

Performance-based Contracting, A Primer

By Susan J. Harvey, 2003

Performance-based contract guidance has been part of the contracting landscape for well over a decade. The movement grew slowly during the 1990's as influential leaders grasped the value of tailoring contracts to focus on results rather than specifying the process of doing work leading to a desired result. The 1993 Government Performance and Results Act requiring agencies to include desired outcomes along with their budget requests cast a distinctly top-down flavor to the movement that continues to this day. The front line manager is confronted with the dilemma of continuing business as before in order to get business done or experimenting with a new approach to work specifications that may or may not work. The result is a massive cultural conflict that mitigates against change. Thus, we see top-down directives to force change. For example, on April 5, 2000 Under Secretary of Defense, Acquisition and Technology, Jacques Gansler, issued a directive that 50 percent of service acquisitions for the Department of Defense were to be performance-based by the year 2005. This initiative was followed on March 9, 2001 when Deputy Director of OMB, Sean O'Keefe, established a FY 2002 goal for the entire Executive Branch that not less than 20 percent of eligible service contracting dollars be awarded using performance-based techniques. For the Department of Defense this translates into 30 percent for FY 2003 and 40 percent for FY 2004 to reach the 50 percent measure established by Dr. Gansler. It is clearly time for Defense Department managers to get on board with the hard work of putting performance standards into contracts before others do it poorly for them. Here is some information to get started along this worthwhile and productive venture.

Performance-based Contracting

What is performance-based contracting?

FAR 37.600 specifies four essential elements of performance-based contracting:

- It describes work requirements in terms for results required rather than the methods of performance.
- It uses measurable performance standards and quality assurance surveillance plans.
- It specifies procedures for fee or price reductions on fixed-price contracts when services are not performed or meet contract requirements.
- It includes performance incentives where appropriate.

The FAR article was published in 1997. It implemented policy guidance issued on April 9, 1991 by the Office of Federal Procurement Policy in OFPP Policy letter 91-2. The Policy letter stated that it was the policy of the Federal Government for agencies to use performance-based contracting methods to the maximum extent practicable. General guidance was provided on quality assurance, focus on the “what” is to be required rather than “how” the work is to be done and so forth. Agency heads were encouraged, but not mandated, to implement the new policy.

Just where does the government stand on performance-based contracting in FY 2003?

Well, let’s start at the top. President Bush’s management agenda for FY 2002 outlined his focus for the agenda on the five initiatives of management of human capital, competitive sourcing, financial performance, electronic government, and budget and performance integration. It contained three principles to be followed in pursuing the initiatives. They were that the initiatives should be citizen-centered, not bureaucracy-centered; results-oriented; and, market-based, while actively promoting rather than stifling innovation through competition.¹

Measuring Results

And how does the Department of Defense measure up to the agenda? The mid-term report issued by OMB in December 2002² reported that as of June 30, 2002 the Department of Defense scored red (any one of a number of serious flaws) in four of the five areas. More encouraging, a progress score of mostly green (meets all of the standards for success) was received in most areas. Together, the scores indicate that DoD is on the right track to meet objectives but has a long way to go to declare success.

¹ Executive Office of the President, Office of Management and Budget, **The President’s Management Agenda, Fiscal Year 2002**, p. 4.

² Executive Office of the President, Office of Management and Budget. **Progress Implementing The President’s Management Agenda**, December 10, 2002.