



STANDARD

Procurement organizations should seek to improve performance and lower costs through the use of performance based contracts that: (1) describe the requirements in terms of results required rather than specifying how the work is to be accomplished; (2) set measurable performance standards; (3) describe how the contractor's performance will be evaluated in a quality assurance plan; (4) identify and use positive and negative incentives, when appropriate.

Definition

Performance Based Contracting is a results-oriented contracting method that focuses on the outputs, quality, or outcomes that may tie at least a portion of a contractor's payment, contract extensions, or contract renewals to the achievement of specific, measurable performance standards and requirements. These contracts may include both monetary and non-monetary incentives and disincentives.

Element 1.1: Developing Performance Based Contracts

Procurement should structure performance work statements in contracts around the outcomes and timeline of the work to be performed, that is, what is to be performed rather than how to perform it.¹ There are two ways to develop a specification for a performance based acquisition: by using a performance work statement (PWS) or a statement of objectives (SOO).²

Performance Work Statement (PWS)³

The Performance Work Statement is similar to a statement of work and is used in performance-based requests for proposals (RFP). A PWS should:

- Describe the work in terms of the required results rather than either "how" the work is to be accomplished or the number of hours to be provided.
- Enable assessment of work performance against measurable performance standards.
- Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work.



Public Procurement Practice

PERFORMANCE BASED CONTRACTING *(Cont'd)*

Statement of Objectives (SOO)⁴

The SOO is a concise and brief document (e.g., under ten pages) that provides high-level objectives of the acquisition. It is provided in the solicitation in lieu of a written Statement of Work (SOW) or Performance Work Statement (PWS). The SOO must include:

- Purpose
- Scope or mission
- Period and place of performance
- Background
- Performance objectives, (i.e., required results)⁵
- Any operating constraints
- The government-prepared SOO is usually incorporated into the RFP as an attachment. At contract award, the contractor-proposed statement of work (solution), or final negotiated statement of work, must be incorporated into the contract

Element 1.2: Decide How to Measure Performance⁶

This component of performance based contracting is as important as developing the Statement of Objectives (SOO) or the Performance Work Statement (PWS), because this step establishes the strategy of managing the contract to achieve planned performance objectives.⁷ Measurable performance standards should:

- Be set in terms of outputs/outcomes, quality, and timeliness⁸
- Be carefully chosen and not unduly burdensome
- Not be set so high that they drive up costs
- Not be set so low that they act as a disincentive to good contract performance

Element 1.3: Identify Incentives and Disincentives

Identify positive incentives and disincentives,⁹ when appropriate. Incentives:

- Should be used when they will induce better quality performance
- May be positive or negative, monetary or non-monetary, or a combination of both
- Should apply to the most important aspects of the work, rather than every individual task¹⁰
- May vary depending on desired outcome and type of contract

Element 1.4: Select the Right Supplier¹¹

When selecting the right supplier, care must be given to insure fair, open, transparent, and equal competition. Strategies that may be used include, but are not limited to:

- Selection based on qualifications – a process by which the most qualified potential bidders are selected and the competitive pool is limited¹²
- Due Diligence – following the selection of suppliers based on qualifications, the qualified potential bidders may be invited to enter a period of due diligence. This period of time should be characterized by very open communications between the potential contractor and procurement organization, and may include:
 - Site visits
 - Meetings with key agency people
 - Research and analysis necessary to develop a competitive solution tailored to agency requirements
- Use “best value”¹³ evaluation and source selection criteria
- Use oral evaluations and other opportunities to communicate
- Emphasize relevant past performance in evaluation



Element 1.5: Manage Performance

To a large degree, the management of contract performance is guided by the contract's terms and conditions and is achieved with the support of the business relationships and communications established between the contractor and the procurement organization.¹⁴ For more detail on performance management see practices: *Performance Management and Performance Measurement*.

Background

The purpose of performance based contracting is to obtain overall better value, better performance, lower costs, or both. Performance based contracting requires output/outcome-based specifications and procedures that require the contractor to devise the most innovative, efficient, and effective way to perform the work. Because of this, it is critical that a capable and competent contractor be chosen. Therefore, past performance evaluations¹⁵ and partnering¹⁶ are essential elements to consider when selecting a contractor.

- 1 U.S. Government Accountability Office (GAO). (2002). *Guidance needed for using performance-based service contracting*. Retrieved from <http://www.gao.gov/new.items/do21049.pdf>
- 2 Acquisition. (2011). *Seven steps to performance-based acquisition*. Retrieved from https://www.acquisition.gov/comp/seven_steps/step4.html
- 3 Ibid.
- 4 Ibid.
- 5 May be linked to wider government and policy objectives such as social, environmental, and economic objectives.
- 6 See Also Practice: Performance Measurement, and Performance Metrics
- 7 Adapted from Acquisition. (2011). *Seven steps to performance-based acquisition*. Retrieved from https://www.acquisition.gov/comp/seven_steps/step5.html
- 8 These standards should be definitive and measurable.
- 9 A negative incentive is any contract provision that causes the contractor to take action in order to avoid an undesirable outcome, including reduced payment" (www.acquisition.gov).
- 10 Government Accountability Office. (2002). *Contract management: Guidance needed for using performance based service contracting* (GAO Publication No. GAO-02-1049). Washington, DC: U.S. Government Printing Office
- 11 For further information see Acquisition (2011). *Seven steps to performance-based acquisition*. Retrieved from https://www.acquisition.gov/comp/seven_steps/step6.html
- 12 Even in full and open competitions, there are means of limiting the competitive pool--providing competition as well as efficiency and cost effectiveness for the government and contractors as well. Many in the acquisition community are familiar with the establishment of a competitive range. But there is another technique: using the multistep advisory process in a negotiated procurement. All these methods provide a means to establish a small pool of the most qualified contractors, competing to provide the solution. In each case, the approach leverages competition previously conducted" (www.acquisition.gov).
- 13 'Best value' is a process used to select the most advantageous offer by evaluating and comparing factors in addition to cost or price. It allows flexibility in selection through tradeoffs which the agency makes between the cost and non-cost evaluation factors with the intent of awarding to the contractor that will give the government the greatest or best value for its money" (www.acquisition.gov).
- 14 'Adapted from Acquisition (2011). *Seven steps to performance-based acquisition*. Retrieved from https://www.acquisition.gov/comp/seven_steps/step7.html
- 15 May include economic, financial, and technical capacity as well as reputational analysis. Note: In counties within the European Union, bound by EU Procurement Regulations, questions about past performance may only be asked at Pre- Qualification Questionnaire (PQQ) stage, not at the Invitation to Tender (ITT) stage. References may be taken up at the ITT stage.
- 16 Partnering includes individual employees of the contractor, and/ or any possible sub-contractors.