

*Sigh.*



Reading this [recent DOD IG](#) report is like listening to a doctor diagnose a patient's illness by listing the symptoms. The doctor tells the patient nothing new, fails to identify the illness that is the root cause of the symptoms, and then charges the patient \$800 for the appointment. And to make it worse, the patient was *already* aware of the symptoms—because they are why s/he went to the doctor's office in the first place.

We're talking about the DOD IG report that evaluated the ability of DCMA Contracting Offices to negotiate and administer Performance-Based Payments (PBPs). DOD IG reported—

Contracting personnel did not properly evaluate and negotiate schedules. Specifically, they did not:

- Establish appropriate events for 1,807 events out of 2,356 total events on 57 approved performance-based payment schedules, and determine whether the event value fairly represented contract performance for 44 schedules;
  - Clearly define the criteria for successful completion in 33 schedules, identify events as severable or cumulative in 23 schedules, and specify completion dates in 21 schedules;
- or
- Properly negotiate and verify the contractors' need for contract financing or level of investment before authorizing performance-based payments in all 60 sample contracts.

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Written by Nick Sanders  
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Based on those findings, the DOD IG provided the following incisive root cause analysis—

This occurred because DoD contracting personnel did not perform adequate reviews of schedules provided by contractors and did not use expenditure data or other independent data to value events. In addition, DoD guidance did not require contracting personnel to take any performance-based payment contract financing training and DoD guidance was inadequate and inaccurate.

Yes. It was a failure of guidance that led to the systemic failures to properly administer PBPs. Thank you, DOD IG, for the value-added diagnosis. Here's your \$800.

This is not the first time DOD IG has expressed concerns with the Pentagon's administration of PBPs. In 2003—a *full decade ago*—audit report number [D-2003-106](#) found that DOD was not adequately administering contracts that used PBPs, and asserted that billions of dollars' worth of contracts "had poorly defined event schedules ... lacked performance criteria, or did not document event dependence."

Partly in response to that 2003 IG report (as well as in response to an earlier IG report on the same topic), the Defense Procurement and Acquisition Policy (DPAP) Directorate convened a PBP Working Group to improve PBP administration. The PBP Working Group's final report, issued March 8, 2005, can be found [here](#). In that report, DPAP committed to revise FAR language to eliminate confusion, revise the DOD User's Guide to Performance-Based Payments, and to revise training to address concerns and confusion about administration of PBPs.

A decade later, in its response to the 2013 DOD IG audit findings, the Director of Defense Pricing committed to take the following actions:

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Update/revise existing policy guidance

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Enhance     required training

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Revise     and issue the (draft) 2012 Performance-Based Payments Guide

So let's recap the bidding.

DOD has been using PBPs for contractor financing since 2000. DOD IG has been criticizing DOD's administration of PBPs for just about that same length of time. While some of the details have changed, in a larger sense none of the 2013 criticisms are new; they are essentially the same criticisms asserted in 2001 and 2003. Pentagon policy-makers continue to largely concur with the IG's audit findings, and continue to commit to enhanced/revised policy guidance and enhanced/revised detailed user's guidance, and to enhanced/revised training for DCMA personnel involved in the administration of PBPs. Not too much has changed over the past decade.

So let us offer this prediction.

Sometime in the next decade, the DOD IG will conduct an "audit" of DOD's administration of PBPs on its fixed-priced contracts. That audit will find many failures. It will recommend enhanced policy guidance. It will recommend more detailed direction. It will recommend enhanced training. And the Pentagon policy-makers will concur, and agree to implement the recommendations.

And that cycle will continue. *Forever.*

The patient will continue to visit the doctor, because something's not quite right. And the doctor will repeat the symptoms back to the patient. And the patient will go home with no more knowledge than before—and perhaps poorer by \$800 for the experience.

Let us end the cycle now. Let us diagnose the problem for Pentagon policy-makers.

1.

Using PBPs requires a trade-off. PBPs require an upfront investment of time and effort in order to identify meaningful events that reasonably correlate to a contractor's expenditure of funds. It requires time and effort to negotiate them and to come to an agreement. In return, "non value-added" administrative efforts are reduced during contract performance. PBPs should not be audited, and event confirmations should be a breeze. It's a trade, but one that many Contracting Officers cannot make, because they have neither time nor schedule to invest in such pre-award negotiations. If DCMA cannot address the CO workload and pressures to put contractors on contract, then it cannot fix this problem--no matter how much the guidance is improved and how many training classes COs attend.

2.

Using PBPs requires education and know-how. It's a relatively new area (even though it's nearly 15 years old at this point.) Unfortunately, training has been perfunctory and had not addressed the real needs of the users—including Contracting Officers and CO Representatives. There aren't a lot of gray-haired mentors around to help out young COs. If you can't create DCMA PBP SMEs, you cannot fix this problem--no matter how much the guidance is improved and how many training classes the COs attend.

Based on (1) and (2), above, there will be a high percentage of compliance failures. If you want to reduce the amount of failures, you've got to give the COs time (and schedule) to make the initial upfront investment. You've got to give them "how-to" guidance and tools—not just some pretty platitudes about "PBPs are DOD's preferred financing solution". You've got to give them detailed guidance and step-by-step instructions. And you've got to create a small cadre of experts who can answer questions.

Until you do all those things, you are never, ever, going to break this endless cycle of IG audit findings and empty promises to fix things.

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