

ACQUISITION ADVISORY PANEL

Meeting Minutes

March 17, 2006

White House Conference Center

Washington, D.C.

The Acquisition Advisory Panel (AAP) convened its eighteenth public meeting on March 17, 2006 in the Truman Room of the White House Conference Center (WHCC), Washington D.C. Ms. Marcia Madsen, Chair of the AAP, opened the meeting at approximately 10:03 AM. She outlined the agenda for the day, and reminded attendees that the next public meeting was scheduled for March 29, 2006 at the same location.

The guest speakers and their affiliations were as follows:

Presenter	Affiliation	Attachment
Bhavneet Bajaj	Partner and Director for Financial Practice, Global Practices, Technology Partners International, Inc.	Attachment 2
Greg Rothwell	Former Chief Procurement Officer, Department of Homeland Security	None

The Working Group updates were presented as follows:

Presenter	Working Group	Attachment
Allan Burman and Carl DeMaio	Co-Chairs, Performance-Based Acquisitions	Attachment 1
Jonathan Etherton	Chair, Interagency Contracting	Attachment 3

The Designated Federal Official, Laura Auletta, called the roll. The following Panel members were present:

Mr. Frank J. Anderson, Jr.
Dr. Allan V. Burman
Mr. Carl DeMaio
Mr. Marshall J. Doke, Jr.
Mr. David A. Drabkin
Mr. Jonathan Lewis Etherton (arrived at 10:09 am)
Mr. James A. (Ty) Hughes, Jr.
Mr. David A. Javdan
Ms. Deidre A. Lee
Ms. Marcia G. Madsen
Mr. Joshua I. Schwartz
Mr. Roger D. Waldron (arrived at 10:33 am)

The following Panel members were not in attendance:

Mr. Louis M. Addeo
Mr. Thomas Luedtke

The Performance-Based Acquisition (PBA) Working Group Co-Chair, Dr. Allan Burman, began his presentation (see Attachment 1) with an overview of the Group's findings. At the urging of the Panel Chair, he explained that the data used had limitations, adding that, although agencies were reporting contracts as performance-based service acquisitions, it appeared that they were not truly PBA, even though some may have included a metric. The Working Group anticipated conducting its own review of a sampling of contracts.

PBA Working Group Co-Chair, Carl DeMaio, provided historical background on PBA, indicating that Congress asked the Panel to look at "how to improve the use of PBA/PBSA." He explained that the Panel had heard testimony indicating that PBA does not work and should not be used. He also explained that this was at variance with the Working Group's mandate, but that they would consider the testimony when presenting final recommendations.

The Working Group's recommendations were briefed as falling into three areas: when to use, how to use, and data/benefits of use. Prior to detailed discussions on each recommendation, Mr. DeMaio explained transactional vs. transformational contracts, and the need to provide clarity, as well as the following:

- A comprehensive proactive analysis of an agency's acquisition plan which could be a cross-cutting issue;
- A trained Contracting Officer's Performance Representative (COPR) who would also be certified as a project manager if handling transformational performance-based contracts;
- Data and studies, and the review of both, to determine continuance.

Discussions of and voting on of three of the eleven PBA Working Group recommendations were conducted as follows during the morning session, with Recommendation #4 being postponed until the afternoon [remaining recommendations would be addressed at the next public meeting]:

Recommendation 1: Office of Management and Budget's (OMB's) Government-wide Quota Requiring that 40% of Acquisitions be Performance-based Should be Adjusted to Reflect Individual Agency Assessments and Plans. After Panel discussions regarding the adequacy of data to determine whether the 40% goal was the issue, the result was consensus that a goal is still necessary, but should be established by each agency based on its unique requirements, with continuing oversight by OMB. The Panel unanimously adopted this recommendation with modified language in the last sentence to read: "...Notwithstanding this modification in how targets are set, the Panel strongly endorses the notion that OMB should continue to establish stretch goals for individual agency implementation of PBA."

Recommendation 2: OFPP Should Issue More Explicit Guidance and Create a PBA "Opportunity Assessment" Tool to Help Agencies Identify When They Should Consider Using PBA Vehicles. Mr. DeMaio explained that this recommendation creates a distinction between a transactional and transformational PBA. Panel Members discussed whether the definitions of transactional and transformational required a Federal Acquisition Regulation (FAR) change, and whether the Panel should propose the language. Several comments were made suggesting that the Panel simply propose the definition and leave changes to the FAR Council's discretion (FAR Parts 2, 7 etc.). Carl DeMaio read a change in the Recommendation

verbiage: “Amend the FAR to define two levels of PBA: Transformational and Transactional. OFPP should issue explicit implementation guidance and create a PBA opportunity assessment tool to help agencies identify when to consider using PBA.” The recommendation, **as read aloud, was unanimously adopted.**

Recommendation 3: **Require Agencies to Devise “Acquisition Performance Plans” to Guide Their Acquisition Management.** Mr. DeMaio briefly reviewed this recommendation, explaining that, to improve PBA implementation, better planning through assessment of an agency’s portfolio was necessary and should be formalized. Extensive discussions regarding the additional workload and value to the taxpayer ensued among the Panel. One comment suggested that the magnitude of this recommendation went beyond PBA to a larger issue of acquisition management. All agreed that planning was necessary and required senior level attention, but another approach would be needed. It was decided that additional information and/or testimony should be obtained. This recommendation was **withdrawn.**

The Panel was adjourned for lunch at 12:34 PM, and reconvened at 1:15 PM.

Panel Chair Marcia Madsen introduced Mr. Bhavneet Bajaj, Partner and Director of Financial Practice at Technology Partners International, Inc. (TPI). Ms. Madsen reminded the Panel that Mr. Bajaj previously addressed them as part of an industry panel that presented at the August 18, 2005 meeting. She explained that TPI is a consulting firm that provides its clients with expertise in business analysis for business processing and IT outsourcing on a global basis.

Mr. Bajaj discussed topics pertaining to the purchase of services in a commercial environment, including competition, pricing in a sole-source environment, rate quotes, determining fair and reasonable prices, required employee skill sets, audit rights, and audit follow-up (see Attachment 2). Highlights are as follows:

- Generally, TPI advises clients not to procure services on a sole source basis. Competition is the best way to determine best value in the marketplace, but exceptions to awarding competitively would include an existing client relationship with vendor; resistance to switch vendors and/or management directed single source; and acquisition and divestiture support of an existing vendor.
- Regardless of competition, TPI’s expectation is that vendors supply rate quotes consistent with a competitive environment and establish fixed prices for service components that are clearly defined.
- Where requirements are not clearly defined, a rate card is acceptable for services on a temporary basis, obligating the vendor to assist the client in defining those requirements. Once defined, a fixed bid is required.
- Fair and reasonable prices are assured in a sole source situation by advising clients to perform at least one of the following analyses:
 - “Mark to Market” (comparison with cost of service in the market, irrespective of the industry, but based on scope, size and type)
 - Benchmarking (what other customers are paying)
 - Should Cost (an internal analysis of the service from the ground up)

- Skill sets specific to the type of service are sought for making the analysis. Generally, personnel require financial skills, familiarity with the service being analyzed, and, where comparisons to the market are performed, access to various databases.
- Regardless of competition, TPI advises clients who buy services to obtain financial and cost data from their vendors. The details include fixed price components-summary level; fixed price components-detailed level (service offering and any related component: geography, business unit etc.); unit rates for adjustments to resource consumptions; fixed one-time charges (hardware, software, labor); fixed charges for termination for convenience; and cost variance schedules to include scope expansions.
- Typically commercial agreements seek audit rights in the areas of records retention, operational audits, security audits, financial audits, SOX audits, SAS 70 Type II audits. *A sample of typical audit language used was provided.*
- Audit follow-up terms were also discussed whereby the vendor and client generally discuss appropriate and effective remedies to deficiencies. Any overcharging would be promptly refunded.
- If a client determines that further action is warranted, the parties shall agree on a remedial plan.

Panel Members questioned Mr. Bajaj about the details of the rate quotes that TPI obtained from vendors, regardless of competition. Mr. Bajaj explained that TPI discourages clients from awarding on a per hour basis, opting for contracted services on a commodity or utility basis. Additionally, he stressed, TPI's clients have multiple options. They may use blended rates so that a variety of skill levels are available, without addressing individual credentials, or they could use fixed daily or monthly rates. Several Panel Members asked additional questions about the practice of using a vendor to help define requirements for a client, but then precluding that same vendor from bidding on the follow-on effort. Mr. Bajaj explained that this practice maintains fairness. Mr. Bajaj clarified that the terms *cost* and *price* were used synonymously in his presentation, because the price is the cost the clients pay to their vendors. The Panel Members were interested in the amount of detailed cost data that TPI obtained. Mr. Bajaj explained various scenarios, whereby a per-user function cost would be submitted under a utility service contract, and a head count and associated costs would be provided under an applications project. In response to a related question from a Panel Member, Mr. Bajaj reiterated that wherever he used the term *cost*, it reflected the actual *price* and was fully burdened. He informed the Panel that TPI does not request direct costs, indirect costs or profit data.

Panel discussions ensued regarding typical audit rights as discussed in Mr. Bajaj's presentation. Many, he said, are driven by some regulatory requirement and generally included record retention. He provided examples of financial and security audit situations, and informed the Panel that TPI is not concerned with a labor rate and G&A (general & administrative) rate because most of their contracts are fixed price. Wherever a client has work with the Government, Mr. Bajaj advised that the vendor would supply information to Defense Contract Audit Agency or the appropriate agency, and not to the client directly.

In response to supplemental questions, Mr. Bajaj explained that TPI does not encourage use of time and materials (T&M) contracts for outsourcing, and if a client insisted, TPI would

recommend that the client take the contract in-house. He informed the Panel that one of the benefits of outsourcing was to move the risk of delivery from the client to the service provider, which becomes difficult in a T&M environment, because the vendor only provides people, not a service level, leaving you to be the Program Manager. He also stated that under T&M, there is no incentive for the supplier to be efficient. Mr. Bajaj stated that in the Information Technology (IT) environment, it might be appropriate to occasionally use T&M contracts for applications development, but warned that better tools should be used. He provided an example of using a scorecard tool to measure objective service levels, and to manage expectations and productivity improvements.

Panel Chair Ms. Madsen thanked Mr. Bajaj for his presentation, and reiterated that the Panel welcomed any additional information and contract samples that he could comfortably release.

After a short recess, Ms. Madsen introduced Mr. Greg Rothwell, explaining that he recently retired as the Chief Procurement Officer from the Department of Homeland Security (DHS), and that he previously held similar positions with Internal Revenue Service and the Department of the Interior.

Mr. Rothwell presented his views on several procurement issues, based on his 34 years of experience in ten different agencies. He stated that “The future of procurement is clear – it’s going to be here forever. It’s the path that’s cloudy.” He expressed his empathy with those engaged in procurement today in light of the personal scandals, emergency situations such as Katrina and Iraq, and unclear rules. It is his opinion, he stated, that the acquisition workforce has been “guttled.” He commented that there was inequity in leadership and staffing among the agencies that, discouragingly, was not reviewed at a top level.

He relayed that, early on at DHS, he managed a \$3 billion program without a single full-time equivalent employee. “Every requisition was logged in and passed on to another agency,” he said, and emphasized that this was *not* a good practice. He indicated that he did not consider Government-wide Acquisition Contracts (GWACs), Blanket Purchase Agreements (BPAs), and Schedules as true interagency contracts because they are expressly authorized for use in the FAR. Mr. Rothwell stated that an interagency vehicle, in his view, should be used when an agency required something in which another agency specialized. He explained that, although he preferred not to create more vehicles, as DHS’s workforce grew, he found there were issues, limitations, fees, and a lack of administrative responsibility/accountability associated with the use of other agencies’ contracts. Mr. Rothwell expressed his belief that the core values of transparency, competition, fairness and caring for one’s workforce were affected.

Mr. Rothwell conveyed the difficulties he experienced at DHS in trying to operate eight IT procurement shops, with 170 buyers in eight different offices. He explained that their approach was to improve each office, and, although he was unable to consolidate the offices, Mr. Rothwell created 71 initiatives to unify performance, and bring consistency to the eight shops.

He stressed the importance of planning, and expressed his belief that more is required to cohesively operate in DHS. When created, he advised, the expectation was there would be fewer organizations, but the “stapling of 23 agencies together resulted in creating 35 new offices.”

In response to several questions regarding top level acquisition planning, Mr. Rothwell professed his agreement that every agency should have an acquisition strategic plan that acts as the “North Star,” to be submitted and discussed with the Office of Federal Procurement Policy.

Additionally, he stated, the agencies could use that strategic plan to address deficiencies prior to a Government Accountability Office or Inspector General audit. He also addressed the Panel’s concern that this requirement might be viewed as burdensome, by responding: “What does corporate America do?”

Mr. Rothwell replied to an inquiry regarding more responsible use of other agencies’ vehicles without increasing resources, by suggesting that an agency send out a data call when it anticipated an award. In an ideal world, he said, these other agencies would provide their requirements for the following years. In-depth discussions regarding transparency and schedules followed. Mr. Rothwell stressed his belief in informing the public of procurements, even when not required, stressing that openness also improves competition and results in better prices.

Panel Chair Marcia Madsen expressed her appreciation to Mr. Rothwell, and continued with a suggestion that the Panelists conclude discussions on the revised recommendations of the Interagency Contracting Working Group from the last meeting, before proceeding with the remaining recommendations of the PBA Working Group.

Interagency Contracting Working Group Chair Mr. Jonathan Etherton briefly explained that he attempted to capture all the changes from discussions held at the previous meeting regarding previously adopted recommendations. He informed the Panel that no comments to the changes had been received, and he presented the language herein mostly for information purposes, and would modify further, if requested. Otherwise, except for Recommendation #9 which has changed significantly and probably requires a vote, these other changes are provided to ensure the Working Group captured the spirit and the letter of what was agreed to earlier (see Attachment 3).

Recommendation #5 “...a requirement that each agency, under guidance from OMB, formally authorize the creation or expansion of the following vehicles under its jurisdiction:

- multi-agency contracts
- enterprisewide vehicles
- assisting entities.”

Mr. Etherton explained that the clarifications were meant to capture two things:

- Heads of the agencies would be accountable for the implementation process
- Professor Schwartz’ discussion about what the Working Group meant by the term “expansion.”

Recommendation #8 regards the requirement that OMB promulgate detailed policies, procedures and requirements, and the list of items OMB should include as part of the requirement. Mr. Etherton provided clarification on the sunset provision under “e” of that list of items in the recommendation in accordance with the discussion at the February 23, 2006 meeting.

Recommendation 9 [*Adopted “in principle” by Panel on February 23, 2006 subject to Working Group submission of additional language to reflect discussion of the role OMB will play in*

determining agency compliance with guidance.] Mr. Etherton said that this recommendation has changed from OMB sponsoring a comprehensive analysis to OMB actually conducting the analysis and setting the timeframes for the analysis as described below:

“OMB conduct a comprehensive, detailed analysis of the effectiveness of Panel recommendations and agency actions in addressing the findings and deficiencies identified in the AAP report. This analysis should occur no later than three years after initial implementation with a continuing requirement to conduct a new analysis every three years.

In conducting its analysis, OMB should evaluate the degree of compliance of a representative sample of vehicles, with business case guidance stipulated by OMB, as well as an analysis of the degree to which the vehicles in the sample represent unwarranted duplication or overlap with other interagency and enterprise-wide vehicles. The evaluation should incorporate recommendations for consolidating or terminating vehicles where unwarranted duplication or overlap has been identified. The analysis should also include identification of any cost savings associated with the implementation of the recommendations, and proposed measures to address the unintended negative consequences of such recommendations. Finally, OMB should include in each analysis formal consideration of whether to require OMB-level approval of agency decisions on a case-by-case basis, and to create or continue vehicles or assisting entities that are not otherwise covered under a statutorily mandated process.”

Panel Member David Drabkin suggested that current OMB guidance granting agencies authority one year at a time should be addressed, in favor of providing a longer executive agency designation of three years for GWACs. Mr. Etherton agreed to make a distinction, adding language to Recommendation #4 (OMB review of current practices for creation and continuation of GWACs and Franchise Funds). He will provide the revision to the Panel for its consideration. The Panel **adopted** this recommendation with the above stipulation. Mr. Javdan was out of the room, and Mr. Doke abstained from discussion and vote.

Panel Chair Marcia Madsen quickly transitioned to PBA discussions from the morning session. PBA Working Group Co-Chair Carl DeMaio explained the reasoning behind Recommendation #4 as difficulty in defining performance standards and measures. The written text included attributes that could be considered in creating those standards and measures, which he explained as good housekeeping elements.

Recommendation 4: **Publish a Best Practice Guide on Development of Measurable Performance Standards for Contracts.** Panel Members David Drabkin and Roger Waldron obtained clarification that the attributes were only illustrative. In the same vein, Jonathan Etherton recommended that the WG change the wording from “criteria should be included” to “should be considered at a minimum,” and Mr. Burman suggested “should be addressed.” Mr. Drabkin voiced his exception to the language referencing *the cardinal change doctrine* and a discussion followed. Mr. DeMaio agreed to remove that section. The Panel **unanimously adopted** this recommendation with ***modified language*** to read “criteria should be addressed.”

The eighteenth public meeting of the Acquisition Advisory Panel was adjourned at 4:01 PM.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

A handwritten signature in black ink, appearing to read "Marcia Madsen". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

JUN 13 2006

Ms. Marcia Madsen
Chair
Acquisition Advisory Panel

A photograph of a man in a dark suit and tie standing on the stone steps of the U.S. Capitol building. He is holding a folder or book and looking down at it. The background shows the iconic dome and classical architecture of the Capitol under a clear sky.

Performance-Based Acquisition Working Group

Recommendations
March 17, 2006

These slides contain preliminary working group findings and recommendations for discussion purposes only. These preliminary findings and recommendations have not been approved by the Acquisition Advisory Panel.



The Panel's Mandate

SARA Legislative Mandate to Panel:

“ ... review all Federal acquisition laws and regulations, and, to the extent practicable, government-wide acquisition policies, with a view toward ensuring effective and appropriate use of commercial practices and performance-based contracting”

Working Group Statement of Issue:

“Why has Performance-based Services Acquisition not been fully implemented in the federal government?”



GAO Review of PBSA

“According to our reviews, agencies may have missed opportunities to take advantage of the benefits offered by...performance based service contracting, because of inadequate guidance and training, a weak internal control environment, limited performance measures, and data that agencies can use to make informed decisions.”

--Government Accountability Office
April 2003



When and How...Key Issue!

- Major inconsistencies in how to define PBC and when to use PBC (GAO 2002 Report)
 - Inconsistencies “raise concern as to whether agencies have a good understanding of performance-based contracting and how to take full advantage of it.”



Working Group Findings

- **#1. Despite OMB Target, Agencies Remain Unsure When to Use PBSA**
- **#2 PBSA Solicitations & Contracts Continue to Focus on Activities and Processes, Rather than Performance and Results**
- **#3 PBSA's Potential for Generating Transformational Solutions To Agency Challenges Remains Largely Untapped**
- **#4. Within Federal Acquisition Functions, There Still Exists a Cultural Emphasis on "Getting to Award"**



Working Group Findings, cont.

- **#5. Post-Award Contract Performance Monitoring and Management Needs to Be Improved**
- **#6. Most Contract Incentives Are Still Not Aligned to Maximize Performance and Continuous Improvement**
- **#7. FPDS Data Are Insufficient and Perhaps Misleading Regarding Use and Success of PBSA**



Three Major Recommendation Areas

- **When to Use...**

- #1. Revised PBA Quotas
- #2. OMB Guidance on When to Use and PBA “Opportunity Assessment” Tool
- #3. Agency Acquisition Performance Plans

- **How to Use...**

- #4. Best Practice Measures Guide
- #5. Baseline Performance Case Requirement
- #6. Performance Improvement Plan Requirement
- #7. OMB Guidance on Use of Incentives
- #8. Revised 7 Steps Process
- #9. Designation of COPR Role for PBA

- **Data and Benefits...**

- #10. A-PART Oversight Process
- #11. 5 Year Study of Proper Implementation...and Impacts



Recommendation 1:
OMB's Government-Wide Quota of Requiring 40% of Acquisitions be Performance-based Should be Adjusted to Reflect Individual Agency Assessments and Plans for Using PBA

- PBA targets to be set by each agency, with review by OMB

Recommendation 2:

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





Two Categories of PBAs

Option 1: Transformational Performance-Based Acquisitions

- When to Use: Acquisitions involving services wherein the agency identifies a baseline need/problem, but is not in a position to specify the work that will be done. In this case, the agency should establish outcomes and allow vendors to offer unique (and potentially adjust post-award, subject to the cardinal-change doctrine) solutions proposing the specific approach to solving the baseline need/problem. The agency thus places the risk that the work being done may not solve the baseline need/problem squarely with the vendor.
- What to Use: Statement of Objectives
- What to Measure: Measurable performance standards would relate to the impact of the acquisition on the agency's need/problem, but not the work actually done by the vendor in solving the agency's need/problem.

Option 2: Transactional Performance-Based Acquisitions

- When to Use: Acquisitions involving services wherein the agency identifies a baseline need/problem, and has already substantially determined what work is to be done. In this case, the agency is more concerned with ensuring that work being done meets certain cost, quality or timeliness attributes. The agency is willing to assume the risk that the work being done may not solve the baseline need/problem.
- What to Use: Performance Work Statement
- What to Measure: Measurable performance standards would relate to the quality and attributes of the work actually done, with limited or no measurement on impact of work on agency's need/problem.



Opportunity Assessment Tool

OMB Would Create a Tool that Advises Agencies to Consider:

- whether a performance-related baseline problem exists (cost, quality, timeliness, impact to agency mission)
- the level of risk associated with the service not being optimally provided (importance to mission of the service being provided optimally);
- the level of confidence the agency has in its own “work statement” to solve the baseline problem;
- the amount of risk the agency wants to assume for managing the service impact on its own vs. shifting to a vendor;
- the readiness of the Program to measure the impact of the service on its program performance goals/mission, as well as the readiness of Program staff to participate in a PBA process



Recommendation 3: Require Agencies to Devise “Acquisition Performance Plans” to Guide their Acquisition Management

Key Elements of Agency Plans:

- **Alignment**: Identify the role of acquisition in achieving the agency’s mission, with specific alignment to program goals and measures
- **Portfolio Assessment**: Include an assessment of the current service acquisition portfolio with a view on improving management and performance of current service contracts
- **Portfolio Projection**: Include an analysis of the projected agency service acquisition needs, taking into account program performance objectives, agency service challenges, and experiences of other federal agencies in using PBA techniques for similar services
- **Target and Schedule**: Establish a schedule of service areas that would be reviewed for PBA, including a target for the use of PBA for the acquisition of services
- **Workforce**: Identify the acquisition human capital needed to manage performance under the plan.

A man in a dark suit and tie stands on the stone steps of the U.S. Capitol building, reading a book. The building's iconic dome and classical architecture are visible in the background under a clear sky.

Recommendation 4: **Publish a Best Practice Guide on Development of Measurable Performance Standards for Contracts**

- **Measurement “Chain” or “Logic Model”** Performance measures should be defined using a structured framework
- **Baseline & Outcome Measure(s)**: PBA’s should be grounded in at least one or more measures that directly assess the agency’s baseline need/problem relating to
 - Improved performance toward program goals, including improved service levels or impact to agency customers, and/or
 - A major cost management issue facing the program, resulting in cost savings or enhanced ability by the program to operate in a more economical or efficient manner.



- **Contract Management and Monitoring Measures**: Other performance measures used in a PBA should relate to the work actually being done by the vendor—with particular focus not on effort or activities conducted, but actual service “attributes” such as:
 - Timeliness; Accessibility; Quality; Workload levels; and Economy
- **Subjective vs. Objective Measures**: Reflecting recent revisions in the FAR, the guidance should address when and how to use subjective performance measures, including customer satisfaction.
- **Limiting Measures**: The Panel endorses the use of sampling and “representative indices” to measure large service areas rather than measures for each service area.
- **Measurement Selection Process**: The guidance should provide helpful practices to guide the process by which measures are developed—ensuring that program and subject matter expertise are used to select measures.
- **Evolution of Measures**: Recognizing that the management of service acquisition is highly relationship-based, the guidance should address a process by which measures WILL and MUST change over time. (Subject to the cardinal change doctrine)



Recommendation 5: Modify the FAR to Require Identification of the Government's Need/Requirements by Defining “Baseline Performance Case” in Measurable Terms Up Front

- **Baseline Performance State:** Using the outcome performance measures, the agency would assess the current level of performance in a particular service area. In addition to measuring the baseline, some qualitative description of the performance problems/needs would be provided.
- **State-of-Practice:** The agency would describe the current “state-of-practice” in the service area as determined from its market research.
- **PBA Approach:** Based on the analysis described above, the agency would then select and justify either the use of a Transformational PBA or a Transactional PBA. The agency would also include the SOO or PWS.



Recommendation 6:
Improve Post-Award Contract Performance Monitoring and Management, Including Methods for Continuous Improvement and Communication through the Creation of a Contract-Specific “Performance Improvement Plan”

- Include reporting of required performance standards under the QASP
- Suggest changes in work product to achieve improved performance and reflect changing circumstances, and
- Identify eligibility for contract incentives, if any.



Recommendation 7: OFPP Should Provide Improved Guidance on Types of Incentives Appropriate for Various Contract Vehicles

- A catalog of the various types of incentives appropriate for use in PBA efforts (both financial and non-financial),
- A critique of how such incentives are currently being applied in selected performance-based awards,
- An assessment of the applicability of award fee and award term approaches to performance based acquisitions (making it clear that while subjective, these techniques offer perfectly acceptable means for measuring performance), and,
- A discussion of challenges posed in managing PBAs under existing budget and appropriation rules that limit multi-year financial commitments and incentive-based budget projections.



Recommendation 8: OFPP Should Revise the Seven Step Process to Reflect the Panel's new PBA Recommendations

- **Agency Pre-Cursor: Acquisition Performance Plan (APP)**
- **Step 1: Designate COPR and Form the Team**
The modification of this step is meant to place more responsibility on the COPR to coordinate PBA planning.
- **Step 2: Assess Baseline Performance and Define Desired Outcomes**
The modification is meant to reinforce the practice of selecting outcome measures and assessing the existing baseline at the beginning of an acquisition—all with an eye toward improving the performance need/requirements definition.



- **Step 3: Examine Private Sector and Public Sector Solutions**

This step remains the same.

- **Step 4: Select Transformational or Transactional PBA Model**

This step reflects the two categories of PBA--part of an effort to move beyond a one-size-fits-all use of PBA and provide clarification on when to use a SOO vs. PWS.

- **Step 5: Narrowcast to Key Performance Indicators**

This refinement reflects the Panel’s desire to limit the number of performance measures included in a PBA contract to a “sampling” or representative index of measures.

- **Step 6: Select the Right Contractor**

This step remains the same.

- **Step 7: Manage, Monitor and Improve Performance**

This step would be modified to include the establishment of milestones for the vendor to prepare “Performance Improvement Plans” as well as the agency’s review and use of those plans to monitor and improve performance.



Recommendation 9:
**Contracting Officer Technical
Representatives (COTR's) should
be re-designated as Contracting
Officer Performance
Representatives (COPR's) in PBAs**

- Formal designation of COPR reinforces a culture change.
- Improved advanced training in performance management—particularly in the development of performance measures and post-award contract performance monitoring and management.
- DAU and FAI should jointly develop a formal educational certification program for those occupying the COPR position.
- For Transformational PBA's, every effort should be made to see that key staff include a certified project manager



Recommendation 10: **Improved Data on PBA Usage and Enhanced Oversight by OFPP on Proper PBA Implementation Using an “Acquisition Performance Assessment Rating Tool” A-PART**

- OFPP would develop a checklist that reflects how well a particular acquisition comports with the basic elements of the seven steps guide. Agencies would then fill out the checklist for each PBA.
- A methodological and accountable approach to PBA implementation not only provides better data, but also helps agencies learn how to implement PBA in a more structured and accountable manner. More rigor is needed in the early stages of PBA’s implementation until agencies are comfortable and competent in the use of the tool.
- Each year OFPP should sample the A-PART documents to see if PBA implementation is in fact being handled properly in each agency.
- This requirement would sunset after three years, unless OMB and agencies felt the use of the A-PART process should continue.



Recommendation 11: **OFPP should undertake a systematic study on the challenges, costs and benefits of using performance-based acquisition techniques five years from the date of the Panel's delivery of its final report**

- More disciplined implementation and greater clarity on when and how to use PBA is the focus of Recommendations 1-9. Recommendation 10 then creates a data collection mechanism to track successful implementation.
- A systematic review of PBA implementation would offer a solid basis for concluding whether significant cost and programmatic benefits are in fact achieved through the adoption of performance-based acquisition methods.



Acquisition Advisory Panel Responses to Questions

Bhavneet Bajaj

Email: Bhavneet.bajaj@tpi.net

Dated: March 17, 2006



Questions – Dated February 10th 2006

▶ In a non-competitive environment:

1. Under what conditions or circumstances do you buy *services* non-competitively/sole-source?
2. Do you ever accept a vendor's rate quote? If so, under what circumstances? If not, what specific analysis do you perform to assure your company is paying a fair and reasonable price? Do you use people with specific skills-sets to perform this analysis, and, if so, what sort of skill sets do they possess?
3. When you buy *services* without competition, what specific types of financial cost or pricing data do you get from the supplier? Do you seek any type of audit rights? If you do obtain audit rights, could you explain briefly what those consist of, who performs the audit, and any remedies?

▶ In a competitive environment:

4. When you buy *services*, what specific types of financial, cost or pricing data do you get from potential suppliers involved in the competition?
5. Do you seek any type of audit rights? If so, can you please explain as requested in Question 3 above?



Responses to Question #1

- ▶ Under what conditions or circumstances do you buy *services* non-competitively/sole-source?
- ▶ Response:
 - ▶ We usually don't advise our Clients to buy services on a sole-source basis in the commercial world. However, there are circumstances where we have to deal with a sole-source environment. This could be for the following reasons:
 - ▶ Existing Client relationship with a current vendor and
 - ▶ Un-willingness to switch to a new vendor (satisfied with the current service)
 - ▶ The only vendor with a viable service offering
 - ▶ Client Management decision/mandate to work with a specific vendor
 - ▶ Acquisition and divestiture support of an existing vendor



Responses to Question #2

- ▶ Do you ever accept a vendor's rate quote?
- ▶ Response:
 - ▶ Even if the environment is sole-source, we still expect the vendor to provide its rate quotes in a manner consistent with an competitive environment. We still expect to receive fixed prices for service components that are clearly defined.
- ▶ If so, under what circumstances?
- ▶ Response:
 - ▶ We will only accept a rate quote for areas where the requirements are not clearly defined and the Client does not know what it wants.
 - ▶ In such a case, we would accept the rate quote for the services on a temporary basis, and the vendor will then be obligated to assist the client in defining the requirements. Once that is complete, we will then require a fixed bid.



Responses to Question #2

- ▶ If not, what specific analysis do you perform to assure your company is paying a fair and reasonable price?
- ▶ Response:
 - ▶ Any time a Client receives a sole-source bid, we advise that it should perform at least one of the following analyses:
 - ▶ Mark to Market – compare the vendor quote to the cost of service in the market, i.e., other vendors' offering that service, irrespective of the industry and based on the scope, size and type of service offering
 - ▶ Benchmarking – what are other customers in your industry paying for the service
 - ▶ “Should Cost” – an internal analysis of what the cost of the same service would be from ground up – Do you use people with specific skills-sets to perform this analysis, and, if so, what sort of skill sets do they possess?



Responses to Question #2

- ▶ Do you use people with specific skills-sets to perform this analysis, and, if so, what sort of skill sets do they possess?
- ▶ Response:
 - ▶ Mark to Market – specific companies that have data regarding the cost of services in the market are able to provide this kind of information in relation to the Client environment and service offering. Personnel with financial skills, familiarity with the particular services being analyzed, and access to the company database are required
 - ▶ Benchmarking – a formal process undertaken by a benchmarking firm that has specific data on the industry and the service offering
 - ▶ “Should Cost” – specific companies and people that have the Financial Architect role and understand the particular service offering and cost associated with such service offering are required



Responses to Question #3

- ▶ When you buy services without competition, what specific types of financial cost or pricing data do you get from the supplier?
- ▶ Response:
 - ▶ Even when we are advising Clients who buy services without competition, we still expect the vendor to provide financial and cost data in a format no different than a competitive bid. The details include:
 - ▶ Fixed price components – summary level
 - ▶ Fixed price components – detailed level including, service offering and any related components, geography, business unit etc.
 - ▶ Unit rates for adjustments in changes to resource consumptions
 - ▶ Fixed one time charges for transition and transformation activities – detailed breakout by components (e.g., hardware, software and labor)
 - ▶ Fixed charges for termination for convenience
 - ▶ Cost variance schedules to include scope expansions



Responses to Question #3

- ▶ Do you seek any type of audit rights?
- ▶ Response:
 - ▶ Typically, any commercial agreement will seek audits in the following areas:
 - ▶ Records Retention
 - ▶ Operational audits
 - ▶ Security audits
 - ▶ Financial audits
 - ▶ SOX Audits
 - ▶ SAS 70 Type II Audits



Responses to Question #3

- ▶ If you do obtain audit rights, could you explain briefly what those consist of, who performs the audit, and any remedies?
- ▶ Response:
 - ▶ Typical Audit language
 - ▶ The Vendor will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Vendor will provide to Client, its internal or external auditors, inspectors, and regulators access at reasonable times to facilities where either the Supplier or any of its subcontractors is providing Services, to personnel, and to data and records relating to the Services for the purpose of performing audits and inspections of either the Vendor or its subcontractors for any reasonable business purpose, including (i) the accuracy of charges and invoices; (ii) audits and examinations by Client's regulatory authorities; (iii) for performance to the terms of the Agreement; (iv) for the conduct of Vendor operations and procedures relating to the Services or in Vendor's performance of the Services; (v) the efficiency of the Supplier in performing the Services; and (vi) for examination by Client of data and records pertaining to Client's compliance with the Sarbanes-Oxley Act of 2002, as amended from time to time



Responses to Question #3

▶ Response:

▶ Typical Audit Follow-up

- ▶ The Vendor and Client shall meet to review each audit report promptly and to mutually agree upon an appropriate and effective manner in which to respond to the deficiencies identified and changes suggested by the audit report. If an audit reveals an overcharge, the vendor shall promptly refund such overcharge.
- ▶ The Vendor will make available promptly to Client the results of any reviews or audits conducted by the Vendor, its Affiliates or their subcontractors, agents or representatives (including internal and external auditors), relating to the Vendor's operating practices and procedures to the extent relevant to the Services or to Client.



Responses to Question #3

▶ Response:

▶ Typical Audit Consequences

- ▶ If the Client determines, in his or her discretion, that further action is warranted, he or she will send a copy of the review to the Vendor. Where the review suggests that the Vendor's procedures or controls are unsatisfactory, the parties shall agree on a remedial plan and a timetable for achievement of improvements. Following agreement of the remedial plan, the Vendor shall implement that remedial plan in accordance with the agreed timetable, shall confirm its completion by a notice in writing to Client and shall allow Client (or its nominees) to conduct a further review to verify that the terms of the remedial plan have been implemented and to verify that the identified problems have been resolved. The process shall be repeated until Client, acting reasonably, is satisfied that the identified problems have been dealt with in a satisfactory manner



Responses to Questions 4 and 5

- ▶ In a competitive environment:
 4. When you buy *services*, what specific types of financial, cost or pricing data do you get from potential suppliers involved in the competition?
 5. Do you seek any type of audit rights? If so, can you please explain as requested in Question 3 above?

- ▶ Response:
 4. See response to Questions # 3 above
 5. Please see response above to the audit question. In a fixed price competitive environment, we would negotiate away some of the above audit requirements

SECTION 1423 ACQUISITION ADVISORY PANEL

**Governmentwide Contracts and
Interagency Contract Vehicles
Working Group**

Presentation of Recommendation Revisions

March 17, 2006

These slides contain preliminary working group recommendations for discussion purposes only. They have not been approved by the Acquisition Advisory Panel

Recommendation #8

1423
Panel

OMB promulgation of detailed policies, procedures, and requirements should include:

- a. Business case justification analysis (GWACs as model).
- b. Projected scope of use (products and services, customers, and dollar value).
- c. Explicit coordination with other vehicles/entities.
- d. Ability of agency to apply resources to manage vehicle.
- e. Projected life of vehicle, including the establishment of a sunset, unless use of a sunset would be inappropriate given the acquisitions made under the vehicle.
- f. Structuring the contract to accommodate market changes associated with the offered supplies and services (e.g. market research, technology refreshment, and other innovations).
- g. Ground rules for use of support contractors in the creation and administration of the vehicle.
- h. Criteria for upfront requirements planning by ordering agencies before access to vehicles is granted.
- i. Defining post-award responsibilities of the vehicle holders and ordering activities before use of the vehicle is granted. These criteria should distinguish between the different sets of issues for direct order type vehicles versus vehicles used for assisted buys, including data input responsibilities.
- j. Guidelines for calculating reasonable fees including the type and nature of agency expenses that the fees are expected to recover. Also establish a requirement for visibility into the calculation.
- k. Procedures to preserve the integrity of the appropriation process, including guidelines for establishing bona fide need and obligating funds within the authorized period.
- l. Require training for ordering agencies' personnel before access to the vehicle is granted.
- m. Use of interagency vehicles for contracting during emergency response situations (e.g. natural disasters).

Recommendation #8

1423
Panel

Recommendation #8 (continued)

- n. Competition process and requirements.
- o. Agency performance standards and metrics.
- p. Performance monitoring system.
- q. Process for ensuring transparency of vehicle features and use. (Defined point of contact for public – Ombudsman)
- r. Guidance on the relationship between agency mission requirements/core functions and the establishment of interagency vehicles (e.g. distinction between agency expansion of internal mission-related vehicles to other agencies vs. creation of vehicles from the ground up as interagency vehicles)

Recommendation #9

1423
Panel

OMB conduct a comprehensive, detailed analysis of the effectiveness of Panel recommendations and agency actions in addressing the findings and deficiencies identified in the Acquisition Advisory Panel report. This analysis should occur no later than three years after initial implementation with a continuing requirement to conduct a new analysis every three years. In conducting its analysis, OMB should evaluate the degree of compliance of a representative sample of vehicles with business case guidance stipulated by OMB as well as an analysis of the degree to which the vehicles in the sample represent unwarranted duplication or overlap with other interagency and enterprisewide vehicles. The evaluation should incorporate recommendations for consolidating or terminating vehicles where unwarranted duplication or overlap has been identified. The analysis should also include identification of any cost savings associated with the implementation of the recommendations and proposed measures to address the unintended negative consequences of such recommendations. Finally, OMB should include in each analysis formal consideration of whether to require OMB-level approval on a case-by-case basis of agency decisions to create or continue vehicles or assisting entities that are not otherwise covered under a statutorily mandated process.