The Bottom Line on Procurement: Effective Tools and Achieving Best Value

Prepared by: P3 Advisors Inc.

January 2008
Final Version

Production of this working paper has been made possible through a financial contribution from Infrastructure Canada. The views expressed herein do not necessarily represent the views of the Government of Canada.

Phelps Centre for the Study of Government and Business
Sauder School of Business
University of British Columbia
2053 Main Mall, Vancouver, BC V6T 1Z2
Tel: 604 822 8399 or e-mail: phelps_centre@sauder.ubc.ca
Web: http://csgb.ubc.ca/p3_about.html
The Bottom Line on Procurement: Effective Tools and Achieving Best Value

Prepared by: P3 Advisors Inc.

Published as part of Building Public Infrastructure Capacity for Canadian Communities: The UBC P3 Project

Funded by Infrastructure Canada’s Knowledge, Outreach and Awareness Program
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0 Introduction</td>
<td>4</td>
</tr>
<tr>
<td>2.0 The Procurement Picture</td>
<td>4</td>
</tr>
<tr>
<td>3.0 The Approach and Evolution of Procurement</td>
<td>15</td>
</tr>
<tr>
<td>4.0 The Tools of the Procurement Trade</td>
<td>19</td>
</tr>
<tr>
<td>5.0 Walking the Line</td>
<td>27</td>
</tr>
<tr>
<td>6.0 Achieving Best Value Solutions</td>
<td>31</td>
</tr>
<tr>
<td>7.0 Conclusion</td>
<td>34</td>
</tr>
</tbody>
</table>

Appendix A: Seven Step Guide to Performance Based Acquisition  
Appendix B: Procurement Tools
Preamble

This document is intended to provide guidance to government officials who are considering changes to the way they procure, manage and deliver services; and who are considering the viability of alternative service delivery in general or for specific projects.

P3 Advisors Inc., Infrastructure Canada and the University of British Columbia are grateful for the valuable contributions to the development of this paper by way of commentary, feedback and insights, from an informal working group of interested municipal, provincial and federal government representatives from across Canada.

This draft was assembled by P3 Advisors Inc., an Ottawa based consulting firm specializing in, and providing strategic consulting advice on, assessing the viability of Alternative Service Delivery (ASD) and Partnering. The firm provides support during the development, implementation and ongoing contract management of ASD and partnering initiatives to all levels of government and the not-for-profit sector (www.p3advisors.com).

As this is an evolving area of practices, the authors and sponsors are interested in obtaining your comments and feedback. These will be compiled and shared amongst the stakeholders involved in the development of the paper and potential future publications.

P3 Advisors Inc.
86 Centrepointe Drive
Ottawa ON K2G 6B1
Tel.: (613) 723-0060
Fax: (613) 723-9720
Email: info@p3advisors.com
1.0 Introduction

The earliest forms of procurement were as basic as the barter system. The strong manufacturing industry of the early years created a pragmatic, quantifiable approach to procuring goods. Today, we see the effect of the growing service industry on procurement methods and the evolution of public procurement engaging the private sector more readily in forms of alternative service delivery. As a result, various strategies and tools have been developed to enable the public and private sector alike, to procure partners rather than products. We are slowly beginning to see a greater emphasis being placed on value and quality than cost. This in essence, defines the difference between Requests for Tenders versus Requests for Proposals.

This paper will focus on the latter, bringing the reader through the considerations, strategies, implications, tools and outcomes of procurement. It will present and provide context to the procurement decisions including the legislative and policy frameworks, the need for transparency and fairness and achieving best value. The paper will introduce many of the procurement tools and strategies used to achieve greater value for money solutions.

2.0 The Procurement Picture

2.1 The Definition

Procurement, simply defined, is acquiring something. It involves a full range of activities related to purchasing goods and/or services. One can procure supplies (e.g. computers, helicopters), services (e.g. consulting, cleaning) or an outcome (e.g. energy efficiency, reduced waste). The Ministry of Housing’s Procurement Working Group has defined procurement as:

A goods, services or construction contract involving a purchasing, leasing, renting or exchange transaction, arrived at by a competitive or non-competitive process. Procurement also includes material(s) management, contract management, advisory services and implementation and adherence to best practices.1

The degree of prescriptiveness of the procurement documentation related to the desired good, service or outcome tends to decrease within each type of procurement type. For instance, when procuring an outcome, such as water efficiency, it is typically the Proponent who would determine how best to achieve the outcome. Alternatively, a more prescriptive approach would specify the type of faucet to be used and the precise flow rate of each faucet required to achieve a specified percentage water use reduction. Section 3.0 will highlight some of the advantages of allowing a certain degree of flexibility in your procurement in order to allow for, and benefit from, a Proponent's expertise and innovations.

A conventional or traditional approach procures in a segmented, sequential fashion and is based on inputs rather than outputs. In relation to infrastructure related procurements, a traditional approach is lengthier as the design and construction are procured separately and distinctly. In fact, a traditional approach does not allow for the same degree of risk transfer, as the client maintains the design and associated risk. There is also no incentive to design or build with life cycle costing or maintenance in mind, since once the construction is complete there is no, or very little obligation or involvement of the successful Proponent, nor are there any performance based mechanisms to minimize risk and optimize performance. The risk lies with the public sector or other procuring agency.2

1 Ministry of Municipal Affairs and Housing, Procurement Guide,
In an alternative and more progressive type of procurement approach such as Public Private Partnership or Alternative Service Delivery, the public sector is typically looking to procure an alternative method of delivering services, for example, acquiring operation and management services for a recreation facility, rather than simply procuring the asset or infrastructure. This also allows for greater risk transference as the procurement is more output based. The payment and contract structure are often based on performance and made over the life of the ‘service’. This again allows for a transfer of risk, associated with issues such as overruns, delays and performance, to the private sector or successful Proponent.

The emphasis on ‘best value’ and the method in which this is determined when procuring supplies versus services or outcomes is a significant consideration. A ‘best value’ determination with respect to procuring supplies, such as computer equipment, will likely provide greater weighting on pure, direct and/or tangible costs. Whereas, intangibles, indirect costs and quantifying elements such as risk would be given greater weight in a ‘best value’ analysis in the procurement of services and outcomes.

This ‘best value’ approach provides for a more holistic approach to procurement, and has become more prominent over the last few years. Initial procurements were very dogmatic and prescriptive; and assessments were very much based on bottom line price. While this is still occurring to a degree, there is a recognition and migration toward a more holistic approach and emphasis on achieving best value.

Many organizations have adopted a strategic approach to procurement. Strategic sourcing is a “rigorous, systematic process by which the organization analyzes its expenditures, evaluates both internal and external influences, and determines the appropriate Service Provider relationships necessary to support overall organizational goals.”

In its approach, strategic sourcing involves examining and assessing the total cost involved in acquiring the goods, services or outcome in order to make a more strategic decision rather than base it solely on face value costing. For instance, making a decision to purchase computers at the lowest cost does not take into account the more significant costs involved over the life of the computer. A strategic sourcing approach considers the entire cost of purchasing, installation, software upgrades, maintenance and disposal. An ad hoc approach to the purchase of office computers results in variations in operating systems, software, etc. and an increase in support costs.

Some of the benefits reported from organizations involved in strategic sourcing include cost reductions, purchasing standards, national contracts, as well as greater collaboration with Proponents. Cost savings have been reported at between 10% to 30% using a strategic sourcing approach.

Sustainable procurement has been defined as follows: “Sustainable procurement provides a framework for using economic power in ways that benefit society, the economy and the environment (thus serving the aims of sustainable development).”
It aims to reduce negative impacts on the environment through factoring in environmental considerations throughout a procurement process. Sustainable procurement simply supplements any of the procurement methods with sustainability requirements, typically defined and tailored to each organization. They include:

- Full cost accounting and whole life costing including environmental factors and sustainability policy
- Waste management, re-use and recycling
- Build in, where possible, energy, waste and fair trade options
- Capitalizing on innovation

Sustainable procurement is also called eco-procurement, green purchasing, environmentally friendly purchasing and affirmative procurement.8

Some of the benefits that can be realized by following a sustainable procurement approach include:

- Health and environmental impacts such as reduced greenhouse gases
- Use of renewable and alternative energies
- Encouraging and creating innovation and alternative solutions such as new forms of waste reduction
- Providing more proactive and holistic solutions
- Use of local Service Providers which benefits and creates sustainability of local economies9

In this paper, the term Proponent is used to mean a person or organization intending to, or engaged in, the development of a proposal for the provision of services. While a Service Provider is an individual or organization who provides a service(s).

### 2.2 The Strategy

The procurement strategy, particularly in a more progressive or alternative form of procurement, should identify the most effective way of achieving the end outcome and best value for money. By selecting the most efficient procurement approach, the public sector can minimize the Proponents’ costs to bid while optimizing the competitive pressures that are necessary to obtain a best-value solution. As illustrated in Figure 1.0 below, as a precursor to the procurement strategy, the assessment of risk, key success factors, needs analysis, business case, and potential constraints such as the markets ability to respond, the financing mechanism, the pricing structure and a preliminary business case should be determined and will help form the procurement strategy.

---


The strategy can help determine the:

- Desired outcome;
- Number of steps in the selection process (e.g. Request For Expression of Interest, Request For Qualification, Request For Proposal);
- Evaluation criteria, which should be based on the key success factors; and
- Milestones and decision points.

The procurement strategy will attempt to address potential constraints in order to achieve the optimal outcome. For instance, uncertain market capabilities (constraint) may require a Request for Expression of Interest. Alternatively, excess capabilities and a flooded market may require a Request for Qualification. These procurement tools are further explained in Section 4: Tools of the Procurement Trade. The strategy will determine the number of phases in the procurement process (e.g. two phased, three phased).

### 2.2.1 Establishing the Strategy

The procurement strategy should recognize Canada's legislative and regulatory boundaries set forth by the Agreement on International Trade (AIT) and North American Fair Trade Agreement (NAFTA) as applicable to various levels of government, quasi government and crown corporations. For instance, AIT's sectoral chapter on procurement (Section 5) delineates the government's obligation not to discriminate against other provincial jurisdictions by actions such as imposing unreasonable time constraints or biased technical requirements.\(^\text{10}\)

---

Part 4, Chapter 10 of NAFTA relates to Government Procurement and delineates measures to be adopted for procurement by government entity, good or service and value threshold. Applicable entities are outlined in Annex 1001, and valuation amounts and methodologies are identified in Article 1001, 1002, and Annex 1001.  

Both agreements state that a reasonable period of time should be given to allow Proponents to prepare and submit proposals before close and to allow for factors such as complexity, sub-contracting requirements, and the need to disseminate information. However, NAFTA states a period of no less than 40 days (Article 1012.2.a).  

Article 502 of the AIT delineates the entities and values by which the measures outlined within the AIT apply. Specifically, procurements valued at $25,000 or greater where the largest portion of the procurement are goods; $100,000 or greater where the largest portion of the procurement are services (except for services listed in Annex 502.1B); $100,000 or greater in the case of construction.  

Organizations should also be aware of and consider other applicable laws such as the Canadian Law of Competitive Contracting and Freedom of Information and Protection of Privacy Act.  

The strategy should be developed taking into consideration the following factors:  
- Agreement on Internal Trade  
- North American Free Trade Agreement  
- Procurement rules and regulations established by your organization  
- Project objectives (e.g. to meet public demand for ice time) and current and ongoing need (e.g. drop in enrollment results in reduced need for new school)  
- Realistic timeframes and key milestone dates  
- If sole sourcing, is there sufficient justification  
- Possibility of parallel procurement activities  
- Market interest and capability  
- Need to ‘package’ project to ensure market interest and project viability  
- Flexibility to integrate procurement tools (such as Commercial Confidential Meetings © discussed in Section 6.2.1)  
- Degree and level of risk transference  
- Will it require unique, innovative or a deviation from the standard Terms and Conditions  
- Does the strategy achieve the desired outcome  

Organizations should carefully consider this last factor. Frequently the demand to abide by internal processes can jeopardize the desired outcome. Organizations are wise to acknowledge the trade off between risking the process versus risking the project outcome. Allowing some flexibility for reasonable and sensible deviations from an internal process, although requiring more effort, will results in project benefits which far outweigh the effort and risk.

---

© Copyright 2008
Depending on the project and market interest, an organization may wish to procure by geographic clusters, functions or services, or other strategic grouping (e.g. management of remote and/or small health centres coupled with urban and/or large health centres). This may be needed to improve the efficiency, viability and attractiveness of a project. Similarly, optional services may be included which could increase the interest and viability of a project. Such strategies are discussed further in Section 6.1.

The ability to transfer risk varies greatly from a traditional procurement approach to a ‘best value’ approach. In a traditional procurement, there is limited scope to transfer risk as asset ownership and financing are retained by the client. Whereas, in an alternative or ‘best value’ procurement, such as a Design, Build, Finance, Own and Operate, the private sector partner can be allocated a greater degree of risk through their direct responsibility for the design, construction financing, ownership and ongoing operation of the asset. The inclusion of operations also provides greater incentive for the private sector partner to perform; and to invest into the asset due to their ongoing accountability function and associated risk.

### Sample Risk Allocation Table

<table>
<thead>
<tr>
<th>Public</th>
<th>Shared</th>
<th>Private</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory/Political</td>
<td>Injury/Damage</td>
<td>Development</td>
</tr>
<tr>
<td>Environmental</td>
<td>Force Majeure</td>
<td>Design</td>
</tr>
<tr>
<td>Tendering Process</td>
<td>Demand/Usage</td>
<td>Construction</td>
</tr>
<tr>
<td>Economic Development</td>
<td>Employee Relations</td>
<td>Operation</td>
</tr>
<tr>
<td></td>
<td>Profit/Loss</td>
<td>Maintenance</td>
</tr>
<tr>
<td></td>
<td>Technological Obsolescence</td>
<td>Inflation and Interest Rates</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exchange Rate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Revenue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Taxation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Residual Value</td>
</tr>
</tbody>
</table>

Nonetheless, risk should be allocated to the party best able to manage it and should be aimed at creating a discipline and incentives for the private partner to achieve the greatest end-result. 14

The selection methodology and approach will define the number of stages and identify the requirements of the procurement forming the evaluation criteria and weighting. Effective criteria will facilitate the selection of a partner. For example, if the key success factor is to “have a proven methodology to ensure continuous service”, the evaluation criteria may look to identify whether the Proponent has the requisite back-up resources and whether measures are in place to limit turnover in key project positions.

---

2.3 The Procurement

2.3.1 Develop Procurement Documentation

In a competitive procurement and in accordance with the procurement strategy, the procurement documentation is developed. The information collected in previous stages provides the basis for the development of the procurement documentation, such as the Request for Information (RFI), Request for Qualification (RFQ) and Request for Proposal (RFP). Issuing an RFI/RFQ can provide useful insights on how to better position the RFP to provide Proponents with the greatest amount of flexibility to introduce innovation.

It is important to ensure that the procurement documents are clear, and that the process is fair. It is also important to ensure that the Proponents have a good understanding of the evaluation process, so as to enable them to respond in a way that meets with the requirements. For public sector organizations, building a fair and open process should help avoid potential issues both during and after the procurement process. It also promotes buy-in from the community and stakeholders since it is open and will typically withstand public scrutiny. This would be facilitated by ensuring the use and careful consideration language used and providing clear and precise instructions in order to eliminate ambiguity. A transparent process can lead to more precise and accurate Proponent submissions and attract qualified Proponents with an understanding of their capacity to deliver the project. The transparent process will allow Proponents to better assess their likelihood of success and result in less ‘surprises’ when unsuccessful.

2.3.2 Request for Qualification

Strategies which involve a qualification phase, will develop a Request for Qualification (RFQ). Section 4 below provides greater detail on when the use and development of procurement tools includes RFQs. The Proponents are qualified according to the established criteria (mandatory and rated) to determine the short list of Proponents. The Mandatory criteria must be clear and consistently applied to all Proponents during the evaluation. Proposals are initially subject to the mandatory screening. Mandatory criteria are not evaluated, but rather given a pass or fail grading. Proponents must pass all Mandatory criteria in order to be considered further. Proponents who have met all the Mandatory criteria will be evaluated according to the rated criteria, if applicable. The Rated criteria must be clear and consistently applied to all Proponents during the evaluation. Typically, a minimum score on the rated criteria is required in order to be short-listed as a qualified Proponent. It is important to note, that setting a minimum score, or threshold, to become a qualified (short-listed) Proponent, is thus also considered a mandatory requirement. Only qualified Proponents are entitled to respond to the Request for Proposal, however, are under no obligation to do so.

While Proponents' proposals are not subject to evaluation in a Request for Expression of Interest (REOI), nor must they meet any mandatory requirements, typically submissions for subsequent phases in the procurement (i.e. RFQ/RFP) can only be made by Proponents who have participated at the REOI phase.

2.3.3 Refine and Issue Request for Proposal

The nature and purpose of the REOI, discussed further in Section 4.2, tends to result in more significant refinement to the Request for Proposal, as opposed to a Request for Qualification. An REOI may in fact result in a change in strategy and approach, for instance, a Design, Build and Finance project may become a Design, Build, Finance and Operate project. The timing for the procurement could also be altered according to feedback provided by Proponents during the REOI phase.
Once refined, the Request for Proposal is issued to shortlisted Proponents. When procuring an ‘outcome’, where it is typical to use an alternative procurement approach, developing results-based specifications will enable greater innovation, risk transference and best value solutions. Rather than dictating the method of achieving a desired outcome (focusing on “how” things are to be done), the specifications simply define the desired outcome (“what” is required). For instance, rather than stating cleaning must take place 10 times a day using Mr. Clean and a cotton fibre cloth; the outcome is a clean room at all times with no marks, smudges or smears. This allows for greater optimization of private sector innovations and expertise, leading to better value for money solutions. Subject matter experts, however, should be consulted in the development of the results-based specifications to ensure viable and realistic specifications. Omissions or errors in specifications can become problematic in both the procurement and ongoing operational phases. For example, a cleaning company may have met all specifications and been awarded a contract. Damages could result from the use of a low quality cleaning agent. If the procurement documentation did not include proper results-based specifications, the Proponent would not be held responsible for covering the cost of the damages or for any replacement.

It is also recommended that a sample legal agreement be included in the RFP documents. Including a sample agreement in the RFP will provide Proponents with a clear idea of how the contract will be managed and how the risks will be allocated. The Terms and Conditions (T&Cs), specifically the performance management tools which outline remedies and incentives linked to performance targets should be disclosed. Clarity and understanding of the requirements and associated T&Cs will enable the Proponents to better assess their capabilities and costing. It should also facilitate and expedite the negotiations stage. In projects which are more complex, unique in nature, or involve a greater degree of risk transference, organizations would benefit from incorporating Commercial Confidential Meetings as part of the procurement process (discussed further in Section 6.2.1).

During the issuance of the RFP, organizations may also undertake Proponents meetings and site visits. Typically, a Questions and Answer period is also permitted in which case Proponents may submit their questions in writing to the designated Contracting authority. All questions and responses are then sent out in the form of addenda to all registered Proponents. The addenda are considered to form part of the RFP documentation.

### 2.3.4 Evaluation and Selection

Organizations may choose to prepare and use an evaluator tool kit and train the evaluation team in the selection process, as this could lead to more consistent and equitable treatment of all Proponents. For sensitive or more complex projects, a Fairness Advisor can be engaged to certify that a fair, open and transparent process has been followed. Evaluation team members are usually those involved in the project and thus have knowledge of the project details and specifications. Typically, there is some input from legal, procurement, finance, design and, where relevant, maintenance personnel. Depending on the complexity of the project and evaluators expertise, organizations may choose to segment the evaluation and/or employ sub-committees of subject matter experts to report to evaluation team members.

If an RFQ was undertaken, proposals will be submitted by Proponents who have pre-qualified at the RFQ stage. It is valuable to have a list of the pre-qualified Proponents available at the time when the RFP proposals are submitted to ensure that only those proposals submitted by pre-qualified Proponents will be forwarded to the evaluators. Prior to the receipt of the proposals, an evaluation matrix should be prepared which will enable the proposals to be ranked according to the degree to which they have met each rated criteria. The matrix should be prepared by the project team and in consultation with relevant and appropriate subject matter experts. Evaluators who feel that they do not have the competency to score a specific section may abstain from evaluating that section; however, they must abstain from evaluating that section for all submissions. Therefore, the process could involve:
Observers: oversee the process and do not provide input on the evaluation, but may provide guidance on the process.

Expert Advisors: provide input to the evaluators on specific subject areas.

Evaluators: take an active role in determining the consensus score. Their specific scoring input is taken into consideration in establishing the consensus score.

While Section 4.8 will discuss the Two Envelope approach, the evaluation process typically involves three basic steps.

Step 1 is the mandatory criteria check. The mandatory check may be undertaken by the Procurement department rather than evaluation team. As with the RFQ, Proponents who have successfully met all mandatory requirements will continue through to step two.

Step 2 involves what is sometimes referred to as the ‘technical’ assessment. The technical assessment involves the evaluation of the rated criteria, exclusive of the financial or price submission. Prior to the evaluation team members beginning their individual evaluations, the Procurement department should review all proposals to ensure no financial or pricing information is included in the technical submission. Evaluation team members should review the proposals in detail to enable knowledgeable and fair ranking during evaluation. The scores should be allocated in consideration and by employing the matrix rather than on a comparative basis. Typically, proposals are scored by each evaluator independently and then reviewed as a group. While not all organizations employ a consensus approach, it is a recommended approach as it allows for discussion of differences and discrepancies, solid rationale and justification, and provides for greater confidence in the final outcome. In a consensus approach, the group arrives at a documented consensus on the final scores. The consensus approach allows for thorough discussion of each requirement to ensure the final assessment matches the desired outcome. Some organizations will employ the averaging of individual scores which can allow for incorrect technical assessments that do not reflect the desired outcome. One example that occurs during most consensus sessions is a majority of evaluators will have scored a requirement either high or low and one evaluator will have scored the requirement the opposite. The individual that scores the opposite to the majority may have a valid reason, such as finding the rest of the answer somewhere else in the submission, which then causes all the rest of the evaluators to change their initial assessment to that of the individual (either higher or lower). This important change to the scoring would not be captured under averaging, thus not aligning with the desired outcome of the procurement.

Step 3 is the assessment or ranking of the financials or bid price.

Clarification questions may be sought prior to the evaluation, however, questions must be for clarification purposes only, and cannot enable the introduction of any new information. Any and all communication with the Proponent must be done through the designated Contracting Authority. While the time frame to respond to a clarification question may vary depending on each organization’s timeline, it should be reasonable considering the type, complexity and amount of effort required to respond.

For instance, a clarification may be sought if, during the evaluation, the evaluation team discovers something contradictory, or cannot find the response to a requirement in the submission. The Contracting Authority may submit a clarification question to the Proponent that asks ‘where in the Proponent’s submission can the response to question/requirement ‘x’ be located’? The clarification request, should contain a note stating that no new information is allowed to be submitted with the response.
Presentations and reference checks can also be used as supplementary evaluation means. However, similarly, presentations must be based on the proposal submitted and cannot be used to present new or solicit new information.

Reference checks should also be undertaken in a consistent fashion. This is essential in maintaining the integrity and fairness of the process.

The final combined technical and financial score for each Proponent, determined according to a pre-established weighting (e.g. 70% technical, 30% financial) is achieved through consensus by the evaluation team. Once consensus has been reached and Proponents have been ranked, they are notified of the result.

2.3.5 Debriefing

Unsuccessful Proponents should be provided the opportunity for a debriefing session. The debriefing will provide them with an indication of the areas within their proposal that contributed to them not being successful and, perhaps more importantly, how they can improve on their response or approach for future bids. It should also reassure the Proponents that they have been treated fairly.

2.3.6 Contract Award and Implement

The objectives of the contracting stage are to:

- Develop, negotiate and incorporate relevant contractual terms, such as clauses addressing matters pertaining to ownership, indemnity and insurance, delay and liquidation damages
- Finalize the contract management tools
- Sign the agreement

In pursuing these objectives, the organization may choose to develop a negotiation strategy. A negotiation strategy helps structure a mutually beneficial contracting framework, which ensures the agreement reflects the true nature of the partnership and takes into consideration the interests of both parties. Sections 2.3.7 and 6.2 will further discuss contract content, management and negotiation strategies.

Initial planning and a knowledgeable team are key success factors in the award and implementation stage. Proper planning should have enabled sufficient time and addressed all potential influencing factors. For instance, the completion date of a project could be vital if dealing with a seasonal service such as the opening of an arena in September to allow for fall programming and leagues. This phase also sets the stage for the ongoing relationship. It is important to recognize the need to manage the relationship and establish the right tools to manage the expectations, outcomes and relationship.

2.3.7 Contract Management

Managing the contract often also involves managing relationships. As Public Private Partnerships (P3) projects are long term, maintaining effective working relationships, and in many cases establishing new relationships among partners, may be required.

Contract management and dedicated resources to ensure proper management of the relationship are often not given enough significance. While much time, energy and money often go into the planning, procurement and award of a contract to make it a success, it can falter in the ongoing management stage. With long term relationships, such as P3s being up to 35 years, people, philosophies and performance can fluctuate. It is thus important to be aware and take steps to encourage and foster an environment of continuous
improvement in order to avoid having the status quo as the de facto service level. While this begins with the type of approach and contract chosen (e.g. performance based, pricing structure) the contract in itself is not self-sustaining. Acceptance of the status quo, particularly in long term ventures, can be common and disadvantageous. The many benefits of a P3 can be realized throughout the life of the project as they often bring innovation, capital and synergies which lend themselves to continuous improvement.

Evaluate outcomes

Public sector and private sector partner objectives can change over time, necessitating the relationship and service delivery approach to be “re-aligned”. To address both the change and to encourage continuous improvement, ongoing evaluation of post-contract outcomes is recommended. Typically, the evaluation verifies whether the project objectives are being met and if results are in-line with expectations (e.g. consistency in service delivery, improved response times on service calls, improve quality of data for decision making). Routine and daily operations can sometimes cause partners to overlook re-evaluating and realigning objectives where necessary. It is important for both partners to be cognizant of this important element as it allows both to benefit from the relationship through improved and appropriate outcomes, rather than leading to frustration and fatigue.

2.4 The Contract

The possibility of change and variation in risk and performance are factors which should be kept in mind when negotiating the contractual terms. Unrealistic demands or one-sided agreements seem to inevitably falter resulting in costly ventures. For example, undue restrictions on the pricing of public services provided by private partners may lead to lower performance levels and/or reduced quality of service. The ability to manage the contract and adjust to political or environmental changes will allow the project and partnership to survive and thrive.

The contract should incorporate mechanisms which will ensure:
- proper implementation/transition of the contract;
- effective management of the contract; and
- regular post-contract award outcome evaluations are undertaken.

Implementation of the contract, which typically involves a host of transitioning in, and potentially transitioning out of a previous Service Provider, must be well planned and resourced. Change can be controversial, thus a smooth transition involving a well planned communication strategy will help an organization to start off on the right foot.

Some organizations tend to follow a template-type contract. It is very important to recognize the unique attributes of a partnering arrangement and to ensure they are well incorporated into any form of generic template. While the structure of contracts may be similar, elements related to the performance management framework, change management process, relationship management, default, payment and invoicing, pricing structure, reporting and other contract management tools are examples of unique attributes and should be tailored to each partnering arrangement.

Incorporating management tools such as risk and performance monitoring matrixes into the contract can be valuable as a means to monitor outcomes, risk variations and performance, and to re-negotiate terms if necessary. Implementing such tools can help to maintain a proper balance between partners, and to verify that performance standards are met throughout the life of the project. Monitoring change in the project, for example in its risk profile and performance, will allow the public sector to respond and adjust accordingly.
Once the contractual conditions have been finalized, it is advisable that the legal departments review them in order to certify that they are clear and legally binding.

3.0 Procurement Approaches

Governments worldwide are seeking new and alternative ways to build infrastructure and deliver services to their citizens – not only more efficiently and for less cost, but with improved performance. The United Kingdom is one of the world’s pioneers of alternative approaches to infrastructure development with the Thatcher government’s introduction of the Public Financing Initiative in 1995. Since then, various countries including Australia, Canada and the United States have experimented with alternative procurement approaches for delivering needed infrastructure and improved services to their citizens.

Efforts in Canada and the US seem to be more independent and segmented, with provinces and states developing their own frameworks, approaches, language and organizations to deal with alternative methods of infrastructure and service delivery. Examples in Canada include Partnerships BC in British Columbia, Infrastructure Alberta in Alberta, Ministry of Public Infrastructure and Renewal (formerly SuperBuild) in Ontario, and l'Agence de Partenariat Public Privé in Quebec.

In the US, the Virginia Commonwealth Competition Council was created as part of their Government Competition Act of 1995 to improve the delivery of government services for less money. The Texas Council on Competitive Government is also mandated to investigate alternatives for cost savings, such as managed competition, outsourcing and Public Private Partnerships. Both councils have reported significant savings of more than US$100million.

While the terms and the processes have evolved, the concepts remain constant – competition and value. Various procurement approaches have been developed in an attempt to maximize these two concepts - obtaining best value through a competitive process.

3.1 Managed Competition

Managed Competition, a term used predominantly in the United States, involves public and private sector organizations competing against one another for the delivery of public sector services. The principal goal is to ensure the best value through improved service delivery and increased efficiency. The approach has been designed in part to enable public sector organizations to ‘rethink and re-engineer existing business process’ with the goal of optimizing efficiency and effectiveness.

In the US, outside proposals are often required to meet a pre-determined savings amount to be eligible. The intent of this regulation is to minimize disruption and cost involved in changing Service Providers. Managed competition in the US has had positive results with resulting savings quoted as high as 60%.

The process of allowing in-house bids is also undertaken in Canada. Some public sector organizations have developed documentation to facilitate the process and ensure a set of protocols that guide the fair, open and transparent nature of the process. The documentation provides specific processes to deal with issues such

18 http://cpr.ca.gov/report/cprrpt/issrec/stops/proc/so74.htm © Copyright 2008 Page 15 of 34
as the communications between the in-house team and the contracting authority, the composition of the in-
house bid team and their communications with other departments. Typically, it will also outline the roles and
responsibilities of those involved, including a Fairness Advisor, as well as the rules of the bidding process
related to inside information, conflict of interest, confidentiality, codes of conduct, probity, and security of
information, among others.

An in-house bid is generally prepared by the individuals who are currently carrying out the services or have
the capability/capacity to carry out the services. Management of the in-house operation must be within the
department, thus ensuring that the bid is truly an in-house bid. If the in-house bid is to be successful, it will
need to demonstrate that the team can transition the organization and services in a manner that provides
continued value for money, including performance and cost effectiveness. This could entail redesigning key
processes, reviewing the scope of activities contracted, adopting new technologies, equipment and
approaches.

A central concept of in-house bidding or managed competition is that of competitive neutrality. Competitive
neutrality means designing a set of policies and legal arrangements that ensures that all individuals and
organizations - public, for-profit, and non-profit - are treated in an equal manner in the bidding process.
Ideally, all protections and special privileges that public units usually enjoy over private firms simply by virtue
of public-sector ownership should be removed, as should barriers that hamper the public-sector unit's ability
to increase productivity and therefore effectively compete with the private sector.19

Public entities often do a poor job of ensuring competitive neutrality. Anti-competitive practices include:
 failing to fully cost out in-house services, requiring excessive performance bonds from private firms,
 rejecting lower bids from private firms, and permitting in-house teams to adjust their bids or proposals after
seeing the private bids. The processes adopted should, thus, ensure that the approach in selecting the
successful Proponent is fair and transparent. Again, organizations may wish to engage a Fairness Advisor
to assist in meeting this objective.

3.2 Performance-Based Procurement

The concept and use of performance based procurement approaches is growing, particularly in the areas of
alternative or partnership projects which emphasize value for money solutions. The concept is being used
both in Canada and abroad, including the United States, the United Kingdom and Australia. Performance
based contracts typically involve the identification and use of indicators of performance. A set of Key
Performance Indicators (KPI) are used as a basis for measuring performance.

KPIs will often be reflective of shared objectives of the client and the successful Proponent; however they
typically take into account:
- Value for money
- Predictability
- Service levels achieved
- Risk
- Cost drivers
- Time considerations
- Innovation
- Track record

19 http://www.privatization.org/database/practicesandstrategies/managed_competition_quick_guide.htm - Condensed from:
March 1998.
There are a number of derivations on the concept of performance based procurement which have been developed integrating these concepts, as seen below.

### 3.2.1 Performance (solutions) Based Services Acquisition

The Performance Based Services Acquisition approach is based on traditional concepts of performance based contracts and evolved following a great deal of reform related to government acquisition. The United States General Services Administration has defined Performance-Based Acquisition (PBA) as a “technique for structuring all aspects of an acquisition around the purpose and outcome desired as opposed to the process by which the work is to be performed”.

As evidenced below, the reforms and renewed approach in the US received consent from the highest level:

...over the next five years, a majority of the service contracts offered throughout the federal government will be performance-based. In other words, rather than micromanaging the details of how contractors operate, the government must set the standards, set the results and give the contractor the freedom to achieve it in the best way. —Presidential Candidate George W. Bush on June 9, 2000

While the traditional methodology of procurement still dominates, the US has mandated that a minimum percentage (40% by 2005) of all acquisitions over $US 25,000 be undertaken in accordance with Performance Based Acquisition. One of the key components of Performance Based Acquisition is that it is a ‘collective responsibility’ of an integrated team inclusive of budget, technical, contracting, logistics, legal expertise and program offices. Thus, the first step in Performance Based Acquisition is to establish an integrated solutions team.

The Seven Step Guide to Performance Based Acquisition (see Appendix A) was developed by the US Government (led by the Department of Commerce) and provides guidance on the process according to the seven main tasks listed below:

1. **Establish an integrated solutions team** including ensuring senior level support, identifying stakeholders and developing and maintaining a knowledge base over the life of the project.
2. **Describe the problem that needs solving** including desired results and determining the current level of performance.
3. **Examine private-sector and public-sector solutions** which would involve consultations and market research.
4. **Develop a performance work statement (PWS) or statement of objectives (SOO)**. In this step it is important to ensure the contractor has the flexibility to propose the most effective solution to achieve the desired outcome. The objectives must allow for alignment of motivations between the public and private sector, and that constraints are clearly identified.
5. **Decide how to measure and manage performance** by identifying your success factors, using incentive type contracts, industry standards and recognize need for change and relationship management.
6. **Select the right contractor**. It is important to ensure that in Step 4, the problem has been defined rather than the solution. This way you compete the ‘solution’ and chose a partner based on their solution. Use a best value evaluation.
7. **Manage performance** by assigning accountability for contract performance and regular review of performance.

---

20 [http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeld=8203&channelPage=%252Fep%252Fchannel%252FgsaOverview.jsp&channelId=-13077](http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeld=8203&channelPage=%252Fep%252Fchannel%252FgsaOverview.jsp&channelId=-13077)

21 [http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeld=8203&channelPage=%252Fep%252Fchannel%252FgsaOverview.jsp&channelId=-13077](http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeld=8203&channelPage=%252Fep%252Fchannel%252FgsaOverview.jsp&channelId=-13077)
The Bottom Line on Procurement: Effective Tools and Achieving Best Value

Rather than focusing on contract compliance, Performance Based Acquisition focuses on performance, improvement, and innovation and provides an outline to draw on the private sectors capabilities, resources and innovation.22

3.2.2 Capability Procurement

Capability Procurement has been used in the Defence industry, primarily in the UK. It was developed in response to a concern regarding the industry capability to continue to meet and sustain ongoing demand. The key differentiator in capability procurement is the timing of and degree of involvement of the industry. In Capability Procurement, the industry is consulted early on in the planning process and is involved to a greater degree in the process. This may even involve ongoing participation pre and post procurement in ‘think tanks’ and working groups to address the issues of sustainable capacity.23

3.2.3 Output Based Procurement

An Output Based Procurement (OBP) can be defined as “a competitive procurement process resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured.”24

Canadian governments at both the provincial and municipal level have employed output based procurements. The Ontario government has an extensive program of infrastructure projects being delivered through their new Alternative Financing and Procurement initiative. Output based specifications have been used in the procurement for a number of hospital projects including the North Bay Regional Health Centre and Trillium Health Centre. In British Columbia, output based specifications were also used in the procurement of the Abbotsford Hospital and Cancer Centre project.

The outputs are typically a measure of functionality. The output specifications thus specify the outcome sought which can be measured in terms of magnitude, quality or dependability. For example, an output specification for the registration/reception area of a new recreation facility in a design/building/operate procurement could be:

Clear, highly visible signage and way finding at the main entrance to provide clear direction to visitors.

The outcome is clearly conveyed, but not the method to be used to achieve the outcome. This provides two key advantages. The first is the ability to benefit from private sector expertise to provide innovative solutions which enable the client to meet its outcome in the most efficient way possible. The second is the risk transference resulting from dictating the outcome rather than the means (the how) to achieve the outcome. By dictating ‘the how’, the Client would taking back the risk in house and hence not benefiting from transferring the risk to the private sector.

Non-performance can therefore lead to payment deductions or payment being retained until rectification.

22 http://www.acquisition.gov/comp/seven_steps/home.html
23 House of Commons, Defence Committee, Procurement Inquiry, Intellect's Response, April 2004, p.3
Measuring the outcome then becomes your basis for payment, for instance, payment is made in accordance with quantity of outputs or service being delivered at a specified level of quality. For instance, where a specified outcome is that 20% of meeting rooms in a recreation centre be available to the public at all times, payment deductions would result if this availability factor is not met.

Alternatively, performance based contracts often include remedies and incentives which are again applied in circumstances of non-performance or superior performance. In this case, a remedy would be applied where the unavailability occurs over a defined period of time, or a set number of times laid out by the client.

3.3 ‘Conventional’ phased competitive approach

A conventional or traditional procurement approach typically involves separate and distinct procurements for the design and construction elements of the project. The design and specifications are completed and provided to the private sector to bid on the construction. Conventional or traditional procurement commonly used for ‘non-partnering’ approaches and thus, are not considered nor fall within the realm of alternative form of service delivery. Consequently, they do not involve the private sector in any aspect of defining the solution, providing innovation, finance, synergies or efficiencies. Therefore in this case, as opposed to the previous approaches discussed, the ‘solution’ is already provided by the Public Sector organization and there is no or limited ability to evaluate best value for money solutions.

There are, however, instances where the conventional approach has been morphed into an alternative procurement by including financing and/or maintenance and/or operations. This enables greater risk transference and an opportunity for the private sector to bring forth innovation and efficiencies for best value to the public sector.

4.0 Procurement tools

The following tools can be used in the procurement process and should be used in accordance with a pre-established strategy. Each tool is used according to the circumstance, objective and type of procurement or approach being considered. They are presented below in the order in which they would be undertaken. Appendix B provides greater detail on examples of use and advantages of each procurement tool outlined below.

4.1 Vendor Consultations

Vendor consultations may be undertaken for projects where market uncertainty, complexity and risk transference are high. It is advisable when the combination of services is not typical and the bankability of the project is questionable. This strategy would allow for greater feedback into the project and/or procurement route, solidification of the business case premise (i.e. testing some of the assumptions), as well as redefining or balancing partner risk, rewards and/or responsibilities which can help re-position the project to improve the chances of it being well received by the market and ultimately successful.

The vendor consultation process serves a similar purpose as the REOI however they are less formal and are undertaken with pre-selected organizations rather than distributed via some form of public procurement vehicle (e.g.. MERX).

4.2 Request for Expression Of Interest or Request for Information

A Request for Expression of Interest (REOI) or Request for Information (RFI) can be used at the onset of a procurement process when there is uncertainty regarding the potential market interest or ability to respond
to a particular procurement. The REOI also serves to provide the market with a ‘heads up’ on projects which may be unique and/or complex in their requirements and/or require the formation of consortia to respond. The REOI, therefore, serves as an initial market survey document through an open invitation for Proponents to provide information regarding a potential or planned procurement and/or project. It is therefore advisable when the project is unknown or where consortia may need to be formed to respond to the resulting RFP.

The process is designed to gather information that can help guide the development of the project and ensuing procurement. An REOI adds the greatest value as the first stage of a multi-stage, pre-award process for large or complex procurement opportunities.

An REOI document should include:

- An overview of the purpose and submission requirements
- An introduction, background and summary of the need or project scope
- Objectives of the project
- Relevant and applicable Terms and Conditions
- A description of the procurement process and proposed schedule (if applicable)

When undertaking an REOI, you may also want to:

- include a statement that there is no obligation to advise any Proponent of any bidding documents which may follow, and that interested Proponents should check the pertinent electronic tendering systems (MERX, BidNavigator, website, etc.) to find out about the posting of any such future bidding documents
- provide an indication of timeframe and likelihood of project eventuating
- state that there is no guarantee or obligation to proceed with a procurement or the project

The document should clearly identify the need and provide an overview of the potential scope and complexity of the project in order to ensure the market can provide relevant and valuable information in responding, and an accurate assessment of their ability to respond in the case of a Request for Proposal.

The types of information which can be requested through an REOI include:

- a company profile, business capabilities, capacities and experience
- organizational resources including Information Management, Information Technology, personnel qualifications and experience, etc.
- information on the types of goods or services available that may meet the requirements
- pricing validations

The general outline nature of this process/procedure is designed to bring forward new innovative and imaginative ideas, but does not create a certainty of any future initiatives. The issuer is under no obligation following the REOI to proceed with the next stages of this process (i.e. RFQ and/or RFP), should there prove to be no interest in the initiative the process may stop, or if there are no qualified Proponents due to the novelty of the request etc. Innovation steps in when the market sees opportunity in the request, with the formation of consortia, new ideas to old problems may emerge.

It is important that this type of process be done correctly, so as to not establish a legal contract: neither a Contract A (bid contract) nor a Contract B (performance contract). Incorrectly it may lead to obligations on the part of the issuer. If the process is used to solicit quotes or proposals, it may create a liability on the part of the issuer. The true purpose of the document must be made very clear within the document and followed without deviation if such difficulties are to be avoided.
4.3 Request For Qualification

A Request for Qualification's (RFQ) is where a Public Sector organization invites responses from potential Proponents interested in responding to a particular project, for example a new road, hospital or recreation complex, to meet certain mandatory and technical criteria. Typically a minimum level of requirement is requested. Those which meet the minimum requirement are then invited to the next phase of the procurement, the Request for Proposal. Only Proponents who qualified can submit a proposal for consideration at the Request for Proposal stage. They can, however, choose not to bid.

RFQs are typically used where a project attracts significant interest from Proponents who may not have the combined capabilities to address the needs (e.g. good in construction, not an operator). It can be considered a soft gate which provides the opportunity to limit the number of Proponents in the Request for Proposal stage and hence reduce bid and evaluation costs. RFQs will typically, however, identify the criteria which are mandatory for all Proponents to be considered and evaluated. It is important to note that RFQs are less stringent and detailed than RFPs. Mandatory requirements can become more stringent in the RFP phase, however, not the reverse.

Depending on the interest, nature, value and size of the project, the RFQ stage could be fairly extensive. Thus, while the extent and depth of the content may vary, a typical RFQ structure includes:

- Project/Requirement Overview
- Instructions to Proponents (e.g. submission requirements, deadlines)
- Mandatory Requirements
- Technical Requirements (e.g. experience and qualifications, financial capacity)
- Evaluation Methodology
- Terms and Conditions (e.g. conflict of interest, confidentiality, Freedom of Information, Privacy Act)
- Appendices (e.g. forms)

4.4 Request For Proposal

The Request for Proposal (RFP) is an invitation by the Public Sector to either potential Proponents or a list of pre-qualified Proponents to submit detailed proposals in response to a particular project (good or service). Depending on the procurement approach, the solution may not be well defined, but the end result/outcome is clear. In other words, “what” of what they want is clear, but they are requesting the “how” from Proponents. For instance, a municipality may have a need for 2000 hours of ice time (the outcome) which can be provided either through existing arenas (solution 1), expansion of an arena complex (solution 2) or new construction (solution 3). Proponents will therefore be submitting their solutions of how to achieve the end result. This allows for diverse responses, a higher level of competition, quality of response, and a value for money solution. The RFP is also used when the requirements include providing analysis, sharing of intellectual information, or providing a recommendation and the exchange of intellectual property.

The RFP is used as a stringent evaluation tool differentiating Proponents based on pre-established evaluation criteria, both mandatory and technical. All Proponents, without exception, must be evaluated against these criteria. The mandatory criteria are the essential criteria, those which must be in the proposal for it to be considered further and evaluated against the technical criteria. The mandatory requirements are typically a pass or fail. Any failed mandatory requirements result in a rejected proposal.

The RFP should include, but is not limited to:

- Description of the project and background
- Instructions to Proponents
The RFP does lead to a Contract A (bid contract) with Proponents, and it is therefore very important that evaluation of the proposals be on the criteria stated in the document to avoid future liabilities. The awarding of the contract is then based on the best score from the evaluation criteria of the technical and price components, along with the effectiveness, and value add. Negotiations with Proponents may be required to finalize any aspect of the requirement.

4.5 Request For Tender

A Request for Tender is an invitation by the Public Sector to potential Proponents to provide costing related to the provision of specified goods or services. The specifications are detailed, the requirements and a solution is proposed and the Proponent must provide the amount it will cost to deliver the good or service, rather than provide a best value solution on how the good or service can be delivered.

While the structure of a Tender, particularly that which follows a conventional procurement approach may have similar elements to a Request for Proposal, the contents will vary drastically. For instance, the Performance Management Framework and sample contract for a RFP undertaken in accordance with a Performance Based Acquisition approach for a partnering project will typically include contract and relationship management tools, remedies and incentives, a change management process, and more tailored clauses related to default, payment and invoicing, reporting, insurance, etc.

4.6 Vendors of Record

Vendors of Record (VORs) are most commonly used when:

1) there is a repeated need for the good or service
2) evaluation criteria are known in advance
3) the precise volume or quantity is not known, but when need arises it is immediate

Vendors of Record allow Public Sector organizations to qualify a group of Proponents from which they can draw on to provide the particular good or service they have been qualified for e.g., legal, environmental, accounting, when the need arises. It is advisable that Public Sector organizations who wish to use VORs, provide for this in their procurement policies. Organizations will typically determine a maximum dollar limit for which ‘users’ can engage a Proponent without further competition within the VOR. For instance, for mandates under a threshold of $50,000 users can engage a Proponent directly.

Therefore the typical process, once the VOR has been established, allows for users to either: 1) directly procure the good or service from a Proponent on the VOR; or 2) use the VOR as a basis for inviting proposals. The benefits of a VOR can include:

- Proponents have been pre-qualified through a competitive process
- Access to pre-determined guaranteed hourly rates
- Proponents are often classified according to Service and Region
- Contractual arrangements are managed centrally

---

http://www.mah.gov.on.ca/userfiles/HTML/nts_1_11349_1.html

© Copyright 2008
The Bottom Line on Procurement: Effective Tools and Achieving Best Value

- Expedited procurement process
- A simplified invitation for proposal and evaluation process, if required

The use of VORs is most suitable amongst organizations whom have a real and repeated need for a particular service or good. This allows them to reap the benefit of the associated cost of administering the VOR. Public organizations that employ VORs should be aware of the International Trade Agreement implications. For instance, opportunities must be given for Service Providers to be added to the list if the organization is maintaining a list of Proponents on ‘ongoing’ basis. 26

4.7 Sole Sourcing

Sole sourcing refers to the acquisition or procurement of goods or services directly from one Proponent without going through a competitive process. Typically, sole sourcing can be considered under the following circumstances:

- Unforeseeable situation of urgency or emergency where the good or service cannot be obtained by means of open procurement procedures
- A situation where tendering could reasonably be expected to compromise confidentiality, cause economic disruption, or otherwise be contrary to public interest
- To ensure compatibility with existing goods or services, to recognize exclusive rights, such as exclusive licenses, copyright, and patent rights; or to maintain specialized products that must be maintained by the manufacturer or its representative
- Where, for technical reasons, there is an absence of competition, and the goods or services can be supplied only by a particular Service Provider and no alternative or substitute exists.
- The procurement of goods or services for which there is a statutory monopoly that is controlled by a Service Provider
- There are pre-requisites to bidding e.g. the existence of an operational power generation facility with excess capacity
- The organization considers that a pressing public interest requires it to proceed with the procurement on a sole source basis. 27
- The purchase of goods on a commodity market
- The low value of the procurement would make it uneconomical and/or impractical to do so and would not attract bids
- Work to be performed on or about a leased building, or portions thereof, that may be performed only by the lessor
- Work to be performed according to the provisions of a warranty or guarantee
- The purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases
- The procurement of original works of art
- The procurement of subscriptions to newspapers, magazines, or other periodicals
- Services of expert witnesses, especially in anticipation of litigation or for the purpose of conducting litigation
- Procurement of goods or services from another level of Government

The Agreement on Internal Trade and the Agreement for the Opening of Public Procurement for Ontario-Quebec Trade Agreement also specify exceptions to competitive sourcing which are outlined in Appendix 4

26 http://www.mah.gov.on.ca/userfiles/HTML/nts_1_11349_1.html
27 Partnering and Procurement Inc., Ontario Power Authority: Report on Large Dollar Procurement Approaches, September 6, 2005
4.8 **Two Envelope Approach**

A Two Envelope Approach can be utilized in a competitive procurement involving some form of pricing proposal (e.g., Request for Proposal). It is particularly useful where a large percentage of the weighting has been assigned to the price proposal or costing. In the Two Envelope Approach, Proponents must be instructed in the procurement documentation (e.g., RFP) to submit their technical or qualitative proposal in one envelope and the pricing proposal in a second, separate envelope in submitting their overall response and proposal.

Typically, the process followed with this approach will dictate that the technical or qualitative proposal is opened and evaluated first, and in accordance with the pre-established criteria and methodology. Only Proponents who have achieved the pre-established minimum score, where applicable, will proceed to the pricing evaluation.

The second envelope will then be opened and evaluated according to the pre-determined criteria and methodology for the pricing evaluation. Proponents who did not meet the minimum score for the technical or qualitative proposal, where applicable, will have their pricing proposal (envelope) returned to them unopened.

The final score and successful Proponent is determined following the evaluation of both the technical and pricing proposals and combination of both scores according to the pre-established methodology.

4.9 **Unsolicited Proposals**

An unsolicited proposal is a valuable way for unique or innovative ideas, approaches or methods to be made available to the public sector. They are therefore a product of, or are derived from, the private sector. Public sector organizations are increasingly bringing new ideas, innovations and tools into their procurement practices. While the acceptance of unsolicited proposals may appear to defeat the benefits and intent of a competitive procurement, it can in fact bring about added and unique value to public sector organizations and the citizens they serve. Through a well defined and communicated process, unsolicited proposals can achieve the same, if not greater, benefits than through traditional procurement. While caution must be taken to ensure a proposal is responding to a true need and is in line with the public sector’s priorities, it can result in services or infrastructure delivered to the public faster, better and more efficiently than planned.

Some of the advantages unsolicited proposals offer include:
- reduced soft costs as there is no need to issue RFQ/RFPs
- faster delivery of infrastructure and related services
- economic stimulus to the private sector should yield lower cost

There are also some potential disadvantages including:
- lack of fairness and transparency
- perceived loss of control of the process
- solution may be what the private sector Proponent deems as appropriate to a municipal need
- lack of determination if value for money was maximized

---

In dealing with unsolicited proposals and to address some of the potential disadvantages, Public Sector organizations should:

- Develop a clear policy related to the acceptance of unsolicited proposals
- Develop guidelines and a process to support the policy for accepting unsolicited proposals
- Ensure the process:
  - Recognizes and maintains the principles of fairness, openness and transparency
  - Encourages competition and promotes best value
  - Addresses issues of conflict of interest, confidentiality and proprietary information
  - Identifies pre-requisites for considering unsolicited proposals and inviting competing proposals such as the project is compatible with the organizations priorities and brings unique value
  - Is clearly communicated to all parties involved
  - Is objective and not biased toward the original unsolicited proposal

The concept and process related to accepting unsolicited proposals is being used by Public Sector organizations both within Canada and internationally. The City of Ottawa has adopted “The Ottawa Option”, a methodology which allows the City to receive unsolicited bids for projects and then offer others an opportunity to improve and bid on the proposal, while at the same time protecting the ability of the original Proponent to match any other competing proposal. “The Ottawa Option” was used to implement the City’s Street Lighting Initiative which involved the management and maintenance of all of the City's 54,000 street lights.

The Swiss Challenge is the most commonly referred to practice upon which governments have developed and based their frameworks on unsolicited proposals. In short, it allows for the original unsolicited proposal submitted to governments to be ‘challenged’ by competing proposals. The original Proponent then is provided the opportunity to counter-match any responses. Countries worldwide, including South Africa, the Philippines and India have developed frameworks on this basis. 29

Other jurisdictions have instituted measures such as:

- Bonus system by awarding a bonus in the formal bidding process to the original unsolicited proposal (UP) Proponent, thus if the original proposal falls within a certain percentage (e.g. 10% or 20%) of the best offer the original proposal is chosen30
- Public posting the UP summary for market scrutiny for a period of time, if no one challenges it, then proceed with UP
- Develop shadow proposals to determine business case and best value before accepting the UP

With Unsolicited Proposals, as with any procurement, the public sector should ensure that the product/or service will meet the need of the public.

4.10 Best and Final Offer (BAFO)

The use of Best and Final Offer (BAFO) typically occurs:

- When the evaluation team believes the price could or should be better
- Where some elements of a proposal are ambiguous, confusing and need further definition
- To obtain additional information which will provide a greater point differentiation between competing proposals

29 Hodge, John, Public Policy for the Private Sector, Unsolicited Proposals: Competitive Solutions for Private Infrastructure, March 2003, Note Number 258.
30 IBID
To provide the Proponents with the opportunity to address specific deficiencies found in their proposals during the evaluation
- To allow them the opportunity to address any other aspect of their original offer that they deem deficient
- To instill equity in the cost comparison where proposed costs are not submitted on the same basis. A cost formula used to evaluate is only effective where the costs are proposed on an identical basis

The ultimate objective of the BAFO is to enable the Public Sector to obtain the best overall value.

A Public Sector organization wishing to employ the BAFO tool must identify this approach in the procurement documentation as part of the process. However, there is no obligation to exercise this process, which should be communicated to the Proponents.

The use of BAFO within Canada is minimal, but increasing. It is however, used quite extensively in the United States, with varying approaches to employing the BAFO. For instance, in Arizona the competitive negotiations precede BAFO. This allows revised proposals to integrate the agreed upon changes resulting from the negotiation process. In Idaho, revised proposals are not required, negotiations occur after BAFO and a contract is awarded. In New Mexico, the process is similar to that typically used in Canada, where Proponents are sent a letter indicating the deficiencies in their proposals and inviting them to submit a BAFO. There are also variations in the process itself, for instance, in some cases no additional points are awarded, or only one BAFO can be requested.31

During the evaluation process, the evaluators identify those proposals capable of delivering the required results. This evaluation is the same as would normally be done to develop the short list of finalists. These finalists are then provided detailed questions related to their proposals, or informed of those parts of the proposals that are deficient. The Proponents are given the opportunity to re-address the deficiencies in their proposals. They are provided with the opportunity to improve their offering and to eliminate unacceptable conditions contained in their original proposal. The amended sections are then re-evaluated and re-scored according to the evaluation process defined in the RFP.

Under Canadian competitive bidding law, if an Owner does not explicitly reserve a power or privilege to themselves, then after close of bidding, the Owner must live with that absence of rules and can not make any new rules. As a result, the process for undertaking a BAFO should be clearly laid out and followed. Proponents are notified in writing with details of the requirements and process and inviting them to participate in the BAFO stage. The BAFO invitation should clearly identify the points the Proponents should consider in their re-submission, as well as the evaluation criteria that will be applied. The BAFO invitation letter may also include instructions to Proponents, and statements related to existing and/or Terms and Conditions, Commercial Confidential Meetings or Honorariums.

Where there are deadlines included in the process, they are treated exactly like the proposal submission. Best and Final Offers submitted after the deadline are not accepted. If the BAFO request contains instructions for reposing the Proponent cost on a basis other than what was contained in the RFP document, then the change should be treated as an RFP amendment and identified as such. As a result, if the scope is changed all Proponents should have the opportunity to benefit from the change. If however, the Proponent is requested to address their approach in responding to the Scope, it is not necessary to provide the information to all Proponents.

Alternatively, to expedite the process, Proponents would respond only to the Technical questions identified in the evaluation and provided by written correspondence, and provide a fully revised financial proposal.

It is recommended that the Proponents be advised that either their initial OR their revised proposal can be accepted at the discretion of the issuer.

4.11 In-House bids

In-house bids allow for internal resources of an organization to compete against external organizations in a public sector procurement, typically for the delivery of a public service. It is used to varying extents in the public sector, both domestically and abroad.

To benefit from their ingenuity while ensuring best value through competition, as discussed in Section 3.1, it is advisable to develop policies and associated guidelines or protocol to ensure the in-house bid process is clear, open, fair and transparent. In fact, Section 271 of the Municipal Act requires municipal and local boards to have in place policies related to in house bids.32

Some of the fundamental principles which you should integrate into your process for in house bids include:

- A common Statement of Work be developed for all Proponents to respond to
- The provision of adequate information so that all Proponents are knowledgeable enough to bid on an informed basis
- A fair evaluation of the cost of both in-house and external bids
- An objective evaluation of all bids by an independent evaluation team

An important aspect to consider when developing guidelines for accepting Unsolicited Proposals is the communication and role of those on the bidding side versus those on the procurement side. The public sector entity must ensure it has clearly delineated and separated its role as purchaser of a product/service from that of provider of a product/service. Clear communication protocol, established and agreed upon codes of conduct; and identification of perceived, potential or actual conflict of interest can help achieve this goal. Involving a Fairness Advisor/Commissioner in the process can also provide greater credibility, oversight and guidance to the process to avoid conflict or challenge during and following the procurement process.

Another aspect which can be of concern to external competitors is the way in which the in-house bid determines its costs – both direct and indirect – of service delivery. The indirect cost, such relevant overhead (e.g. technology, staff), cost of capital reserves, external expertise, must be properly accounted for. This, evidently, can have a significant impact on both parties ability to be competitive and introduces an element of fairness.

5.0 Walking the Line

5.1 The Right Balance of Risk and Reward

There can be risk involved in any procurement. Ideally a procurement process will find the perfect balance between process risk and project (or outcome) risk in order to ensure a best value outcome through an open, fair and transparent process. The potential risks which exist during procurement are derived from:

- uncertainty and/or innovation in the requirement
- an unclear objective
- lack of clarity in the service requirements and associated level of service (service outcome)
- reasonable and realistic timelines and expectations
- market interest and ability to respond
- change (political, organizational, financial, public perception)

32 http://www.mah.gov.on.ca/userfiles/HTML/nts_1_11349_1.html
© Copyright 2008
lack of resources and knowledge including subject matter experts
absence of good record keeping and management to ensure proper documentation for accountability and transparency purposes
a lack of appropriate, effective and clear evaluation criteria
the appropriateness of procurement policies
bias, influencing and/or decision making based on political motivations
a bias in the process
the level of flexibility in the process
lack of a clear, comprehensive and communicated agreement terms & conditions
magnitude and accuracy of available information and data

Public Sector organizations must ensure they employ a procurement process which reflects public accountability and value for money. Balancing these two priorities requires close consideration of potential risk factors. The evaluation of proposals is a key area in reaching these two priorities. For instance, organizations must ensure that when evaluating financial proposals, they are in fact comparing ‘apples to apples’. This requires that Proponents reveal all costs and that they are calculated on the same basis. Otherwise, there is a risk that the evaluation may be invalid. Proponents should also indicate the net present value of services (and/or goods) to be received at a later date. This will allow for proper evaluation of proposals which may involve provision of services (and/or goods) upfront.

The procurement process, however, must balance process risk with outcome risk, in order to ensure that the public interest is served.

The procurement process will often dictate:
- Adherence to applicable legislation and policies
- Adherence to the process and Terms and Conditions laid out
- Consistency in the application of rules and parameters
- Respect for confidentiality requirements
- A clear distinction and understanding of where the procurement process ends and implementation begins
- Proper documentation of the process

Public Sector organizations should be aware that one (process) does not exclude the other (outcome). Factors which will lead to the required procurement outcome include:
- Understanding and setting your objectives – know the desired outcome
- Recognizing that competitive advantage does not mean unfair advantage
- Enabling competitive pressure, by applying the right tools at the right time (Vendor Consultations, REOI, RFQ, RFP, etc…)
- Providing complete and accurate information
- Providing an environment that permits exchanges in a thorough and structured process (if relevant)
- A focus on the evaluation criteria
- Doing a sensitivity analysis to map out the possible outcomes BEFORE the proposals are received
- Clarity (i.e. clearly establish the need/requirements, language and terminology (i.e. may wish to include a definition. Terminology and language used within, amongst and between public and private sector organization may have varied meanings and lead to ambiguity.)

There are measures that can be taken to help find the right balance and address certain risk in procurements, some of which include:
- Developing a policy or standard related to the presentation (and cost inclusions) of financial proposals
- Clarity related to the calculation of net present value
- Communicating the process to be initiated by a Proponent/competitor complaint
5.2 A Fair, Open and Transparent Process

The issue of fairness in procurement must first be well understood in order to implement it. Increasingly, public sector organizations are developing procurement policy which stipulates that all procurements must be undertaken in a fair, open and transparent manner. The New Century Dictionary defines fair as “free from bias or injustice, as statements, actions, etc; impartial; equitable; honest; not taking undue advantage”.

When applied to a procurement process, however, the principles of fairness are in fact applied to the process and outcome. For instance, a Proponent which is significantly larger than its competitors, thus having access to greater resources, is at a competitive advantage and thus is not a consideration when determining the fairness of the procurement process.

PPI Consulting Limited (PPI) (formerly Partnering and Procurement Inc), an Ontario based consulting firm, interprets fairness, openness and transparency in public sector procurement to mean:

- recognition of the public-interest nature of the undertaking
- maintaining consistency with the public policy objectives underlying the initiative
- application of the fairness values and commitments expressed or implied in the solicitation documents, public-sector Codes of Conduct, Mission Statements, Statements of Ethics and non-discrimination rules which are intended to form part of decision-making related to the solicitation
- being consistent, even-handed and free of favouritism or bias in the treatment of vendors and other interested parties in the development and application of evaluation criteria and the assessment and selection processes, at all stages of the solicitation
- being straightforward, unambiguous, open and transparent about available information and how decisions are reached
- the establishment of trust and goodwill with the vendor community. © Partnering and Procurement Inc. 2005

As indicated, fairness in the procurement context, relates to fairness of the process, which involves matters of consistency, codes of conduct, avoidance of bias, monitoring communication, and ensuring a level playing field and equitable treatment among Proponents.

A transparent procurement system ensures that all qualified Proponents have equal access to all elements of the system, including:

- methods of procurement
- legislation
- evaluation criteria and technical specifications
- rights and responsibilities of government as a buyer
- due process

Among the leading practices related to fair, open and transparent procurement processes is the development of procurement policies, guidelines and associated documentation which may include such things as:

- Evaluation process guidelines
- Development and adherence to Codes of Conduct

---

33 Ministry of Municipal Affairs and Housing, Procurement Guide, [http://www.mah.gov.on.ca/userfiles/HTML/nts_1_11351_1.html](http://www.mah.gov.on.ca/userfiles/HTML/nts_1_11351_1.html), December 2005 (last visited)
Development and adherence to Confidentiality Agreements
Declarations of Conflict of Interest
Communication and information sharing protocol

The development of procurement policy which includes as its objective undertaking open, fair and transparent procurement processes, can greatly assist organizations in ensuring that matters of fairness have been addressed up front and are consistently applied. For instance, if there is no policy regarding compliance reviews, there is a risk that whatever means is used could be viewed as arbitrary.

Supporting guidelines and processes should also be developed to support the policies created. For instance, the process and methodology used to evaluate proposals should be clear and consistently applied by all those involved in the evaluation. A policy of retaining rating results and documentation which supported the final selection can also contribute to an open and transparent process; and demonstrate a fair process.

In developing procurement policies, organizations may wish to consider the following and how they may either influence or be integrated into the policies and/or practices developed:
- levels of authority
- relevant and applicable legislation (e.g. AIT, NAFTA)
- process risk versus outcome risk
- overall procurement objectives of fairness, openness and transparency
- impact of the policy in practice (e.g. rigid process with specific requirements may limit market interest)
- type and manner in which irregularities will be dealt with
- exceptions

5.2.1 Fairness Advisors

As part of, or in addition to procurement policies, public sector organizations are engaging Fairness Advisors, Fairness Monitors or Fairness Commissioners on either all or select projects. A Fairness Advisor is an independent, neutral and objective observer who provides advice and reports on the aspects of fairness during each step of the procurement of goods and/or services. The Advisor is involved from the earliest stages of the procurement process, to providing a full report of the process at the conclusion. A Fairness Monitor is an independent, neutral and objective resource who confirms that the process that a fair, transparent and open process adopted by the public sector entity has been followed. They do not generally provide advisory services other than making determinations with respect to the application of the code of conduct to internal and external project participants. At a minimum, they are involved in overseeing the evaluation process.

As stated above, Fairness Advisors typically participate in key aspects of procurements, outsourcing or partnering type projects, from project definition to contract award which could include:
- Project definition and strategy development
- Development of scope
- Development of procurement documentation
- Proponent communication
- Development of evaluation criteria
- Receipt and evaluation of proposals
- Evaluation process
- Documenting results/outcomes
- Negotiations and award
Maintaining an open, transparent and fair process is of particularly concern to many public sector organizations. Another area, which is receiving growing attention, more commonly in alternative type procurement processes or projects such as ASDs, AFPs, and P3s, is achieving best value for money.

6.0 Achieving Best Value Solutions

6.1 Employing The Right Approach and Tools

The procurement approach should, to a degree, be defined by the outcome sought. Selecting a partner will require a more ‘organizational’ approach, while selecting a Proponent or vendor can be satisfied with a more traditional ‘business’ approach. Partners are typically selected in longer term, collaborative partnering projects involving an alternative form of service delivery where there is a degree of shared risk, reward and/or responsibility.

Various tools, approaches, and strategies have been presented. The way in which one procures, and the tools, approach and strategy used, should fit the circumstance. Projects often have differentiating factors which may make one option, for instance, the use of Commercial Confidential Meetings (CCMs) may be more worthwhile in circumstances, where, for example, the objective is to reduce post award negotiation and/or the project has unique requirements.

Procuring a solution versus an outcome versus an asset, may involve different strategies. For instance, a municipality who has a demand for source separated organics capacity may procure the capacity (solution) rather than the processing facility (asset). Or a municipality who requires ice time may procure ‘ice time’ (solution) rather than an arena (asset). This allows for a best value solution to be put forth rather than simply a response. Solutions are often enabled through pursuing alternative service delivery approaches such as Public Private Partnerships.

Similarly, if an outcome is sought, for instance, increased energy efficiency or improved service delivery for either an existing or new facility, an outsourcing arrangement or a Design, Build, Operate may be most suitable.

However, if the need is for an asset, such as a hospital, the procurement may take the form of a Design/Build or a conventional approach.

There may also be circumstances where limited market interest in all or parts of a project may require greater flexibility and/or grouping. For instance, procuring an operator for highway roadside service centres may require the less attractive service centres to be grouped with those which are more attractive.

While the United Kingdom has for some time employed its Public Sector Financing (PFI) in the design, building and financing procurement process for their new schools, it has recently developed a new approach incorporating elements of the PFI in a more planned and efficient way. The Department for Education and Skills (DfES) along with Partnerships UK created Partnerships for Schools (PfS) to deliver this new approach. In accordance with DfES Building Schools for the Future programme, Local Education authorities develop long term strategic plans for the development of schools and procure a private sector partner to implement not one school, but the authority’s entire strategic plan. Strategic Partnering Agreements are utilized to outline the relationship, term of the agreement, and will detail procedures to market test the supply chains and benchmark proposals against industry comparators to ensure continued value for money.\(^{35}\)

---

There may also be circumstances where piloting or phasing of projects may prove beneficial. In such cases closely examining the reasons for considering phasing or piloting (e.g., limited resources to execute full project, political influence, acceptance), how it is going to be implemented (e.g., phased by region or service), and what will be the ultimate impact (e.g., increase cost, decreased efficiencies, higher level of acceptance, opportunity to re-scope).

6.2 Negotiation: Setting the stage for success

Contractual issues will vary according to the complexity of the project, as well as the type of P3 chosen (e.g., Operating and Maintenance versus a Design-Build-Finance-Operate-Transfer). Smaller, simpler projects, with fewer partners and involving a local government, for example, facilities management, will not normally have to address issues such as ownership, transfer, and reversion (transfer back to the public sector at the end of the contract).

In negotiating contractual terms, organizations may reflect on whether all elements of responsibility have clearly been addressed (e.g., who is responsible for design? asset replacement? maintenance?); whether incentives for timely and quality service provision have been included; whether sufficient and accurate output and performance measurements are in place. Other areas which may be worth considering during contract negotiations include unforeseen circumstances, default, liquidation, intellectual property, and forms of dispute resolution.

6.2.1 Pre Negotiation Tools

One method to facilitate clarity and ensure understanding of the contract terms and conditions is to include a sample copy of the contract as part of the RFP documentation. Allowing commentary and questions will provide organizations with a “heads up” on potential issues and further enable more amicable interchange of information at this stage in the process. A method developed by P3 Advisors and being more widely used and by the industry to facilitate this open exchange is Commercial Confidential Meetings ©.

Commercial Confidential Meetings © (CCM) allow both the Client organization and the Proponents responding to the procurement to partake in an open exchange aimed at encouraging better dialogue than the traditional question and answer process. The intent of the process is to ensure that the RFP is consistent with the Client organization’s requirements, and that new and emerging issues are brought to the table during the response formulation process.

To ensure the process achieves its intent and provides a fair, transparent and open process while protecting the commercial interest of Proponents, the meetings are guided by a set of protocols dealing with the manner and nature in which information is exchanged, the confidential or proprietary nature of the information and the applicability of the terms of procurement.

The CCMs will contribute to a higher quality procurement process by enabling a clear understanding of the requirements by both parties, an opportunity to clarify or adjust a requirement for greater results (aligning closer to the desired outcome), and identification and potential resolution of potential issues in order to facilitate and expedite the negotiation process.
6.2.2 Top Ten Negotiation Points

For the last four years, the International Association for Contract and Commercial Management (IACCM) has undertaken a survey with its members to identify the most frequently negotiated contract terms and conditions.

The 2005 results, from over 50 countries identified the following top ten most frequently negotiated items:

1. Liability
2. Indemnity
3. Intellectual Property
4. Payment/Late Payment/Invoices
5. Warranty
6. Price/Charge
7. Termination
8. Confidentiality/Data Protection
9. Delivery/Acceptance
10. Service Levels

There has been limited change within the top ten over the last four years. The survey results also indicate inefficiencies in the process and the use of confrontational approaches to negotiations.36

6.2.3 Interest Based Negotiations

In addition to some of the pre-negotiations mechanism mentioned earlier and in reflection of the IACCM findings, organizations may also benefit from developing an interest based negotiation strategy. The goal of the Interest-Based negotiation is to achieve a ‘win-win” agreement, whereby both parties work together as partners towards developing solutions and resolving issues to satisfy each others’ interests. This ensures that the interests and business goals of both parties are considered and respected during the negotiations, and that they are ultimately reflected in the terms of the contract. It can also help make a potentially adversarial process become an effective planning exercise and collaborative venture with mutual benefits by taking into account both parties “interests”. For example, the private sector partner may be interested in being considered the owner of the new facility, as it would increase its asset base and allow them to benefit from the amortization.

In this approach, one “Seeks first to understand, then to be understood”. In order to achieve this objective, the negotiation team needs to focus on assessing what interests will be included in the final agreement in order that both parties are satisfied.

In developing an interest based negotiation strategy, organizations should consider the following basic steps. Prior to the negotiation, organizations should:

1. Identify and prioritize interests
2. Consider the other side’s interests
3. Find common areas of interest
4. Develop potential solutions and boundaries for the prioritize interests

The results of these discussions will form the basis of the Negotiation Strategy. It is therefore critical that all stakeholders be fully engaged in these meetings.

---

36 International Association for Contract and Commercial Management, The IACCM Top Ten Most Frequently Negotiated Terms and Conditions, 2005
It is then important to set certain ground rules for the negotiations, related to the manner and process of communicating and recording information, process, and mutual respect. For example:

1. Listen Carefully
2. Don’t rush to judge
3. Develop a good relationship based on trust and respect, honesty and integrity and encourages mutual persuasion and enables both sides to maintain reason and not lose face
4. Only one person can get angry at a time
5. Need to separate issues from emotions
6. Be conscious of the difference between positions and interests
7. Understand and know what you can commit to
8. Finally, a day of negotiations should not exceed 8 hours

And finally, initiate the negotiations. There should be consensus on the approach and ground rules by this point. It is now time to:

1. Identify and explore Interests
2. Develop criteria standards to support the solutions
3. Select the preferred options based on agreed-upon criteria
4. Formulate an agreement
5. Finalize the deal

7.0 Conclusion

There are a multitude of approaches and tools to assist organizations in procuring goods or services. Where, alternative procurement approaches are employed, it is important to ensure the procurement policies enable organizations to truly benefit from the advantages brought forward by ASDs such as P3s. Therefore, a certain degree of flexibility and supporting policies and resources are in place to ultimately ensure best value can be achieved through the procurement process. The procurement should be considered part of a reiterative process where ASDs are pursued and as such the planning and strategy development should guide the procurement, and ensure the approach and tools utilized leads to the desired outcome.
Appendix A: Seven Step Guide to Performance Based Acquisition
Seven Steps to Performance-Based Services Acquisition

1. Establish the team.
2. Decide what problem needs solving.
4. Develop a PWS or SOO.
5. Decide how to measure and manage performance.
6. Select the right contractor.
7. Manage performance.

For full version go to:
www.acqnet.gov/Library/OFPP/BestPractices/pbsc

An Interagency-Industry Partnership in Performance
Introduction

A Performance-Based Preference

Over the last decade, innovators in Congress and the executive branch have reformed the laws and policies that govern Federal acquisition. Among the most important of these reforms are the Government Performance and Results Act of 1993, the Federal Acquisition Streamlining Act of 1994 (FASA), and the Clinger-Cohen Act of 1996. All of these laws send an important message about performance in federal programs and acquisitions.

As is evident from the dates above, performance-based service acquisition is not new. Office of Federal Procurement Policy Pamphlet #4, "A Guide for Writing and Administering Performance Statements of Work for Service Contracts," (now rescinded) described "how to write performance into statements of work" and addressed job analysis, surveillance plans, and quality control in 1980. Eleven years later, OFPP Policy Letter 91-2, Service Contracting, established that:

It is the policy of the Federal Government that (1) agencies use performance-based contracting methods to the maximum extent practicable when acquiring services, and (2) agencies carefully select acquisition and contract administration strategies, methods, and techniques that best accommodate the requirements.

The intent is for agencies to describe their needs in terms of what is to be achieved, not how it is to be done. These policies have been incorporated in the Federal Acquisition Regulation Subpart 37.6 (Performance-Based Contracting), and additional guidance is in the OFPP document, "A Guide to Best Practices for Performance-Based Service Contracting." (OFPP Policy Letter 91-2 was rescinded effective March 30, 2000.)

Law and regulation establish a preference for performance-based service acquisition. The new Administration continues a long line of support for this acquisition approach, as demonstrated in OMB Memorandum M-01-15 on performance goals and management initiatives. As cited in the Procurement Executives Council’s Strategic Plan:

...over the next five years, a majority of the service contracts offered throughout the federal government will be performance-based. In other words, rather than micromanaging the details of how contractors operate, the government must set the standards, set the results and give the contractor the freedom to achieve it in the best way.

—Presidential Candidate George W. Bush on June 9, 2000

Benefits of Performance-Based Acquisition

Performance-based service acquisition has many benefits. They include:

- Increased likelihood of meeting mission needs
- Focus on intended results, not process
- Better value and enhanced performance
- Less performance risk
- No detailed specification or process description needed
- Contractor flexibility in proposing solution
- Better competition: not just contractors, but solutions
- Contractor buy-in and shared interests
- Shared incentives permit innovation and cost effectiveness
- Less likelihood of a successful protest
- Surveillance: less frequent, more meaningful
- Results documented for Government Performance and Results Act reporting, as by-product of acquisition
- Variety of solutions from which to choose

Moving toward Performance-Based Competency

The federal acquisition workforce has not, to date, fully embraced performance-based acquisition. There are many reasons, such as workload demands, but more fundamentally, traditional "acquisition think" is entrenched in a workforce of dwindling numbers. The situation is complicated by lack of "push" from the program offices who have the mission needs and who fund the acquisitions... because there is where the true key to performance-based acquisition lies. It is not the procurement analyst, the contracting officer, or even the contracting office itself. Performance-based acquisition is a collective responsibility that involves representatives from budget, technical, contracting, logistics, legal, and program offices.
While there are leaders among us who understand the concept and its potential, it is difficult for an agency to assemble a team of people who together have the knowledge to drive such an acquisition through to successful contract performance. This is especially true today because many more types of people play a role in 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.

Performance-based service acquisition can be daunting, with its discussion of work breakdown structures, quality assurance plans, and contractor surveillance. Guides on the subject can easily run to and over 50, 75, or even 100 pages. This makes learning something new appear more complicated than it really is. The foundation for a successful acquisition involves a clear answer to three questions: what do I need, when do I need it, and how do I know it’s good when I get it?

The virtual guide on which this downloadable guide is based breaks down performance-based service acquisition into seven easy steps, complete with "stories" (case studies). It is intended to make the subject of PBSC accessible for all and shift the paradigm from traditional "acquisition think" into one of collaborative performance-oriented teamwork with a focus on program performance and improvement, not simply contract compliance. Once the shift is made, the library and links sections interwoven in the virtual guide will lead you into the rich web of federal performance-based guidance.

Have a good journey!

Executive Summary

One of the most important challenges facing agencies today is the need for widespread adoption of performance-based acquisition to meet mission and program needs. This Administration has set a goal for FY 2002 in OMB Memorandum M-01-15 to “award contracts over $25,000 using PBSC techniques for not less than 20 percent of the total eligible service contracting dollars,” increasing to 50 percent by FY 2005.

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. Because of this, many more types of people must play a role in acquisition teams today. In addition to technical and contracting staff, for example, there is “value added” by including those from program and financial offices. 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 guide, geared to the greater acquisition community (especially program offices), breaks down performance-based service acquisition into seven simple steps.

1. Establish an integrated solutions team
2. Describe the problem that needs solving
3. Examine private-sector and public-sector solutions
4. Develop a performance work statement (PWS) or statement of objectives (SOO)
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 "acquisition think" into one of collaborative, performance-oriented teamwork with a focus on program performance, improvement, and innovation, not simply contract compliance. Performance-based acquisition offers 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.

Let the acquisitions begin!
Establish an integrated solutions team.

The trend today, given the statutory, policy, and regulatory mandates discussed in the introduction, is that acquisitions are conducted by teams of people, working cooperatively toward a common goal. This is the model used by leading or breakthrough organizations, which have come to recognize the limitations of clearly defined roles, responsibilities, and organizational boundaries... and have adopted the use of acquisition teams that integrate all stakeholders' efforts toward one goal: mission accomplishment. It is also the model that the Office of Management and Budget is seeking when it asks this question of agencies in their budget submissions: "Is there an Integrated Project Team?"

These principles are also reflected in the Federal Acquisition Regulation (FAR), which (1) recognizes that teams begin with the customer and end with the contractor and (2) outlines procurement policies and procedures that are used by members of the acquisition team. Note also that the FAR specifically provides that contracting officers "should take the lead in encouraging business process innovations and ensuring that business decisions are sound."

In this guide, we call such acquisition teams "integrated solutions teams" in acknowledgment of the fundamental purpose of performance-based acquisition: to find solutions to agency mission and program needs.

Tasks, Features, & Best Practices: Learn More

- Ensure senior management involvement and support.
- Tap multi-disciplinary expertise.
- Define roles and responsibilities.
- Develop rules of conduct.
- Empower team members.
- Identify stakeholders and nurture consensus.
- Develop and maintain the knowledge base over the project life.
- "Incent" the team: Establish link between program mission and team members' performance.

See website for Additional Information
Ensure senior management involvement and support.

Most best-practice studies agree: senior management involvement and support is a predictor of success. For example, the CIO Council document, "Implementing Best Practices: Strategies at Work," cited "strong leadership at the top" as a "success factor" in the selection, evaluation and control processes associated with acquisition investment review. By its very nature, an integrated solutions team has members whose affiliations cut across organizational boundaries. "Turf" can become an issue unless there is strong, effective senior management support and a shared vision. Program decision makers should be on the team. Creating "buy in" from leadership and establishing the realms of authority are essential to project success.

Tap multi-disciplinary expertise.

Because of the mission-based and program-based focus of acquisition that has resulted from acquisition reform, many more types of people play a role in acquisition teams today. In addition to contracting staff, for example, are those from the program, financial, user, and even legal offices. All of these skills and more can be required to create a true performance-based approach to an agency's needs.

It is important to recognize that integrated solution teams are not a "training ground." They're a field of operation for not just 4 or 6 or 8 people, but 4 or 6 or 8 people who are among the best in their fields and have a grounding in, or have been trained in acquisition. Team composition is a critical success factor in performance-based acquisition -- so much so, in fact, that the Office of Management and Budget asks about team approach during the budget review process for acquisition funding.

Define roles and responsibilities.

It is important that the members of the team understand what their roles and responsibilities are. Regardless of its representation, the team is responsible for ensuring that the acquisition:

- Satisfies legal and regulatory requirements.
- Has performance and investment objectives consistent with the agency's strategic goals.
- Successfully meets the agency's needs and intended results.
- Remains on schedule and within budget.

Successful teams typically have a number of features: shared leadership roles, individual as well as mutual accountability, collective work-products, performance measures related to the collective work-product, and other ingredients.

In a team environment, the roles and responsibilities of the members blur and merge, often with striking results.
Develop rules of conduct.

Seasoned facilitators and team leaders know this: It is important to develop rules of conduct for groups of people. Setting the rules... and then insisting on their use... is a key to effective team operation. Given a clear purpose and defined approach for working together, teams are much more likely to move quickly through the early phases of team performance and achieve the desired result.

Those phases of teamwork were identified by B.W. Tuckman in the “Tuckman model” (http://ias.berkeley.edu/siss/hurricane/sissworkingpapers/formingstorming.doc):

- **forming**, or coming together
- **storming**, or conflict
- **norming**, or working out the rules
- **performing**, or getting the job done

While the length of time different groups take to pass through each of these developmental stages varies, high team performance is usually not achieved until the group has passed through the first three stages.

Empower team members.

The "Statement of Guiding Principles for the Federal Acquisition System," says it most simply: "Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility." (FAR 1.102(a)) Clearly defined levels of empowerment are critical to success.

The Department of Commerce, in its CONOPS (Concept of Operations) acquisition program, has examined the concept of what "empowerment" means in detail. The Department believes that empowerment is tied to responsibility, authority, and autonomy. In the agency's project planning tool are the life-cycle tasks of an acquisition and an identification of where responsibility for the performance of that task typically resides.

Identify stakeholders and nurture consensus.

Stakeholders may include customers, the public, oversight organizations, and members and staff of Congress. It is important for the team to know who the stakeholders are and the nature of their interests, objectives, and possible objections. At a minimum, stakeholders should be consulted and, at times, may participate on the team.

In developing the acquisition, the key tools the team should use are consensus and compromise, without losing sight of the three key questions:

1. **What do I need?**
2. **When do I need it?**
3. **How do I know it’s good when I get it?**
Develop and maintain the knowledge base over the project life.

“How do you predict the future... you create it.” (Peter Drucker)

An emerging concern in the acquisition community is "knowledge management." There are many definitions, but the simplest may well be "the right knowledge in the right place at the right time and in the right context." Knowledge management is a people issue, not a technology issue.

Consider the need to manage the project's knowledge base in this light: Acquisitions often take months, and the contracts that are awarded are often performed over years. People join the team and people leave, taking their knowledge with them.

Further, those people that began the project and those that oversee the project are often different. All too often, when a contract is awarded, the acquisition team "pats itself on the back" and walks away. The project is passed into the care of a contract administrator who doesn't know the history of the project, why decisions were made, and why the contract is structured or worded the way it is. Modification may begin right away. And we wonder why contract performance is sometimes a problem?

The approach needs to shift from a focus on contracting to a focus on both acquisition and project management. Where possible, the same key members of the team (program manager, project manager, and contracting officer) should be part of the integrated solutions team from the initial discussions of mission-based need, through contract performance, and indeed to contract closeout. With this continuity, and a focus on maintaining the project's knowledge base, the likelihood of success is exponentially greater.

"Incent" the team: Link program mission and team members' performance.

If continuity is important, what can be done to keep a team together? Added to empowerment and a shared vision, incentives are key. The most fundamental incentives are those that link program mission and team members' performance, and then tie performance to pay. If the acquisition has performance objectives, and the contractor has performance objectives, then the Government team should also have performance objectives. Like contractor incentives, the team's objectives should carry a value in terms of pay, recognition, and awards.

Keep in mind that these performance objectives should be program-based, not acquisition-based. Who cares if the contract is awarded in two months if it takes two years to get deliverables in the hands of the users? Make sure the incentives are tied to the "right" results.
Because a clearer, performance-based picture of the acquisition should be the team's first step, it is not yet time to retrieve the requirement's former solicitation, search for templates, think about contract type or incentives, decide on the contractor or the solution.

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

The Government Performance and Results Act of 1993 requires that agencies establish and "manage to" mission-related performance goals and objectives. It stands to reason that any significant, mission-critical acquisition should relate in some way to the Results Act objectives. Although many acquisitions do not make this link, performance-based acquisitions must make this connection to the agency's strategic plan and to employees' performance plans.

**Tasks, Features, & Best Practices: Learn More**

- Link acquisition to mission and performance objectives.
- Define (at a high level) desired results.
- Decide what constitutes success.
- Determine the current level of performance...

See website for Additional Information
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 (reported to OMB and Congress under the Results Act's strategic and annual performance planning processes). 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 business, and it sets the stage for crafting an acquisition in which the performance goals of the contractor and the government are in sync.

In addition to the Government Performance and Results Act, the President's Management Agenda has added the requirement for performance-based budgeting. This links funding to performance, and ensures that programs making progress towards achieving their goals will continue to receive funding. Conversely, programs unable to show adequate progress may lose option-year funding.

This mission-based foundation normally must be established by or in cooperation with people who work 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.

With this foundation, 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 thoughts of the team should turn to what, specifically, are the desired results (outcomes) of contract performance? 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? What is the ultimate intended result of the contract and how does it relate to the agency's strategic plan?

Note that these are questions that a former solicitation... or someone else's solicitation... cannot answer. This is one of the tough tasks that the integrated solutions team must face.

These answers can normally be found, not with an exhaustive analysis, but through facilitated work sessions with program staff, customers, and stakeholders. By taking the process away from a review of paper or an examination of the status quo, greater innovation and insight is possible. Once aired, those thoughts need to be captured in the performance work statement (PWS) or statement of objectives (SOO).

Note also that, to do this well, the team will need to plan to seek information from the private sector during market research (step three). Industry benchmarks and best practices from the "best in the business" 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. These are two distinct questions: Where do I want to go, and how will I know when I get there?

In the Joint Direct Attack Munitions (JDAM) research and development acquisition, for example, affordability (in terms of average unit production price) was a key element, along with "how well the product met the live-or-die criteria." Affordability was communicated in no uncertain terms 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 between $14,000 and $15,000... far lower than the original cost target of $40,000 and the original cost estimate of $68,000 per unit.

So it is important to establish a clear target for success, which will then serve to focus the efforts of the integrated solutions team 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.

In order to think about taking measurements of current performance, 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 were no existing provision, this could easily be done via contract modification. New solicitations can be written with provision 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.
Once the acquisition's intended results have been identified, the integrated solutions team should begin to examine both private-sector and public-sector solutions. This is called "market research," and it 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. 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 undertaken by the integrated solutions team long before attempting to write a performance work statement.

---

**Tasks, Features, & Best Practices:**

- Take a team approach to market research.
- 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.

See website for Additional Information
Take a team approach to market research.

In the past, it was not unusual for technical staff to conduct market research about marketplace offerings, while contracting staff conducted market research more focused on industry practices and pricing. A better approach is for the entire integrated solutions 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 common understanding of what features, schedules, terms and conditions are key.

Spend time learning 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 a practice. 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 and could potentially provide services through an interagency agreement. Alternatively, it could be that to provide seamless services to the public, two or more agencies need to team together to acquire a solution. (This is the model that may well evolve with e-Government solutions, given the President's proposal of a special fund for such initiatives.)

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). Another agency that we are aware of is now conducting public-sector market research about seat management implementation in the federal government. 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 avert problems that could otherwise arise in the acquisition.

Talk to private-sector companies before structuring the acquisition.

With regard to the more traditional private-sector market research, it is important to be knowledgeable about commercial offerings, capabilities, and practices before structuring the acquisition in any detail. This is one of the more significant changes brought about by acquisition reform.

Some of the traditional ways to do this include issuing "sources sought" type notices at FedBizOps.gov, conducting "Industry Days," issuing Requests for Information, and holding pre-solicitation 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 now 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." The limitations that apply (once a procurement is underway) are that prospective contractors be treated fairly and impartially and that standards of procurement integrity (FAR 3.104) be maintained. But the real key is to begin market research before a procurement is underway.

**Consider one-on-one meetings with industry.**

While many may not realize it, one-on-one meetings with industry leaders are not only permissible – see Federal Acquisition Regulation 15.201(c)(4) – they are more effective than pre-solicitation or pre-proposal conferences. Note that 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 providers 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 on the way to an "incentivized" partnership with a contractor.

**Look for existing contracts**

FAR Part 10 requires that as part of market research, the Integrated Solutions Team must go to [http://www.contractdirectory.gov](http://www.contractdirectory.gov) to see if there is an existing contract available to meet agency requirements.

**Document market research**

FAR Part 10 requires that a written market research report be placed in the contract file. The amount of research, given the time and expense should be commensurate with the size of the acquisition.
There are two ways to develop a specification for a performance-based acquisition: by using a performance work statement (PWS) or an emerging methodology built around a statement of objectives (SOO).

The PWS process is discussed in most existing guides on performance-based service contracting and in the Federal Acquisition Regulation. Among its key processes are the conduct of a job analysis and development of a performance work statement and quality assurance and surveillance plan... When people talk about performance-based contracting, this is typically the model they have in mind.

The alternative process -- use of a SOO -- is an emerging methodology that turns the acquisition process around and requires competing contractors to develop the statement of work, performance metrics and measurement plan, and quality assurance plan... all of which should be evaluated before contract award. It is described briefly in the Department of Defense "Handbook for Preparation of Statement of Work (SOW)" for example:

The SOO is a Government prepared document incorporated into the RFP that states the overall solicitation objectives. It can be used in those solicitations where the intent is to provide the maximum flexibility to each offeror to propose an innovative development approach.

The SOO is a very short document (e.g., under ten pages) that provides the basic, high-level objectives of the acquisition. It is provided in the solicitation in lieu of a government-written statement of work or performance work statement.

In this approach, the contractors’ proposals contain statements of work and performance metrics and measures (which are based on their proposed solutions and existing commercial practices). Clearly, use of a SOO opens the acquisition up to a wider range of potential solutions. The Veterans Benefits Administration loan servicing acquisition discussed under step two and in this step was conducted (very successfully) using a SOO.

The integrated solutions team should consider these two approaches and determine which is more suitable:

- Use of a PWS
- Use of a SOO
Using a PWS

Conduct an analysis.

Preparing a PWS begins with an analytical process, often referred to as a "job analysis." It involves a close examination of the agency's requirements and tends to be a "bottom up" assessment with "re-engineering" potential. This analysis is the basis for establishing performance requirements, developing performance standards, writing the performance work statement, and producing the quality assurance plan. Those responsible for the mission or program are essential to the performance of the job analysis.

A different approach to the analytical process is described in the "Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense." It describes three "analysis-oriented steps" that are "top down" in nature:

- Define the desired outcomes: What must be accomplished to satisfy the requirement?
- Conduct an outcome analysis: What tasks must be accomplished to arrive at the desired outcomes?
- 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?

The integrated solutions team should consider the various approaches. Neither the OFPP nor DoD guide is mandatory; both describe an approach to analysis. (There are other guides and other approaches in the "seven steps" library as well.) Regardless of the analytical process adopted, the team's task under step four is to develop certain information:

- A description of the requirement in terms of results or outcomes
- Measurable performance standards
- Acceptable quality levels (AQLs)

The AQL establishes the allowable error rate or variation from the standard. OFPP's best-practices guide cites this example: In a requirement for taxi services, the performance standard might be "pickup within five minutes of an agreed upon time." The AQL then might be five percent; i.e., the taxi could be more than five minutes late no more than five percent of the time. Failure to perform within the AQL could result in a contract price reduction or other action.

With regard to performance standards and AQLs, the integrated solutions team should remember that an option is to permit contractors to propose standards of service, along with appropriate price adjustment or other action. This approach fosters a reliance on standard commercial practices. (Remember that all these points -- performance standards, quality levels, and price -- are negotiable.)
Apply the "so what?" test.

*There is nothing so useless as doing efficiently that which should not be done at all.*

(Peter Drucker)

An analysis of requirements is often, by its nature, a close examination of the status quo; that is, it is often an analysis of process and "how" things are done... exactly the type of detail that is not supposed to be in a PWS. The integrated solutions team needs to identify the essential inputs, processes, and outputs during job analysis. Otherwise, the danger is that contractors will bid 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 during job analysis. For example, once 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...

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 Treasury guide, "Performance-Based Service Contracting" illustrates a six-column approach with the following:

- Desired Outcomes: What do we want to accomplish as the end result of this contract?
- Required Service: What task must be accomplished to give us the desired result? (Note: Be careful this doesn't become a "how" statement.)
- Performance Standard: What should the standards for completeness, reliability, accuracy, timeliness, customer satisfaction, quality and/or cost be?
- Acceptable Quality Level (AQL): How much error will we accept?
- Monitoring Method: How will we determine that success has been achieved?
- Incentives/Disincentives for Meeting or Not Meeting the Performance Standards:
  - What carrot or stick will best reward good performance or address poor performance? [This reflects priced and un-priced adjustments based on an established methodology. Reductions can be made for reduced value of performance.]

The Treasury guide provides templates for help desk, seat management, systems integration, software development, and system design/business process re-engineering services.

The Department of Defense approach is very similar: take the desired outcomes, performance objectives, performance standards, and acceptable quality levels that have been developed during the analytical process and document them in a Performance Requirements Summary (PRS). The PRS matrix has five columns: performance objective, performance standard, acceptable quality level, monitoring method, and incentive. The PRS serves as the basis for the performance work statement.
Write the performance work statement.

There is not a standard template or outline for a PWS. The Federal Acquisition Regulation 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.

In terms of organization of information, a SOW-like approach is suitable for a performance work statement: introduction, background information, scope, applicable documents, performance requirements, special requirements (such as security), and 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. (See LINKS section) 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.

Let the contractor solve the problem, including the labor mix.

FIRST, keep this important "lesson learned" in mind: 

Don't spec the requirement so tightly that you get the same solution from each offeror.

SECOND, performance-based service acquisition requires that the integrated solutions team usually must jettison some traditional approaches to buying services... like specifying labor categories, educational requirements, or number of hours of support required. Those are "how" 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. In making the shift to performance-based acquisition, remember this:

The significant problems we face cannot be solved at the same level of thinking we were at when we created them.

(Albert Einstein)
The Department of Defense addresses this in the "Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense." The guide provides as follows:

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. Congress passed a provision (section 813) in the 2001 Defense Authorization Act, now implemented in the FAR (with government-wide applicability, of course). It 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) require the use of other than a performance-based contract.

Remember that how the performance work statement is written will either empower the private sector to craft innovative solutions... or limit or cripple that ability.
Using a SOO

As discussed previously, an alternative approach to development of the PWS is to develop a statement of objectives. There is no set format for a SOO, but one approach follows:

- Purpose
- Scope
- Period of Performance
- Place of Performance (if known, if required)
- Background
- Program Objectives
- Constraints (may include security, privacy, safety, and accessibility)

The Government-prepared SOO is usually incorporated into the RFP either as an attachment or as part of Section L. At contract award, the contractor-proposed statement of work (solution) can be incorporated by reference or integrated into Section C.

Begin with the acquisition's "elevator message."

How many solicitations have you seen that begin with a statement like, "This is a solicitation for a time-and-materials contract." Or what about this one: "The purpose of this solicitation is to acquire information technology hardware, software, and services." Or this one (true story): "This is a performance-based specification to acquire services on a time-and-materials basis." In the context of performance-based acquisition, all are bad starts.

The first statement made in a statement of objectives should be an explanation of how the acquisition relates to the agency’s program or mission need and what problem needs solving (as identified under step two).

For example, in a recent task order solicitation by the Veterans Benefits Administration, this statement was made:

_The purpose of this task order is to obtain loan servicing in support of VA’s portfolio that will significantly improve loan guaranty operations and service to its customers._

This simple statement was a signal that the acquisition had made a huge break from the predecessor contract, which had started with something like, "This is a requirement for information technology resources." The turnaround was the realization that the need was for loan servicing support services; technology was the enabler.
Describe the scope.

A short description of scope in the SOO helps the competitors get a grasp on the size and range of the services needed. The Veteran's Benefits Administration's scope statement follows:

_The purpose of this [task order] is to provide the full range of loan servicing support. This includes such activities as customer management, paying taxes and insurance, default management, accounting, foreclosure, bankruptcy, etc., as well as future actions associated with loan servicing. This Statement of Objectives reflects current VA policies and practices, allowing offerors to propose and price a solution to known requirements. It is anticipated that specific loan servicing requirements and resulting objectives will change over the life of this order. This will result in VA modifying this order to incorporate in-scope changes._

Another consideration for the integrated solutions team to consider is the budget authority (in dollars) available to fund the acquisition. In an acquisition approach as "wide open" as a statement of objectives, the competing contractors will need insight into funding authority so that they can size their solution to be both realistic and competitive. This may be listed as a constraint.

Write the performance objectives into the SOO.

In step two, the task of the integrated solutions team was to "decide what problem needs solving." The basis for that analysis was information in the agency's strategic and annual performance plans, program authorization documents, budget documents, and discussions with project owners and stakeholders. That information constitutes the core of the statement of objectives.

In the case of the Veterans Administration, for example, the acquisition's performance objectives were set forth in this opening statement:

VA expects to improve its current loan servicing operations through this task order in several ways. Primary among these is to increase the number and value of saleable loans. In addition, VA wants to be assured that all payments for such items as taxes and insurance are always paid on time. As part of these activities, the VA also has an objective to improve Information Technology information exchange and VA's access to automated information on an as required basis to have the information to meet customer needs and auditors' requirements.

What is immediately obvious is that these are mission-related, measurable objectives.

Make sure the government and the contractor share objectives.

When the acquisition's objectives are "grounded in" the plans and objectives found in agency strategic performance plans, program authorization documents, and budget and investment documents, then the government and the contractor are clearly working in a partnership toward shared goals. This is a far cry from the old-school acquisition approach, characterized by driving cost down and then berating the supplier to demand delivery. When the agency and the contractor share the same goals, the likelihood of successful performance rises dramatically.
Identify the constraints.

The purpose of a SOO is to provide contractors with maximum flexibility to conceive and propose innovative approaches and solutions. However, in some cases, there may be constraints that the government must place on those solutions. For example, core financial systems used by federal agencies must comply with requirements of OMB Circular A-127 and the guidance of the Joint Financial Management Improvement Program. Acquisitions related to technology will need to conform to the agency's information technology architecture and accessibility standards. In addition, there may be considerations of security, privacy, and safety that should be addressed. There may also be existing policies, directives, and standards that are constraining factors. The integrated solutions team should work with program managers, staff, customers, and stakeholders to identify these and to confirm their essentiality.

Develop the background.

The background and current environment set forth in a statement of objectives comprise important information for contractors. The Veterans Benefits Administration's statement of work included sections on—

- VA loan servicing history,
- Current VA Portfolio Origination/Acquisition Process, and
- Overview of the Current Servicing Process.

A best practice when using a SOO is to provide a brief overview of the program, listing links to web-delivered information on the current contract, government-controlled, government-furnished equipment, and a hardware configuration or enterprise architecture, as appropriate. The development of this information is essential so that contractors can perform meaningful due diligence.

Make the final checks and maintain perspective.

Before finalizing the document, the integrated solutions team should examine the entire SOO carefully and delete anything that is not essential.

Even more so than performance work statements, it is extremely unlikely that another agency's SOO would prove very useful, but several examples are provided in the library. Since this is an emerging technique, the integrated solutions team should examine them critically. New processes take time to perfect... and require ongoing experimentation and innovation.
Decide How to Measure & Manage Performance.

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 component of performance-based contracting is as important as developing the Statement of Work (SOW) or the Statement of Objectives (SOO), because this step establishes the strategy of managing the contract to achieve planned performance objectives.

Tasks, Features, & Best Practices: Learn More

- Review the success determinants.
- Rely on commercial quality standards.
- Have the contractor propose the metrics and the quality assurance plan.
- Select only a few meaningful measures on which to judge success.
- Include contractual language for negotiated changes to the metrics and measures.
- Apply the contract-type order of precedence carefully.
- Use incentive-type contracts.
- Consider "award term."
- Consider other incentive tools.
- Recognize the power of profit as motivator.
- Most importantly, consider the relationship.

See website for Additional Information
Review the success determinants.

In Step Two, the integrated solutions 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.

Rather than inventing metrics or quality or performance standards, the integrated solutions team should use existing commercial quality standards (identified during market research), such as International Standards Organization (ISO) 9000 or the Software Engineering Institute’s Capability Maturity Models®.

ISO has established quality standards (the ISO 9000 series) that are increasingly being used by US firms to identify suppliers who meet the quality standards. The term "ISO 9001 2000" refers to a set of new quality management standards which apply to all kinds of organizations in all kinds of areas. Some of these areas include manufacturing, processing, servicing, printing, electronics, computing, legal services, financial services, accounting, banking, aerospace, construction, textiles, publishing, energy, telecommunications, research, health care, utilities, aviation, food processing, government, education, software development, transportation, design, instrumentation, communications, biotechnology, chemicals, engineering, farming, entertainment, horticulture, consulting, insurance, and so on.

The Carnegie Mellon Software Engineering Institute*, a Federally funded research and development center, has developed Capability Maturity Models® (CMM) to "assist organizations in maturing their people, process, and technology assets to improve long-term business performance." SEI has developed CMMs for software, people, and software acquisition, and assisted in the development of CMMs for Systems Engineering and Integrated Product Development:

- SW-CMM® Capability Maturity Model for Software
- P-CMM People Capability Maturity Model
- SA-CMM Software Acquisition Capability Maturity Model
- SE-CMM Systems Engineering Capability Maturity Model
- IPD-CMM Integrated Product Development Capability Maturity Model

The Capability Maturity Models express levels of maturation: the higher the number, the greater the level of maturity. There are five levels. Solicitations that require CMMs typically specify only level two or three.

The integrated solutions team can incorporate such commercial quality standards in the evaluation and selection criteria.

Have the contractor propose the metrics and the quality assurance plan.

One approach is to require the contractor to propose performance metrics and the quality assurance plan (QAP), rather than have the government develop it. This is especially suitable when using a SOO because the solution is not known until proposed. With a SOO, offerors are free to develop their own solutions, so it makes sense for them to develop and propose a QAP that is tailored to their solution and commercial practices. If the agency were to develop the QAP, it could very well limit what contractors can propose.

As the integrated solutions team considers what is required in a QAP, it may be useful to consider how the necessity for quality control and assurance has changed over time, especially as driven by acquisition reform. In short, QAPs were quite necessary when federal acquisition was dominated by low-cost selections. Think about the incentives at work: To win award but still protect some degree of profit margin, the contractor had to shave his costs, an action that could result in use of substandard materials or processes. With best-value selection and an emphasis on past-performance evaluation and reporting, entirely different incentives are at work.

The regulations have changed to some degree to reflect this reality. FAR 46.102 provides that contracts for commercial items "shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection."

Air Force Instruction 63-124 (1 April 1999) goes farther. Among others, the AFI suggests these considerations in implementing a quality management system:

- Tailor the system to management risks and costs associated with the requirement.
- Use source selection criteria that promise the most potential to reduce government oversight and ensure the government is only receiving and paying for the services required.
- Rely on customer feedback where contract nonconformance can be validated.
- Allow variation in the extent of oversight to match changes in the quality of the contractor's performance.
- Allow the contractor to perform and report on surveillance of services as part of their quality assurance system. Some form of oversight (government QA, third party audit) is needed to confirm surveillance results.

Remember the following key aspects. Performance metrics are negotiable and, wherever possible, address quality concerns by exception not inspection. Also, when contractors propose the metrics and the QAP, these become true discriminators among the proposals in best-value evaluation and source selection.
Select only a few meaningful measures on which to judge success.

Whether the measures are developed by the proposing contractor or by the integrated solutions 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 determine that the cost of measurement does not exceed the value of the information... and that more expensive means of measurement are used for only the most risky and mission-critical requirements.

The American Productivity and Quality Center website* states that performance measures come in many types, including economic and financial measures such as return on investment, and other quantitative and qualitative measures. "Organizations are investing energy in developing measures that cover everything from capital adequacy and inventory turns to public image, innovation, customer value, learning, competency, error rate, cost of quality, customer contact, perfect orders, training hours, and re-engineering results." Each measure should relate directly to the objectives of the acquisition.

Include contractual language for negotiated changes to the metrics and measures.

One important step the integrated solutions team can take is to reserve the right to change the metrics and measures. One effective way to do this is for the agency and the contractor to meet regularly to review performance. The first question at each meeting should be, "Are we measuring the right thing?"

This requires that the contractual 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.

Apply the contract-type order of precedence carefully.

Under law and regulation, there is an order of preference in contract types used for performance-based contracting, as follows:

(i) A firm-fixed price performance-based contract or task order.
(ii) A performance-based contract or task order that is not firm-fixed price.
(iii) A contract or task order that is not performance-based.

Agencies must take care implementing this order of precedence. Be aware that a firm-fixed price contract is not the best solution for every requirement. "Force fitting" the contract type can actually result in much higher prices as contractors seek to cover their risks.

This view is upheld by FAR 16.103(b) which indicates, "A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance."

Clearly, the decision about the appropriate type of contract to use is closely tied to the agency’s need and can go a long way to motivating superior performance -- or contributing to poor performance and results. Market research, informed business decision, and negotiation will determine the best contract type.

One final point: The decision on contract type is not necessarily either-or. Hybrid contracts -- those with both fixed-price and cost-type tasks -- are common.

**Use incentive-type contracts.**

Although determining the type of contract to use is often the first type of incentive considered, it is important to understand that contract type is only part of the overall incentive approach and structure of a performance-based acquisition. Other aspects have become increasingly important as agencies and contractors have moved closer to partnering relationships.

Contract types differ in their allocation and balance of cost, schedule, and technical risks between government and contractor. As established by FAR Part 16 (Types of Contracts), contract types vary in terms of:

- The degree and timing of the risk and responsibility assumed by the contractor for the costs of performance, and

- The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

The government's obligation is to assess its requirements and the uncertainties involved in contract performance and select from the contractual spectrum a contract type and structure that places an appropriate degree of risk, responsibility, and incentives on the contractor for performance.

At one end of the contractual spectrum is the firm-fixed-price contract, under which the contractor is fully responsible for performance costs and enjoys (or suffers) resulting profits (or losses). At the other end of the spectrum is the cost-plus-fixed-fee contract, in which allowable and allocable costs are reimbursed and the negotiated fee (profit) is fixed -- consequently, the contractor has minimal responsibility for, or incentive to control, performance costs. In between these extremes are various incentive contracts, including:

- **Fixed-price incentive contracts** (in which final contract price and profit are calculated based on
a formula that relates final negotiated cost to target cost): these may be either firm target or successive targets.

- **Fixed-price contracts with award fees** (used to "motivate a contractor" when contractor performance cannot be measured objectively, making other incentives inappropriate).

- **Cost-reimbursement incentive contracts** (used when fixed-price contracts are inappropriate, due to uncertainty about probable costs): these may be either cost-plus-incentive-fee or cost-plus-award-fee.

Use of certain types of incentives may be limited by availability of funds. Fortunately, there are other types of incentives that can tailored to the acquisition and performance goals, requirements, and risks. For example, agencies can also incorporate delivery incentives and performance incentives -- the latter related to contractor performance and/or specific products' technical performance characteristics, such as speed or responsiveness. Incentives are based on meeting target performance standards, not minimum contractual requirements. These, too, are negotiable.

**Consider "award term."**

"Award term" is a contract performance incentive feature that ties the length of a contract's term to the performance of the contractor. The contract can be extended for "good" performance or reduced for "poor" performance.

Award term is a contracting tool used to promote efficient and quality contractor performance. It is not an acquisition strategy, nor is it a performance solution. As with any tool, its use requires careful planning, implementation, and management/measurement to ensure its success in incentivizing contractors and improving performance.

The award term feature is similar to award fee (FAR 16.405-2) contracting where contract performance goals, plans, assessments, and awards are made regularly during the life of a contract. Award term solicitations and contracts should include a base period (e.g., 3 years) and a maximum term (e.g., 10 years), similar to quantity estimates used in indefinite quantity/indefinite delivery contracts for supplies (FAR 16.504).

When applying the award term feature, agencies need to identify and understand the project or task:

- Conditions, constraints, assumptions, and complexities
- Schedule, performance, and cost critical success factors
- Schedule, performance, and cost risks

They also need to understand marketplace conditions and pricing realities. Only then can agencies establish meaningful and appropriate schedule, performance, and cost measures/parameters for a specific contract. These measures must be meaningful, accurate, and quantifiable to provide the right incentives and contract performance results. Specifics need to be incorporated and integrated in an award term plan.

Award term is best applied when utilizing performance or solution-based requirements where a
SOW or SOO describes the agency's required outcomes or results (the "what" and "when" of the agency's requirement) and where the contractor has the freedom to apply its own management and best performance practices (the "how" of the requirement) towards performing the contract. The award term plan must specify success measurement criteria, regarding how performance will be measured (i.e., defines what is "good" or "poor" performance) and the award term decision made.

There should also be a clear indication of the consequences of various levels of performance in terms of the contract's minimum, estimated, and maximum terms -- and the agency needs to be prepared to follow up with those consequences. If contractor performance is below the standard set, the contract ends at the completion of the base period. The agency must be prepared to re-procure in a timely fashion.

The effort applied in managing an award term contract after award is critical. Too often, agencies and contractors don't invest the right people (numbers and skills) and management attention during the contract performance phase. Managing contracts with features like award term is not a "last minute," incidental, or a fill-out-a-survey job. As in the case of its "sister" award fee approach, communication needs to be constant and clear with contractors, and not include so many evaluation elements that it dilutes the critical success factors.

Consider other incentive tools.

Incentives can be monetary or nonmonetary. They should be positive, but include remedies, as appropriate, when performance targets or objectives are missed.

Creating an incentive strategy is much the same as crafting an acquisition strategy. There is no single, perfect, "one size fits all" approach; instead, the incentive structure should be geared to the acquisition, the characteristics of the marketplace, and the objectives the government seeks to achieve. While cost incentives are tied to a degree to contract-type decisions, there are other cost and noncost incentives for the integrated solutions team to consider, such as--

- Contract length considerations (options and award term)
- Strategic supplier alliances
- Performance-based payments
- Performance incentive bonus
- Schedule incentives
- Past performance evaluation
- Agency "supplier of the year" award programs
- Competitive considerations
- Nonperformance remedies
- Value engineering change provisions
- Share-in-savings strategies
- Letters of commendation

Remember that performance incentives are negotiable. Developing an incentive strategy is a "study
STEP 5: Decide how to measure & manage performance.

 unto itself," and there are some excellent guides on the subject. See Step 5 Additional Information.

Recognize the power of profit as motivator.

One of the keys to effective incentives involves recognizing... then acting on... the private sector's chief motivator: profit. 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 work to the government's advantage. For example, link the incentive program to the mutually agreed-to contract performance measures and metrics. Then, incorporate value engineering change provisions (VECP) or share-in-savings strategies that reward the contractor for suggesting innovations that improve performance and reduce total overall cost. Put more simply: Set up the acquisition so that a contractor and the 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 the inevitable outcome. This approach will help ensure that the contractor is just as concerned -- generated by self-interest in winning all available award fees and award terms -- about every element of contract performance, whether maximizing operational efficiency overall, reducing subcontract costs, or ensuring the adequacy of post-award subcontractor competition and reasonableness of prices, as is the agency.

Most importantly, consider the relationship.

With regard to overall approach to contract performance management, the integrated solutions team should plan to rely less on management by contract and more on management by relationship. At its most fundamental level, a contract is much like a marriage. It takes work by both parties throughout the life of the relationship to make it successful. Consider, for example, the public-private partnership that was the Apollo Program. Other, more recent examples exist, but they all share the same common characteristics:

- Trust and open communication
- Strong leadership on both sides
- Ongoing, honest self-assessment
- Ongoing interaction
- Creating and maintaining mutual benefit or value throughout the relationship

There are several means to shift the focus from management by contract to management by relationship. For example, plan on meeting with the contractor to identify ways to improve efficiency and reduce the effect of the "cost drivers." Sometimes agencies require management reporting based on policy without considering what the cost of the requirement is. For example, in one contract, an agency required that certain reports be delivered regularly on Friday. When asked to recommend changes, the
contractor suggested that report due date be shifted to Monday because weekend processing time costs less. An example is requiring earned-value reporting on every contractual process. For tasks of lesser risk, complexity, and expense, a less costly approach to measuring cost, schedule, and performance can be used. 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.

Another effective means is to establish a Customer Process Improvement Working Group that includes contractor, program, and contracting representatives. This works especially well when the integrated solutions team's tasks migrate into contract performance and they take part in the working group. These meetings should always start with the question, are we measuring the right thing?

For major acquisitions, the team can consider the formation of a higher-level "Board of Directors," comprised of top officials from the government and its winning partner, 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.
Developing an acquisition strategy that will lead to selection of the "right contractor" is especially important in performance-based acquisition. The contractor must understand the performance-based approach, know or develop an understanding of the agency's requirement, have a history of performing exceptionally in the field, and have the processes and resources in place to support the mission. This goes a long way to successful mission accomplishment. In fact, selecting the right contractor and developing a partnership automatically solves many potential performance issues.

Keep in mind that large businesses have not "cornered the market" on good ideas. Small firms can be nimble, quick thinking, and very dedicated to customer service. While there is a cost in proposing solutions, a small business with a good solution can win performance-based awards.

Also, do not think you are limited to companies that specialize in the federal market. Information obtained from market research sessions has shown that often commercial companies — or commercial divisions of companies that do federal and commercial business -- have significantly more experience with performance-based service delivery methods and techniques.

While there are many aspects to crafting an acquisition strategy, among the most important for performance-based acquisition are to "compete the solution," use downselection and "due diligence," evaluate heavily on past performance information, and make a best-value source selection decision.
Compete the solution.

Too many government-issued statements of work try to "solve the problem." In such cases, the agency issues a detailed SOW, often with the assumption that "the tighter the spec the better," without realizing that this approach increases the government's risk.* The agency SOW establishes what to do, how to do it, what labor categories to provide, what minimum qualifications to meet, and how many hours to work. The agency then asks vendors to respond with a "mirror image" of the specifications in the proposal. The result is that the "competing" vendors bid to the same government-directed plan, and the agency awards the contract to the company with the best proposal writers... not the best ideas.

So the first key to selecting the right contractor is to structure the acquisition so that the government describes the problem that needs to be solved and vendors compete by proposing solutions. The quality of the solution and the contractor-proposed performance measures and methodology then become true discriminators in best-value evaluation.

Use downselection and "due diligence."

Responding to a performance-based solicitation, especially a SOO that seeks contractor-developed solutions, is substantial work for contractors. Likewise, evaluation of what may be significantly different approaches or solutions is much more substantial work for the integrated solutions team. The team will have to understand the contractor-proposed solutions, assess the associated risks and likelihood of success, identify the discriminators, and do the best-value tradeoff analysis.

Because of this, the acquisition strategy should consider some means of "downselection," so that only those contractors with a significant likelihood of winning award will go through the expense of developing proposals. As to the integrated solutions team, evaluating dozens of solution-type proposals would be overly burdensome.

"Downselection" is a means of limiting the competitive pool to those contractors most likely to offer a successful solution. There are four primary means of downselection in current acquisition methodology: using the Federal Supply Service (FSS) Multiple Award Schedule (MAS) competitive process, using the "fair opportunity" competitive process under an existing Government-wide Agency Contract (GWAC) or multiple-award contract (MAC), using the multistep advisory process in a negotiated procurement, or using a competitive range determination 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.

Once the competing pool of contractors is established, those contractors enter a period called due diligence. "Due diligence" is used in acquisitions to describe the period and process during which competitors take the time and make the effort to become knowledgeable about an agency's needs in order to propose a competitive solution. It usually includes site visits, meetings with key agency people, and research and analysis necessary to develop a competitive solution tailored to agency requirements.

* This is because if the government specifications are not accurate or feasible, any increase in cost or time is at government expense.
During this time, the competing contractors must have access to the integrated solutions team and program staff so that the contractors can learn as much as possible about the requirement. It is a far more open period of communication than is typical in more traditional acquisitions.

**Use oral presentations and other opportunities to communicate.**

One streamlining tool that eases the job of evaluation is the use of oral presentations (characterized by "real-time interactive dialogue"). These presentations provide information about the contractor's management and/or technical approach that the integrated solutions team will use in evaluation, selection, and award.

Oral presentations provide "face time," permitting the integrated solutions team to assess prospective contractors. Agencies have said that oral presentations remove the "screen" that professional proposal writers can erect in front of the contractor's key personnel. The integrated solutions team should take full advantage of "face time" by requiring that the project manager and key personnel (those who will do the work) make the presentations. This gives agency evaluators an opportunity to see part of the vendor-proposed solution team, to ask specific questions, and to gauge how well the team works together and would be likely to work with the agency.

Oral presentations can lay out the proposed solution and the contractor's capability and understanding of the requirement. Oral presentations *may substitute for, or augment, written information.* However, it's important to remember that statements made in oral presentations are not binding unless written into the contract. Note that oral presentations should be recorded in some way.

Communication with offerors is an important element of selecting the right contractor. Despite this fact, it is "trendy" in negotiated procurements to announce the intent to award without discussions. Given the complexities associated with performance-based proposals (i.e., different approaches and different performance metrics), it is nearly impossible to award without conducting discussions. While it may reduce time, it is important to use discussions to fully understand the quality of the solution, the pricing approach, incentive structure, and even the selection itself.

**Emphasize past performance in evaluation.**

A contractor's past performance record is arguably the key indicator for predicting future performance. As such, it is to the agency's advantage to use past performance in evaluating and selecting contractors for award. Evaluation of past performance is particularly important for service contracts. Properly conducted, the collection and use of such information provides significant benefits. It enhances the government's ability to predict both the performance quality and customer satisfaction. It also provides a powerful incentive for current contractors to maximize performance and customer satisfaction.

Past performance information can come from multiple sources. The two most familiar methods are asking the offerors to provide references and seeking information from past performance information
STEP 6: Select the right contractor.

databases. The Past Performance Information Retrieval System, or PPIRS, is the Government-wide repository for past performance information. It ties together a number of databases formerly independent of one another. (Reference: http://www.ppirs.gov.)

There are other means of obtaining past performance information for evaluation. One very important means is through market research. Call counterparts in other agencies with similar work and ask them for the names of the best contractors they’ve worked with. Are there industry awards in the field of work? Who has won them? In fact, ask offerors to identify their awards and events of special recognition. Look for industry quality standards and certifications, such as ISO 9000 and SEI CMM® (discussed in Step Five). Ask offerors what they do to track customer satisfaction and to resolve performance issues. Is there an established and institutionalized approach? In short, the integrated solutions team must take past performance more seriously than just calling a few references. Make the answers to these questions part of the request for proposals. Rather than have a separate past performance team, integrate this evaluation into the technical and management proposal evaluation effort.

When used in the source selection evaluation process, past performance evaluation criteria must provide information that allows the source selection official to compare the "quality" of offerors against the agency requirement and assess the risk and likelihood of success of the proposed solution and success of contractor performance. This requires the information to be relevant, current and accurate. For example, the information requested of the contractor and evaluated by the integrated solutions team should be designed to determine how well, in contracts of similar size, scope and complexity, the contractor--

- Conformed to the contract requirements and standards of good workmanship.
- Adhered to contract schedules.
- Forecasted and controlled costs.
- Managed risk.
- Provided reasonable and cooperative behavior and commitment to customer satisfaction.
- Demonstrated business-like concern for the interest of the customer.

The answers to the above list provide the source selection authority with information to make a comparative assessment for the award decision.

Use best-value evaluation and source selection.

"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.

Note that "the rules" for the best-value and tradeoff process (and the degree of documentation required) depend on two factors: the rules for the specific acquisition process being used and the rules the agency sets in the solicitation. For example, when conducting a negotiated procurement, the
complex processes of FAR Subpart 15.1, "Source Selection Processes and Techniques," and FAR Subpart 15.3, "Source Selection," apply. When using Federal Supply Schedule contracts, the simpler provisions at FAR 8.404 apply. However, if the agency writes FAR 15-type rules into a Request for Quote under Federal Supply Schedule contracts, the rules in the RFQ control.

The integrated solutions team should consider including factors such as the following in the evaluation model:

- Quality and benefits of the solution
- Quality of the performance metrics and measurement approach
- Risks associated with the solution
- Management approach and controls
- Management team (limited number of key personnel)
- Past performance (how well the contractor has performed)
- Past experience (what the contractor has done)

The General Accounting Office acknowledges broad agency discretion in selection; therefore, the integrated solution team evaluators and the source selection authority should expect to exercise good judgment. Quite simply, best-value source selection involves subjective analysis. It cannot, and should not, be reduced to a mechanical, mathematical exercise. The following, derived from GAO protest decision B-284270, reflects just how broad agency discretion is.

- Source selection officials have broad discretion to determine the manner and extent to which they will make use of the technical and price evaluation results in negotiated procurements.

- In deciding between competing proposals, price/technical tradeoffs may be made; the propriety of such tradeoffs turns not on the difference in technical scores or ratings per se, but on whether the source selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme.

- The discretion to determine whether the technical advantages associated with a higher-priced proposal are worth the price premium exists notwithstanding the fact that price is equal to or more important than other factors in the evaluation scheme.

- In a best-value procurement, an agency's selection of a higher-priced, higher-rated offer should be supported by a determination that the technical superiority of the higher-priced offer warrants the additional cost involved.

**Assess solutions for issues of conflict of interest.**

An "organizational conflict of interest" exists when a contractor is or may be unable or unwilling to
provide the government with impartial or objective assistance or advice. An organizational conflict of interest may result when factors create an actual or potential conflict of interest on a current contract or a potential future procurement.

While concerns about organizational conflict of interest are important, they should be tempered by good business sense. For example, sometimes software development is done in stages. Organizational conflict of interest would suggest that the contractor that does the initial systems design work be precluded from the follow-on code development due to unfair competitive advantage. However, this would also mean that the agency is excluding from consideration the contractor with the best understanding of the requirement. In this case, perhaps the acquisition approach should be reconsidered to allow the definer of the requirements to continue with the development.
The final step of the seven steps of performance-based acquisition is the most important. Unlike legacy processes where the contract is awarded and the team disperses, there is a growing realization that "the real work" of acquisition is in contract management. This requires that agencies allocate sufficient resources, in both the contracting or program offices, to do the job well.

This is largely a problem of resource allocation and education. Again, legacy processes are much to blame. Many contracting staff learned their job when the culture was to maintain an arm's length distance (or more) from contractors... and, by all means, limit the amount of contact the contractor has with program people. That approach won't work in today's environment and especially not in performance-based acquisition. The contractor must be part of the acquisition team itself... a reality recognized by the guiding principles of the federal acquisition system. FAR 1.102(c) provides:

"The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services."

Effective contract management is a mission-critical agency function. This goes to the heart of the need to maintain sufficient core capability in the federal government to manage its programs. If the contractor is flying blind in performance, then the agency will soon fly blind and without landing gear when the contract is over.

This step, contract performance, is guided far less by law, regulation, and policy than those described in the preceding steps. 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 integrated solutions team. It is in the best interest of all parties concerned that the contract be successful.
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. Those on the team 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 final measure of success. Effective and efficient contract performance that delivers a solution is the goal. The team should stay together to see that end reached.

Acquisition team members are expected to collaborate with all requisite external organizations in order to provide the best possible service to the citizens. The most notable example, 20 years on the making, is the USDA's food stamp program. The federal government collaborated with state and local governments, banks, and supermarkets to move away from the paper food stamps to debit cards. This has not only helped ease the “stigma” of the food stamps but has significantly reduced fraud.

Adjust roles and responsibilities.

Often the members of the acquisition team take on new roles during the contract performance phase. Typically, these responsibilities are shared between the program office and contracting office.

Given that the purpose of any acquisition (in part) is "to deliver on a timely basis the best value product or service to the customer" (as provided in FAR 1.102), meeting this objective requires the continued involvement of the program office in duties classified as contract administration as well as those more accurately described as program (or project) management.

Program management is concerned with maintaining the project's strategic focus and monitoring and measuring the contractor's performance. The integrated solutions team is ultimately responsible for ensuring that the contractor performs on time and within budget. On smaller acquisitions, the contracting officer's technical representative (COTR) may fill this role.

Contract administration involves the execution of the administrative processes and tasks necessary to see that the contractual requirements are met, by both contractor and agency. FAR Subpart 42.3 identifies the numerous but specific contract administration functions that may be delegated by the contracting office to a contract administration office, and in turn to a specific individual.

Assign accountability for managing contract performance.

Just as important as keeping the team together is assigning roles and responsibilities to the parties. Contracting officers have certain responsibilities that can't be delegated or assumed by the other members of the team. These include, for example, making any commitment relating to an award of a task, modification, or contract; negotiating technical or pricing issues with the contractor; or modifying the stated terms and conditions of the contract. Some roles and responsibilities are decreed... for example, agencies are required to establish capability and training requirements for contracting officers technical representatives (COTRs).

Make sure the people assigned the most direct roles for monitoring contract performance have 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, have familiarity with the tools the contractor is using to perform, have good interpersonal skills... and the capability to disagree constructively.

Enhanced professionalism in contract performance management is on the horizon. In November 2003, the Services Acquisition Reform Act (SARA) was passed with a number of noteworthy provisions. Share-in-savings contracting is authorized for all types of acquisitions. See www.gsa.gov/shareinsavings. A fund is to be established in FY2005 to ensure Government program managers are properly trained and certified to manage large projects. Certified project managers' names will appear on OMB Form 300 submissions. See www.publaw.com/legis/SARA2003ssa.pdf. Information on certification programs can be found at www.pmi.org. These requirements are part of a larger effort to link budget to performance, and to improve project management in order to reduce or eliminate wasteful spending.

**Add the contractor to the team at a formal "kick-off" meeting.**

It is often advisable -- and sometimes required by the contract -- to conduct a "kick-off meeting" or, more formally, a "post-award conference," attended by those who will be involved in contract performance. Even though a post-award conference 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 the contractor be part of the integrated solutions team, and that agency and contractor personnel work closely together to fulfill the mission and program needs.

**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 regulation. 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 bi-monthly performance reviews would be appropriate. For contracts of extreme importance or contracts in performance trouble, more frequent meetings may be required.

Measuring and managing a project to the attainment of performance goals and objectives requires the continued involvement of the acquisition team, especially the program manager. It also requires considerable involvement by the acquisition team's new members -- contractor personnel.
Ask the right questions.

It is important to keep the focus of the meetings on improving performance, not evaluating people. Each meeting should start with the questions, "Are we measuring the right thing?" and "How are we doing?" It is important to continually revisit the success measures the team identified during Step Two. Other important questions are--

■ Is the acquisition achieving its cost, schedule, and performance goals?
■ 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, "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 for the convenience of all parties, with responsibilities and due dates assigned.

Report on the contractor's “past performance”

There are many types of performance reporting that may be required of the integrated solutions 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 (as required by the Federal Acquisition Streamlining Act). The 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.

However, one type of performance reporting requirement -- evaluation of the contractor's performance -- is dictated by the contract terms and conditions and by FAR 42.15. This requirement is generally referred to as past-performance evaluation.

The FAR now requires that agencies evaluate contractor performance for each contract in excess of $100,000. 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 has been continual feedback and adjustment, so there should be no surprises on either side.
Conclusion

The intent of this guide is to make the subject of performance-based acquisition accessible and logical for all and shift the paradigm from traditional "acquisition think" into one of collaborative, performance-oriented teamwork with a focus on program performance, improvement, and innovation, not simply contract compliance. Performance-based acquisition offers 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.

*Let the acquisitions begin!*
1.0  **Procurement Tools**

There are a number of procurement tools available to private and public organizations. These tools each fulfill a specific purpose. The following highlights, in addition to Section 4, their purpose, situations in which they are most useful, and some key advantages.

1.1  **Standard Procurement Tools**

1.1.1  **Request for Information (RFI)**

<table>
<thead>
<tr>
<th>Title</th>
<th>Request for Information or Expression of Interest</th>
<th>RFI / EOI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>Primarily used to assess the capability and the interest of potential Proponents to respond to a competitive process for particular products or services and to access information on the latest product and service offerings from the industry. <strong>Advisable when:</strong> the project is not known, there may be a need for consortiums to be formed, etc</td>
<td></td>
</tr>
<tr>
<td>Examples of Use</td>
<td>Typically used when there is uncertainty about the capability of potential Proponents to provide a particular product or service and/or their interest in responding to a competitive process to acquire the product or service. The document (RFI) sets out details outlining the projects business goals and requirements; the procurement outcomes and objectives; the proposed procurement process including the evaluation and selection processes and the proposed contracting approach. The objective is to seek feedback from potential Proponents typically in the form of written comments, however, formal one-on-one consultation sessions with interested Proponents may also be undertaken which can be an extremely helpful exchange of information that greatly improves the quality of the outcome.</td>
<td></td>
</tr>
<tr>
<td>Advantages</td>
<td>Inconvenience</td>
<td></td>
</tr>
<tr>
<td>• Assesses the potential success of a competitive process in advance of undertaking the competitive process</td>
<td>• Increases the overall procurement timeframe by the time required to undertake the RFI process</td>
<td></td>
</tr>
<tr>
<td>• Provides up to date information on available product and service offerings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Provides advance notice to Proponents of a potential competitive process</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Reduces the cost to Proponents to participate in a competitive process</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Improves the quality of proposals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Demonstrates probity in use of public funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Creates awareness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Provides the opportunity for consortiums to be created</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Enables the public sector organization to get feedback</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Identify the interest</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1.1.2 Request for Qualification (RFQ)

<table>
<thead>
<tr>
<th>Title</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request for Qualification</td>
<td>Primarily used to establish a list of qualified Proponents that will receive a Request for Proposal for a particular product or service. This is generally considered to be a two-stage procurement process in that there is a qualification stage in advance of a competitive or RFP stage.</td>
</tr>
<tr>
<td>RFQ</td>
<td><em>Advisable when:</em> the project attracts significant interest from Proponents who may not have the combined capabilities to address the needs (e.g. good in construction, not an operator), etc.</td>
</tr>
</tbody>
</table>

**Examples of Use**

Typically used to limit the competitive process to a list of Proponents that has the demonstrated capability of providing the required product or service.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Inconvenience</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Increases the probability of a successful procurement outcome since the RFP will be forwarded to Proponents who, as a result of the RFQ stage, are qualified to provide the required product or service</td>
<td>• May increase the time and cost to complete a procurement</td>
</tr>
<tr>
<td>• Provides advance notice to pre-qualified Proponents of a subsequent competitive process</td>
<td></td>
</tr>
<tr>
<td>• Eliminates the risk that unqualified Proponents will participate in a competitive process – typically addresses the mandatory criteria</td>
<td></td>
</tr>
<tr>
<td>• Eliminates the cost to Proponents to participate in a competitive process for which they are not qualified</td>
<td></td>
</tr>
<tr>
<td>• Improves the quality of proposals</td>
<td></td>
</tr>
<tr>
<td>• Demonstrates probity in use of public funds</td>
<td></td>
</tr>
<tr>
<td>• Soft gate that provides the opportunity to limit the number of Proponents (to reduce bid and evaluation costs)</td>
<td></td>
</tr>
</tbody>
</table>

1.1.3 Request for Proposal (RFP)

<table>
<thead>
<tr>
<th>Title</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request for Proposal</td>
<td>An RFP is primarily used when the need or outcome sought is known, but one cannot or does not want to describe or prescribe an exact manner or method of how the need is to be fulfilled. Rather the goal is to undertake a competition to have Proponents propose how to achieve the desired result and make a selection based on overall best value (i.e. combined elements of service offering, price, capabilities, and qualifications of the Proponent). Solutions for the “how” are requested of the Proponents, based on pre-determined criteria. This type of process allows for more innovation and diverse responses, better competition, quality responses, and result in achieving best value for money.</td>
</tr>
<tr>
<td>RFP</td>
<td></td>
</tr>
</tbody>
</table>

**Advantages**

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Inconvenience</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Promotes competition</td>
<td>• Increases time to complete the procurement (vs. Sole Source)</td>
</tr>
<tr>
<td>• Provides clarity, standardizes evaluation and selection</td>
<td>• Increases cost to undertake the procurement (vs. Sole Source)</td>
</tr>
<tr>
<td>• Reduces bias and favouritism</td>
<td></td>
</tr>
<tr>
<td>• Improves the quality of proposals</td>
<td></td>
</tr>
<tr>
<td>• Promotes best value</td>
<td></td>
</tr>
<tr>
<td>• Increases the potential for supplier innovation</td>
<td></td>
</tr>
<tr>
<td>• Demonstrates probity in use of public funds</td>
<td></td>
</tr>
<tr>
<td>• Proposes distribution of risk, as applicable</td>
<td></td>
</tr>
<tr>
<td>• Stringent evaluation tool differentiating Proponents based on pre-established evaluation criteria</td>
<td></td>
</tr>
</tbody>
</table>
**Title** | Request for Proposal | RFP
---|---|---
- Includes a description of the project context, results-based specifications and may also include performance management framework, sample agreement, guiding principles...
- RFP’s can include any of the following stages:
  - Interview / Presentation
  - Commercially Confidential Meetings
  - Due Diligence Phase
  - Proof of Proposal / Proof of Concept
  - BAFO (Best and Final Offer)

---

**1.1.4 Request for Tender (RFT)**

<table>
<thead>
<tr>
<th>Title</th>
<th>Request for Tender</th>
<th>FRT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Description</strong></td>
<td>The RFT process is used to procure goods and/or services where the requirements can be clearly specified. Award of the contract is based solely on price after all mandatory requirements and qualifications have been met.</td>
<td></td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
<td>The simplest form of procurement where the good or service is known, the use is known and the value is the only determining factor. The RFT must outline all key delivery requirements, terms and conditions and performance specifications. Proposals are evaluated to meet the detailed requirements on a pass fail basis and all proposals that receive a pass are then ranked on price. The lowest price proposal is declared the winner.</td>
<td></td>
</tr>
<tr>
<td><strong>Expected Result</strong></td>
<td>Potential Proponents submit a response that identifies how they propose achieving the result. Proposals are evaluated and a winner is identified and receives an award in accordance with the terms and conditions of the RFP. The issuer of the RFT is obligated to complete the process except to the extent that it exercises its right or privilege to cancel (and re-issue) in accordance with the published rights or privileges.</td>
<td></td>
</tr>
<tr>
<td><strong>Examples of Use</strong></td>
<td>Mainly used to procure goods that are easily quantifiable and measurable such as fixed office furnishing.</td>
<td></td>
</tr>
</tbody>
</table>
| **Advantages** | Fast procurement  
Simple process | Does not allow innovation  
Does not result in overall best value  
Does not promote high quality proposals |  |
### 1.1.5 Vendor Consultation

<table>
<thead>
<tr>
<th>Title</th>
<th>RFP - Vendor Consultation / Vendor One on One</th>
</tr>
</thead>
</table>
| **Purpose** | Vendor Consultation enables the gathering of feedback directly from potential Proponents. The consultation can either be done on a one to one basis or as a group. The Vendor Consultation provides an opportunity to test business case assumptions and allow for the repositioning of the project based on feedback through the bid open clarification phase. The decision to hold Vendor Consultations depends on the project and the expected feedback.  
**Advisable when:** the combination of services is not typical, the bankability of the project is questionable, etc. |
| **Examples of Use** | Typically used when the results desired are known, however uncertainty exists in relation to the markets ability to meet all the requirements. It will help assess and determine if mandatory requirements are set to stringently and/or to if the prescribed Statement of Work/Requirements will produce the expected business outcome. |
| **Advantages** | - Provides an early indication of whether SOW/SOR will produce desired business outcome  
- Market notified of project  
- Responses/feedback can enhance overall RFP  
- Extra time spent at beginning of RFP process can save time during Bid Open and Contract Negotiation as ground work has been done upfront  
- Responses/feedback may result in postponement of procurement to enable further industry research to ensure future procurement market interest/responses |
| **Inconvenience** | - Time spent at beginning of process can push back closing date |

### 1.1.6 Vendor of Records (VOR)

<table>
<thead>
<tr>
<th>Title</th>
<th>Vendor of Records</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>A VOR arrangement is a fixed contractual arrangement with multiple vendors for the on-going acquisition of commonly purchased goods or services within a defined term. A VOR arrangement requires further competition among approved vendors through a second stage selection process. For the second stage selection process, specific assignment deliverables must be developed to be evaluated in order to ensure best value for money is achieved.</td>
</tr>
<tr>
<td><strong>Examples of Use</strong></td>
<td>Typically used to limit the competitive process to a list of Proponents that have the demonstrated capability of providing the required service.</td>
</tr>
</tbody>
</table>
| **Advantages** | - Access to services quicker  
- Access to a range of ‘like’ services  
- Allows more competition for SME’s as they do not require all the skills/goods required to remain listed on a VOR |
| **Inconvenience** | - Limited innovations  
- Refresh rules/timing can limit new competition |

### 1.1.7 Sole Sourcing

<table>
<thead>
<tr>
<th>Title</th>
<th>Sole Sourcing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>The use of sole sourcing requires a defendable business outcome/objective that only one firm can provide. When unsure if sole sourcing is acceptable, an RFI is a useful tool to examine the marketplaces ability to meet the requirements.</td>
</tr>
<tr>
<td><strong>Examples of Use</strong></td>
<td>Commodity procurement generally is sole sourced. Such examples include newspapers, periodicals used for resource centers and libraries.</td>
</tr>
</tbody>
</table>
Sole Sourcing

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Inconvenience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quick procurement</td>
<td>Value for money can be difficult to measure if no benchmarks exist</td>
</tr>
<tr>
<td></td>
<td>Extensive market scan must be undertaken to lower risk to challenges of contract award</td>
</tr>
</tbody>
</table>

1.1.8 Unsolicited Proposal (Swiss Challenge)

<table>
<thead>
<tr>
<th>Title</th>
<th>Swiss Challenges (for unsolicited bids)</th>
</tr>
</thead>
</table>

Purpose

Unlike competitive approaches, the idea generally originates with a private sector Proponent who seeks to negotiate directly with the public sector entity for a sole source contract. This method, referred to as a “Swiss Challenge procurement procedure”, has become an alternative to traditional procurement methods by taking advantage of the best aspects of the various other procurement methods while, at the same time, maintaining transparency in the process.

Expected Result

The public sector and the private sector Proponent would enter into a Swiss Challenge agreement giving the public sector the right to use the technical information contained in the unsolicited proposal as input to a public tender (i.e. RFP) to prospective Proponents (but excluding any proprietary information). The Proponent then has the right to match any competitive offer to maintain its sole source position. The successful Proponent is selected and the details of the contract are finalized. The successful Proponent may or may not be the initiating Proponent. Under the Swiss Challenge procurement method, the public sector entity should follow through with a competitive process unless any of the pre-conditions for Sole Source contracting are met.

Examples of Use

Typically used in the procurement of large capital infrastructure projects.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Inconvenience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expedites the procurement timeframe and process</td>
<td>May be viewed / challenged as unfair (primarily a result of lack of familiarity with the process)</td>
</tr>
<tr>
<td>Requirements for competition are met</td>
<td></td>
</tr>
<tr>
<td>Promotes best value</td>
<td></td>
</tr>
<tr>
<td>Increases the potential for Proponent innovation</td>
<td></td>
</tr>
<tr>
<td>Proponents are better able to determine if they can meet the technical requirements before investing time to prepare a response</td>
<td></td>
</tr>
<tr>
<td>Demonstrates probity in use of public funds</td>
<td></td>
</tr>
</tbody>
</table>

1.1.9 RFP – Best and Final Offer (BAFO)

<table>
<thead>
<tr>
<th>Title</th>
<th>Best and Final Offer (BAFO)</th>
</tr>
</thead>
</table>

Purpose

A BAFO RFP is primarily used when the needs are known, but the public sector entity cannot or does not want to describe or prescribe an exact manner or method of how the need is to be fulfilled. Rather a competition is undertaken to have Proponents propose how to achieve the desired result and make a selection based on overall best value (i.e. combined elements of service offering, price, capabilities, and qualifications of the Proponent). Solutions for the “how” are requested of the vendors, based on pre-determined criteria. This type of process allows for more innovation and diverse responses, better competition, quality responses, and will result in achieving best value for money.

The BAFO process allows for one on one interaction to refine the submitted proposals (or allow for new proposals) to be evaluated in a second stage.

Examples of Use

Typically used when price uncertainty exists and in the case all short listed Proponents submitted exceedingly high-priced proposals, to allow for some elements can be refined (scaled back) or removed entirely to fit into the budget. A BAFO can also be used to allow short listed Proponents access to sensitive information (due diligence), usually financial, that would otherwise not be included in the RFP. The proponents can then choose to resubmit their
**Title** | Best and Final Offer (BAFO)
--- | ---

Propose a Best and Final Offer (BAFO) proposal, with updated financials or choose to be bound by their original proposal.

<table>
<thead>
<tr>
<th><strong>Advantages</strong></th>
<th><strong>Inconvenience</strong></th>
</tr>
</thead>
</table>
| • Lowers risk of a cancelled RFP process, saves time  
  • Allows for innovation  
  • Allows for modifications to requirements/scope to meet budget expectations and/or enforce importance of certain services  
  • Able to withhold publishing sensitive information until short-listed phase | • Length of time of process  
  • May require legal expertise depending on complexity  
  • Due diligence phase interrupts day to day operations (sensitivity if incumbent is present) |