



Initiative for
Collaborative Government

Partnering for Mission Results



Recovery Act Acquisition

Buy fast, transparently, and well
using the 2½-day method

A conversation with Dr. Allan Burman,
former administrator, Office of Federal
Procurement Policy under Presidents
Ronald Reagan, George H.W. Bush,
and Bill Clinton, and adjunct professor
at George Mason University's School
of Public and International Affairs.

About the CGI Initiative for Collaborative Government

The CGI Initiative for Collaborative Government is a joint public-policy project of CGI in partnership with leading academic institutions. Launched in January 2008, the initiative's mission is to analyze models of government's collaboration with the private and nonprofit sectors in order to identify best practices in using collaboration to achieve mission results.

Government today partners with the private and nonprofit sectors to accomplish a broad range of mission-related and administrative functions. The question is not whether collaboration will occur, but rather how agencies will collaborate most effectively while retaining strategic alignment, control, and accountability. The CGI Initiative for Collaborative Government is focused on helping government answer this challenge. A full listing of the CGI Initiative's 2009 research and events agenda, access to published 2008 reports, and executive summaries of seminar discussions are available at www.collaborativegov.org.

About George Mason University

Named the "No. 1 national university to watch" by U.S. News & World Report, George Mason University is an innovative, entrepreneurial institution with global distinction in a range of academic fields. Located in the heart of Northern Virginia's technology corridor near Washington, D.C., Mason prepares its students to succeed in the workforce and meet the needs of the region and the world. With strong undergraduate and graduate degree programs in engineering and information technology, dance, organizational psychology, and health care, Mason students are routinely recognized with national and international scholarships. Mason professors conduct groundbreaking research in areas such as cancer, climate change, information technology, and the biosciences, and Mason's Center for the Arts brings world-renown artists, musicians, and actors to its stage.

Mason's Masters in Public Administration program in the Department of Public and International Affairs is designed for people who hold or aspire to hold leadership positions in organizations that participate in the development and implementation of public policy. The program aims to give graduate students the opportunity to build their knowledge of politics, policy, and management and to enhance their analytic, problem solving, and communication skills.

Foreword

These are hugely challenging times for the federal executives who must collaborate to ensure fast, appropriate, and effective spending on projects under the American Recovery and Reinvestment Act (ARRA).

Fortunately, long experience and recent innovation and reform have created practical models executives can apply to speed Recovery Act acquisition while also maximizing the results agencies get for their money.

Performance-based contracting techniques, FAR Part 15 due diligence, and pre-negotiated contracts offered by the General Services Administration and other federal agencies are all powerful tools for ARRA procurement.

Dr. Allan Burman, former Office of Federal Procurement Policy chief for three presidents and a recognized leader in acquisition policy-making and analysis, has been advising federal agencies and Congress on Recovery Act purchasing.

The CGI Initiative for Collaborative Government recently sat down with Dr. Burman, an adjunct professor at George Mason University, to get his take on effective acquisition approaches in the Recovery Act environment. His advice, captured in this paper, “Recovery Act Acquisition: Buy fast, transparently, and well using the 2 ½ day method,” focuses on four essentials:

- Use performance-based contracting expertise and lessons learned to quickly award compliant contracts to companies with proven records of success
- Conduct due diligence sessions to take early advantage of the insights and innovative ideas offered by industry, and directly align what agencies buy with achieving their target mission outcomes
- Get money into the economy quickly by paying contractors for components of a project as milestones are completed
- Be aware of and address risks — use existing multiple-award contracts, involve inspectors general up front in the acquisition process, monitor guidance from the Office of Management and Budget, close any gaps in agency contracting capacity, and educate new political appointees about federal contracting rules.

We are grateful to Dr. Burman for offering his guidance at this critical juncture. We hope federal executives find the ideas in this paper helpful in achieving a healthy balance of accelerating stimulus spending, maintaining maximum accountability, and reaching mission objectives.



Andrew McLauchlin
Director, CGI Initiative for Collaborative Government

Under the American Recovery and Reinvestment Act,

federal agencies are speeding funds to states, nonprofits, companies, and other recipients via grants, loans, and contracts to kick-start the economy and create jobs. Never before has the nation sought to push so much money out through agencies so quickly with such intense scrutiny and public transparency.

The goals of the law — to immediately stimulate job creation and retention and economic development — are pressuring agencies to take performance-based contracting to a whole new level. Office of Management and Budget guidance mandates that agencies:

- Define contract requirements that deliver meaningful and measurable outcomes consistent with agency plans and the goals of the Recovery Act
- Obtain maximum practicable competition, and clearly report contracts where competition was not used
- Apply a sufficient and adequately trained workforce to responsibly plan, evaluate, award, and monitor contracts
- Ensure an adequate number of qualified government personnel are available to perform inherently governmental functions
- Provide appropriate agency oversight at critical decision points.

In addition, agencies are to use fixed-price contracts as much as possible to carry out these efforts.

There are ways to tackle the Recovery Act contracting challenge, says Dr. Allan Burman, adjunct professor at George Mason University. He believes agencies can rapidly shape performance-based contracts that establish strong, accountable projects aligned directly with Recovery Act goals.

The CGI Initiative for Collaborative Government talked with Dr. Burman to get his perspective on ARRA contracting, and his suggestions for approaches that will maximize agencies' achievement of Recovery Act objectives.

CGI Initiative for Collaborative Government:

You believe that federal agencies can meet the challenge of fast and effective Recovery Act procurement by using a method you've successfully applied to performance-based contracting. Could you explain?

Dr. Allan Burman:

In many respects, the Recovery Act challenge raises classic performance-based contracting issues in terms of defining outcomes, shaping meaningful metrics, being able to measure whether you're getting the results, and fostering collaboration between contracting and program staff.

The way I have seen agencies successfully wrestle these issues to a positive result — and fast — is to get experts who have helped create solid performance-based contracts many times over together in a room with the program people and the contracting people. You have a brief burst of just-in-time training and teamwork focused on the problem.

If you can get the right people together for 2½ days, you can do a little bit of training so that they understand how things work; then, with that base, you can get a solid procurement out the door, completely compliant with the Federal Acquisition Regulation, very fast.

CGI Initiative:

How do you recommend that agencies implement the 2½-day method?

Burman:

A key step is to create a “tiger team” of what I call “contracting officer performance representatives,” as opposed to the traditional contracting officer technical representatives. These performance representatives are teams of people who have performance-based contracting expertise and can carry it program-to-program, contract-to-contract agencywide.

The Coast Guard has examples of tiger teams that would go out to other parts of the Coast Guard and bring that expertise. That way, everyone on the program or contracting team doesn't need to know how to shape a performance-based contract quickly; instead, people with special expertise in this kind of contracting help lead the team in getting it done well.

CGI Initiative:

What else happens during the 2½ days?

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Burman:

You start off in the morning, making sure you have the right members of the agency team, which means contracting and program people — subject matter experts. Then you spend some time making sure they understand the concepts.

You give them an opportunity to spend time working through a performance-based project that does not necessarily relate to what the team knows or does. The exercise is to get them working together and getting the jargon down.

If you spend two or three hours in the morning doing that, then in effect everybody starts at the same level of knowledge and with an ability to take the project they're working on and go through that same process. It raises their comfort level and confidence in working as peers.

You then use that team to consider the business outcome, the tasks that the contractor is going to perform, the performance measures, whether there is some tolerance on those measures that they could apply, how the government is going to monitor whether it's getting the results, and whether there are incentives to make things happen quickly and effectively.

By the end of 2½ days, you essentially have a filled-in accountability matrix for what the agency is looking for, what you're going to get, and you've got everybody signed off on it.

It's a technique that focuses on all the right things. It focuses on outcomes; it focuses on measurement; it ensures competition; it aligns the agency's vision with what is doable by the market; it focuses on how the government is going to see whether it's getting good results.

You certainly could use job creation as a performance measure. You could certainly focus on transparency and data collection and documentation, so the contractor has to figure out how everyone can get the type of information they're looking for about contract performance.

It's a very quick and effective way to make something happen.

CGI Initiative:

At what point up front in the process is it best to have communication with potential contractors?

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Burman:

As early as possible so that the government can have a good idea of the marketplace and of who is out there that can do the work. In contracting parlance, this is called “doing market research.”

CGI Initiative:

Why should agencies communicate with potential contractors up front? And what should they discuss?

Burman:

The more the government can hone its requirements and clarify the business results it is looking for, the more potential bidders will be able to tighten and focus their proposals. That kind of clarity brings better results for both government and industry.

CGI Initiative:

How can agencies strike the right balance between maintaining a level, competitive playing field and getting the information they need from industry? What methods have you seen that work well?

Burman:

Agencies can conduct due diligence sessions with individual firms to ensure clarity and illuminate special considerations affecting a bid (See: “The FAR Encourages Exchanges With Industry,” page 5).

Getting procurement requirements right takes lots of good communication, not just internally but also with the private sector, so you can make sure you know what you’re looking for. One approach is for agencies to invite contractors to come in before they submit proposals to have due diligence discussions to gain clarity about requirements. This kind of communication helps level the playing field for potential bidders, particularly if an incumbent contractor has performed the work for many years. Of course, agencies need to be careful not to provide procurement-sensitive information or give any one bidder an unfair competitive advantage.

Another technique is the draft request for proposal. Using a draft RFP, the agency makes a good-faith effort to identify its needs and alerts potential bidders to what it is seeking. Using contractors’ suggestions, the agency then can make improvements and put out a stronger final RFP. The more information available at the beginning of the process, the better the outcome of the procurement.

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It's also very hard to plug in oversight after the fact, so you're much better off if you can get things done right up front. I recommend that agencies recognize that the inspector general has an important role in Recovery Act procurement, and try to bring in the IG staff early and keep communications open with them.

The more you can allow this kind of conversation to take place, the more likely you are to get good results. It may take slightly longer at the front end to get it right, but if you don't, and you have uncertainties about requirements, then you've got the potential for a lot more problems later on.

Agencies also should look at past performance as an even greater indicator of the ability to do the job. It becomes an even more important evaluation criterion than usual. When you're moving fast, you want to be able to feel comfortable that whoever you're signing up has been there, done it, and done it successfully.

The FAR Encourages Exchanges With Industry

The Federal Acquisition Regulation outlines steps agencies should take to exchange information with industry. Its message is: the earlier, the better. Here's how Subpart 15.201 puts it:

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements. Interested parties include potential offerors, end users, government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the government's requirements, and enhancing the government's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns over strategy, including:

- Proposed contract type, terms and conditions, and acquisition planning schedules
- The feasibility of the requirement, including performance requirements, statements of work, and data requirements
- The suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information
- The availability of reference documents; and any other industry concerns or questions.

CGI Initiative:

What are the key elements of successful fixed-price contracting, which is the Obama administration's preferred approach for Recovery Act procurement?

Burman:

Fixed-price contracting is the favored contracting approach because the agency tells the contractor the outcome it's looking for, and the contractor is totally responsible and accountable for making that happen. So the performance risk rests with the contractor.

But if the contractor does not have a clear understanding of what the agency is looking for, or if the agency is not sure itself, how can a contractor sign up to produce the outcome? It is vitally important that objectives and outcomes are clearly understood by all parties. Where these are well known and well understood, the contractor is much more likely to produce the result the government wants. This kind of clarity helps companies understand and accept the risks of bidding on and successfully accomplishing the work.

When you're talking about very elaborate projects that have lots of variables and there's lots of uncertainty, the contractor needs to understand whether the risk is manageable.

CGI Initiative:

Are there other risks created by high-speed spending under the Recovery Act?

Burman:

There is another problem created by the circumstances in which the law was enacted. This is a new administration with a relatively limited number of senior political employees in place, all of whom are going to be seeing the Recovery Act as their challenge to get a job done well. The political impetus also is going to be to get it done fast.

It takes a while for people from the private sector to recognize that contracting in the federal environment has different considerations, including socioeconomic concerns and special provisions for small businesses and for making sure everyone has a chance to participate. There's a whole series of ground rules that apply here that someone coming from the private sector might not ordinarily think about. Agencies need to give those insights to people taking political jobs.

My recommendation is to have senior career staff who are knowledgeable about the procurement process help educate new political appointees about these concerns and constraints. Have them explain the need to heed contracting

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officers' advice and to be sensitive to the issues that can arise from taking shortcuts.

CGI Initiative:

Considering the political impetus to get stimulus money out into the economy, is there anything agencies can do as part of Recovery Act contracts to accelerate payment to contractors?

Burman:

Agencies should consider milestone billing, where they pay contractors for various elements of a project as they are completed rather than waiting to pay at the end. Using this performance-based contracting method allows companies with fixed-price contracts to be paid as they provide the agreed-upon deliverables, thereby getting money into the economy more quickly.

CGI Initiative:

Are there ways agencies can speed up other aspects of Recovery Act procurements to create time for up-front conversations, greater collaboration internally and with industry, and careful evaluation of contractors' past performance?

Burman:

Instead of trying to create stimulus contracts from whole cloth, agencies should try to find projects that already have been approved, that already have gone through the prioritization list.

They should consider using existing contracting vehicles such as the General Services Administration schedules or governmentwide acquisition contracts (GWACS), such as the new Alliant contract, or agencywide acquisition contracts, where potential bidders already have been vetted through a rigorous process. They've already got a contract with the federal government, so by using those multiple-award contracts, agencies apply competition in a way that meets the requirements put out by the Office of Management and Budget.

In many ways, the stimulus resembles the large and fast contracting that followed Hurricane Katrina. To prevent the kind of problems that accompanied that spending, emergency management agencies are crafting contingency contracts — lists of pre-qualified bidders for specific requirements — so they don't have to wait for a crisis to hit before putting in place contracts for disaster relief. Agencies

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can look at GWACs and the GSA schedules as contingency contracts for economic relief.

CGI Initiative:

What other advice do you have regarding contracting under the Recovery Act?

Burman:

- Don't take shortcuts. Become very familiar with the OMB guidance and follow it.
- The OMB guidance is a moving target — OMB is continually reassessing and refining it. Assign a senior-level official to regularly review OMB guidance issuances and to keep the agency apprised and up to speed.
- Make sure the agency has a solid ability to monitor, review, and assess contractor performance. Use existing management assessment reports from the inspector general, Government Accountability Office, and elsewhere to identify gaps in the agency's abilities and address them.
- From the beginning, include end users, program officials, and contracting professionals in ARRA contract discussions to help identify the business outcomes and social benefits those contracts are intended to achieve.
- Finally, as you gain more experience in the effort, continually refine and improve processes and stay in touch with other agencies to take advantage of their good practices.

About the Author



Dr. Allan Burman is former administrator of the Office of Federal Procurement Policy under Presidents Ronald Reagan, George H.W. Bush, and Bill Clinton. He is an adjunct professor at George Mason University's School of Public and International Affairs, and president of Jefferson Solutions, the government division of the Jefferson Consulting Group. Under his leadership, Jefferson Solutions provides change management services to

federal departments and agencies. He graduated summa cum laude Phi Beta Kappa from Wesleyan University, Middletown, Conn.; was a Fulbright Scholar at the Institute of Political Studies, University of Bordeaux, Bordeaux, France; and has a master's degree from Harvard University and a Ph.D. from the George Washington University. In 2009, Burman was selected as one of the "Federal 100," the top executives from government, industry, and academia with the greatest impact on the government's information technology community.

Also Coming in 2009 from the CGI Initiative

Partnered Government: The Whole Is Greater than the Sum of the Parts

*University of Maryland, Center for Public Policy and Private Enterprise
Dr. Jacques Gansler, Professor and Roger C. Lipitz Chair in Public Policy and Private Enterprise, Director, Center for Public Policy and Private Enterprise*

Aligning federal agencies, the private sector, and academia to achieve high-performance results for large federal programs is daunting. This research focuses on the Defense Department in examining alternatives to partnered government for managing large and sophisticated programs.

Grants and the Recovery Act: Classic Challenges, New Dilemmas, Best Practices

*George Mason University, Department of Public and International Affairs
Dr. Timothy J. Conlan, Professor, Government and Politics*

More than one-third of the 2009 economic stimulus is grants to state and local governments. Effectively distributing, spending, and administering federal grants present unique challenges. These challenges also are present in the Recovery Act. This paper will identify options and best practices for grants management under the stimulus program.

Beyond the Recovery Act: How to Sustain Jobs Once the Stimulus Ends

*George Mason University, Department of Public and International Affairs
Dr. Darrene Hackler, Associate Professor, Department of Public and International Affairs*

A long-term strategy for local economic development and job creation differs from the current “shovel-ready” focus of the ARRA. This report will reflect on what needs to happen beyond recovery to ensure long-term, sustainable productivity and economic impacts.

A New Playbook for the 21st-Century Senior Government Executive

*George Mason University, Department of Public and International Affairs
Alethea Long-Green, Adjunct Professor, Department of Public and International Affairs*

This research will analyze the challenges Senior Executive Service (SES) members face as they manage large, complex programs, as well as the new management skills they need to successfully deliver solutions that serve multiple and diverse stakeholders.



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