

Performance-Based Contracting and Guaranteed Fixed Price Remediation Primer

Air Force Base Conversion Agency

DRAFT
26 July 2002



1.0 Introduction

In the past ten years, Congressional and Executive Branch actions have been taken to reform the laws and policies that govern federal acquisition. Among the most important of the reforms are the Government Performance and Results Act of 1993, the Federal Acquisition Streamlining Act of 1994, and the Clinger-Cohen Act of 1996. All of these laws sent an important message about performance in federal programs and acquisitions. Performance-based service acquisition is not new, but until recently has not been fully embraced by the federal workforce. Despite its lack of popularity in the past, there is a definite legal and regulatory preference for the mechanism. However, with this drive for contract improvement has come confusion about how to implement improved contracting strategies and some of the tools available to accomplish this improvement both at the agency level as well as for specific contracting actions at individual bases.

The purpose of this primer is to present an overview of Performance-Based Contracting (PBC) including the components of a PBC, and to describe Guaranteed Fixed Price Remediation (GFPR) contracts in terms of how they meet the intention of PBCs. Finally, the paper provides lessons learned from experience in developing GFPR contracts for Army BRAC installations.

1.1 Why Change Your Contracting Strategy?

There are several benefits to developing a new approach to contracting within the Agency as well as at the individual bases. With PBC, there is a clear understanding of the scope, schedule and cost of work being performed. This understanding benefits all involved, including both the Agency and its contractors. By providing clear definitions of performance expectations and evaluation criteria, there is a better likelihood that expectations will be reached to all parties' satisfaction. The Army BRAC program has found that awarding GFPR contracts for remediation services is a very effective means of accomplishing work. For example, from the Headquarters perspective, developing a fixed price scope of work requires a clear understanding of the remaining scope; thereby allowing for development of an independent government cost estimate to complete the work that is much more reliable than most cost to complete estimates. For the Base Environmental Coordinators (BECs), the benefit is seen in reduced time spent developing work scopes for new funding, requesting funding for specific projects, and working with and/or overseeing multiple contractors.

Benefits of Guaranteed Fixed Price Contracts

From the Headquarters perspective:

- Reduced number of contracting actions
- Fixed cost for Cost to Complete
- Fixed schedule
- Oversight provided by BEC
- AFBCA maintains signature authority

From the BEC perspective:

- Consistent contractor team responsible for completing work
- Fixed cost and schedule (i.e., change orders are not permitted under most circumstances)
- Well defined scope
- Project is fully funded once contract awarded (i.e., no need to continue to justify funding)
- Time spent is focused on oversight and communication with the BCT; reduced paperwork.

2.0 Performance-Based Contracting

2.1 Overview

PBC is a contracting approach in which performance is judged against the desired outcome rather than the level of effort performed (generally referred to as cost plus fixed fee (CPFF) or time and materials (T&M) contracts). PBC is designed to ensure that contractors are provided flexibility to 1) determine and implement the best approach to meet the Government's performance objectives, 2) ensure that appropriate performance quality levels are achieved, and 3) guarantee that payments are made to the contractors only for services that meet the agreed upon levels of quality and performance. All aspects of an acquisition are structured around the purpose of the work to be performed. The contract requirements are set forth in specific and objective terms with measurable outcomes as opposed to the manner by which the work is to be performed or broad and imprecise statements of work.¹

Although the Government Accounting Office and the Office of Federal Procurement Policy have not established a template for PBC, several agencies have identified the elements that should be considered in PBC. The contract statement of work, which is referred to as the Performance Work Statement (PWS), is the foundation of performance-based services. The PWS provides a description of the required services in terms of output, a measurable performance standard for this output, and an acceptable quality level (AQL) or allowable error rate for the output. A Quality Assurance Plan (QAP) (further discussed in Section 2.4), which directly corresponds to the performance standards and measures contractor performance, is needed to determine if contractor services meet the PWS requirements.

Government Interest in Performance-Based Contracting

Government interest in PBC and its potential for cost savings prompted several agencies to explore it as a contracting option. In 1994, the Office of Federal Procurement Policy (OFPP) issued a performance-based service contracting policy and initiated a government-wide pilot project covering 15 agencies and 26 contracts for a total contract value of \$585M. The FY96 Defense Authorization Act granted the Department of Energy (DOE) authority to employ the approach in environmental contracts. FAR Part 37 was created subsequently to define the concept and encourage federal agencies to employ the approach more broadly. In 1998, an Office of Management and Budget (OMB) Pilot Study reported that application of PBC had resulted in a 15% price reduction and an 18% improvement in satisfaction with contractor performance. Several federal agencies retain ongoing pilot studies for environmental cleanup, and each agency has separately developed approaches to PBC.

2.2 Performing A Job Analysis

Job analysis involves determining the agency's needs and what kinds of services and outputs are to be provided by the contractor. The job analysis is of particular importance because the services or outputs identified during this analysis form the basis of establishing performance requirements, developing performance standards and indicators, writing the PWS, and producing the QAP. In general, job analysis includes: agency or activity organization, work to be performed by the contractor, performance standards, directives, data gathering, and cost.

¹ FAR Subpart 2.101 - Definitions

2.3 Performance Work Statement

As mentioned in the previous section, Performance Work Statements (PWS) are the foundation of performance-based services. There are generally three elements of a PWS:

- ◆ A statement of the required services in terms of output;
- ◆ A measurable performance standard for the output; and
- ◆ An AQL or allowable error rate.

These three elements are established during the job analysis phase. They are incorporated into the PWS, which describes the specific requirements the contractor must meet in performance of the contract. The PWS is meant to specify a standard of performance for the required tasks and to establish the level of quality the government expects the contractor to provide. Essentially, the PWS should be structured around the purpose of the work to be performed rather than how to perform it.

Components of PBC Job Analysis

Organization analysis involves reviewing the agency's needs and identifying services and outputs required from the contractor. Emphasis should be placed on the outputs the contractor will produce, not on dictating how to produce those outputs.

Work analysis involves further analyzing the required outputs by breaking the work into the lowest task level and linking tasks in a logical flow of activities. A failure to identify all outputs from tasks and subtasks required of the contractor could result in incomplete or ambiguous contractual requirements, which may be difficult to enforce or lead to contractor misinterpretation and inadequate performance.

Performance analysis and standards assigns a performance requirement to each task by determining how a service can be measured and what performance standards and quality levels apply. This requirement may involve the development of a performance requirements summary (PRS) that lists tasks, deliverables, standards, and quality levels.

The directives analysis should include a screening of all potentially relevant agency directives to determine which should be utilized, either in whole or in part.

In the data collection stage, agencies should provide the contractor an estimate of the workload to be performed and the items and services that the government will furnish to the contractor for the performance of the contract. The estimated costs for each service or output should be based on historical cost data and discussions with industry.

Estimated costs must be computed for each service or output based on historical cost data and discussions with industry. These costs will then be used in preparing the government estimate, evaluating proposals, and determining positive and negative performance incentives.

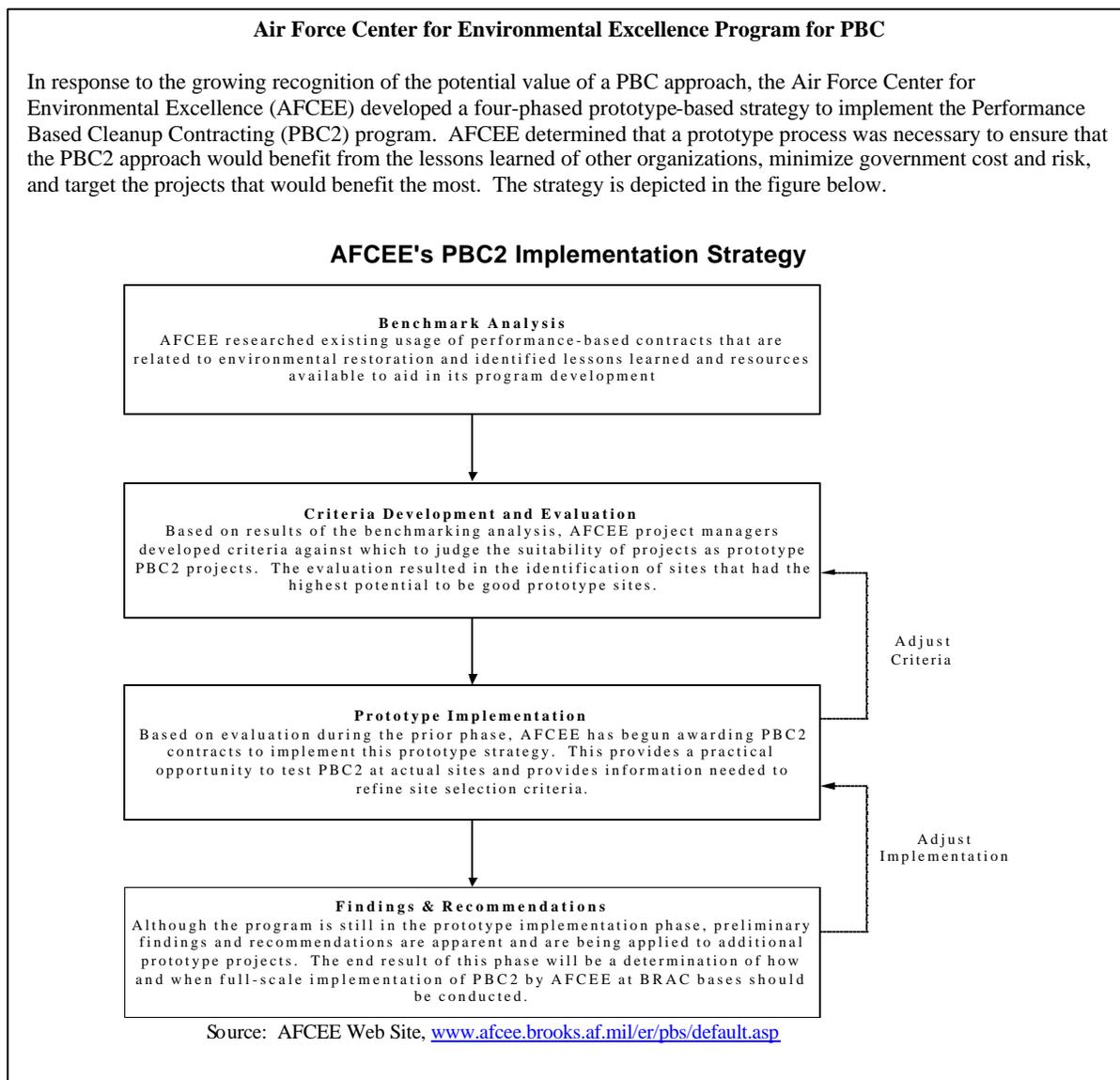
2.4 Quality Assurance Plan and Surveillance

The QAP defines what steps the government must take in order to ensure that the contractor performance is in accordance with the PWS performance standards. The QAP is meant to ensure that the government receives the quality of services called for under the contract and pays only for the acceptable level of services received. Since the QAP is intended to measure performance against standards in the PWS, the two documents should be written simultaneously and can be combined into one document.

The QAP should state clearly the surveillance schedule and methodology. Methods may include random sampling, periodic sampling, trend analysis, customer feedback, or third party audits. The surveillance methods should be discussed with the contractor to confirm they are in full understanding and efforts should be made to ensure that contractor operations are not unduly interfered with.

2.5 Determining the Contract Type

A contract type that is most likely to motivate contractors to perform optimally should be selected. PBC encourages and enables the use of fixed-price contracts and incentives to encourage optimal performance. A fixed-price contract is suitable for services that can be objectively defined and for which the risk of performance is manageable. Although PBC is best used with fixed-price contracting, it can also be used to a limited extent with cost-reimbursement and time and material/labor hours contracts.



2.6 Incentives in Performance-Based Contracting

Positive and/or negative performance incentives, based on QAP measurements, should be included. These incentives should provide descriptions of procedures that address how to manage performance that does not meet performance standards or exceeds performance

standards. Each incentive should be proportional to the indicated level of task importance. The relative failure or success of a task should be determined through comparison to the 'acceptable' performance defined in the PWS.

Incentives should be used when better quality performance will be yielded. These incentives can either be positive, negative, or a combination of both. Incentives are meant to be applied selectively to motivate contractor efforts that might not otherwise be emphasized and to discourage inefficiency. Focus should be applied to the most important aspects of the work, rather than every individual task. The definitions of standard performance, maximum performance and negative performance incentives, and the units of measurement should be established clearly in the solicitation. The incentive structure should not only provide a meaningful incentive to the contractor but also reflect the monetary and intrinsic value to the government of differing performance levels. Performance incentives should be challenging yet reasonably attainable.

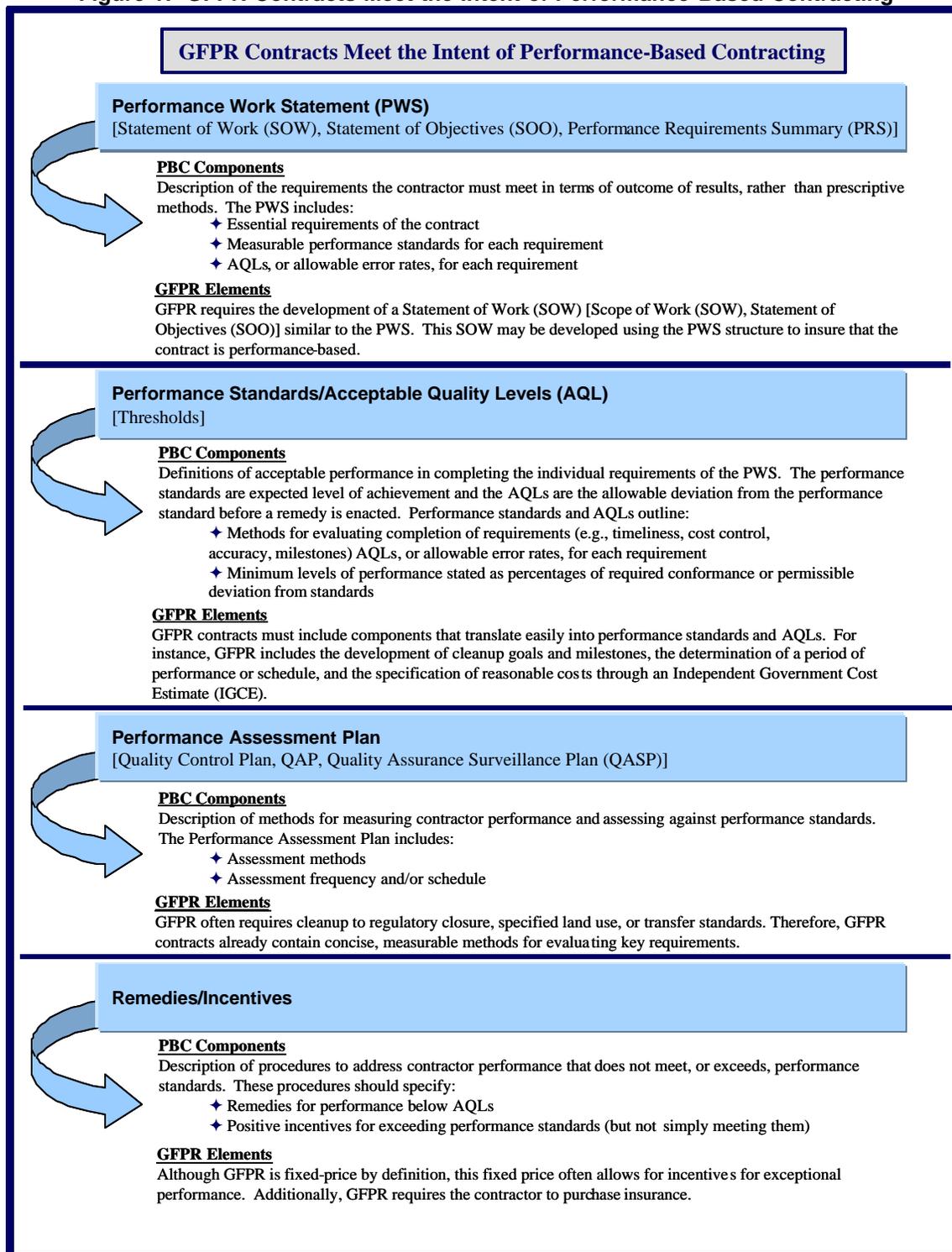
3.0 Guaranteed Fixed Price Remediation

3.1 Overview

The GFPR approach is a methodology that expedites the BRAC process and realizes a reduced closure timeframe and overall cost savings, while achieving protection from future environmental liabilities. The GFPR approach does not eliminate DoD's environmental liability entirely. Instead, it offers a significant financial buffer to the DoD and subsequent end users because third party endorsements are provided for known constituents and unknown contaminants. The work to be conducted may be in the nature of studies, removal action, remedial design, remedial action, long term monitoring establishment of institutional controls, and support in defending toxic tort liabilities; or a combination thereof. The GFPR contract names DoD as an additional insured and extends this protection to third parties.

As shown in Figure 1, although not prescribed, the GFPR methodology meets most, if not all, objectives and components set forth for PBC.

Figure 1: GFPR Contracts Meet the Intent of Performance-Based Contracting



3.2 The “Guarantee” in GFPR — Insurance

The component of GFPR that distinguishes it from other fixed-price contracting mechanisms is that the contractor is required to acquire insurance to cover overruns and unexpected conditions. As a rule of thumb, the Army BRAC Office requires contractors to obtain insurance to cover between 100% and 150% of the total cost of the contract depending on scope and complexity of the projects included.

The most common type of policy that protects against cost overruns above the estimated cost of remediation is Cleanup Cost Cap (CCC), also known as Remediation Loss (RL) policies. The cost overruns covered by these policies are generally due to one of three occurrences:

1. Regulatory or requirement changes;
2. The discovery of new contaminants, or more extensive contamination, not identified when the remediation plan was designed; or
3. Delays and difficulties in the execution of the original remediation plan.

CCC policies are usually purchased for sites with known contamination and an identified remediation plan. The carrier issuing the CCC policy indemnifies the insured for remediation costs above the estimated costs, plus an additional retention level, up to the policy cap. For example, a \$1 million cleanup may require a \$100,000 retention amount. In this example coverage under the policy begins after \$1.1 million (value of GFPR plus retention amount) has been spent on the covered remediation project. Policy premiums are based on a percentage of the guaranteed costs in combination with the limits, generally falling between 10% and 15%. These premiums are included as an element of the overall proposed cost to complete the scope of work. The Army BRAC program agrees to pay the contractor up front for the insurance premiums (as the first contract milestone) to reduce carrying costs the contractor would otherwise accrue and are ultimately passed along to the government as part of the contract cost.

As with any insurance coverage, there are both advantages and disadvantages:

Advantages to CCC	Disadvantages to CCC
<ul style="list-style-type: none"> • Specific coverage terms and exclusions are highly negotiable; most carriers are willing to tailor a policy to a specific site. • Policy limits are highly negotiable, typically between \$1 Million and \$10 Million, up to \$200 Million in some cases. • Policy terms are highly negotiable, typically between 1 to 10 years, up to 30 years in some cases. • Coverage may include costs associated with long-term monitoring. • Can be used as financial assurance mechanism for corrective action under RCRA. 	<ul style="list-style-type: none"> • Policy purchasers may need the assistance of underwriters, brokers, and/or lawyers to guide them in comprehending and selecting coverage suited to their specific projects. • Are generally not cost effective for small remediation projects (those costing less than \$250,000). • Carriers may require the development of a specific remediation plan and cost estimates prior to coverage. • Carriers may also require pre-approval of the remediation plan by regulatory agencies prior to coverage. • Coverage may exclude remediation of contaminants whose remedial costs could be covered by a federal/state program or other insurance policy: including asbestos, lead paint, radioactive matter, naturally occurring radioactive material (e.g., radon), pollution from underground storage tanks, and pollution on Superfund sites.

When evaluating the insurance policy purchased by the bidders, AFBCA needs to establish guidelines on the types of policies it will accept, and the level of insurance required. [Note, this section will include guidelines provided by BRACO – not yet available.]

3.3 Implementing GFPR Contracting – Lessons Learned

Once a decision has been made to use GFPR as a contracting mechanism, AFBCA will need to identify the bases where all remaining activities, or portions of the remaining activities, lend themselves to this type of contracting approach. Several key questions that will assist in this decision making process are highlighted in the GFPR Checklist to the right. The answer to any one of these questions should not be the critical decision point; rather, the sum of these questions (and others) should be taken into consideration when evaluating whether a GFPR contract would be an appropriate option for the base.

GFPR “Checklist”	
✓	Is there consensus on regulatory “closure”?
✓	What is the scope of work that remains?
✓	What key decisions remain?
✓	What is the impact of the remaining decisions?
✓	What additional data, if any, are necessary?
✓	What uncertainties exist?
✓	What are the impacts of these uncertainties?
✓	What is the uncertainty management strategy?
✓	What is your ramp down or exit strategy?
✓	Is there a clearly defined land use?
✓	Will you require OPS certification?

The process used to develop the statement of work and award the GFPR contracts will differ slightly depending on the complexity of the work remaining at the site. However, based on experience from several installations, there are commonalities. In order to improve the scoping and contracting process for future GFPR contracts, the Army BRACO compiled some of the key lessons learned from five GFPR contracting efforts conducted during 2001 and 2002. The lessons learned are organized into several categories that follow the GFPR process: Early Considerations and Base Selection, Scoping the Statement of Work (SOW), Developing the Independent Government Cost Estimate (IGCE), the Procurement Process, and Contract Negotiation and Award.

3.3.1 Early Considerations and Base Selection

As mentioned above, several factors need to be considered when determining whether a base, or portion of the base, will be a viable candidate for a GFPR contracting approach. One consideration is determining whether the base (or portion of the base) has been characterized sufficiently to allow development of the scope of work that can be bid on by a contractor on a fixed price basis. While uncertainties may still exist, the remaining uncertainties should not be significant enough to drive the costs of the contractor estimates to a prohibitive level. At several Army bases, the Army decided to conduct limited data collection activities prior to issuing the GFPR Request for Proposal (RFP) because the uncertainties were significant enough to cause a large swing (i.e., nearly double the estimates provided in the IGCE) in the anticipated estimates from contractors. Because contractors have to evaluate all options and often bid the worst-case scenario, it is important for the government entity to scope the projects carefully such that the contractors understand the likely outcome clearly as well as uncertainties.

Groundwater remediation tasks are inherently different than the more typical “dig and haul” or soil-based remediation tasks because of uncertainty frequently associated with groundwater characteristics or subsurface conditions. This differentiation does not preclude groundwater units from the GFPR approach, but they may be addressed differently, depending on the size and complexity of the plume.

While overall cost savings can be realized through a GFPR approach, cost should not be the primary driver behind making the base selection. At many bases, multiple contractors are working on different scopes, often losing the ability to achieve economies of scale or scope. Consolidating efforts at the base under a single contractor can achieve significant time and cost savings for the remediation effort as well as in terms of oversight responsibility.

The development of a GFPR SOW is easier for all parties when the BEC at the BRAC installation where GFPR tasks will be conducted is supportive of the GFPR contracting mechanism and is actively involved. In addition, while the regulators cannot dictate how the AFBCA chooses to contract for remediation activities, it is much easier to facilitate the process when the regulators are willing to participate in the development of the scope of work. Early on in the decision-making process, the AFBCA will need to lay the foundation for the GFPR approach with the Local Reuse Authority (LRA) and the regulators. While it should be seen merely as a contracting mechanism for the military component, the BRAC Cleanup Team (BCT) will often be somewhat apprehensive because they believe they will no longer be involved in decisions. For this reason, it is necessary to “package” the GFPR process carefully to the regulators and to the public. Focus needs to be on having a consistent contractor to complete all activities and a fixed schedule. It is necessary to determine the extent it will be beneficial to request comments and feedback from regulatory agencies on all the draft versions of the GFPR SOW. The innovative nature of many GFPR SOWs may cause hesitation and some misgivings amongst regulators. (However, if a Principles of Environmental Restoration (facilitated decision-making) Workshop has been used to develop the SOW, then, in general, the regulators will be participating from the initial drafts of the SOW and their input on the draft SOW will be taken into consideration.)

3.3.2 Developing the Scope of Work

One of the most critical points in a successful GFPR is developing a clear and concise SOW that the bidders will work with. The development of the SOW includes conducting a scoping meeting to aid the installation in developing and identifying strategies to address many of the hurdles precluding regulatory closure. For example, the Facilitated Decision-Making Workshop approach was implemented at several of the bases to encourage participation from the regulatory community and reuse authorities. Through technical facilitation, the BCT identifies: the appropriate activities to be included in the scope of work, significant uncertainties, likely remediation strategies, and the definition of regulatory closure. When appropriate, the facilitation team develops decision logic diagrams and paths forward to be included in the SOW for contractor consideration.

Uncertainty will drive costs. Therefore, during scope development, the team may want to evaluate options or activities that would narrow the range of significant uncertainties. For example, at Lompoc Disciplinary Barracks, Lompoc, California, the project team identified areas

of uncertainty that could be resolved at two of the three operable units prior to the procurement, thereby, reducing the scope of investigation work for the GFPR contractor. The work plan for investigations aimed at reducing uncertainty in the procurement should be a consensus product from the scoping workgroup.

When uncertainty spans too great a breadth of scope, the contractor cannot cover the cost liability. It is then necessary to make the decision as to the appropriate path forward. If the costs associated with pending alternative remedies are too disparate, yet strong arguments can be made that suggest they cannot be ruled out, then the project is either not an ideal GFPR candidate, or the path forward needs to be resolved during the scoping process. This issue was encountered at Ft. Sheridan, Illinois, where the Record of Decision (ROD) had not yet been signed for a landfill. There were strong arguments for two alternatives, capping or excavation, although all parties believed that capping would be the remedy ultimately selected. Because of the large cost differential between the two remedies, it was difficult for prospective bidders to prepare reasonable cost estimates. In this case, the Army had to re-bid the SOW, and in so doing made the decision to have bidders develop the estimate based on capping the landfill. The Army took the risk of the remedy requiring excavation, rather than having the risk borne by the contractors (which had substantially driven up the cost in the first bid).

The potential for turnover of project team members (especially regulators) during the implementation process emphasizes the need to document consensus on scope prior to the procurement process. At Lompoc Disciplinary Barracks, output from the SOW scoping meeting was used to justify withdrawal of scope additions made by a new state regulator upon her assuming responsibility for the site. If there had been a way to obtain more formal sign off on the output from the scoping decisions, then it may have been even easier to avoid scope creep.

During scope development, it is critical to identify and reach agreement on all of the outstanding issues. These issues include conducting a records/file search to make sure that all previously identified areas of concern have been addressed and that all final paperwork is in place for tank closures/pulls, and other activities completed in the past that were never officially "closed out." As sites draw nearer to closure, the BEC generally identifies several outstanding issues that are time consuming and difficult to achieve in a timely manner. All of these issues can be wrapped into a GFPR contract. At several Army bases, the final deliverable on the GFPR milestone schedule is a site-wide final ROD that references all closure documentation completed to date.

During the initial development stages of the SOW, it is critical to determine and agree upon the period of performance for the GFPR contract. In determining the period of performance, the following factors must be taken into consideration:

- ◆ AFBCA fiscal year limitations (e.g., length of time funds can sit unexecuted);
- ◆ Length of time needed by the contractor to realistically accomplish certain goals; and
- ◆ Key deadlines in the state or federal regulations guiding remediation efforts.

There will be limitations to the level of flexibility afforded a contractor in the milestone schedule. However, most bidders/contractors request that milestones be modified after award to best suit their proposed approach to the sites. Therefore, the SOW should clearly identify those

activities that qualify for payment milestones and any set schedule for accomplishing these tasks. The contractor can then provide a revised milestone schedule that incorporates these set dates and activities into their project management plan, one of the early deliverables required.

It is feasible that the entire base is not necessarily included in the scope of work. A portion of the base could be excluded for a variety of reasons. For example, an installation may have some components of the restoration work well underway (e.g., design and construction of landfill cap), but require groundwater restoration to be completed under the GFPR. There may be a strong desire from the LRA to gain access to specific parcels of the base on an accelerated schedule. In such cases, the scope of work for those parcels can be bundled in to a GFPR without affecting on-going work at the remainder of the base. In one case, the Army chose to implement GFPR for the on-site contamination at a base, and delay the off-site work until further characterization and regulator approval is achieved.

In general, the scope includes all activities necessary to achieve regulatory closure at the site, including conducting operation and maintenance (O&M) requirements through completion of the first successful five-year review. The scope includes conducting all work necessary to correct deficiencies identified in the five-year review. Activities required beyond the five-year review should not be included in the same scope of work as the remediation because of inherent conflicts between aggressive remediation and long-term monitoring. Once remediation activities are complete, a second contract can be let to conduct long-term monitoring (LTM) at the site. The scope in this case would have to be delineated in terms of both activities and assumed timeframe. It would not be prudent to attempt to award a fixed-price LTM contract without an endpoint (and it is likely most contractors would not bid the project unless they built in a considerable contingency). Incentives could be used to encourage contractors to optimize the systems and to negotiate ramp down and exit strategies for monitoring and treatment systems such that savings could be split between the government entity and the contractor.

Incentives have been used in GFPR contracts. The Army developed a scope of work for a large, off-site groundwater plume at Hingham, Massachusetts. The anticipated date for installation and achievement of regulatory closure was within seven years. However, the Army offered an incentive to the bidding contractors that they would receive a bonus if they could achieve regulatory closure sooner than anticipated. The bonus, which was included in the contract itself, was developed on a sliding scale and was subject to verification that the site had achieved closure, even after a period of confirmation monitoring.

3.3.3 Developing the Independent Government Cost Estimate (IGCE)

Once the SOW is agreed to, the AFBCA needs to develop the IGCE to provide a basis by which to evaluate the bids. The estimate may be initiated and based on the CTC that has been provided by the base. However, in most cases, the IGCE and CTC numbers will vary significantly. Once the IGCE is developed, a full explanation of differences between the CTC projections and the IGCE is needed. This explanation needs to be completed early in the process and is particularly important when the IGCE and the CTC numbers are significantly different. While both numbers may have a justifiable basis, assumptions and the path forward identified for the GFPR contract may be different than assumed in the CTC numbers and need to be provided to the BRAC Office to justify the request for additional funds. In addition, in the GFPR, the government provides for

the insurance premiums, which may be from 10% - 15% of the total remediation costs. This process is similar to the Business Case Analysis performed in the Environmental Services Cooperative Agreement (ESCA) process.

Some bidders/contractors may be using much higher contingencies than typically used under non-GFPR contracts or inflating their estimates to account for the uncertainty of tasks, and to minimize the chance of having to tap into insurance coverage funds. Therefore, IGCEs may need to be adjusted upwards to account for this fact (i.e., estimators should not be looking at the lowest possible costs for activities because bids will be working from higher cost tables to account for uncertainties). For example, the method used to develop the cost estimate described by one successful bidder was to develop cost estimates for a suite of scenarios and then to select the cost based on the 75% - 90% cost curve.

The ESCA Business Case Analysis

An ESCA may be used when a local government or other governmental entity, such as a LRA, assumes responsibility for completing the environmental cleanup and/or regulatory closure of surplus BRAC property. As a first step, a Business Case Analysis (BCA) must be undertaken to determine if it is in the best interest of the Air Force to proceed with an ESCA. This step affords the Air Force the opportunity to allocate resources in the most efficient manner based upon the circumstances of a particular case, prior to the commitment to undertake an ESCA.

The BCA should answer the question: What are the probable consequences, from a financial and business perspective, of the variety of possible actions? The BCA should consider the options available for completion of the environmental restoration necessary to obtain regulatory closure. The options include time and materials or fixed price contracting or pursuing a privatized fixed price environmental cleanup with environmental insurance.

When developing the IGCE, there is a need to split the cost estimating effort from development of the statement of work (i.e., the IGCE should not be developed by the same group/persons responsible for developing the scope of work). Splitting these two efforts ensures a truly independent IGCE and serves as a final QA/QC step in development of the SOW. If there are questions/inconsistencies or possible misinterpretation, then they are likely to be reflected in the cost estimate (i.e., costs are much higher/lower than expected). The cost estimate provides an opportunity to catch potential issues before the SOW is released for bid, and, thereby, reduce the number of questions/clarifications necessary during the procurement process.

3.3.4 The Procurement Process

Once both SOW and IGCE are developed, AFBCA will need to determine what vehicle they want to use to let the contract out. In previous years, Army Forces Command (FORSCOM) has used the Atlanta Contracting Center to access the contractors. However, due to challenges in getting contractors paid on time, FORSCOM is now using the GSA schedule directly through General Services Administration Contracting. GSA is managing the procurement process, and will manage the administrative aspects of the contract, once awarded.

Regardless of the contract vehicle, AFBCA should plan on conducting a thorough briefing with the prospective bidding contractors. FORSCOM typically pre-selects three to four Architectural and Engineering (A&E) firms to attend the briefing. For two recent awards, the bidding contractors have been invited to attend the scoping meetings. Attending the meetings provides them with in-depth knowledge of the site and issues and uncertainties associated with the SOW.

Once the RFP has been released, the AFBCA will need to determine how to effectively manage communication between all parties. During the procurement process, the need to level the playing field in terms of communication between site personnel, bidders, and regulators is required. While contractors are encouraged to find out as much as possible about the site during the bidding process, it is critical that the competition remain fair, and that all questions and answers be provided to all bidders. At Lompoc, inquiries were handled through a website in which all questions and responses were distributed to all bidders. At other sites, inquiries and responses were handled by establishing a single point of contact for questions and distributing answers via e-mail to all bidders. The communication process needs to be established up front, and clearly explained to all bidders, the BEC, and the regulators.

3.3.5 Contract Negotiation and Award

Prior to entering into negotiations with the bidders, the AFBCA will need to develop a negotiation strategy that will be followed during meetings and negotiation with the bidders. This strategy should include recognition of uncertainties in the statement of work in order to ensure that large differences in bids or discrepancies between the bids and the IGCE can be better accounted for. In addition to recognizing uncertainties, the AFBCA needs to identify a “walk away” point, at which time they choose not to award the contract. Prior to negotiation, AFBCA will need a clear understanding of the upper limit it is willing to pay to the GFPR contractor. If there is a great deal of pressure to get this site to regulatory closure and/or transferred, then there may be a willingness to pay a greater premium to the contractors. However, all parties involved in the negotiations need to be aware of these desires before negotiations start.

Monetary incentives should be used when it is beneficial to the AFBCA to achieve regulatory closure on a particular site in an expedited manner and possibly reduce out-year LTM and O&M costs. Expedited achievement of regulatory closure or even achievement of particular administrative goals may be appropriate for incentivized contracts when extensions have been granted by regulatory agencies or there are highly restrictive Federal Facility Agreements (FFA) in place. It should be noted that GFPR contractors will need to meet the requirements of any agreements (including FFAs and compliance agreements) that are already in place. These agreements generally should not present a concern if EPA and the State are invited to be involved in the development of the scope of work. Although GFPR contracts typically afford the contractors more flexibility in how they approach the work, it does not usurp existing requirements. However, contractors are encouraged to discuss alternatives with the regulators and to develop innovative approaches to achieve closure and transfer ahead of schedule.

Monetary incentives may not always elicit the response expected from the bidders/contractors. Factors that may affect whether a bidder/contractor will formulate a strategy to reach an incentivized goal, include the following:

- ◆ What is the overall corporate philosophy (e.g., how risk averse or aggressive is a particular bidder/contractor)?
- ◆ How does a bidder/contractor typically deal with regulatory agencies (e.g., are they conciliatory or capable of pushing their agenda)?

- ♦ Can a bidder/contractor realistically reach some of the incentivized goals during the period of performance of the SOW?

Army Forces Command Installations with GFPR Contracts

Base	Location	Status	Approximate Cost	Portion of Base	EPA Region
Rio Vista	CA	14 Jan 02 – regulatory closure (ahead of schedule)	\$2.7 – 2.9M	Installation wide	9
Camp Pendricktown	NJ	Jun 02 – regulatory closure	\$2.5 – 2.7M	Installation wide	2
Hingham Annex	MA	Nov 02 – regulatory closure	\$2M	Installation wide	1
Lompoc Disciplinary Barracks	CA	Sept 01 – started	\$3.5M	Installation wide	9
Fort Devens*	MA	Sept 01 – started	\$8M (with \$1M in potential incentives)	AOC 50 only	1
Fort Sheridan	IL	Sept 01 – started	\$17M	Installation wide	5
Fort Pickett	VA	Aug 02 – award	~2M	Former scrap yard only	3
Fort Devens*	MA	Nov 02 – award	TBD	Shepley’s Hill Ground Water only	1

4.0 Conclusion

In an era of diminishing annual budgets and a looming possibility of additional BRAC rounds, it is important for the AFBCA to identify efficient and cost-effective contracting methods that will help facilitate cleanup and expedite the transfer of bases. Recent government emphasis on cost-saving contract options has opened the door for innovative contracting methods. This paper focused on those contract mechanisms that judge performance against outcomes rather than efforts. Performance-based contracting and guaranteed fixed price remediation, in particular, provide a viable option for expediting cleanup, regulatory closure, and base transfer at minimal cost or risk of overrun to the AFBCA. PBC and GFPR allow the AFBCA to maintain cost oversight over cleanup projects and to determine upfront that the desired outcome (typically regulatory closure) will be achieved.

Understanding the contracting options currently available and their compatibility with base conditions will allow the AFBCA to make informed decisions. These decisions will ultimately assist in achieving the Agency’s goals of completing cleanup and expediting base transfer. As illustrated by the lessons learned in this paper, the AFBCA can use the experiences of the Army to identify bases that lend themselves to GFPR and to help ensure the development of targeted SOWs, accurate cost estimates, and negotiation strategies. Additionally, review of the Army’s experiences may aid the AFBCA in identifying the appropriate contracting vehicle, which is one of the drivers in the acceleration of base cleanup and transfer schedules.

Resources

Performanced-Based Contracting

Air Force Center for Environmental Excellence. May 11, 2001. *Environmental Restoration website*. <http://www.afcee.brooks.af.mil/er>

Air Force Center for Environmental Excellence. May 11, 2001. *Performance-Based Cleanup Contracting*. <http://www.afcee.brooks.af.mil/er/pbc/default.asp>

Air Force Center for Environmental Excellence *Performance-Based Cleanup Contracting (PBC2) for Base Realignment and Closure Resource Guide*. May 11, 2001. www.afcee.brooks.af.mil/er/pbc/ResourceGuide.asp

Department of Defense. December 2000. *Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense*. <http://www.acq.osd.mil/ar/doc/pbsaguide010201.pdf>

Office of Management and Budget. Office of Federal Procurement Policy. August 8, 1997. *Memorandum for Agency Senior Procurement Executives, The Deputy under Secretary of Defense (Acquisition Reform), Performance-Based Service Contracting (PBSC) Points of Contacts. PBSC Checklist*. www.arnet.gov/Library/OFPP/PolicyDocs/pbsckcls.html

Office of Management and Budget. Office of Federal Procurement Policy. March 9, 2001. *Memorandum for the Heads and Acting Heads of Departments and Agencies. Performance Goals and Mgmt. Initiatives for the FY2002 Budget*. Sean O'Keefe, Deputy Director. www.whitehouse.gov/omb/memoranda/m01-15.pdf

Office of Management and Budget. Office of Federal Procurement Policy. October 1998. *A Guide To Best Practices for Performance Based Service Contracting*, Final Edition. www.arnet.gov/Library/OFPP/BestPractices/PPBSC/BestPPBSC.html

Office of Management and Budget. February 14, 2001. *Memorandum for the Heads and Acting Heads of Departments and Agencies. Performance Goals and Mgmt. Initiatives for the FY2002 Budget*. Mitchell E. Daniels, Director. www.whitehouse.gov/omb/memoranda/m01-11.html

Office of Management and Budget. *Performance-Based Contracting Discussion Paper*. www.pscouncil.org/stand/perfbasedcontract.htm

U.S. Air Force. April 1, 1999. *Air Force Instruction 63-124 Performance-Based Service Contracts*. <http://web.deskbook.osd.mil/reflib/MAF/002FR/002FRDOC.HTM>

GFPR

Environmental Protection Agency. Performance Incentives. Archived Documents.

Kovalik, James. P and Pixie A. B. Newman. *The Role of Guaranteed Fixed Price Remediation Contracting in Brownfield Redevelopment*. CH2M Hill.
<http://www.brownfields2001.org/proceedings/POS-14.pdf>

U.S. Department of Energy. *Department of Energy e-Center Business Opportunities with Energy*. www.pr.doe.gov

Environmental Insurance

Amos, Bruce A. and Edwin K. Chan. Fall 1996. *The Application of Environmental Insurance in Transfers of DoD Property*.

Arcadis. <http://www.arcadis-us.com>

NAID and ECS. 2001. *Environmental Insurance and BRAC Communities: Building a Successful Partnership*.

Nathanson, Esq., Gregg A. April 1999. *Environmental Contamination and Pollution Insurance*.
www.couzens.com/pubs/insurance.shtml

U.S. Department of Energy. Office of Environmental Management. September 1998. *Program/Project Manager's Privatization Guide* (Draft). www.em.doe.gov/private/projmangu.html

XL Capital. <http://www.xlcapital.com/xlc/xls.jsp>

Cost Estimating

AIG Environmental. August 2000. *Clean-Up Cost Cap Program . Clean-Up Cost Cap Insurance Policy*.
<http://home.aigonline.com/AIGEnvironmental/CDA/Content/Files/pdf/SP20028.pdf>

Defense Information Systems Agency. *DISA Acquisition Deskbook. Independent Government Cost Estimates*. <http://disa.dtic.mil/D4/igce98.html>

Department of Defense. DSS-OC Corporate Contracting. July 25, 2000. *Guidance for Developing an Independent Government Cost Estimate (IGCE) for TIPSS-2 Contractor Support*.
<http://www.dla.mil/dss/dss-oc/download/Guidance%20for%20IGCE%20.pdf>

Greenwich Insurance Company. July 1999. *Pollution and Remediation Legal Liability Policy*.
<http://204.178.120.25/Forms/pdf/gic-parl3cp.pdf>