

## The Acquisition Advisory Panel And Performance-Based Contracting: A Wasted Year

by Vernon J. Edwards

In the more than 15 years since the Office of Federal Procurement Policy issued its policy making performance-based contracting the preferred way to buy services, the policy has not caught on. Working-level resistance to performance-based contracting has withstood pilot programs, best practices guides, samples, templates, a variety of handbooks, new regulations, new statutes, annual goals, countless conferences and seminars, unsubstantiated claims of cost savings and quality improvements, and all manner of hype. In 2003, Congress passed a law requiring the creation of an acquisition advisory panel and mandating that the panel review laws, regulations, and policies about performance-based contracting and make recommendations "with a view toward ensuring effective and appropriate use of...performance-based contracting," Services Acquisition Reform Act of 2003, Pub. L. No. 108-136, § 1423, 117 Stat. 1391 (2003). See *A Chance To Fix Performance-Based Contracting*, 19 N&CR ¶ 18.

The Office of Management and Budget established the Acquisition Advisory Panel (the "§ 1423 Advisory Panel" or "SARA Advisory Panel") on February 1, 2005. See 47 GC ¶ 61(d). It is now June 2006, and we still do not have the Panel's final recommendations. However, the Panel's Performance-Based Acquisition (PBA) Working Group has made 11 recommendations, 10 of which have been adopted by the full Panel. See 48 GC ¶ 123(a). Here they are, as stated in the summary of the Panel's voting on the working group's recommendations in meetings held March 17 and March 29, 2006, available at [http://www.acquisition.gov/comp/aap/documents/PBA\\_Recommendations.pdf](http://www.acquisition.gov/comp/aap/documents/PBA_Recommendations.pdf)

Recommendation 1:

OMB's Government-Wide Quota of Requiring 40% of Acquisitions be Performance-based Should be Adjusted to Reflect Individual Agency Assessments and Plans for Using PBA

[Adopted by Panel 3/17/06]

Recommendation 2:

OFPP Should Issue More Explicit Guidance and Create A PBA "Opportunity Assessment" Tool to Help Agencies Identify When They Should Consider Using Performance-based Acquisition

[Adopted as revised by Panel 3/17/06]

Recommendation 3:

Require Agencies to Devise "Acquisition Performance Plans" to Guide their Acquisition Management

[Withdrawn by working group]

Recommendation 4:

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

[Adopted as revised by Panel 3/17/06]

Recommendation 5:

Modify the FAR to Include an Identification of the Government's Need/Requirements by Defining a "Baseline Performance Case" in the [Performance Work Statement] or [Statement of Objectives]. OFPP should issue guidance as to the content of the Baseline Performance cases

[Adopted as revised by Panel 3/29/06]

Recommendation 6:

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

[Adopted as revised by Panel 3/29/06]

Recommendation 7:

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

[Adopted as revised by Panel 3/29/06]

Recommendation 8:

OFPP Should Revise the Seven Step Process to Reflect the Panel's new PBA Recommendations

[Adopted by Panel 3/29/06]

Recommendation 9:

Contracting Officer Technical Representatives (COTR's), in PBAs receive additional PBA training and be re-designated as Contracting Officer Performance Representatives (COPR's)

[Adopted as revised by Panel 3/29/06]

Recommendation 10:

Improved Data on PBA Usage and Enhanced Oversight by OFPP on Proper PBA Implementation Using an "Acquisition Performance Assessment Rating Tool" A-PART

[Adopted by Panel 3/29/06]

Recommendation 11:

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

[Adopted by Panel 3/29/06]

Now, am I being unfair in asking: *Is that it? After more than a year?* After all those hearings and public statements? Please forgive me for saying that it seems pretty lightweight to recommend developing yet another "best practices" guide, to ask agencies to develop a "baseline performance case" (whatever that is) and a "performance improvement plan" (more paperwork), to change "COTR" to "COPR" (now they'll be "coppers"), to develop an "A-PART" (whatever that is), and to conduct yet another study five years from now. There's not much meat on them bones. If this is the best that some of our best minds can do in a year and a half, then performance-based contracting is doomed (and maybe acquisition is, too).

I have tried to recall an unsuccessful policy to which more attention was given over a longer period of time than has been devoted to performance-based contracting (*performance-based services contracting, performance-based acquisition, performance-based services acquisition--take your pick*), and I cannot think of a single one. (Not "total package procurement," "design-to-cost," "price-based acquisition," or "cost as an independent variable," to name a few.) Assuming for the moment that the current performance-based contracting policy is realistic and sound (which it is not), and that it is worth a large-scale effort to do (which it is not), here are what I think the full Panel's recommendations to OMB should be:

- (1) Develop Government-wide standard training for (a) service requirements analysis, (b) the development of service performance standards, and (c) the performance of service quality assurance. The training should cover theory (what is a service, what is a service result), application, and practice.
- (2) Develop Government-wide standard training for service contract pricing. The training should cover (a) how firms price services in different industries and (b) how to analyze service price proposals.
- (3) Develop Government-wide standard training for service contract administration and Government-contractor relationship management. The training should emphasize that while contracts are not unimportant, contracts, contract law, and court enforcement cannot ensure that the Government gets quality service.
- (4) Develop a Government-wide standard textbook for services acquisition that reflects the standard curriculum described above and that is mandatory for use in training courses.
- (5) Require all Contracting Officers, contract specialists, program managers, and CO representatives to attend the Government-wide standard training in services acquisition, and ask Congress to provide funds for the conduct of the training.
- (6) Develop a Government-wide standard format and style guide (like the *MLA Style Guide*) for performance work statements and quality assurance surveillance plans.
- (7) Direct agencies to establish work statement development offices staffed with personnel who are qualified to assist agency personnel in analyzing their requirements, developing performance standards, and developing work statements and quality assurance plans.
- (8) Establish criteria for evaluating the effectiveness of performance-based services acquisition and a program for measuring and documenting its effectiveness.
- (9) Ask Congress to repeal the statutory order of precedence established by the National Defense Authorization Act for Fiscal Year 2001, Pub. L. No. 106- 398, § 821(a), which incorrectly suggests that there is a relationship between performance-based contracting and contract type.
- (10) Cancel the goals for the implementation of performance-based contracting and do not establish any goals for at least two years.

- (11) Drop the emphasis on the use of contractual incentives. (Incentives, which are difficult to design, administratively costly, and of dubious value, should be the exception, rather than the rule. Award-fee incentives are inconsistent with performance-based contracting.)

Those are just a few ideas--one coffee-cup's worth.

Recently at *FedBizOpps* (<http://www.fedbizopps.gov>), the Government's website for electronic postings of solicitations over \$25,000, I saw a "sources sought" synopsis published by an agency that wants to hire a firm to write a performance work statement and a quality assurance surveillance plan-- solicitation number M67861-06-RF11, dated May 19, 2006. I think that is outrageous. Who is writing the performance work statement for *that* service? The Government is either serious about performance-based contracting or it is not. If it is, then OMB should get to work and do something serious about it. If it is not serious, then it should drop the policy or adopt the recommendations of the Advisory Panel's PBA working group. VJE

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