Performance-Based Acquisition

INTRODUCTION

One of the most important challenges facing agencies today is the need for widespread adoption of performance-based acquisition (PBA) to meet mission and program needs. Although policies supporting performance-based contracting have been in place for more than 20 years, progress has been slow. The single most important reason for this is that the acquisition community is not the sole owner of the problem, nor can the acquisition community implement performance-based contracting on its own. Laws, policies, and regulations have dramatically changed the acquisition process into one that must operate with a mission-based and program-based focus. Today, many more types of people must participate as members of the acquisition team. In addition to technical and contracting staff, individuals from program and financial offices are included on acquisition teams. These people add fresh perspective, insight, energy, and innovation to the process — but they may lack some of the rich contractual background and experience that acquisition often requires.

This reading is targeted to the services acquisition community and it will address the performance-based acquisition process in seven simple steps.

1. Establish an integrated solutions team.
2. Describe the problem that needs solving.
4. Develop a performance work statement (PWS).
5. Decide how to measure and manage performance.
6. Select the right contractor.
7. Manage performance.
The intent is to make the subject of performance-based acquisition accessible and logical for all and shift the paradigm from traditional contract compliance to one of collaborative, performance-oriented teamwork with a focus on program performance, improvement, and innovation. Performance-based acquisition has the potential to dramatically transform the nature of service delivery, and permit the federal government to tap the enormous creative energy and innovative nature of private industry.

**STEP 1 - THE PERFORMANCE-BASED ACQUISITION TEAM**

The performance-based acquisition team should be a customer-focused, multi-functional team that plans and manages service contracts throughout the life of the requirement. Many functional experts can make up an acquisition team. The duties, expertise, and contributions of each PBA team member are important to the success of a service acquisition.

Previously, it was common for contracting and other functional experts to work independently in acquiring services. This way of conducting business is considered outdated. It is essential that all stakeholders be involved throughout the service acquisition life cycle from the requirements analysis phase through contract award and administration.

The goal of performance-based acquisition is relatively simple — to obtain quality, timely services in both a legal and cost-effective manner, placing the responsibility for quality performance on the contractor. Nonetheless, accomplishing this goal can be extremely complex. The interdisciplinary nature of contract efforts means no single individual will likely have all the requisite knowledge and experience in most instances. Therefore, personnel such as the contracting officer, contracting officer’s representative (COR), program manager, responsible fiscal officer, and legal counsel (among others) should form an integrated solutions team as soon as possible in order to:

- Develop and execute a procurement/acquisition master plan.
- Develop a level of dialogue and teamwork so the team can communicate efficiently and be responsive to change.
- Deal effectively with the concepts of “quality in fact,” defined as compliance with specifications, and “quality in perception,” or consistency with expectations.
The composition of the PBA team will vary from contract to contract. The requirement may be for a single function or for multiple functions. The estimated dollar value should not be the sole determinant of the amount of effort devoted to the acquisition. However, a few key individuals are critical to the success of any contract:

- **Customer/user:** The customer’s representative or functional manager normally brings to the team detailed knowledge of the user requirements. They are responsible for defining the requirement, including an assessment of the risk that the government might assume when relying on commercial specifications and performance and quality standards. The customer/user also plays an important role in deciding what tradeoffs can be made when considering a commercially available service to fulfill an agency requirement. They are the central figure in the need analysis stage and also may contribute valuable historical data. To guarantee that there are no misunderstandings during contract performance, it is essential that the customer representative help establish the contractor’s performance quality level and the estimated cost of the services.

- **Contracting officer:** The warranted, duly appointed contracting officer is responsible for performing all relevant pre- and post-award functions from the solicitation phase to contract closeout, while safeguarding the interests of the government in its contractual relationship. The contracting officer does not determine the government’s need, but is responsible for assisting the program manager in preparing a performance work statement (PWS) that clearly states the government’s needs in accordance with pertinent regulations. The contracting officer serves as the principal business advisor and agent for the government responsible for developing the solicitation, conducting the source selection, and managing the contract. This individual also researches the marketplace to identify general business practices such as commercial terms and conditions, contract type, and the use of incentives.

- **Program manager:** The program manager (PM) is the acquisition team leader and has the overall responsibility for ensuring that the acquisition plan is properly executed and desired results are achieved. The PM provides coordination and facilitates communication among the acquisition team members, closely tracks the milestone schedule, and provides leadership and guidance to overcome and resolve any
problems or delays. More often than not, this individual will be assigned lead responsibility for drafting the PWS, and, in keeping with the goal of ensuring results-oriented performance, this individual must ensure that contract requirements are clearly and concisely defined and articulated. The PM’s duties include identifying, planning, and controlling various functional areas, such as program objectives, delivery requirements, scheduling, estimating, and budgeting. The PM normally participates in the source selection as well. These people serve as the principal technical experts and are usually the most familiar with the requirement and best able to identify potential technical tradeoffs and determine whether the requirement can be met by a commercial solution.

- **Performance assessment personnel (quality assurance personnel):** Performance assessment personnel are known by many names, such as quality assurance evaluator (QAE) and contracting officer’s representative (COR), but their duties are essentially the same. They serve as the on-site technical managers assessing contractor performance against contract performance standards. Performance assessment personnel are responsible for researching the marketplace to remain current with the most efficient and effective performance assessment methods and techniques. They contribute field experience in the post-award administration and surveillance of service contracts. Frequently, this individual is the same person who initiates the program requirements. They provide guidance to the PM (and other technical specialists who may provide input on the PWS) to ensure contract requirements are described in a manner that enables the government to objectively and effectively assess the contractor’s work performance. During contract performance, they serve as the “eyes and ears” of the contracting officer. When applicable, they perform the actual surveillance of the contractor’s work.

- **Cost/price analyst:** The cost/price analyst analyzes and evaluates financial price and cost data for reasonableness, completeness, accuracy, and affordability. Some agencies use cost-engineering personnel from within an engineering division to conduct cost/price analysis from a technical standpoint.

- **Small and disadvantaged business utilization (SADBU) specialist:** The SADBU serves as the principal advisor and advocate for small business issues. He or she may also serve as liaison to the Small Business Administration (SBA).
- **Finance/budget officer:** The finance/budget officer serves as an advisor for fiscal and budgetary issues.

- **Legal advisor:** The legal advisor ensures that the commercial practices and terms and conditions contemplated are consistent with the government’s legal rights, duties, and responsibilities. This individual conducts reviews for legal sufficiency and advises on acquisition strategies and contract.

- **Others:** Personnel from outside the agency may also be useful, depending on their area of expertise. These include people from agencies such as the Defense Logistics Agency, the Defense Contract Audit Agency, and the Environmental Protection Agency.

- **The business relationship with the contractor:** A positive relationship between the government and the contractor is essential in fulfilling a performance-based requirement. The agency’s relationship with prospective and performing contractors should promote a strong and positive business alliance to achieve mutually beneficial goals, such as timely delivery and acceptance of high-quality services, through the use of efficient business practices. Business relationships should seek to create a cooperative environment to ensure effective communication between the parties, teamwork, cooperation, and good-faith performance. These are important for meeting mission objectives and resolving conflicts and problems. Each party should clearly understand the goals, objectives, and needs of the other. It is essential that government and industry work together as a team to communicate expectations, agree on common goals, and identify and address problems early on to achieve desirable outcomes.

**STEP 2 – DESCRIBE THE PROBLEM THAT NEEDS SOLVING**

Planning for an acquisition should begin with business planning that focuses on the desired improvement. The first consideration is what problem the agency needs to solve. What results are needed? Will it meet the organizational and mission objectives?

**Link Acquisition to Mission and Performance Objectives**

The most effective foundation for an acquisition is the intended effect of the contract in supporting and improving an agency’s mission and performance
goals and objectives. Describing an acquisition in terms of how it supports these mission-based performance goals allows an agency to establish clearly the relationship of the acquisition to its mission, and it sets the stage for crafting an acquisition in which the performance goals of the contractor and the government are in sync.

This mission-based foundation normally must be established by or in cooperation with individuals in the program area that the resources will support when they are acquired. This is why assembling the team is the first step in a performance-based acquisition. Again, note that the focus is not what resources are required; the focus is what outcome is required. When the planning process is complete, an agency should be able to demonstrate clearly how an individual acquisition’s performance objectives will assist in achieving the agency’s mission and goals.

**Define (at a High Level) Desired Results**

Once the acquisition is linked to the agency’s mission needs, the team’s focus should shift to the specific desired results (outcomes) of contract performance. What is the ultimate intended result of the contract and how does it relate to the agency’s strategic plan? Is it a lower level of defaults on federal loans? Is it a reduction in benefit processing time? Is it broader dissemination of federal information? Is it a reduction in the average time it takes to get relief checks to victims? A former solicitation (or someone else’s solicitation) cannot answer these questions.

This is one of the tough tasks that the integrated solutions team must face. These answers can normally be found through facilitated work sessions with program staff, customers, and stakeholders, not with an exhaustive document analysis. By taking the process away from a review of paper or an examination of the status quo, greater innovation and insight are possible. Once aired, those thoughts are captured in the PWS.

Note that, to do this well, the team will need to plan to seek information from the private sector during market research (see Step 3). Industry benchmarks and best practices may help sharpen the team’s focus on what the performance objectives should be.
Decide What Constitutes Success

Just as important as a clear vision of desired results is a clear vision of what will constitute success for the project. There are two questions the team must ask themselves:

- Where does the team want to go?
- How will we know when we get there?

For example, in one production acquisition, affordability (in terms of average unit production price) was a key element. Affordability was communicated clearly from top-level management to the acquisition team and from the acquisition team to the competing contractors. As the project manager recalled—

*I had a strong sense of empowerment... from the Air Force Chief of Staff who said basically, ‘Do what you have to do to get the products under $40,000’...*

With that clear a mandate and the benefits of head-to-head contractor competition, the final, winning proposal included an average unit production price under $15,000 — far lower than the original cost target of $40,000 and the original cost estimate of $68,000 per unit.

This example shows how important it is to establish a clear target for success, which will then serve to focus the team’s efforts in crafting the acquisition, the contractors in competing for award, and the government-industry team throughout contract performance.

Determine the Current Level of Performance

The main reason to determine the current level of performance is to establish the baseline against which future performance can be measured. If you don’t know where you started, you can’t tell how far you’ve come.

Think about what happens when you rent a car. The company will give you a piece of paper with an outline of a car on it. You’re asked to go outside and mark on the diagram every nick and scratch you see, so that when you return the car, the baseline is clear. This is precisely what we need to do with our current contracts or operations. Keep in mind that the government doesn’t necessarily have to do the baseline measurement.
Another approach is to require a set of metrics as a deliverable under a current contract. Even if there are no existing provisions, this could easily be done via a contract modification. New solicitations can be written to provide for delivery of baseline and/or current performance levels, either annually, at the end of the contract, or both. The integrated solutions team must determine the adequacy of the baseline data for the new contract to ensure they achieve the best results.

**Best Practices**

Best practices for describing the problem include:

- linking the acquisition to mission and performance objectives;
- defining the desired results at a high level;
- deciding what constitutes success; and
- determining the current level of performance.

**STEP 3 – MARKET RESEARCH**

Market research is a vital means of arming the team with the expertise needed to conduct an effective performance-based acquisition. Market research is the continuous process of collecting information to maximize reliance on the commercial marketplace and to benefit from its capabilities, technologies, and competitive forces in meeting an agency need. It helps determine the suitability of the marketplace for satisfying a need or requirement.

Market research is essential to the government’s ability to buy best value products and services that solve mission-critical problems. Acquisition reform has opened the door to effective new approaches to market research that should be used by the integrated solutions team long before attempting to write a performance work statement.

The ultimate goal of market research is to help the acquisition team become informed consumers. The information derived from the market research will help the acquisition team develop the optimum strategy for meeting the requirement. Since market research should address both business and technical considerations of a requirement, it requires the active participation of
all acquisition team members as appropriate. The FAR makes it mandatory that market research be the first step in any acquisition. It should be done before:

- developing new requirements documents;
- soliciting any offers over the simplified acquisition threshold (SAT);
- soliciting offers under the SAT when adequate information is not available and cost is justified; and
- soliciting offers for acquisitions that could lead to a bundled contract.

The information collected will differ depending on whether the research is to help in developing a requirements document, support solicitation preparation, or both.

Acquisition histories may not give the whole picture needed for planning a particular acquisition. This information will not be helpful in cases such as first time purchases, rapidly changing technology, change in market capability, and no known sources. In determining and identifying the scope and extent of additional research needed, follow these steps:

- Review information already in hand, including your personal knowledge of the market from prior requirements and the findings of recent research on similar requirements.
- Identify information deficiencies.
- Select sources of additional information.
- Plan the collection of additional market information (i.e., when and how) during the acquisition planning, presolicitation, solicitation, and evaluation phases.

**Take a Team Approach to Market Research**

In the past, it was not unusual for technical staff to conduct market research on industry offerings, while contracting staff conducted market research on commercial practices and pricing. A better approach is for the entire team to be a part of the market research effort. This enables the members of the team to share an understanding and knowledge of the marketplace — an important factor in the development of the acquisition strategy — and a com-
mon understanding of what features, schedules, and terms and conditions are available.

The team should consider such factors as urgency, estimated dollar value, complexity, and past experience as guidelines for determining the amount of time and resources to invest in this effort. Do not invest more resources (e.g., time, available personnel, and money) than are reasonable given the potential benefits.

**Federal, State, and Local Resources**

Other government officials are an excellent resource for obtaining information on products, contractors, specifications, and costs, especially for a requirement that has never been procured by your contracting office. Other resources include state and local governments that may have procured services that have not been procured by the federal government. Contacting these resources can be handled through a formal market survey. Any information needed to help make the best decisions should be included on the survey. Actual questions will vary with each survey.

**Customers**

A wealth of information can be obtained from customers of prospective contractors regarding:

- how well a contractor performs;
- the reliability and quality of the product or service;
- the price they paid;
- delivery terms and conditions; and
- warranty provisions.

**Learn from Public Sector Counterparts**

While many are familiar with examining private sector sources and solutions as part of market research, looking to the public sector is not as common. Yet it makes a great deal of sense on several levels. First, there is an increased interest in cross-agency cooperation and collaboration. If the need is for payroll support, for example, many federal agencies have “solved” that problem
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and could potentially provide services through an interagency agreement. Alternatively, it could be that two or more agencies need to team together to acquire a solution in order to provide seamless services to the public. Second, agencies with similar needs may be able to provide lessons learned and best practices. For example, the Department of Commerce COMMITS office has frequently briefed other agencies on the process of establishing a government-wide agency contract (GWAC). So it is important for the integrated solutions team to talk to their counterparts in other agencies. Taking the time to do so may help avoid problems that could otherwise arise in the acquisition.

**Talk to Private Sector Companies Before Structuring the Acquisition**

It is important to be knowledgeable about commercial offerings, capabilities, and practices before structuring the acquisition in any detail. Some of the traditional ways to do this include issuing “sources sought” notices on FedBizOps.gov, conducting “Industry Days,” issuing Requests for Information, and holding presolicitation conferences. But it is also okay to simply pick up the phone and call private sector company representatives. Contact with vendors and suppliers, for purposes of market research, is encouraged. In fact, FAR 15.201(a) specifically promotes the exchange of information “among all interested parties, from the earliest identification of a requirement through receipt of proposals.” Once proposals have been received, limitations apply to the exchanges of information with prospective contractors.

**Consider One-on-One Meetings with Industry**

One-on-one meetings with industry leaders are not only permissible under FAR 15.201(c)(4), they are more effective than pre-solicitation conferences. When market research is conducted before a solicitation or performance work statement is drafted, the rules are different. FAR 15.201(f) provides, for example: “General information about agency mission needs and future requirements may be disclosed at any time.” Since the requirements have not (or should not have) been defined, disclosure of procurement-sensitive information is not an issue.

It is effective to focus on commercial and industry best practices, performance metrics and measurements, innovative delivery methods for the required services, and incentive programs that contractors have found particularly effective. This type of market research can expand the range of potential solutions, change the very nature of the acquisition, establish the performance-
based approach, and represent the agency’s first step to an “incentivized” partnership with a contractor.

**Look for Existing Contracts**

A thorough review of acquisition histories on current or prior contracts for the same or similar items may help to determine the type of market information that may be needed for a particular acquisition. Existing contracts include GSA Schedules, GWACs, and multi-agency contracts.

**Document Market Research Results**

The team must document the market research results in a written market research report that is kept in the contract file. The market research report provides a summary of the team’s market research activities and should provide a logical basis for determining whether or not to acquire a commercial product to satisfy agency needs.

The FAR does not make it mandatory to prepare a market research report; however, it encourages agencies to document the results of market research in a manner appropriate to the size and complexity of the acquisition. Remember, it is easier to compile information into one document that will be included in the contract file. Also, always refer to your agency guidance for any additional requirements.

**Best Practices for Market Research**

- Take a team approach to market research.
- Talk with other federal, state, or local agencies.
- Talk with your customer or ultimate user of the service.
- Spend time learning from public-sector counterparts.
- Talk to private-sector companies before structuring the acquisition.
- Consider one-on-one meetings with industry.
- Look for existing contracts.
- Document market research.
Market Research Techniques

This table illustrates techniques to use in compiling data necessary for making the best decisions when planning the procurement.

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<th>Technique</th>
<th>Application</th>
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<tr>
<td>1. Investigate the market. Determine current status of technology, extent of commercial applications, and source availability.</td>
<td>Buys where rapid technological changes influence the way the requirement is stated.</td>
<td>Market indicators influence the specifications and the contracting approach (e.g., multi-year, options, type of contract). Significant savings by adapting commercial items.</td>
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<td>2. Brief industry. Conduct widely publicized briefings on future requirements to gain interest and to solicit comments on planned approach.</td>
<td>Seek out new companies.</td>
<td>Acquire information that will affect the specification development and contracting approach.</td>
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<td>3. Contact potential contractors to discuss requirements and get recommendations about planned acquisitions.</td>
<td>All buys.</td>
<td>Enhanced requirements definition, solicitation development, and competition.</td>
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<td>4. Visit potential sources. Target qualified potential sources who typically do not respond to solicitations.</td>
<td>Where history suggests that responses may be insufficient.</td>
<td>Identify and encourage new and possibly better sources to submit offers.</td>
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<td>5. Attend industry and scientific conferences.</td>
<td>Key personnel who need to keep abreast of new developments, industry trends, and make contacts.</td>
<td>Knowledge of current technology and commercial successes and failures as applied to agency requirements.</td>
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<td>6. Acquire literature about commercial products, industry trends, product availability, reliability, and prices.</td>
<td>All requirements.</td>
<td>More sources to solicit. Affects how requirements are stated, facilitates price analysis, and identifies new products.</td>
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<td>7. Analyze procurement history by examining quality and extent of competition, prices, and performance results.</td>
<td>All buys.</td>
<td>Revise requirements, specifications, and contracting approach based on “lessons learned.”</td>
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<td>8. Evaluate and test commercial items fully, as appropriate.</td>
<td>Whenever seemingly artificial barriers to the use of commercial items exist.</td>
<td>Develop data about the performance of commercial items. Determine necessary adaptations and develop cost estimates.</td>
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<td>9. Advertise in trade journal and other publications to solicit inquiries.</td>
<td>Any buy where competition is limited and FedBizOpps announcements are not reaching potential sources.</td>
<td>More responses from new, perhaps better, sources.</td>
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<td>10. Use FedBizOpps; provide complete data and synopsis far in advance of a solicitation.</td>
<td>All nonexempt procurements over $25,000.</td>
<td>More inquiries and responses. Sufficient time to receive expressions of interest about a requirement and alert potential contractors to release of a solicitation.</td>
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<td>11. Determine why selected contractors do not respond to a solicitation.</td>
<td>All procurements where responses are insufficient or apparently well-qualified sources do not respond.</td>
<td>Identify the impediments to effective competition. Document and publicize “lessons learned.”</td>
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<td>12. Examine business and trade association directories.</td>
<td>All buys.</td>
<td>Identify additional sources to solicit and acquire basic information about these sources.</td>
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<td>13. Use Federal Procurement Data System information.</td>
<td>All buys where an insufficient number of sources are responding (e.g., you can search FPDS for the NAICS codes for your product and obtain a printout of contractors who have previously supplied it).</td>
<td>Identify current government contractors, what was purchased, and if the purchase was competitive. Also, information about past procurements of the same/similar supplies, products, or services.</td>
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<td>14. Examine GSA Schedules.</td>
<td>All requirements that might be satisfied by commercially available products or services.</td>
<td>Identify products or services on schedules at a favorable price and terms.</td>
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<td>15. Contact the agency small business advisor to assist in locating qualified small and minority suppliers.</td>
<td>All requirements.</td>
<td>Identify qualified small and minority businesses for inclusion in a sources list.</td>
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## Market Research Sources

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### Step 4 – Develop a Performance Work Statement

The PWS process is discussed in most existing guides on performance-based service acquisition and in the FAR. Among its key steps are a job analysis and development of a performance work statement, quality assurance plan,
and a surveillance plan. This is typically the PBA model used. The specific tasks for developing a PWS are:

- a. Conduct an analysis to define the agency’s requirements. Often, a work breakdown structure (WBS) is used to capture all the key tasks. Other analysis methods are also available.

- b. Identify the requirements in terms of outcomes or results, and not in terms of processes, work efforts, or resources.

- c. Scrub the requirements to eliminate unnecessary ones.

- d. Capture the results of the analysis in a matrix (table) to help guide the writing of the PWS.

- e. Write the PWS. (Note: When writing the PWS, Steps 5-7 of the seven-step process should have already been reviewed at least once).

**Step 4a: Conduct an Analysis**

The objective of this step is to define the key requirements in terms of results or outcomes. This analysis is the basis for establishing performance requirements, developing performance standards, writing the performance work statement, and producing the quality assurance plan.

There are different strategies for tackling this problem. One technique is called a job analysis and is referred to as a “bottom-up” assessment. Another technique (from DOD) is a “top down” approach consisting of three analysis-oriented steps. Either approach is acceptable, as well as other approaches as long as the end result is an expression of the requirements in terms of results or outcomes.

**Job Analysis: Bottom-Up Approach**

This involves a close examination of the agency’s requirements, beginning with an analysis of work to be performed, and breaking down work tasks into applicable components and sub-components.

The work breakdown structure provides a good mechanism with which to begin this process. The WBS is a useful tool in distinguishing what work is performed by federal employees and what tasks contractors will perform. The goal of using the WBS is to help ensure that significant tasks are not overlooked. However, even though the WBS can be a valuable tool, it must be used carefully to avoid stifling innovation and ingenuity. Rigid control of
every detail is not necessary or desirable. Our main concern is that the WBS is sufficiently detailed and defined to permit government inspection and acceptance of services performed, hardware produced, etc., while still leaving room for creative thinking on the part of contractors. In addition, work breakdown structures have often been used to develop resource requirements. Except in limited situations, resource requirements such as manpower should not be included in performance work statements.

**Steps to Performing a Job Analysis**
The process of performing a job analysis includes the following steps:

1. Gather data on required outputs by breaking down the work into its lowest task level and linking tasks in a logical flow of activities.

2. Conduct open discussions with the customer or customer’s representative.

3. Perform market research.

4. Develop a work breakdown structure or tree diagram of the services that are being acquired.

To ensure project success, it must be accomplished by a cross functional team of subject matter experts (SMEs).

**Task Requirement List**
This process can begin by obtaining the following information from the customer:

- How is the work currently accomplished?

- Is the service currently on contract?

- Does the agency perform the service with its own workforce?

- Does another activity provide the service? Or is the service not currently being performed?

The answers to these questions will lead to more questions, all of which are aimed at the purpose of defining what the customer requires. A list of requirements or tasks that the contractor wants to perform should be the result.
Outcomes of Task Requirements
Given a list of tasks that the customer needs performed, the next step is to organize the tasks, grouping similar and related tasks and identifying the relationships of tasks. The focus should be on the “outcomes” that the customer expects for each of these tasks. Except in special cases, do not describe either:

- the processes of performing the tasks; or
- the resources that would be required to perform the tasks.

Work Breakdown Structure
The WBS is a hierarchical approach to describing the elements of a project or work effort. The intent is to create a consistent and visible framework for planning, estimating, and identifying responsibilities and costs associated with a project effort. The steps involved with developing the WBS are:

1. Identify all major module/aspects of a project required to meet project objectives.
2. For each module, identify the activities that must be accomplished to complete that module.
3. Breakdown each activity into tasks that must be accomplished to complete the activity.
4. If necessary, breakdown the tasks into sub-tasks until a level is reached where all products have been adequately identified.

In deciding how detailed the WBS should be, the PBSA team should ask:

- Have all of the customer’s requirements been adequately described?
- Are there previous contracts to look at for similar services?

Analysis-Oriented Process: Top-Down Approach
This analysis process is described in the “Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense.” It consists of three “analysis-oriented steps:”

1. Define the desired outcomes. What must be accomplished to satisfy the requirement?
2. **Conduct an outcome analysis.** What tasks must be accomplished to arrive at the desired outcomes?

3. **Conduct a performance analysis.** When or how will I know that the outcome has been satisfactorily achieved, and how much deviation from the performance standard will I allow the contractor, if any?

This approach is “top down” because it focuses on requirements rather than on tasks. The integrated solutions team should consider the various approaches. Neither the “job analysis” approach nor the “analysis-oriented” approach is mandatory; both describe an approach to analysis. Regardless of the approach adopted, the analysis will be used to develop:

a. A description of the requirement in terms of results or outcomes.

b. Measurable performance standards (Step 5).

c. Acceptable quality levels (Step 5).

**Step 4b: Express Requirements in Terms of Outcomes or Results**

The top-down approach will usually generate requirements in terms of results or outcomes. However, the job analysis approach may result in a task list and/or work breakdown structure. Often, these are process or resource-focused, rather than results-focused. The key requirements must be expressed in terms of results or outcomes to fit into the PWS.

**Step 4c: Scrub the Results to Eliminate Unnecessary Ones**

The integrated solutions team needs to identify the essential inputs, processes, and outputs during job analysis. Otherwise, the danger is that contractors will simply propose back the work breakdown structure, and the agency will have failed to solicit innovative and streamlined approaches from the competitors. One approach is to use the “so what?” test. For example, once the job analysis identifies outputs, the integrated solutions team should verify the continued need for the output. The team should ask questions like:

- Who needs the output?
- Why is the output needed?
- What is done with it?
- What occurs as a result?
Is it worth the effort and cost?

Would a different output be preferable?

And so on...

**Warning:** An analysis of requirements is often, by its nature, a close examination of the status quo (i.e., “how” things are done). This is exactly the type of detail that is *not* supposed to be in a PWS. The objective is to define the key requirements in terms of results or outcomes.

**Step 4d: Capture the Results of the Analysis in a Matrix**

As the information is developed, the integrated solutions team should begin capturing the information in a performance matrix. The Department of Defense recommends taking the desired outcomes, performance objectives, performance standards, and acceptable quality levels that have been developed during the analytical process and documenting them in a Performance Requirements Summary (PRS). The PRS serves as the basis for the performance work statement.

The PRS matrix has five columns:

1. **Performance objective:** What must be accomplished to satisfy the requirement?

2. **Performance standard:** What are the standards for timeliness, quantity, and quality (such as completeness, reliability, accuracy, customer satisfaction, cost, and so forth)?

3. **Acceptable quality level:** How much error will we accept?

4. **Monitoring method:** How will we determine that success has been achieved?

5. **Incentive:** How do we motivate continuous improvement?

**Step 4e: Write the Performance Work Statement**

There is not a standard template or outline for a PWS. The FAR only requires that agencies:

- Describe requirements in terms of results rather than process.
- Use measurable performance standards and quality assurance surveillance plans.

- Provide for reductions of fees or price.

- Include performance incentives where appropriate.

Although writing the PWS is listed as part of Step 4, the seven-step process is a repetitive and iterative process. It is advisable to have worked through all seven steps before writing the final version of the PWS.

**Format**

In terms of organization of information, a SOW-like approach is suitable for a performance work statement:

1. Introduction.
2. Background information.
4. Applicable documents.
5. Performance requirements.
6. Special requirements/Constraints (such as security).
7. Deliverables.

However, the team can adapt this outline as appropriate. Before finishing, there should be final checks:

- Examine every requirement carefully and delete any that are not essential.

- Search for process descriptions or “how” statements and eliminate them.

Many agencies have posted examples of performance-based solicitations that can provide some guidance or helpful ideas. However, since the nature of performance-based acquisition is (or should be) tied to mission-unique or program-unique needs, keep in mind that another agency’s solution may not be a good model.
Style Guidelines for Writing PWS

- **Style:** Write in a clear, concise and logical sequence. If the PWS is ambiguous, courts are likely to side with the contractor's interpretation of the PWS.

- **Sentences:** Replace long, complicated sentences with two or three shorter, simpler sentences. Each sentence should be limited to a single thought or idea.

- **Vocabulary:** Avoid using seldom-used vocabulary, legal phrases, technical jargon, and other elaborate phrases.

- **Paragraphs:** State the main idea in the first sentence so that readers can grasp it immediately. Avoid long paragraphs by breaking them up into several, shorter paragraphs.

- **Language Use:** Use active voice rather than passive.

- **Abbreviations:** Define abbreviations the first time they are used, and include an appendix of abbreviations for large documents.

- **Symbols:** Avoid using symbols that have other meanings (such as " for inches).

- **Use must and don’t use will.** The term *must* is used to specify that a provision is binding and usually references the work required to be done by the contractor. The word “will” expresses a declaration of purpose or intent.

- **Be careful using any or either.** These words clearly imply a choice in what needs to be done contractually. For instance, the word *any* means a limited number selected at the discretion of the contractor.

- **Don’t use and/or** since the two words together are meaningless; i.e., they mean both conditions *may* be true, or only one may be true.

- **Avoid the use of etc.** because the reader would not necessarily have any idea of the items that could be missing.
Do not use catch-all/open-ended phrases or colloquialisms/jargon. Examples of unacceptable phrases include “common practice in the industry,” “as directed,” and “subject to approval.”

Do not use terms without adequately defining them.

Best Practices and Lessons Learned for Developing PWS

- Don’t spec the requirement so tightly that you get the same solution from each offeror. If all offerors provide the same solution, there is not creativity and innovation in the proposals.

- PBA requires that the integrated solutions team jettison some traditional approaches to buying services. Specifically, specifying labor categories, educational requirements, or number of hours of support required should be avoided because they are “how to” approaches. Instead, let contractors propose the best people with the best skill sets to meet the need and fit the solution. The government can then evaluate the proposal based both on the quality of the solution and the experience of the proposed personnel.

- Prescribing manpower requirements limits the ability of offerors to propose their best solutions, and it could preclude the use of qualified contractor personnel who may be well-suited for performing the requirement but may be lacking, for example, a complete college degree or the exact years of specified experience. For some services, in fact, such practices are prohibited. The FAR prescribes that when acquiring information technology services, solicitations may not describe any minimum experience or educational requirements for proposed contractor personnel unless the contracting officer determines that needs of the agency either (1) cannot be met without that requirement or (2) requires the use of other than a performance-based contract.

- Remember that how the PWS is written will either empower the private sector to craft innovative solutions, or cripple it.

**STEP 5 – CONTRACTOR PERFORMANCE MANAGEMENT**

Traditionally, PBA contracting methods have used the term “quality assurance” to refer to the functions performed by the government to determine whether a contractor has fulfilled the contract obligations pertaining to quali-
ty and quantity. However, the term “quality assurance” does not accurately capture the true essence of PBA, since agencies do not “assure” quality; rather, they assess contractor performance. As such, performance assessment is not surveillance. In a PBA environment, the contractor is contractually responsible for quality assurance, further motivated through various incentives such as award-fee and past performance evaluations. Agencies are still responsible for ensuring that they get what they are paying for by periodically evaluating performance through the appropriate assessment methods. This is done by deciding how to measure and manage performance.

**Decide How to Measure and Manage Performance**

The next step in the PBA/PWS process is to execute a performance analysis. It is a process that identifies appropriate and reasonable performance standards (i.e., how well the work should be done). The purpose is to establish objectively measurable standards for all of the tasks that have been identified as “needs” of the customer. Examples of performance standards include:

- response times, delivery times, timeliness (meeting deadlines or due dates), and adherence to schedules;
- error rates or the number of mistakes or errors allowed in meeting the performance standard;
- accuracy rates;
- milestone completion rates (the percent of a milestone completed at a given date); and
- cost control (performing within the estimated cost or target cost), as applied to flexibly-priced contracts.

Developing an approach to measuring and managing performance is a complex process that requires consideration of many factors: performance standards and measurement techniques, performance management approach, incentives, and more. This part of PBA is as important as developing the PWS because this step establishes the strategy of managing the contract to achieve planned performance objectives.

Performance standards are the criteria for determining whether the work requirements are met. That is, they represent the minimum acceptable levels of performance for the contract requirements. Another way of describing a
performance standard is that it is the measurement threshold or limit that establishes the point at which successful performance has been accomplished. Performance standards should be clearly written, in sufficient detail for them to be attainable, and objectively “measurable.” Conversely, vague descriptions can only be subjectively assessed by an evaluator.

The performance standards should describe the outcome or output measures but not give specific procedures or instructions on how to produce them, except in special cases. When the government specifies the “how-to’s,” the government also assumes responsibility for ensuring that the design or procedure will end with the desired result. On the other hand, if the government specifies only the outcome and accompanying quality standards, the contractor must then use its best judgment in determining how to achieve that level of performance. Recall that a key PBA tenet is that the contractor is entrusted to meet the government’s requirements and is given both the responsibility and authority to decide how to best meet the government’s needs. The government’s job is to then to evaluate the contractor’s performance against the standard.

**Review the Success Determinants**

In Step 2, the PBA team established a vision of what will constitute success for the project by answering two distinct questions: Where do I want to go, and how will I know when I get there? The task now is to build the overall performance measurement and management approach on those success determinants.

**Rely on Commercial Quality Standards**

While a customer may want the work accomplished to a particular standard, that standard may not be consistent with current industry practices. Market research may reveal that commercially acceptable performance standards will satisfy the customer at a lower price. The PBA team may also discover that industry standards and tolerances are measured in different terms than the customer has used in the past.

Rather than inventing metrics or quality or performance standards, the PBA team should use existing commercial quality standards identified during market research, unless the commercial standards prove inappropriate for the particular requirement. Industry involvement will help identify ineffi-
ciencies caused by too strenuous standards in the PWS, and will also lead to cost efficiencies that can be achieved through the use of commercial practices.

**Have the Contractor Propose the Metrics and the QASP**

One approach is to require the contractor to propose performance metrics and the quality assurance surveillance plan (QASP), rather than have the government develop them. If the agency developed the QASP, it would limit what contractors can propose.

**Quality Control Plan**

A quality control plan is developed by the contractor for its internal use to ensure that it performs and delivers high-quality service. Often, the quality control plan is part of the contractor’s original proposal, and in many cases, it is incorporated into the contract.

**Performance Standards: Performance Characteristics**

As a rule of thumb, the performance characteristics for a task have three basic elements:

- quantity;
- quality; and
- timeliness.

In establishing the performance standards, choose objective measurements wherever possible. The quantity and timeliness characteristics are fairly straightforward, but the quality characteristics are often difficult to define. The important quality characteristics must be defined by the customer. Quality may include one or more characteristics such as cost, accuracy, completeness, reliability, repeatability, consistency, and customer satisfaction.

**Select Only a Few Meaningful Measures on Which to Judge Success**

Whether the measures are developed by the prospective contractor or by the PBA team, it is important to limit the measures to those that are truly important and directly tied to the program objectives. The measures should be selected with some consideration of cost. For example, the team will want to ensure that the cost of measuring some aspect of performance does not exceed
the value of that information. The team will also want to limit more expensive means of measurement to only the most risky and mission critical requirements.

The number of assessment criteria and requirements will vary widely depending on the amount of risk involved, the uncertainties that exist, and the type of contract. The criteria and rating plan should be established in order to motivate the contractor to perform beyond the normal requirement when it is determined that the government will benefit from the improved performance.

**Include Contractual Language for Negotiated Changes to the Metrics and Measures**

The PBA team needs to reserve the right to change the metrics and measures in the contract. This requires that the contract documents include such provisions as value engineering change provisions, share-in-savings options, or other provisions preserving the government’s right to review and revise. To determine the need for such changes, the agency and contractor should meet regularly to review performance. The first question at each meeting should be, “Are we measuring the right thing?”

**Incentives**

Incentives can be monetary or non-monetary. They should be positive, but can include remedies, as appropriate, when performance targets or objectives are missed. Creating an incentive strategy is similar to crafting an acquisition strategy. There is no single, “one size fits all” approach; instead, the incentive structure should be tailored to the acquisition, characteristics of the marketplace, and objectives the government seeks to achieve, which is discussed in detail later in this section.

**Performance Standards**

Performance standards are established and included in the PWS after the requirements are identified and written. Under PBA, the government implicitly is willing to accept the contractor’s solution as long as it meets expressed performance requirements. Performance standards should:

- address quantity, quality, and timeliness;
- be objective, not subjective;
be clear and understandable;

be realistically achievable;

be true indicators of outcome or output; and

reflect the government’s needs.

The more critical the result is to objectively-measurable accomplishment, the more likely the need to develop a unique performance standard to evaluate the result. The level of detail of performance standards should correspond to the expectation of essential work accomplishment. You do not need to identify performance standards explicitly if the requirement is so clearly stated that a standard for performance has been unmistakably, albeit implicitly, established in the PWS — but be careful to not assume something is clear and implicit. The rule is “when in doubt, put it in.”

An important consideration regarding performance standards is cost. When we apply performance standards appropriately, we should actually reduce overall costs as performance deficiencies are identified and improvements to existing processes are made. Nevertheless, we need to be very selective in applying only needed performance standards at the suitable level, so as not to spend money for unnecessary performance standards. We should ask the following questions:

1. Is this level of detail necessary?

2. What performance can be measured by querying the contractor’s data system?

3. What is the risk to the government of not having this level of performance?

Standards may be previously published, well-recognized industry-wide standards, or may be developed by the government with industry input to ensure they are realistic and effective. The latter may be accomplished through public meetings, public comment on proposed standards, or a request for information per FAR 15.405.

Do not merely copy performance standards from previous contracts. Be especially careful with follow-on contracts that are converted to PBA. These per-
formance standards may have been “how to” rather than “what we need” documents.

**Acceptable Quality Levels**

The PWS development phase must also address how the contract will be administered. It’s too late to wait until after contract award to devise answers to questions. Often a convenient way to manage these types of problems is for the team to establish an acceptable quality level (AQL) for the task. This tool recognizes that unacceptable work happens, and that in most cases, zero tolerance is prohibitively expensive. In general, the AQL is the minimum number (or percentage) of acceptable outcomes that the government will accept. For example, in a requirement for taxi services, the performance standard might be “pick up the passenger within five minutes of an agreed upon time.” The AQL then might be 95%, meaning that the taxi must pick up the passenger within 5 minutes 95% of the time. Failure to perform to the AQL could result in a contract price reduction or other action.

Setting the maximum allowable defect rate (MADR) provides an alternative method for measuring performance. Also referred to as the maximum error rate (MER), the MADR is the number of occurrences during an evaluation period (usually the contractor’s invoice period) that the contractor can fail to meet the performance standards for a work requirement and still be considered as performing satisfactorily. The MADR is also defined as the defect rate in a population of services above which the contractor’s performance is considered unsatisfactory. The MADR can be expressed as either a number or a percentage. If the contractor provides either nonconforming service or nonperformance that exceeds the MADR, the contract administration team should take appropriate action to lead the contractor back to satisfactory performance or pursue a more serious action (e.g., termination for default or for cause).

**AQL vs. MADR**

Although an AQL and MADR serve the same purpose, they are different. AQLs and MADRs approach defining the threshold between acceptable and unacceptable performance from two extremes.

- The AQL defines the **minimum number** or percentage of acceptable outcomes. AQLs are often used to measure customer satisfaction and to measure the number of outcomes completed in a given time period.
The MADR defines the **maximum number** or percentage of **unacceptable (defective) outcomes**. MADRs are often used to set acceptance levels for products, since the percentage of defects is a small number (we hope).

A MADR of 1% corresponds to an AQL of 99%. It is possible to improve the MADR by 10% but it is not possible to improve the AQL by 10%. So, when continuous improvement goals are defined for the contractor, it may be more convenient to use a MADR. Also, the phrase “defective” implies a very negative outcome. In some situations, it will be better to use an AQL to promote continuous improvement.

A good rule of thumb is to try to define an AQL. Switch to a MADR if the defect rate is less than 1%, or when measuring the number of defects (e.g., a report with no more than 3 defects per page). AQLs should be used when measuring customer satisfaction or the responsiveness of the contractor (e.g., 80% of calls answered within 5 minutes).

**Reviewing AQLs (or MADRs)**

Once the team has established the AQLs, they should review them:

- Are the AQLs realistic?
- Do they represent true minimum levels of acceptable performance?
- Do they consider cost tradeoffs?
- Are they consistent with the selected method of surveillance?
- Are they compatible with the measurement of performance?
- Is the AQL clearly understood and communicated? For instance, if the AQL is an error percentage, is it a percentage of time the performance can vary, or is it a percentage of variation from the performance standard?

**Performance Assessment Personnel**

Personnel who will be assessing the contractor’s performance play a very important role in the development of the criteria of any requirement. Technical organizations are responsible for ensuring that the individual they recommend to the contracting officer possesses training, qualifications, and experi-
ence commensurate with the duties and responsibilities to be delegated and the nature of the contract. Specifically, requirements officials must nominate CORs. Following this nomination, and as early as practicable in the acquisition planning process, the contracting officer designates and authorizes a COR in writing. (FAR 2.101 and 7.104)

CORs become the main interface between the technical and contracting activities (e.g., technical aspects of the project, balancing customer needs against agreed-upon contract details, and managing the contractor performance). CORs must have a general knowledge of contracting to be able to assist the contracting personnel. The contracting officer maintains the lead in this area, but should be able to obtain assistance in assessing the technical risks and requirements from personnel assessing the contractor’s performance.

The technique for establishing or assessing the contractor's performance is established before the contract is awarded. It is the responsibility of the COR, in conjunction with the PBA team, to establish the performance requirements and quality levels or standards for the requirements.

**Assessment Methods**

Several methods can be used to evaluate a contractor’s performance.

- **Random sampling** is a statistical method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments is found to be acceptable. Random sampling is the most appropriate method for frequently recurring tasks. It works best when the number of instances is very large and a statistically valid sample can be obtained. If performance is considered marginal or unsatisfactory, the evaluators should document the discrepancy and begin corrective action. If performance is satisfactory or exceptional, they should consider adjusting the sample size or sampling frequency.

- **Periodic sampling** is similar to random sampling, but it is planned at specific intervals or dates. It may be appropriate for tasks that occur infrequently. This method can be quite effective in determining a contractor’s compliance with contract requirements, and it allows for assessing confidence in the contractor without consuming a significant amount of time.

- **Trend analysis** should be used regularly and continually to assess the contractor’s ongoing performance over time. Additionally, contrac-
tor-managed metrics may provide any added information needed for the analysis. It is a good idea to build a database from data that have been gathered through performance assessment. This database should be created and maintained by government personnel.

- **Customer feedback** is firsthand information from the actual users of the service. It should be used to supplement other forms of evaluation and assessment, and it is especially useful for performance that does not lend itself to the other methods of assessment. However, customer feedback information should be used prudently. It can be complaint-oriented, is likely to be subjective, and may not relate to actual contract requirements. This information requires thorough validation.

- **Third-party audits** refer to contractor evaluation by a third-party organization that is independent of both the government and contractor. All documentation supplied to, and produced by, the third party should be made available to the government and contractor.

The assessment methods identified in the QASP, together with the contractor’s quality control plan, will help evaluate the success with which the contractor delivers the level of performance agreed to in the contract.

**Suggested Quality Assessment Plan Outline**

The QASP describes how government personnel will evaluate and assess contractor performance. It is intended to be a “living” document that should be revised or modified as circumstance warrant. It is based on the premise that the contractor, not the government, is responsible for managing and ensuring that quality controls meet the terms of the contract. The degree of performance assessment should be based on the criticality of the service or task and on the resources available to accomplish the assessment. Also, recognize that the methods and extent of performance assessment may change over time in proportion to the evaluator’s level of confidence in the contractor’s performance. Although there is no required format for this document, we suggest the following format:

1. Purpose
2. Roles and responsibilities
3. Procedures
4. Methods of assessment

5. Successful performance and remedies

6. Certification of services

7. Sample of contract discrepancy report

8. Customer complaint procedures and training instructions

9. Acronyms and abbreviations

**Contract Types**

FAR 37.102 includes a preference for using firm-fixed price performance-based contracts to acquire services. However, the contract type must reflect the nature of the service and performance risk involved. The contract type should also serve to motivate the contractor to deliver optimum performance. You should also use your observations and understanding of common commercial practices to guide the selection of contract type, and include documentation justifying your selection in the written acquisition plan (as required) or the contract file. (FAR 16.103)

**Fixed-Price Contract Types**

As a general rule, contracts for routine services or efforts involving stable requirements, manageable performance risk, or follow-on acquisition for recurring requirements should use fixed-price contract types. With these types of contracts, the contractor is required to deliver the performance outcome as specified in the contract. Work must meet minimum stated performance standards. Service must be delivered within a specified time.

The contract amount represents full payment for the work. Exceeding this amount is at the contractor’s own expense. These contract types are used when technical and cost uncertainties involved in contract performance can be estimated with sufficient accuracy (i.e., low or predictable risk) or when work can be clearly defined. The contractor bears more responsibility for the performance costs and resulting profit (or loss).

**Cost-Reimbursement Contract Types**

Services that can only be defined in general terms or that involve performance risk that does not permit sufficient estimation of cost should use a cost-reimbursement type contract. These types of contracts require the con-
tractor to deliver their “best effort” to provide the specified service. Reasonable, allowable, allocable costs will be reimbursed up to the level specified in the contract as the total estimated amount.

The contract amount represents an estimate of total costs as a ceiling that cannot be exceeded without contracting officer approval. When using a cost-reimbursement contract:

- a written acquisition plan documenting the rationale for the selection of the contract type must be approved and signed at least one level above the contracting officer;

- the contractor must have an adequate accounting system;

- adequate government resources must be available to award and manage a contract other than firm-fixed-price including:
  - the pre-award designation of at least one qualified COR who has the certification, training, and experience commensurate with the responsibilities to be designated; and
  - assurance of efficient methods and effective cost controls during the government’s monitoring during performance. (FAR 16.301-3)

The contractor bears less responsibility for the performance costs and resulting fee. Cost-reimbursement contracts are not authorized for acquiring commercial items.

**Multi-Year Contracts**

A multi-year contract involves the purchase of supplies or services for more than one, but not more than five, program years, even though the total obligated funds may be unavailable at the time of contract award. A multi-year contract may provide the contingency that contract performance during the second and subsequent years of the contract depends on the appropriation of funds, and may provide for a cancellation payment to the contractor if appropriations are not made. The funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs.

Multi-year contracts can be terminated for the convenience of the government at any time during the life of the contract and can be for the total quantity or partial quantity. However, multi-year contracts can only be cancelled between fiscal years and must be for all subsequent fiscal years’ quantities.
Use of multi-year contracting may enable one or more of the following:

- Lower costs.
- Enhancing standardization.
- Reducing administrative burden in the placement and administration of contracts.
- Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phase-out costs.
- Stabilizing contractor workforces.
- Avoiding the need for establishing quality control techniques and procedures for a new contractor each year.
- Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.
- Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

In contrast to multiple year contracts, multi-year contracts allow for buying more than a year’s requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

**Incentives**

Incentives are not unique to performance-based acquisition. Contracts, by their very nature, motivate successful performance because contractors that fail to perform satisfactorily don’t get paid. The government can incentivize the contractor’s performance on just about any area of contract performance, as long as that performance provides ultimate benefit to the government.

Performance-based acquisitions should include the use of appropriate incentives when the contract type itself does not adequately motivate the contractor. Ultimately, whatever incentives we prescribe must be based on predetermined, objective performance standards that we can quantify, measure, and surveillance as needed. Increasingly, contracts are incorporating incen-
tives designed to encourage superior performance. The government collects, maintains, and uses information on past performance. An exceptional track record gives the contractor a greater competitive edge in future source selections and thus a stronger assurance of future work. Contract clauses such as liquidated damages provide a negative incentive.

Incentives can be monetary or non-monetary, positive or negative. They can be based on cost, schedule, or quality of performance. The goal of all incentives is to encourage and motivate the best-quality performance. While cost incentives are tied to some degree to contract type decisions, other cost and non-cost incentives for the integrated solutions team to consider, such as:

- contract length (options and award term);
- strategic supplier alliances;
- performance-based payments;
- performance incentive bonus;
- schedule incentives;
- past performance evaluations;
- agency “supplier of the year” award programs;
- competitive considerations;
- nonperformance remedies;
- value engineering change provisions;
- share-in-savings strategies; and
- letters of commendation.

Since performance incentives are negotiable, be aware of the unique nature of each incentive strategy. Several excellent guides exist on the subject.

**Recognize the Power of Profit as a Motivator**

One of the keys to effective incentives involves recognizing and acting on the private sector’s chief motivator — profit. Although profit is not the only motivator, it is a simple fact that companies are motivated by generating return
for their investors. One contractor was heard to say, “You give us the incentive, we will earn every available dollar.” The real opportunity is to make that motivation work to the government’s advantage.

Link the incentive program to the mutually agreed-to contract performance measures and metrics. Then, incorporate value engineering change provisions or share-in-savings strategies that reward the contractor for suggesting innovations that improve performance and reduce total overall cost. Set up the acquisition so that the contractor and government can benefit from economies, efficiencies, and innovations delivered in contract performance. If the incentives are right, and if the contractor and the agency share the same goals, risk is largely controlled and effective performance is almost inevitable. This approach will help ensure that the contractor is just as concerned about every element of contract performance as is the agency.

**Types of Incentives**

- **Cost-based incentives** are designed to relate profit or fee to results achieved by the contractor in relation to identified cost-based targets. For services such as maintenance of equipment, typical measures would be mean time between failures (MTBF), mean times to repair (MTTR), or system availability rates (in-commission rates). Regardless of the measure, performance incentives must be quantified and within a reasonable range (high-target-low). Cost performance must be included as an incentive when we are dealing with other than FFP or FP/EPA contracts.

- **Award-fee contract arrangements** are a tool for subjectively assessing contractor performance for a given evaluation period. They allow contractors to earn all or a portion of the award-fee pool established at the beginning of the evaluation period. The agency unilaterally determines the amount of earned fee. In PBA, the award-fee evaluation is based on a subjective assessment of how well the contractor meets or exceeds the applicable performance standards.

- **Award-term contract arrangements** are similar to award-fee contracts; however, instead of money, the contractor is awarded additional periods of performance for quality performance, or if performance is habitually below standard, the period of performance can be shortened. Award-term arrangements are most suitable when establishing a long-term relationship is valuable both to the government and to the potential contractor. Award term contracts are different from options
in that award terms are based on a formal evaluation process and do not entail the regulatory procedures associated with priced options.

- **Schedule incentives** focus on getting a contractor to exceed delivery expectations. These incentives can be defined in terms of calendar days or months, attaining or exceeding milestones, or meeting rapid-response or urgent requirements.

- **Past performance** can affect decisions to exercise options or make future contract awards. Past performance assessments serve as a way to motivate improved performance or reinforce exceptional performance. The integrity of a past performance evaluation is essential.

**Considerations When Contemplating Incentives**

Make sure that incentives are realistic and attainable. Understand that a contractor will not spend a dime to earn a nickel. To achieve the desired outcome, incentives should be consistent with the effort and contract value. They must also be carefully structured to consider their overall impact and avoid any unintended consequences while providing value for achieving the mission. In addition, make sure that incentives are tied to performance objectives and performance standards. If they do not clearly communicate the agency’s desires and expectations, they will have, at best, only a random chance of achieving the desired outcome. An “I will know it when I see it” approach is neither an incentive nor a performance standard. Instead, ask yourself these questions:

- Will enhanced performance provide additional value to the mission?

- Which areas of the requirement would benefit most from enhanced performance?

- Which areas do not need added incentives (or which areas can do without)?

- How much is the agency willing to pay to achieve a level of performance beyond the performance standard? Is there a potential for using cost-sharing?

- Do contractors within the particular industry prefer additional performance periods (award terms) or monetary incentives (award fees)?

- Is the incentive affordable? Will it affect timelines or schedules in a positive way? Adversely?
The government has adopted several general principles pertinent to PBA incentives. First, it is the government’s intent to obtain, using PBA methods, the products, services, and cost savings it requires by providing tangible incentives that motivate the contractor to perform at a level that exceeds the performance standards or acceptable quality levels and benefits mission performance. Second, the contract vehicle itself to result in a mutual value for both contracting parties. Understandably, many contractors are reluctant to move into the PBA environment if it entails more risk to them, unless of course they can also anticipate more reward than they may have received in the past. Conversely, the position of the government is that a contractor who meets only the minimum performance standards merits only the awarded contract amount. Earning a reward should be based on objective ratings of the contractor’s performance rather than subjective ratings employed in numerous CPAF contracts in the past. If good, valid, objectively-measurable outcome criteria exist, then CPIF type structures using performance incentive provisions would be the preferred approach. These contracts would, by definition, fall into the PBA category since objective, measurable performance standards and performance incentives are a critical component.

In order to effectively use performance incentives, the solicitation package must establish definitions (and units of measurement, or metrics) for “standard performance” and “maximum positive and negative performance incentives.” Units of measurement themselves also must be defined and described in the solicitation. These definitions will vary from contract to contract. A draft RFP may be issued for comment, along with a request for proposed alternative incentive arrangements. These criteria must focus on achieving program or project objectives, taking into account the program mission, product’s key characteristics, and other unique features of the program. The PBA team may jointly develop and negotiate these incentive criteria with contractor(s) and all potential stakeholders so that all parties “buy in” to the merits of this approach. Additionally, soliciting stakeholders’ input and feedback will help identify what the customer feels is most important. When developing appropriate incentive criteria, keep the following attributes in mind:

1. The selected incentives must be relevant to the program and consistent with the program mission, goals, and operational requirements.

2. Incentives must be consistent with contract requirements as well as other program documents. Their use may be especially desirable in
complex, high-dollar value efforts, or those with a history of performance or cost overrun problems.

3. Not only must chosen incentives be measurable, but the measurement systems themselves must be reliable.

4. Incentives should correlate accurately, one-for-one, with desired results. The government has the burden to accomplish necessary follow-up to ensure desired results are achieved (i.e., establish solid, stable measures to determine the extent to which good performance is actually realized). Incentives should continue to encourage good performance and discourage unsatisfactory performance.

5. Performance incentives may be positive, negative, or a combination. We should use contract price deductions when contractor performance slips below the minimally satisfactory level, and it makes good business sense to do so (i.e., the administrative cost to assess deductions is offset by the individual or cumulative amount of the deductions themselves). If deductions are considered, the amount assessed should approximate the value of lost services or failed components.

6. To be effective, incentives must be beneficial to both parties. The incentive structure itself must make sense and not cost more to implement than its ultimate worth to the government (including all relevant administrative costs). However, the incentives must also be meaningful and attainable for the contractor who should find it worthwhile to innovate and seek to improve performance, motivate their employees, and so forth.

7. Multiple incentive contracting combines the motivation for technological progress, timely delivery, and effective cost control with the ultimate objective of attaining an appropriate balance between performance, schedule, and cost control (not necessarily the lowest cost). All multiple incentive contracts must have a cost incentive. Multiple incentive contracting allows for a direct quantitative relationship between profit motivation and the government’s objectives. Multiple incentives must identify the possible alternative technical levels of performance and place relative value on the alternatives as affected by the relationship between cost, performance, and schedule decisions. Multiple incentives should be negotiated within a structure that gives appropriate weight to acquisition objectives, which includes balancing the range of cost and performance goals.
Positive and Negative Incentive Examples

- **Positive:**
  - When performance exceeds standard, pay X% of monthly payment into pool. At the end of Y months, pay contractor amount accrued in pool.
  
  - When performance exceeds standard, pay X% of monthly payment into pool. When pool has reached Y dollars, pay contractor amount accrued in pool.
    
  - When performance has exceeded the standard for X consecutive months, reduce government oversight or contractor reporting, as appropriate.
    
  - Document past-performance report card, paying particular attention to performance that exceeded the standard.

- **Negative:**
  
  - When performance is below standard for a given time period, X% of the period’s payment will be withheld.
    
  - When performance is below standard for a given time period, require the contractor to re-perform the service at no addition cost to the government.
    
  - When performance is below standard for X consecutive months, increase surveillance or contractor reporting.
    
  - Document past-performance report card, paying particular attention to performance that failed to meet the standard.

Generally, positive incentives are preferred over negative incentives.

**Review the PWS**

You can review the PWS by answering the following questions:

- Does the PWS describe the outcomes (or results) rather than how to do the work?
Does the PWS avoid specifying the number of contract workers required to perform the work (except when absolutely necessary)?

Does the PWS avoid specifying the educational or skill level of the contract workers (except when absolutely necessary)?

Can the contractor implement new technology to improve performance or lower cost?

Can the contractor use lower cost materials and still meet the performance standards?

Are the situations documented where tightly controlled materials or supplies are essential?

Are commercial performance standards used?

Do performance standards address quantity, quality, and timeliness?

Are performance standards objective, easy to measure, and timely?

Is the assessment of quality a quantitative or qualitative assessment?

Will two different evaluators come to the same conclusion about the contractor’s performance based on the performance standards?

Are AQLs or MADRs clearly defined?

Is the time period for the AQL or MADR clearly defined?

Are the persons who will perform the evaluations identified?

Are the AQL or MADR levels realistic and achievable?

Will the customer be satisfied if the AQL or MADR levels are exactly met? (Or will they only be satisfied at a higher quality level?)

Do the AQLs or MADRs allow for improvement?

Is the value of evaluating the contractor’s performance on a certain task worth the cost of surveillance?

Have random sampling or periodic sampling been used in the QASP?
Has customer feedback been incorporated into the QASP?

Does the PWS make use of the contractor's own quality control plan and MIS systems to reduce costs?

Are there incentives to motivate the contractor to improve performance or to reduce costs?

Are there negative incentives to handle poor performance?

Will the contractor focus on continuous improvement?

**Acquisition Plans for Services**

Acquisition plans for services must describe strategies for implementing PBA methods or provide a rationale for not using them, provide a rationale if the contract type is other than firm-fixed-price (FFP), and explain PBA descriptions to be used. The acquisition plan serves many other related purposes. It is used to communicate the requiring activity’s approach to higher management, who are focused on very high-level questions, such as the following:

- Is the plan consistent with current agency priority policies?
- Is the plan executable?
- Are the top-level objectives appropriate and in the best interest of the agency and the United States?

On a more fundamental basis, the plan helps to generate commitment by all stakeholders to support the plan’s execution. It serves as a permanent record of decisions made regarding the acquisition strategy for future reference.

**Policy Goals**

According to the FAR, a principle goal of acquisition planning includes acquiring commercial and (to the extent available commercial items are not suitable) nondevelopmental items (NDI) to the maximum extent practicable. Agencies must perform acquisition planning and conduct market research (see FAR Part 10) for all acquisitions to promote and provide for full and open competition, and to select an appropriate contract type. Agency FAR supplements set out other specific requirements for written acquisition plans.
**Phases of the Process**

The table below shows potential phases of the preparation and approval process. This general process should be tailored as needed to satisfy local policy requirements. The estimated time to complete each phase depends on the complexity of the acquisition.

<table>
<thead>
<tr>
<th>Phase</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting</td>
<td>First, determine your acquisition strategy. Then, document that strategy using the format provided by your agency. The team (those who will play a part in carrying out the acquisition) should discuss the issues to be addressed in the acquisition plan. This meeting should be done early in the process.</td>
</tr>
<tr>
<td>Consultation</td>
<td>FAR Subpart 7.1, Acquisition Plans and your local procedures determine which offices (such as the competition advocate) coordinate and/or sign the acquisition plan. Your contracting activity may have developed a process to efficiently obtain the required coordination and valuable inputs to the plan.</td>
</tr>
</tbody>
</table>
| Resolution    | The goal of the resolution phase is to resolve all significant comments. The program manager or planner is responsible for adequate resolution of all comments. Three possible results are:  
  ■ The program manager or planner concurs with the comment and makes the recommended change.  
  ■ The comment may be withdrawn if the reviewer agrees with the program manager or planner’s position.  
  ■ The comment may be elevated for resolution by the approving authority. |
| Local Signature | The program manager or planner and the contracting officer sign and date the plan.                                                                                                                                 |
| External Approval | External coordination with higher headquarters may be needed. Your office may have a designated focal point for this function.                                                                                     |

**Elements of the Plan**

According to FAR 7.105, an acquisition plan contains the acquisition background, objectives, and plan of action. The plan addresses all the technical,
business, management, and other significant considerations that control the acquisition, and identifies the milestones at which decisions should be made. Use the format required by your agency or the outline described in FAR.

Start with a planning meeting to discuss major strategy issues, and then begin to draft the plan. Preparing a detailed planning document will be much easier once the following major issues are resolved:

- What are your performance, cost, and schedule objectives?
- What are the user’s requirements? Have they been addressed?
- What are the risks of not achieving them?
- What contract type is appropriate given the risks?
- How should the end item be tested and evaluated?

Other major issues that must be resolved are:

- How will the user maintain the items?
- How will the user/support organization keep the items operational?
- What kinds of data do we, the user, and the supporter need?
- Is there a competitive market for the effort?
- How can we develop and sustain competition through follow-on and support efforts?
- Do we need a warranty?

**STEP 6 - SOURCE SELECTION CONSIDERATIONS**

The objective of source selection is to select the offer that represents the best value to the government. In many cases, this is achieved through a tradeoff process of evaluating and comparing factors in addition to cost and price. A tradeoff decision reflects the government’s willingness to accept other than the lowest priced acceptable offer if the perceived benefits of the higher priced offer merit the additional cost. PBA source selection procedures do not neces-
sarily differ from source selection procedures in general or have special considerations. However, there are some key areas worthy of brief review.

**Tradeoffs**
Since one of the goals of PBA is to achieve the highest degree of quality and efficiency at a reasonable price, a tradeoff source selection is an excellent strategy when using PBA methods. While competition is critical to attaining these goals, the best-value offeror may not be the lowest price. Source selections allowing for tradeoffs in evaluation factors will consider award to other than the lowest-priced offeror. One of the main challenges in determining best value is assessing performance risk because the offerors may be proposing different approaches that can be difficult to compare (i.e., an “apples to oranges” comparison). If no expertise exists, consider enlisting the aid of consultants if possible.

**Instructions to Offerors**
The key to a successful source selection is the establishment of a clear relationship between the PWS, Section L of the solicitation (Instructions, Conditions, and Notices to Offerors or Respondents), and Section M of the solicitation (Evaluation Factors for Award).

- The PWS describes the requirement.
- Section L is where information and guidance are provided to help offerors prepare proposals in response to the solicitation. It requests information relating to how the offeror will execute that requirement, for evaluation purposes.
- Section M describes how the proposal will be evaluated for source selection purposes.

The following example shows the relationship between the three areas.
Section L
Section L MUST explain the methods by which the offerors will submit their proposals and the requirement to specifically address those areas that will be evaluated and scored or rated during source selection.

- **Proposal instructions:** Instructions for submitting proposals should be complete and thorough, but not overly long, complex, or restrictive. Most agencies have a “standard” or preferred format that is familiar to contracting officers and evaluators. For example, proposals may be submitted electronically, orally, or in paper form.

- **Contents of proposals:** The most common content items include the number of volumes, page limits, front matter, font, spacing, and other layout instructions.
  
  — **Number of volumes:** Usually only two volumes, technical and cost, are necessary. However, on complex acquisitions, there may be as many as four separate volumes, such as administrative, management, technical, and cost. Because of the requirement to include past performance as an evaluation factor, past performance information may also be required as a separate volume.

  — **Page limits:** Technical and business proposals can be very difficult to evaluate because of their length, much of which may be repetition. Placing a limit on the number of pages for each proposal reduces this problem. The typical limit is 50 to 100 pages, but be sure that the technical personnel concur that the technical and business approaches can be adequately explained within the limits.

  — **Front matter, font, spacing, and other layout instructions:** These instructions help create a uniform appearance for proposals.
so evaluators will not be unduly influenced by a “flashy” layout, but will be able to concentrate on the essentials. However, do not impose unnecessary restrictions on the contractors’ ability to communicate the necessary information in their proposals (i.e., complicated charts and graphics).

- **Evaluation areas:** Instructions should clearly require contractors to thoroughly address all evaluation areas. It is important for the contractor to know exactly what is going to be evaluated.

- **Oral presentations:** Oral presentations are verbal submissions of proposal information. This information is used to determine the offeror’s understanding of the requirements and its capability to perform.

**Section M**

Section M is tailored for each procurement and must inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors. The goal here is to make the offerors fully aware of how the source selection will be made.

- **Evaluation factors and subfactors:** Be sure that section M is clear and complete in describing the evaluation factors and significant subfactors. Each factor and subfactor must be fully explained, and their relationship to each other (relative importance) must be clearly stated. (see FAR 15.304(d)).

- **Relative importance:** Relative importance is a statement of the importance of all non-cost evaluation factors in relation to cost or price. This must be stated in section M. The FAR makes it mandatory to insert one of the phrases from FAR 15.304(e). Normally, the factors are explained in descending order of importance. However, you are not required to disclose the actual weights that will be used for ranking the factors.

- **Evaluation matrix:** If there are multiple factors and subfactors, you can create an evaluation matrix. This helps in developing the solicitation by cross-referencing the evaluation factors against subfactors and elements. The following table is an example of an evaluation matrix:
### Role of Past Performance in Best Value Procurements

The FAR mandates that cognizant government personnel make comparative assessments of contractors’ past performance in order to use this information as an evaluation factor in the source selection process. By using past performance in this manner, agencies are better able to predict the quality of, and customer satisfaction with, contractors’ future work based on their past history of performance. Currently, the requirement to collect past performance data applies only to competitive negotiated contracts (not sealed bidding procurements) valued at greater than the simplified acquisition threshold (for DOD, the thresholds are $5 million for systems and operation support, $1 million for research technology and info technology, and $100,000 for health services and fuel).

If an offeror has no past performance or the performance information is either unavailable or irrelevant, the FAR states that the offeror may not be evaluated either favorably or unfavorably on the past performance factor.

Not only does the government require collecting past performance data because it is viewed as a valuable source selection tool, but also it is regarded as an influential factor in motivating contractors toward excellence. The focus is on rewarding good performance, rather than deducting points based on subpar assessments. Certainly, ignoring past performance or not giving it enough weight in the evaluation process does perpetuate a system in which offerors write “winning” proposals so that they appear, at least on paper, “to walk on water,” when some of these offerors, upon contract award, may not be able to perform in an outstanding, or even satisfactory, manner.
STEP 7 – ASSESSING PERFORMANCE

Contract administration includes all activities performed by government officials and the contractor to ensure performance and delivery within the terms of the contract. It spans the time from contract award until contract closeout. The contract is managed from both a contractual and administration standpoint to ensure that the contractor delivers in accordance with the contract’s terms. Therefore, it is essential that the PBA team understand this step and their role in this process.

The specific nature and extent of contract administration varies from contract to contract. It can range from a single individual accepting and paying for delivery of an item to extensive involvement by program, audit, and procurement officials. Factors influencing the degree of contract administration include the nature and complexity of the service and the type of contract.

Post-Award Orientation

Even though a post-award orientation may not be required by the contract, it is an especially good idea for performance-based contracts. This meeting can help both agency and contractor personnel achieve a clear and mutual understanding of contract requirements and further establish the foundation for good communications and a win-win relationship. It is very important that agency and contractor personnel work closely together to fulfill the mission and program needs.

Keep the Team Together

To be successful in performance-based acquisition, the agency must retain at least a core of the integrated solutions team on the project for contract management since they have the most knowledge, experience, and insight into what needs to happen next and what is expected during contract performance. Contract award is not the measure of success or even an especially meaningful metric. Effective and efficient contract performance that delivers a solution is the goal. The team should stay together to see that end reached.

Assign Accountability for Managing Contract Performance

Just as important as keeping the team together is assigning roles and responsibilities to the parties. The people assigned responsibility for monitoring contract performance need to read and understand the contract and have
the knowledge, experience, skills, and ability to perform their roles. In performance-based organizations, they are held accountable for the success or failure of the program they lead. They should know the program needs in depth, understand the contractor’s marketplace, be familiar with the tools the contractor is using to perform, have good interpersonal skills, and the capability to disagree constructively.

**Customer Surveys**

Good contract administration also ensures that the stakeholders are satisfied with the service being provided under the contract. One way of verifying customer satisfaction is to obtain input directly from the customers through customer satisfaction surveys. These surveys help to improve contractor performance because the feedback can be used to notify the contractor when certain aspects of the contract are not being met. Customer satisfaction surveys also help to improve communications between the procurement, program, and contractor personnel.

**Regularly Review Performance in a Contract Performance Improvement Working Group**

Performance reviews should take place regularly, and that means much more than the annual “past performance” reviews required by regulations. These are contract management performance reviews, not for formal reporting and rebutting, but for keeping the project on course, measuring performance levels, and making adjustments as necessary.

For most contracts, monthly or bimonthly performance reviews are appropriate. For contracts of vital importance or contracts in performance trouble, more frequent meetings may be required.

During this review, the PBA team should ask:

- Is the contractor meeting or exceeding the contract’s performance-based requirements?
- How effective is the contractor’s performance in meeting or contributing to the agency’s program performance goals?
- Are there problems or issues that we can address to mitigate risk?
There should be time in each meeting where the agency asks the contractor, “Is there anything we are requiring that is affecting the job you can do in terms of quality, cost, schedule, or delivering the solution?” Actions discussed should be recorded, with responsibilities and due dates assigned.

**Report on the Contractor's Past Performance**

Many types of performance reporting may be required of the PBA team. For example, agency procedures may establish special requirements for acquisition teams to report to the agency’s investment review board regarding the status of meeting a major acquisition’s cost, schedule, and performance goals. The PBA team may also be responsible for performance reporting under the Government Performance and Results Act, if the contractor’s performance directly supports a GPRA performance goal. Refer to internal agency guidance on these processes.

The FAR requires that agencies evaluate contractor performance for each contract in excess of the simplified acquisition threshold. The performance evaluation and report is shared with the contractor, who has an opportunity to respond before the contracting officer finalizes the performance report. In well-managed contracts, there is continual feedback and adjustment, so there should be no surprises on either side.

**Most Importantly, Consider the Relationship**

With regard to the overall approach to contract performance management, the PBA team should plan to rely less on management by contract and more on management by relationship. At its most fundamental level, a contract takes work by both parties to make it successful. Characteristics of strong relationships include:

- trust and open communication;
- strong leadership on both sides;
- ongoing, honest self-assessment;
- ongoing interaction; and
- mutual benefit or value throughout the relationship.
There are several ways to effectively manage the contract relationship. For example, plan on meeting with the contractor to identify ways to improve efficiency and reduce the effect of the “cost drivers.” This type of collaborative action will set the stage for the contractor and government to work together to identify more effective and efficient ways to measure and manage the program. For example, in one contract, an agency required that certain reports be delivered regularly on Fridays. When the contractor was asked to recommend changes, he suggested shifting the due date to Mondays since the weekend processing time cost less.

Another effective means is to establish a Customer Process Improvement Working Group that includes contractor, program, and contracting representatives. This group should meet to answer with the question: Are we measuring the right thing? For major acquisitions, the team can consider the forming a higher-level “Board of Directors,” comprised of top officials from the government and contractor, with a formal charter that requires continual open communication, self-assessment, and ongoing interaction.

The intent to manage by relationship should be documented in a contract administration plan that lays out the philosophies and approach to managing this effort, placing special emphasis on techniques that enhance the ability to adapt and incorporate changes.