

# Performance-Based Services Acquisition



## Guiding Principle

Performance-based services acquisition strategies embrace commercial best practices and innovative processes while leveraging the competitive forces of the marketplace and achieving cost effective service delivery.

[Reference: [Public Law 106-398, § 821](#), [FAR 37.6](#)]

## 1.0 Summary of Latest Changes

This update: (1) changes the chapter number from 37.2 to 37.601 to coincide with the FAR, (2) updates references, and (3) includes administrative changes.

## 2.0 Discussion

This chapter supplements other more primary acquisition regulations and policies contained in the references above and should be considered in the context of those references. DOE also has a performance-based services acquisition toolkit that includes links to best practices and samples, including the DoD Guidebook for Performance-Based Services Acquisition. The toolkit is located at the following site: <http://www.energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procureme-2>. This chapter does not assist in establishing performance measures and incentives related to DOE Management and Operating (M&O) Contracts and other major operating contracts.

**2.1 Overview.** The purpose of this chapter is to provide acquisition professionals and program offices with a resource that enables them to achieve success in performance-based services acquisition (PBSA).

Federal acquisition law has established a preference for PBSA, which improves procurement services by encouraging the use of simplified procedures under FAR Part 12, Acquisition of Commercial Items.

There are many benefits of acquiring services through the use of PBSA methods. The agency has a greater probability of meeting mission needs by directing the focus on intended results rather than the process. PBSA also reduces performance risk because the contractor is involved at the front end of the acquisition process. Detailed specifications and work process descriptions

are not needed because the performance work statement (PWS) and the statement of objectives (SOO) describe the end use. These advantages allow the agency to set the standard and the outcome while giving contractors the freedom to execute an innovative and unrestrictive method of delivery.

The following information is contained in this chapter:

- Definitions
- Objectives of PBSA
- Development of the Performance Work Statement (PWS)
- Development of the Statement of Objectives (SOO)
- Managing to Contract Completion

**2.2 Definitions.** The following list of terms is directly associated with the PBSA methodology. Some of the terms are defined elsewhere in existing regulation and guidance; however, this chapter seeks to provide a working definition of the terms discussed and should not be considered all inclusive:

<b>Acceptable Quality Level (AQL)</b>	The maximum degree of variance from the standard or expectation, e.g., allowable error rate.
<b>Best Value</b>	The process used to select the most advantageous offer to the government, typically using trade-offs while considering technical merit over price.
<b>Incentive</b>	Motivators of successful performance.
<b>Job Analysis</b>	Identification of essential inputs, processes, and outputs.
<b>Measurable Performance Standards</b>	Describes what is considered acceptable performance by use of quantifiable, easy to apply, attainable attributes.
<b>Needs Assessment</b>	The process by which the team determines what problem the agency needs to solve. What result or outcome is needed on a macro level and does it meet the organizational and mission objectives?
<b>Performance Analysis</b>	A review of Job Analysis outputs and a determination of how each output is measured using a quantifiable standard, e.g., time, cost, error rate, accuracy rate, etc.
<b>Performance-Based Services Acquisition (PBSA)</b>	An acquisition strategy designed to meet mission and program needs that describes measurable performance objectives as related to specific outcomes or results.
<b>Performance Metrics</b>	A series of negotiable indicators that are meant to provide a way to measure contractor success and are also discriminators of quality in a best value scenario.

<b>Performance Objectives</b>	Desired outcome of work to be performed as determined by the team analysis recorded in agency business documents, e.g., business case, acquisition strategy, etc.
<b>Performance Work Statement (PWS)</b>	A document that describes the agency's requirement in clear, specific, objective, and measurable outcomes or results.
<b>Quality Assurance Surveillance Plan (QASP)</b>	A government developed tool generally used to assess contractor success against the agreed upon performance standards.
<b>So What Test</b>	Verification of a continued need for an output determined during the Job Analysis.
<b>Statement of Objectives (SOO)</b>	A short descriptive document that provides basic high level objectives of the acquisition, requiring offerors to formulate a competitive solution to the Government's needs.

**2.3 Objectives of PBSA.** The major objective of PBSA is to create a link between mission needs and acquisition performance, while shifting the standard from contract compliance to a collaborative performance oriented process. This approach to contracting is intended to:

- Maximize contractor performance through competition and innovation, encouraging contractors to find a cost effective way of service delivery;
- Promote the use of commercial services by allowing contractors to offer routine industry solutions that pose minimal risk to the government;
- Move the focus from process to results, thereby providing a means for the preferred outcome; and
- Achieve cost savings.

**2.3.1 Maximize Contractor Performance.** Certain services lend themselves to PBSA because performance expectations can be identified and they are easy to measure, such as information technology support services, janitorial services, and guard services. Performance presents minimal risk to the government. Conversely, there are other services, such as software development, that are more complex and maximize contractor performance through competition and innovative processes that focus on the desired outcome. In this instance, a SOO that focuses on the end result, and performance incentives, may prove to be more useful. This technique may guard against being too prescriptive, yet allow for the mitigation of technical risk and other concerns.

**2.3.2 Promote Use of Commercial Services.** The use of FAR Part 12 procedures streamlines the acquisition process while expanding the range of potential solutions

or outcomes. Market research is a key component to buying best value services from the commercial marketplace.

**2.3.3 Move Focus from Process to Results.** PBSA clearly spells out the desired end result(s) expected from the contractor's performance. It is critical to structure requirements around the purpose of the work to be performed as opposed to the manner in which the work is to be performed, e.g., labor mix, number of hours, type of equipment, etc. Contractors should be given flexibility to determine how to best meet the government's performance expectations.

**2.3.4 Achieve Cost Savings.** PBSA allows for contractor innovation and ingenuity that may result in cost savings to the government. Contractors decide how to best meet performance objectives and how to ensure that standards are achieved with acceptable levels of quality. Performance standards must be attainable and their measures must clearly convey what constitutes an acceptable level. As necessary, standards may have positive or negative incentives to motivate performance, e.g., monetary, past performance, government oversight, etc.

Critical to the success of PBSA is careful program and project planning (see [DOE O 413.3B Chg 2 \(PgChg\), Program and Project Management for the Acquisition of Capital Assets](#)), collaborative market research, detailed performance work statements, high level statement of objectives (if applicable), and the "critical-few" performance measures.

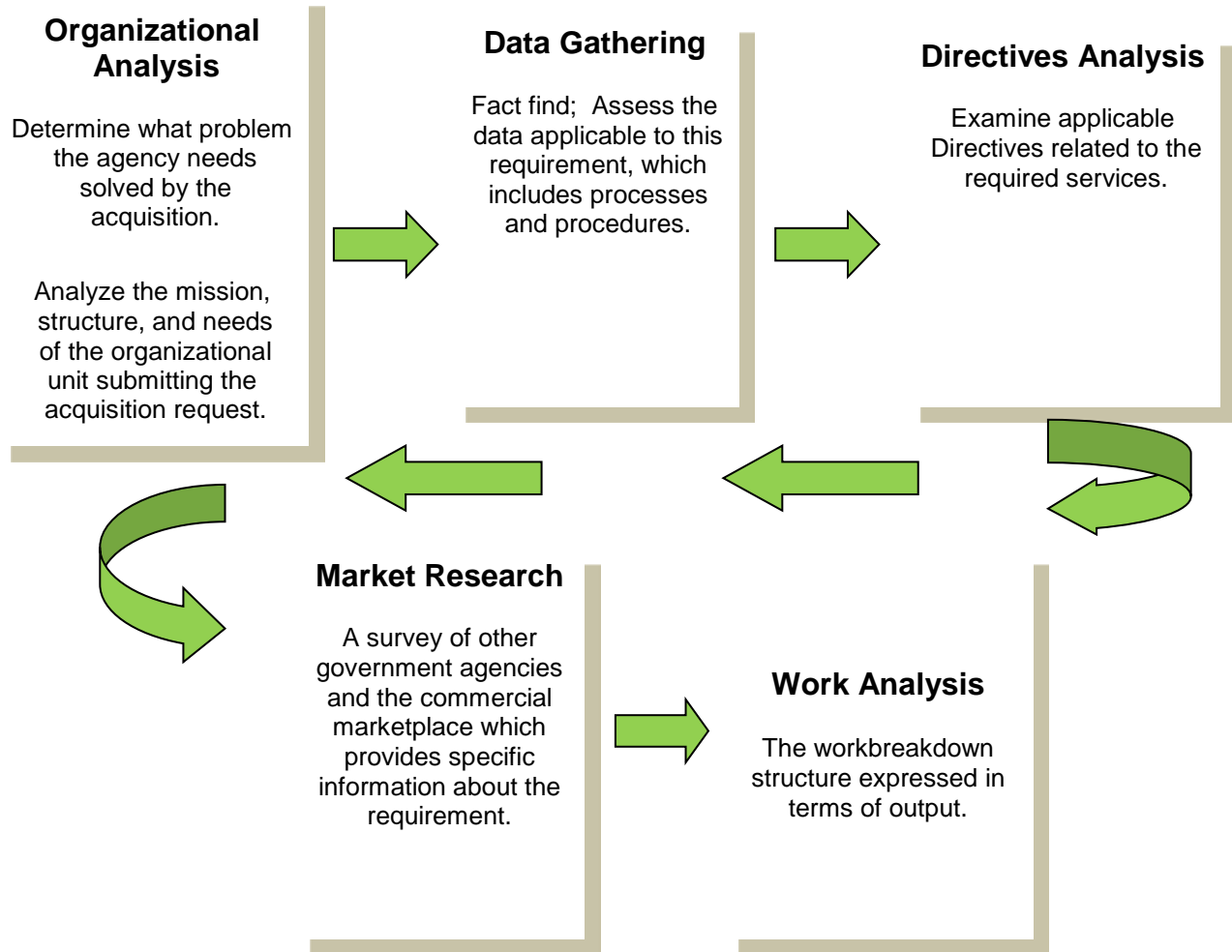
**2.4 Development of the Performance Work Statement (PWS).** There are two ways to describe the Government's needs under PBSA - a PWS or a SOO. In terms of organization of information, a statement of work (SOW) like approach is suitable for a PWS, e.g., introduction, background information, scope, etc., adapted as appropriate.

**2.4.1 Job Analysis.** Preparation of the PWS requires a comprehensive job analysis to ensure that expected outcomes or end results are accurate and complete. The job analysis also forms the basis for developing measurable performance standards and creating the quality assurance surveillance plan (QASP). The job analysis is a bottom-up evaluation of each aspect of the requirement (inputs, processes, and outputs). Processes and procedures for repetitive requirements should be verified and validated to ensure that outcomes are cost effective and solutions are industry driven. During the job analysis, it is important to differentiate between what is actually being done and perceptions of what is being done. A job analysis consists of:

- Organizational Analysis (data may overlap with needs assessment);
- Data Gathering;
- Directives Analysis;
- Market Research; and
- Work Analysis.

**WARNING:** During the job analysis, the examination of “how” things are done could unintentionally lead to creating a PWS that (1) instructs the contractor how to perform a task, and/or (2) provides a process-oriented description. To safeguard against this, the [Seven Steps to Performance-Based Services Acquisition](#) guide advocates use of the “so what?” test during job analysis. The application of this test will help ensure that the desired performance outcome is achieved. Once the outputs of the job analysis have been identified, the continued need for the output should be challenged. For example, a job analysis output of an Information Technology requirement may be to maintain an electronic modeling system. The team should ask questions and analyze responses, such as: who needs the output, what occurs as a result, why is the output needed, what is done with it, etc. If, after you ask these questions, the “so-what” inquiry reveals that the output is still significant or pertinent to the heart of the acquisition then the team should capture the results of the job analysis into a matrix or a diagram format that outlines the critical few performance standards necessary to meet the mission need (see Exhibit 1) and proceed in the PBSA process.

**Exhibit 1  
DOE Job Analysis**



Organizational Analysis

The first step in conducting the job analysis is to conduct an analysis of the organizational unit supported by the required services, including its mission, structure and needs. The key question to address is “What does the organization want to achieve in terms of outcomes?” Once that question has been answered, a general-purpose statement describing the objective of the procurement can be written.

### Data Gathering

The next step is gathering data. The gathered data is related to workload, facilities, processes and procedures, laws and regulations, and resources. This data is critical to performing a proper job analysis and developing a PWS. Data gathering should include an examination of the facilities, data, equipment currently used and the benefit to the government of providing all or some of it to the contractor. If any changes affect the facility, e.g., changes to government furnished equipment, they must be factored into the data collected. Resource data such as the types of personnel currently used and their required minimum qualifications, e.g., education and experience, as well as specific qualification requirements such as security clearances must be developed. Any anticipated personnel requirements must be noted.

### Directives Analysis

This involves the examination of all current Directives applicable to the services being contracted out. The PWS must contain all relevant Directives and reference documents related to the services being performed. Directives that apply in part should cite the pertinent portion of the Directive. The team should take care and guard against the application of too many Directives. This could result in excessive costs, inappropriate application of a Directive, restriction of the contractor's innovative approach, etc.

### Market Research

The objective of market research is to become informed about the service industry that will provide a solution to the problem. Market research should include an inquiry into how the required services are performed at other government agencies and the commercial market place. Market information may also be obtained from trade publications, contractor capability statements, the Small Business Administration, etc. A sources sought synopsis and/or draft solicitation may be used in conjunction with a market survey to obtain information. Market research should:

- Determine if the service is commercially available;
- Enable the acquisition team to understand what solutions are available in the marketplace;
- Provide insight regarding price expectations;
- Allow the agency to keep abreast of the latest technology and market trends; and
- Assist in the overall acquisition planning.

### Work Analysis (Work Breakdown Structure)

The final step in performing a job analysis is the work analysis (work breakdown structure). The organizational analysis, data gathering, directives analysis, and market research all factor into the

work analysis. The work analysis is the work breakdown structure expressed in terms of output. To complete the work breakdown structure the work inputs, work steps, and work outputs must be identified:

- Work inputs are actions or documents necessary to perform the services.
- Work steps are the “how to” actions that will be taken by the contractor in order to achieve the product or outcome. (*Remember, how to complete the work steps is left up to the contractor*).
- Work outputs are the items produced as a result of completing the work steps (*the output is the expected outcome the contractor agrees to deliver*). In addition, output provides the basis to measure the contractor’s performance in terms of timeliness, error rates, accuracy rates, completion rates, cost control, etc. One method of documenting work outputs is to set up a tree diagram, dividing the job into parts that contribute to a final outcome or result.

The ultimate goal of the job analysis is to understand and describe the desired outcome, which enables the development of (1) measurable performance standards, and (2) acceptable quality levels.

2.4.2 Performance Analysis. The performance analysis process will identify how the results of the job analysis (outcome) will be measured by establishing an objective or subjective performance standard (timeliness, accuracy rate, completion rate, cost, customer satisfaction, quality, value, feature benefit, etc.) and determining the acceptable quality level of performance associated with the standard. When creating performance standards it is important to identify the “critical few” focusing on the mission related objective, customer need, and the assessment of what is important to measure. The results of this analysis will further support the reasonableness or validity of the identified performance standards and establish any margin for error in achieving an acceptable level of performance.

Acceptable quality level (AQL) provides a maximum degree of variance from the performance standard. The development of this process comes from asking basic questions. What is the minimum level of quality that is acceptable in order to meet the mission need? What is the highest acceptable error rate that will meet mission need? What is being measured, e.g., help desk efficiency or customer satisfaction? At what interval will the measurement be made, e.g., monthly, quarterly, semi-annually, etc.? How precise must the performance standard be? (Hint: there may be an industry standard which determines measurable success in a performance standard). The answer to these questions is typically recorded in terms of percentage, e.g., resolve a customer complaint on the first call 70% of the time, or facility chilled water equipment must be operating at maximum efficiency 90% of the time. Every performance



standard does not have to equal 100% to be successful. The commercial marketplace should play a key role in establishing an AQL for the applicable performance standards.

The result of the analyses (Job Analysis and Performance Analysis) should be captured in a Results Matrix, grouping findings within a specific category, e.g., desired outcome, performance standard, acceptable quality level, surveillance method, and incentive or disincentive, if applicable. This matrix only captures the salient elements or “critical few” determined as a result of the analysis performed. See Exhibit 2.

### Exhibit 2 Results Matrix

<b>Desired Outcomes</b> <i>What is to be accomplished as the end result of this contract?</i>	<b>Required Service</b> <i>What task needs to be accomplished to achieve the desired result?</i>	<b>Performance Standard</b> <i>What should the standards for quality, value, customer satisfaction, feature benefit, accuracy, etc. be?</i>	<b>Acceptable Quality Level</b> <i>How much error is acceptable?</i>	<b>Monitoring Method</b> <i>How it will be determined that success is achieved?</i>	<b>Incentive/Disincentive</b> <i>What will best reward or penalize performance.</i>
Provide a dedicated on-site repair service, preventative maintenance, and repair service to Government owned security equipment	Provide experienced personnel	Elements such as cost control/risk management, commercial or industry quality standards, quality awards, surveillance methodology, etc.	System must be operational 95% of the time.	Could be 100% inspection, random sampling, periodic sampling, etc.	Incentives and disincentives may include greater or lesser fee, longer or shorter performance term, less or more surveillance, etc.

**Note:** Incentives and disincentives may be used to motivate successful contract performance as it relates to the desired outcomes. However, the use of incentives or disincentives is not required as part of the PBSA methodology.

2.4.3 Drafting the PWS. The results of the above analyses develop the foundation for the PWS. The PWS contains measurable performance standards associated with the identified output as determined by the performance analysis. The matrix may be included in

the PWS as a summary document; however, the PWS should describe in greater detail what the Results Matrix depicts visually. When writing the PWS, the requirements are described in terms of results as opposed to process, such as, the contractor shall maintain equipment operability consistent with the industry standard or the contractor shall provide customer support in accordance with commercial practices. Describing the requirement in terms of result or outcome as opposed to compliance, e.g., the contractor shall provide help desk support between the hours of 9:00 am – 6:00 pm, Monday – Friday, provides an opportunity for the contractor to develop its approach absent of government direction, subsequently lowering cost and promoting successful contract performance

**2.5 Development of the Statement of Objectives (SOO).** The use of the SOO is a methodology that requires competing contractors to develop the PWS, performance metrics and measurement plan, and quality assurance plan, which are evaluated before contract award.

A key aspect of the SOO is that it is a short, 3-5 pages, high-level document. It describes the desired results as related to the agency mission in terms of objectives, and identifies the associated constraints. The SOO may be used when limited information is available regarding the requirement, or when use of the PWS is otherwise inappropriate. Unlike the PWS, the FAR advocates a preferred content for the SOO (see FAR 37.602(c)). The SOO should be incorporated into the request for proposal as Section C or part of Section C, depending on how the solicitation is formatted.

In accordance with the FAR, the SOO should address the following:

#### Purpose

The purpose should provide information to the offeror regarding the reason for this requirement. The purpose may be a vision of what is to be achieved organizationally as a result of the acquisition.

#### Scope or Mission

This is a description of how the requirement relates to the program and/or mission, along with a description of the problem that will be solved as a result of this acquisition. Describing the scope of the requirement in the SOO should involve the use of a single, clearly identifiable statement; the “full range of services” is the goal so that all aspects of what is being purchased are captured. The structure of the SOO provides for industry driven innovation, cost efficiency, and competitive solutions.

#### Period and Place of Performance

Address whether option periods and award terms apply, and whether work will be performed at the contractor's facility, at a Government site, or both.

### Background

Provide pertinent background information that would help the offeror propose a more accurate PWS.

### Performance Objectives

The performance objectives or desired outcomes are the core of the SOO. The Team determines the objectives as a result of analysis performed on agency business documents (plans and goals), e.g., the strategic and annual performance plans, program authorization documents, budget documents, directives review, and interviews with project stakeholders. Once the performance objectives have been established, any known impediments, i.e., constraints, to accomplishing the objectives must be identified.

### Constraints

A constraint is anything that limits performance relative to the goal. It is something to be focused on and perhaps improved upon. This thinking will allow offerors to provide innovative and competitive solutions while giving due consideration to those things or events that limit performance. For example, most agencies have security requirements that address a contractor's access to the building; subsequently, the nature of the work involved in the requirement is limited by the security constraint. Therefore, an offeror must be innovative and creative enough to propose solutions to the requirement that would either accommodate the security concerns or work around them.

**2.6 Quality Assurance Surveillance Plan (QASP).** The QASP establishes the process that the Government will use to assess the contractor's performance in accordance with the agreed upon performance standards. When using the PWS approach, the QASP is usually developed by the Government, although there are times when a contractor-developed QASP may be more desirable. For example, when commercial quality standards are applicable to a particular requirement, industry may have a more effective and efficient measure. When using the SOO approach, the QASP may be developed by the offeror as part of the response to the RFP. The QASP summarizes the performance standards and acceptable quality levels for the appropriate standard, describes how performance will be monitored and how results will be evaluated, and explains the impact on contract payment. The QASP focuses on the level of performance and not the method for achieving it.

**2.6.1 PWS.** The QASP may be part of the PWS, but it is usually contained as a separate document within the contract. There may be one QASP for the entire PWS or multiple

QASPs associated with specific tasks within the PWS. The QASP helps the Government assess contractor success and perform overall contract management. The most common types of surveillance methods used are 100% inspection, random sampling, periodic sampling, customer input, and unscheduled inspections. 100% inspection is best suited for infrequent tasks or tasks with strict performance requirements. Inspection is required at each occurrence and is often time consuming and administratively burdensome. Random sampling works best in instances where the service being performed is very large and valid samples can be obtained. Periodic sampling is appropriate for tasks that are infrequent and do not require a 100% sample. Agency resources must be considered, as well as the relative importance of each task to help determine which tasks should be inspected, how to inspect them, and how often they should be inspected. Customer input is a method that measures contractor performance based on the number and types of customer input received. It is usually accomplished through customer surveys. Administratively, the government must manage the input system and demonstrate that it acted upon input received by customers. Unscheduled inspections are surprise inspections made at times and places deemed appropriate by the individuals responsible for monitoring contractor performance on behalf of the government.

The selection of a surveillance method is affected by a number of factors including:

- Number of performance standards to be inspected;
- Criticality and cost of the activity to be inspected;
- Location of the activity; and
- Resources available to conduct surveillance.

The entire surveillance process requires scheduling, observing, documenting, and accepting service. The surveillance must be comprehensive and well documented as the results of the surveillance impact the incentives paid to the contractor. If the surveillance process becomes complicated, the PWS and performance standards should be reviewed and simplified. The CO should brief contractors on the surveillance requirements and ask the contractor to provide a requirement-specific quality control plan describing procedures it will use to maintain acceptable quality levels under the contract.

2.6.2 SOO. The SOO approach is particularly suitable for having the offeror propose performance metrics and the QASP because the SOO requires each offeror to develop an innovative competitive solution to the government's requirement. Consequently, each proposal should have different metrics, measures, and quality assurance plan(s). In this instance, the QASP should be tailored to the proposed solution. The solicitation should require that certain elements are addressed in the QASP, such as cost control/risk management, commercial or industry quality standards, quality awards, surveillance methodology, and past performance. In addition, the solicitation should inform the prospective offeror that the measures and metrics may be changed as contract performance progresses, in order to ensure that the right measures continue to be considered.

**2.7 Incentives.** The incentive plan rewards a contractor that performs well and penalizes one that does not. Incentives encourage contractors to develop innovative cost-effective methods of performance while maintaining the quality of the services provided. They may be included in the quality assurance plan or set aside in a separate document. Incentives may be monetary or non-monetary. Where monetary incentives are not desirable or considered ineffective as a motivating factor, non-monetary incentives such as extensions to award term should be explored. If deductions are used, incentives are usually included in the quality assurance plan. If award or incentive fees are used, they are usually addressed in a separate document.

The following chart describes types of incentives:

<b>Type of Incentive</b>	<b>Description</b>
<b>Fee</b>	Fee dollars are directly linked to achieving or exceeding standards. A specific amount of fee may be directly related to the achievement of a specific performance standard. Fee dollars may also be associated with a target fee amount or an award fee pool, where the amount of fee earned is adjusted upward or downward based upon the contractor achieving performance standards.
<b>Payments</b>	When performance exceeds standards, pay x% of monthly payment into a pool. If performance is below standard, x% of that monthly payment is withheld. At the end of y months, pay the contractor the amount accrued in the pool. Payment may also be made when the contractor has accrued x dollars in the pool.
<b>Re-work</b>	When performance is below standard for a given period of time, require the contractor to re-perform the service at no additional cost to the Government.
<b>Surveillance/monitoring</b>	Adjust surveillance or contractor reporting based upon the contractor performance exceeding standards or not over a specified amount of time.
<b>Past Performance</b>	Document past performance report card, paying attention to performance that either failed to meet or exceeded standards.
<b>Term</b>	Adjust the contract performance period, either shorten or lengthen, depending on the contractor performance either failing to meet or exceeding performance standards during a stated period of time.

A firm-fixed-price contract is the ultimate incentive-laden, performance-based contract. If the contractor does not deliver the required supply or service, the contractor will not get paid. Fixed-price incentive and cost-plus-incentive-fee contracts are formula-type incentives that can provide both positive and negative incentives depending on the extent to which the contractor exceeded

or failed to meet target numbers. Formula incentives must contain cost incentives. Multiple-incentive contracts should be considered when emphasis is required on more than cost control. Multiple-incentive contracts must include a cost incentive and may include performance (technical) incentives and delivery incentives. Performance incentives should only be applied to the most important aspects of the work. Trade-offs must be considered and should be consistent with the overall objectives of the acquisition to prevent the contractor from concentrating its efforts on any one incentive area.

A cost-plus-award-fee contract may support an award term incentive. However, award fee contracts are resource intensive in their administration, so this type of contract should only be used with large dollar value requirements. The available award fee pool acts as a motivating factor on contractor performance. The award fee incentive is expressed as a total dollar amount and is divided up and paid out periodically throughout the life of the contract based on the contractor's performance in relation to stated evaluation factors. These factors may be objective and subjective but should always be stated and agreed to. Objective factors such as cost control, and timeliness of deliverables tend to be easily identifiable and motivate contractor performance effectively. In some cases it may be appropriate to use subjective factors such as quality of the product or service. Objective factors suggest that a certain outcome will result in a certain fee. Subjective factors may appear vague and less convincing. Nonetheless, subjective factors should be used when there are clear discriminators. Award fee criteria may be changed during contract performance to reflect the current situation and changes in mission priorities.

**2.8 Managing to Completion.** The key to successful project completion is managing contract performance within the performance-based acquisition structure. The first step is identical to the last: maintaining team formation. Team effectiveness is critical. Each individual brings a certain skill set to the team that may be needed at any time. Once the contract is awarded, team participation should not ramp down but evolve into another state where team roles and responsibilities are adjusted to the changed work requirements. At this stage the contractor is part of the team, and the contractor's expertise and knowledge should be used to ensure project success.