Practical Guidance: CCWIS Contracting & Procurement, Part II

AUGUST 25, 2021

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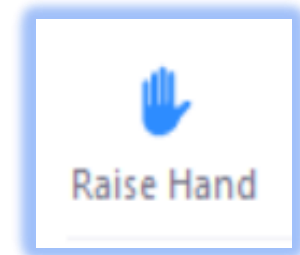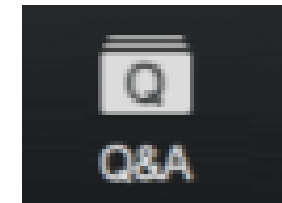
After today's webinar, email questions to CCWIS.Questions@acf.hhs.gov.

Webinar Presenters

Presenters:

- Nicole Harter-Shafer, Federal Analyst, DSS
- Spencer Wilder III, Federal Analyst, DSS
- Kim Bennett, Contract Manager/Procurement Documents Reviewer, Federal Contract Support

Moderator:

- Philip Breitenbucher, Federal Contract Support

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Agenda

Practical Guidance:
CCWIS Contracting & Procurement, Part II

1.0   Welcome and follow up from Part I (July 2021)

2.0   Strategies for traditional, performance-based, and agile acquisition

3.0   Deliverables and the definition of done

4.0   Customization or configuration

5.0   Acquisition "…as a service"

6.0   Contract language: How to negotiate warranties, intellectual
        property rights, terms to manage risk and change

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Polling Question #1

Did you attend the July 28th Webinar –

Practical Guidance: CCWIS Contracting and Procurement (select one)?

- ❑ Yes
- ❑ No
- ❑ I don't know where I was last month

Polling Question #2

What is the primary role that you play in relation to CCWIS contracting and procurement at your agency (select one)?

- ❑ Information Technology
- ❑ Program
- ❑ Contracting/Procurement
- ❑ Fiscal/Budget
- ❑ Other

1.0 Welcome

Nicole Harter-Shafer

**A clear scope of work, clear pricing, and a clear order of precedence
work together to support mutual understanding and dispute-free operations.
Ensuring this clarity is the most important thing you can do to manage risk
and to support efficient and economical project outcomes.**

2.0 Acquisition Approach

Using traditional, agile, and performance-based procurement

to achieve the intended results

2.1 Comparison

	Traditional	Performance-Based	Agile
Basis	**Procurement of defined deliverables** and requirements.	**Procurement of a specified outcome** with performance assessment. Structured around purpose of work as opposed to how it is to be performed; objective assessment of performance.	**Procurement of deployable software** in continuously improving iterations.
Purpose	**Government defines requirements.** Payment for completion.	**Contractor freedom** to determine how to meet government performance objectives. Payment based on performance quality levels. *Government oversight. Disputes resolved informally.*	**Cooperative.** *Gov role is integral.*
Contract Type	**Fixed price / Cost reimbursable / T&M**	**The contract/task order is fixed price.** Competitive Selection. Best value evaluation/selection methods are used to award contract/task order.	**Fixed price/ Cost reimbursable/T&M**
Terminology	**Statement of Work (SOW)**	**Performance Work Statement (PWS)** describes work with alignment to measurable performance standards.	**Statement of Objectives** Sprints, User Stories.

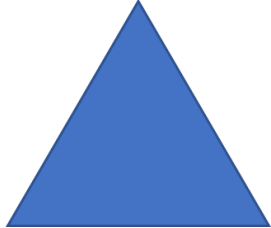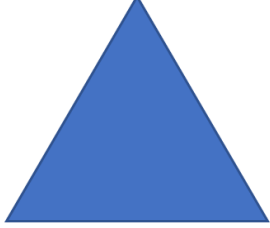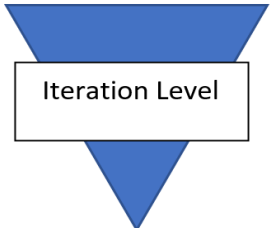Children's Bureau

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2.2 Comparison

	Traditional	Performance-Based	Agile
Terminology	**Statement of Work (SOW)**	**Performance Work Statement (PWS)** describes work with alignment to measurable performance standards.	**Statement of Objectives** Sprints, User Stories.
Requirements	**Directed Process**	**Outcomes.** Process-oriented (e.g., job descriptions, level-of-effort). Minimal reports. Industry perf. standards.	**Flexible to support innovation and CPI.**
Metrics	**As stipulated for deliverables**	**A Quality Assurance Plan (QAP)** aligns to measurable performance standards.	**As stipulated for deliverables.** Sprint: time to working software.
Incentives	**Cost plus incentive fee**	**Standard, positive and/or negative incentives** based on QAP measurements.	Standard, positive or negative based on metrics.
Alignment	Deliverables to payment	**PWS, QAP, and financial incentives.**	Objectives to deliverables to payment.
Deliverables	Specified tangible or intangible goods and services.	Required outcomes, based on standard performance, positive and negative performance incentives, and units of measurement established in the RFP.	Working software on a progressively improving cycle.

2.3 Deliverables & Outcomes

	Traditional	Performance-Based	Agile
What are You Buying?	**Delivered** in accordance with the stated requirements.	**Delivery of the Required Performance and Outcomes:** compensation based on standard performance, performance incentives and disincentives.	**Rapid Delivery of Working Software** that meets all contractual requirements.
Developing the Requirements	Identify the deliverables required (goods and services), and the technical, functional and business requirements associated with each.	• Identify desired performance outcome(s); minimum requisite parameters; technical, functional and business requirements. Estimate workload with historic workload analysis. Draft the Performance Work Statement. • Develop the Quality Assurance Plan, aligning performance standards and incentives. • Provide stakeholders with the opportunity to provide input on draft requirements, standards, the QA plan, and incentives. • Provide information to potential offerors about current state of operation to facilitate efficient, effective and innovative proposals.	• Requirements are expected to change through iterations, as a result of intentional collaboration for continuous improvement and innovation. Agile contracting affords potential for rapid response to change. • It remains necessary to contractually identify the technical, functional and business requirements that will support the intended outcome and objectives. • Requirements may include processes, but processes are not the intended outcome.
	Objectives **Resources Time**	**Objectives** **Resources Time**	**Resources Time** Iteration Level **Objectives**

2.4 What They Have in Common

Successful outcomes are dependent upon:

- Clear, unambiguous meaning
- Affirmative language
- Plain language
- Consistent definitions
- Alignment
- Measurable performance outcomes

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2.5 What Is Different

- Performance-based contracting aligns with Agile because performance outcome is the Agile intent.

**The distinction is ease of change
to support rapid implementation and innovation.**

- A hybrid can achieve the intended results, while also providing for flexible change. Bottom line: Agile development—*any development*—needs an enforceable contract.

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2.6 A Hybrid Approach
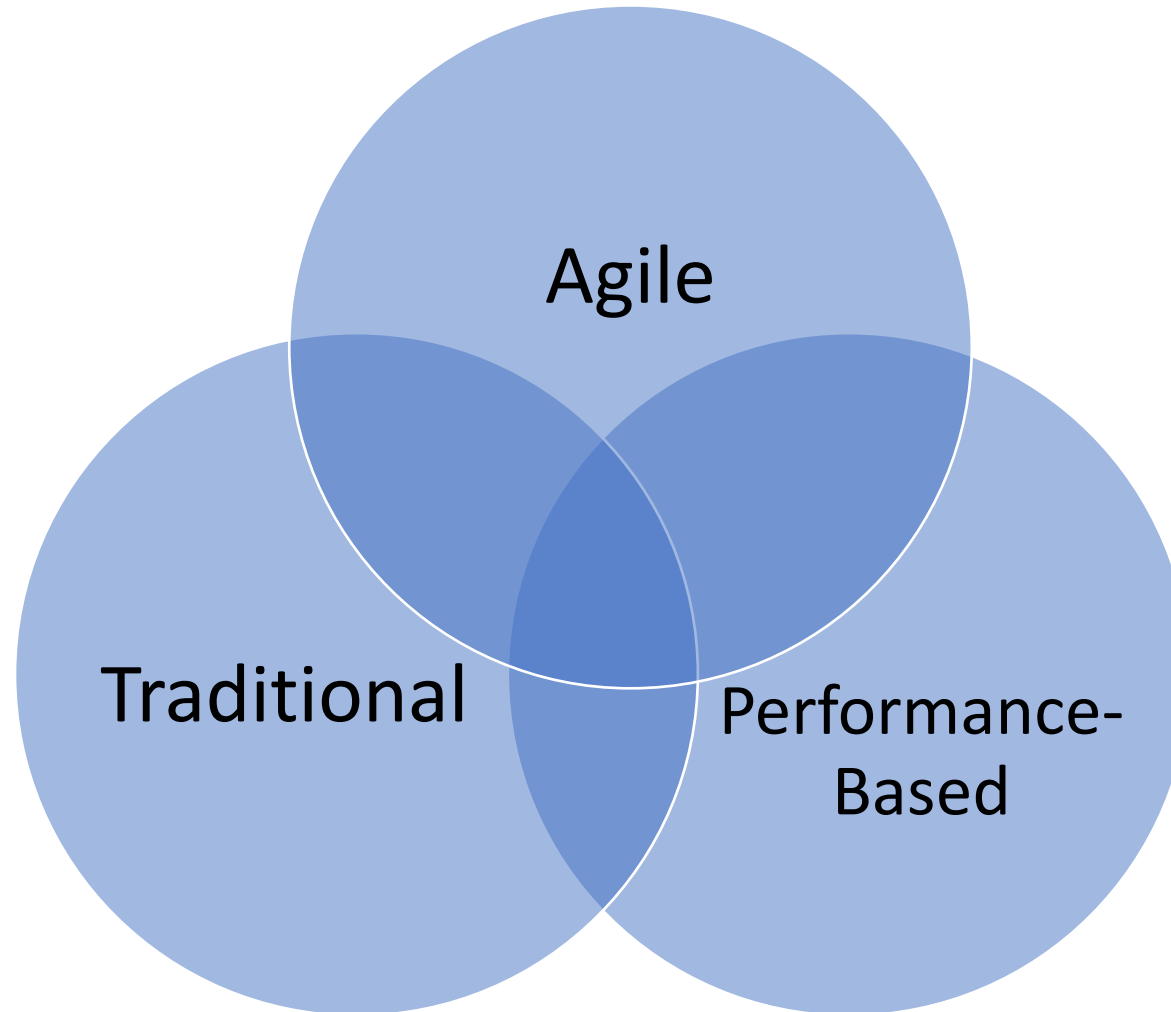
2.7   The Hybrid Advantage

- **Agile identifies potential failure earlier and enables rapid, efficient changes...**   Keep it flexible for innovation, creativity, and continuous process improvement.

- **Performance-based contracting specifies and pays for a desired outcome...**   Get the outcome you want.

- **Traditional contracting identifies requirements and aligns to payment...**   Maintain controls to ensure payment is for the desired outputs.

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3.0 Deliverables and the Definition of Done

"The Contractor commitment in Agile is to produce software releases with set features at set time increments. Agile seeks tangible outcomes, not progress against a plan."

—TechFAR Handbook for Procuring Digital Services Using Agile

3.1 How to Draft Deliverables

1. Develop the vision and goal.
2. Identify the key project objectives.
3. Move backward from objectives to determine actions needed to achieve each.
4. Align: Deliverables, requirements, milestones, and metrics.
5. In-house estimate: Cost and time for each deliverable and completed project.

3.2 Definition of Done

Know what you want to buy

Definition of Done
Definition of Done: Basic Minimum Viable Product (MVP)
Definition of Done: Basic + 1
Definition of Done: Alternate (Trade-offs)

Definition of Done for every deliverable and for the whole project

Definition of Done: performance standards, performance incentives, and retainage

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3.3 Definition of Done

CCWIS Current State: A Licensing Module

Change Journey

- Human-centered design. Modular implementation. FADE process.
- Discovery, sprint, testing, and deployment.
- Preliminary list of user stories with provision for mutually agreed change process.
- Assumptions: Out of scope. Largely contractor driven.
- Extensive reports and metrics.
- Rough order of magnitude efforts provided by contractor for next sprint.
- Deliverables listed: Detailed plan. Up to four training sessions… Up to five…
- Will work with agency business team to maintain end user support.
- SLA. Service credits as sole and exclusive remedy for failure.
- Contractor to ensure solution hosted in FedRAMP-authorized environment.
- Definition of ready and definition of done: User stories.

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3.3 Definition of Done

What Good Looks Like

- How well does the definition of done capture the functionality of the user stories?
- How well does process enable collaboration and change to support improvements?
- How well do requirements align to measurable performance standards?
- Is there a definition of done for both deliverables and for the project as a whole?
- How well does the definition of done align to objectives, deliverables, and payment?

Good	Better	Best

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4.0 Configuration or Customization

4.1 Commercial Off-the-Shelf Software (COTS)

Benefits

- Eliminates or reduces development time.
- Easy to keep up with new technology improvements.
- Lower life-cycle costs may be possible with less up-front investment.

Disadvantages

- Systemic impacts may be difficult to anticipate.
- Proprietary functionality embedded in COTS: limited sources.
- Modified COTS: ability to upgrade may be limited.
- Limited design information. Use rights may be limited.
- Licensing agreements: unknown future costs.
- Standard terms and conditions limit vendor's liability.
- No obligation of seller to provide supply chain information.
- Manufacturing and support: Limited risk visibility.
- Unforeseen costs to integrate, change, or upgrade.

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4.2 Noncommercial Development

When does configuration become customization?

MODIFIED COTS

5.0 Acquisition "…as a Service"

5.1 Acquisition "…as a Service"

National Institute of Standards and Technology (NIST) definitions

Infrastructure as a Service (IaaS)	Platform as a Service (PaaS)	Software as a Service (SaaS)
• Access to network infrastructure comprising physical computing resources, location, data partitioning, scaling, security, backup, etc. • The customer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications, and possibly limited control of select networking components (e.g., host firewalls).	• Access to hardware and software resources required for application development. • The customer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly configuration settings for the application hosting environment.	• Access to application software and databases. Suppliers install and operate application software in the cloud and users access the software from cloud clients. • The user does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with possible exception of limited user-specific application configuration settings.

5.2 Advantages & Disadvantages

Advantages

- Flexibility, Scalability
- Innovation
- Continuous Improvement
- Equipment Ops: Easy and Hassle-Free
- Risk Transfer
- Cost Aligned to Use

Disadvantages

- Outcomes
- Continuity
- Performance Management
- Change and Control
- Lifecycle: May Cost More
- Data Security

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5.3 Acquisition "…as a Service"

Key Decision Points, Requirements, and Concerns:

- Choosing the Cloud Service and Deployment Model
- Basis of Payment: Subscription. Time and Use.
- Cloud Service Provider End-User Terms of Service
- Define Performance Outcomes and Standards
- Service Level Agreements (SLAs)
- Roles and Responsibilities
- Security and Privacy
- Continuity
- Lifecycle Cost

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5.4 Contract Terms and Conditions: SaaS, PaaS, and IaaS

Different Contract Terms and Conditions: SaaS, PaaS, and IaaS

Templates are available within the following guide:

Best Practice Guide for Cloud and As-A-Service Procurements

https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/cdg16_xaas_procurement_guide_i.pdf

Freely Downloadable:
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6.0 Negotiating Contract Language

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6.1 Software Ownership and License Rights

45 CFR § 95.617 - Software and Ownership Rights

(a) **General.** The State or local government **must include a clause in all procurement instruments** that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) **Federal license.** The Department reserves a **royalty-free**, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for **Federal Government purposes**, such **software, modifications, and documentation.**

(c) **Proprietary software.** Proprietary operating/vendor software packages provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b). FFP is not available for proprietary applications software developed specifically for the public assistance programs covered under this subpart.

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6.2 Risk

- Warranty
- Indemnity
- Limit of Liability
- Insurance

6.3 Change

- Acceptance / Deemed Acceptance
- Termination for Convenience
- Force Majeure
- Right to Direct Changes
- Continuity

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Take-Aways: Webinar Part I and Part II

1. Agile acquisition offers rapid response to change that can keep pace with technology, while fostering innovation and continuous process improvement integral to CCWIS. States have not always received the anticipated results due to organizational systems designed to support traditional rather than agile procurement. **A hybrid approach, combining elements of traditional, performance-based, and agile acquisition, can overcome challenges to achieve intended outcomes**.

2. Knowing what you want to buy and articulating that clearly in the contract is key to achieving the desired outcome. **If using an agile process, always ensure that the contractual commitment is to produce software releases with specified features at specified time increments: working software reflecting required outcomes, not progress against a plan.**

3. In all CCWIS Contracting:

- **A contractual foundation that is clear, unambiguous, and comprehensive—*with aligned requirements and measurable performance standards*—is essential to achieving intended outcomes.**

- **Strategic acquisition and planning are essential to attaining best value.** Effective negotiation of terms to manage risk and change will ensure that the intended outcome is received at the price anticipated. That can be achieved by specifying requirements in the SOW within the RFP and limiting exceptions.

- **IT managers and program managers have the ability to streamline negotiation, make contracting faster and easier, and prepare a contractual foundation for dispute-free operations with few change order requests** by developing comprehensive SOW requirements that are incorporated into the RFP and contract, to become part of the contractual agreement.

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Resources

References Applicable to Contracting and Procurement will be posted as an appendix on the webinar website.

Procurement Regulations Applicable to CCWIS, with identification of flow-down requirements, conditions for federal financial participation, and requests for waiver of requirements will also be posted as an appendix on the webinar website.

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Final Questions

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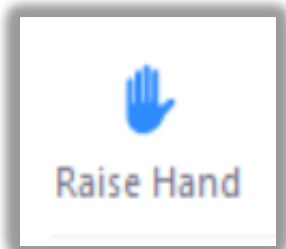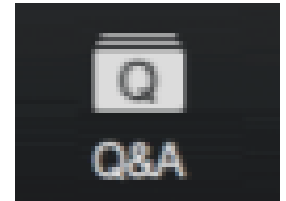
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Closing Remarks

The Children's Bureau supports your endeavors for children, families, and the workers who support them.

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Wrap Up

- Thank you for attending today!

- Please contact your assigned analyst if you have any suggestions, feedback, questions, or issues.

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