximately \$5,000 per audit. In addition, a considerable amount of staff time will be saved due to decreased contract administration.

DOE estimates it annually will save approximately \$400,000 from a \$2.3M requirement due to the change from its sole source cost-plus-fixed-fee contract to a competitive firm fixed-price contract for a site protective services contract.

Partial Use of PBSC Methods

In situations where the entire contract is not conducive to PBSC, many tasks nevertheless may be defined in performance-based terms. In these situations PBSC methods should be used to the maximum extent possible.

A cost-reimbursement level-of-effort term contract could be converted to a fixed-price completion contract defining as much of the requirement in

performance-based terms as possible. A labor-hour arrangement could be used for the remainder of the requirement that could not be sufficiently defined or to accommodate unpredictable spikes in workload.

EPA's contract for telephone hotline services was awarded on a fixed-price basis. The contractor used past history compiled by EPA to determine the amount of work it could expect. To provide additional flexibility for an emergency or crisis, quantity options (fixed price per hour) were included.

Agencies also should consider breaking up large umbrella contracts experiencing cost overruns or performance problems. This will often enable the use of PBSC for large portions of the umbrella contract. The amount of money saved, the improved performance, and the reduced contract administration effort often can outweigh the added cost of awarding and administering multiple contracts.

Agencies should award more performance-based task orders competitively when they use task order contracts. They should define their requirements in such a manner that performance-based task orders can be fixed-price.

CHAPTER 7

CONTRACT ADMINISTRATION

Good contract administration is essential to the success of PBSC, and requires the cooperation of both program and procurement offices. Cooperation is needed to identify any organizational barriers to fostering teamwork. Such cooperation should be instilled and reinforced at the executive levels of management in the agency.

The Customs Service has bi-weekly meetings between technical and procurement personnel to discuss procurement issues, including PBSC.

PBSC offers opportunities, in line with NPR principles, for streamlining and innovation in the contract administration/audit process. A primary benefit of the PBSC method is that it enables agencies to shift their emphasis from processes to outputs.

DOE has revamped its audit and appraisal process to bring it in line with PBSC. The focus has shifted from process to outputs.

PBSC streamlining extends to the entire acquisition process. It includes requirements definition, proposal preparation, and contract administration.

The Air Force used PBSC for a product design procurement. On a billion dollar procurement the streamlined process reduced procurement administrative lead time by 66 percent, cut program staff by 75 percent, and drove costs down by nearly 40 percent. The RFP was just 100 pages long, compared to an earlier RFP for a similar requirement that was 1,000 pages long. The program team was pared from the typical 80-100 people to a cross-functional team of 20 people. Draft requirements were shared with industry, and when the RFP was issued, contractors were given just one month to respond, which was sufficient due to their prior input. Simple performance requirements, competition, and collaboration were used to create relationships and incentives that produced extraordinary results.

For other best practices applicable to PBSC, see "*Best Practices for Contract Administration*," October 1994.

CHAPTER 8

CONFLICT RESOLUTION

Traditionally, contracting parties have relied on claims and litigation to resolve disputes. However, this is often costly and time-consuming. In the interest of economy and efficiency, expeditious and less confrontational resolution procedures are increasingly being utilized. Communication and openness throughout the procurement process greatly reduce conflicts. The OFPP Pledge Program recognized the value of such procedures by including an agency commitment to institute an informal, timely conflict resolution mechanism for resolving pre- and post award issues.

Partnering

Partnering is a technique for preventing disputes from occurring. Under this concept, the agency and contractor, perhaps along with a facilitator, meet after contract award to discuss their mutual expectations. The parties mutually develop performance goals, identify potential sources of conflict, and establish cooperative ways to resolve any problems that may arise during contract performance.

Creating a partnership agreement signed by all parties - contracting officer, QAE/COTR, program office, and contractor - creates a "buy in" to the overall goal of satisfactory performance on time, within budget, and without claims.

Within the Department of Defense (DOD), the Army Corps of Engineers has implemented a partnering program with its contractors and has achieved improved cost, schedule, and performance goals. DOD believes the use of partnering in its contracts improves relationships and communication between government and industry.

Partnering can transform an adversarial relationship/attitude into a professional relationship built on trust and cooperation between the parties. Contracting parties that have participated in partnering have experienced the following results: more timely performance, better cost control, significant reductions in paperwork, and fewer disputes.

Ombudsman

Some agencies have established an ombudsman to help resolve concerns or disputes that arise during the acquisition process. Typically, an ombudsman investigates selected complaints and issues nonbinding reports, with recommendations addressing problems or future improvements deemed to be desirable.

The Army Materiel Command (AMC) has had an agency ombudsman for several years. The ombudsman helps firms to resolve problems they encounter on existing AMC contracts. The ombudsman investigates reported complaints or requests for assistance from business/industry, and ensures that proper action is taken. Working directly for the commander, the ombudsman is able to cut through organizational "red tape" and improve the command problem-solving process. The success of the ombudsman program at Headquarters AMC prompted the establishment of ombudsman programs in all of the subordinate AMC buying commands. The AMC-wide ombudsman program is a positive force in the timely resolution of problems presented by contractors. It contributes to an increased level of sensitivity in the command for handling contractor problems, and results in the solution of most problems presented without the need for expensive and time-consuming litigation.

NASA also established an ombudsman program to improve communication between the agency and interested parties. The NASA ombudsman hears and works to resolve concerns from actual and potential offerors, as well as contractors, during the pre- and post award acquisition phases.

Alternative Dispute Resolution (ADR)

ADR means any procedure or combination of procedures used voluntarily

to resolve controversies without resorting to litigation. Examples of ADR include conciliation, facilitation, mediation, and mini-trials.

ADR can provide an effective and less expensive method for resolving contract disputes. Agencies should include an agreement to utilize ADR in their contracts.

The Navy has used ADR techniques since 1982, and it has been able to resolve issues and controversies in almost 99 percent of the cases in which ADR was used. Recently, the Navy used ADR to resolve a \$1.1 million dispute. The hearing on this matter was completed within six hours, and a decision was rendered the next day.

There is no single correct method for conducting ADR. Each situation is different and the ADR technique and procedures must be tailored to a particular situation and the needs of the parties.

The Army has established an acquisition reform working group that meets periodically with industry to discuss upcoming procurements and the use of ADR.

The DLA has established agency-wide guidelines which include consultation with ADR specialists to determine which of the numerous ADR techniques would be appropriate for resolving each dispute situation.

Several agencies, including the Navy, the Air Force, Army Corps of Engineers, and GSA, have drafted model ADR agreements. These documents can provide useful guidance to agencies in implementing the use of ADR techniques. A model agreement is provided at Appendix 12.

CHAPTER 9

CONCLUSION

The best practices included in this document are a first step at providing practical guidance for implementing a performance-based approach to service contracting. The use of these methods should lead to more cost-effective acquisitions, better value, and greater competition. They should have the net effect of shifting some of the manageable performance risk from the government to the contractors. Contractors will be given more latitude for determining methods of performance, with more responsibility for performance quality. The government should experience fewer cost overruns, schedule delays, and performance problems.

By using PBSC methods, agencies have an opportunity to further the goals of streamlining and reinvention. The PBSC process requires agencies to re-evaluate their workload to determine what really needs to be done and how best to do it. Once a requirement has been subjected to this process, future performance-based contracting will be easier, and agency needs will be better defined and manageable. This creates a "win/win" situation for both agencies and contractors.