

WHITE PAPER PAST PERFORMANCE

December 1997

FOREWORD

This White Paper discusses the collection and use of past performance information in Federal acquisitions. It is the third in a series of short papers focusing on key issues and important topics in the acquisition and management of information technology (IT).

A contractor's past performance record is arguably the key indicator for predicting future performance. As such, it is to Federal agencies' advantage to use past performance in evaluating and selecting contractors for award. The collection and use of such information provides significant benefits. It enhances the government's ability to predict both the performance quality and customer satisfaction. It also provides a powerful incentive for current contractors to maximize performance and customer satisfaction.

While simple in concept, implementation of policies and procedures for the collection and use of past performance information has proven problematic. This White Paper provides information and best practices guidance to assist departments and agencies effectively and efficiently collect, evaluate, and use past performance information. The authors would like to thank the Office of Federal Procurement Policy, whose May 1995, Guide for Best Practices for Past Performance (Interim Edition) was used extensively in the preparation of this White Paper.

Federal agencies are requested to provide any comments and suggestions regarding this Past Performance White Paper to the following address:

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Additional information about Federal IT acquisition and other acquisition White Papers are available on the IT Policy ONRAMP located at: <http://www.itpolicy.gsa.gov>.

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EXECUTIVE SUMMARY

A key acquisition reform initiative of the recent Office of Federal Procurement Policy (OFPP) Administrator,

Dr. Steven Kelman, was to increase the importance of past performance as a source selection evaluation criteria. He believed making past performance information a key part of the selection decision would increase the likelihood of agencies awarding contracts to top notch contractors. Using past performance would provide agencies a higher degree of confidence that the selected contractors would meet or exceed quality, timeliness, and cost control requirements.

A contractor's past performance record is a key indicator for predicting future performance. As such, it is only logical such information be used in selecting contractors for award. The collection, evaluation, and use of past performance information offers significant benefits to the government. This includes the ability to assess the quality of a contractor's previous work and customer satisfaction. It also provides a powerful incentive for contractors to maximize performance and customer satisfaction on their current contracts.

Analysis of relevant "real life" examples, "best practices" etc., show the increased emphasis on past performance information is already producing significant benefits. Results from OFPP's pilot test, where over 30 contracts were competed using past performance as a significant evaluation factor, showed a 21% increase in average customer satisfaction. Perhaps more insightful are the anecdotal reports from contractors who report they are now very concerned with past performance ratings and are taking extraordinary actions to ensure good reports.

While conceptually simple, collecting and applying past performance information has proven to be somewhat problematic. Acquiring the specifics of how to implement a fair and efficient process remains a challenge. From establishing performance collection systems, to evaluating collected data in the source selection decision, implementation of past performance systems has proven difficult. The OFPP has given federal departments and agencies wide latitude in developing systems that gather data for future procurements. This White Paper provides information and best practice guidance in assisting departments and agencies in effectively and efficiently collecting, evaluating and using past performance information.

The increased importance of past performance information has made it critical that agencies develop, maintain, and apply an accurate and equitable process. Contractors are especially concerned with the application of what, in some cases, is very subjective data used in making a selection decision. Their concern is understandable given the direct impact of past performance information on the contractor's competitiveness in future source selections. If the government is to receive the maximum benefit of past performance information, it is essential that agencies develop equitable processes and procedures.

TABLE OF CONTENTS

1.	INTRODUCTION	1-
1.1	Background	1-1
1.2	Scope	1-
1.3	Audience	1-

1.4	Definitions	1-
2.	LEGISLATIVE AND BACKGROUND MATERIAL	2-
2.1	Historical Perspective	2-
2.2	Federal Policy and Guidelines	2-
2.2.1	Legislative	2-
2.2.2	Policy	2-
2.2.3	Regulatory	2-
3.	PAST PERFORMANCE OVERVIEW	3-
3.1	Historical Role of Past Performance	3-
3.2	Goal of Past Performance Evaluation System	3-
3.3	General Indicia of Past Performance Information	3-
3.3.1	Relevant of the Data	3-2
3.3.2	Currency of Past Performance Information	3-

3.3.3	Accuracy and Reliability of Past Performance Information	3-
4.	CONTRACTOR PERFORMANCE EVALUATION SYSTEM	4-
4.1	Contractor Performance Evaluation Reports	4-
4.1.1	Rating Categories	4-
4.1.2	Rating Rankings	4-
4.1.3	Completion of Performance Evaluations	4-
4.1.4	Timing of Reporting	4-
4.2	Contractor Response and Agency Review	4-
5.	PAST PERFORMANCE IN THE SOLICITATION	5-
5.1	Section L - Instructions	5-
5.2	Section M - Evaluation Factors for Award	5-
6.	PAST PERFORMANCE IN SOURCE SELECTION	6-1

6.1	Obtaining Past Performance Information	6-
6.2	Quality Certifications and Awards	6-
6.3	Release of Information	6-
6.4	Rating Past Performance	6-
6.5	Rating Offerors With No Past Performance	6-
6.6	Source Selection Decision	6-
7.	INDUSTRY ISSUES AND CONCERNS	7-
APPENDIX A	- OFPP POLICY LETTER 92-5	A-1
APPENDIX B	- INTERAGENCY CONTRACTOR PERFORMANCE REPORT	B-1

1. INTRODUCTION

1.1 Background

The collection and use of past performance information is not a new concept. For years contracting officers have used past performance information as part of their responsibility determination. In this capacity, the Federal Acquisition Regulation (FAR) requires the contracting officer to affirmatively determine that an offeror has adequate resources and abilities to satisfactorily perform the work required in the contract.

The FAR also addresses the collection of past performance information during the conduct of a contract as relevant to

future source selections. It includes, for example, the contractor's record of:

- Conforming to contract requirements and to standards of good workmanship
- Forecasting and controlling costs
- Adherence to contract schedules
- Reasonable and cooperative behavior and commitment to customer satisfaction
- Business-like concern for the interest of the customer

Recent legislation and policy guidance has vastly increased the importance of, and attention paid to, the collection and use of past performance information. The Federal Government's effort to increase the use of past performance information began with the issuance of Office of Federal Procurement Policy (OFPP) Policy Letter No. 92-5, Past Performance Information. This policy letter required all agencies to prepare past performance evaluations for new contracts and use past performance information as an evaluation factor in awarding contracts.

Analysis of relevant laws, regulations, studies, and "best practices" indicate the collection and application of past performance information is already producing significant benefits including increased customer satisfaction rates and better contractor performance, value, and process time. These benefits are the direct result of applying past performance information to the source selection process. The knowledge that source selection teams have increased the use of past performance information in the selection decision is a powerful motivating force for contractors to provide exemplary service on their current contracts.

While the benefits of the collection and use of past performance information may be intuitively obvious, the specifics of how to implement a fair and efficient process remains a challenge. By its nature, much past performance information is subjective. As indicated by the increase in protests filed with the General Accounting Office citing past performance, contractors are particularly concerned with the application of subjective data in making a selection decision. One aspect of acquisition reform is to develop a partnership with industry. If the government is to receive the maximum benefit of past performance information, it is essential that agencies develop processes and procedures, which provide a degree of confidence within the vendor community.

1.2 Scope

This White Paper provides information, guidance, and recommendations for the collection of past performance information during contract performance and application of this data as an evaluation factor in source selections.

Specifically, this White Paper addresses the following:

- Legislative and background material on past performance
- Developing a contractor performance evaluation system that enables agencies to rate contractor performance throughout the life of the contract
- Incorporating past performance in the solicitation
- Past performance in the source selection process
- Industry concerns

The General Services Administration (GSA) developed this White Paper to solicit feedback on the issue of past performance. GSA will use this document, plus feedback obtained from agencies, to expand areas of interest and

provide examples, case studies, and best practices for a government-wide guide on past performance.

Comments on this document should be addressed to General Services Administration, Strategic Information Technology Analysis Division, 18th & F Streets, N.W., Washington, D.C. 20405. Points of contact for this document are David Middledorf, dave.middledorf@gsa.gov or (202) 501-1551, and John Clark, john.clark@gsa.gov or (202) 501-4362.

1.3 Audience

This White Paper was developed for Federal Information Technology (IT) managers, program and contracting staffs, and contracting officer technical representatives (COTR).

1.4 Definitions

Contractor Performance Evaluation—An evaluation prepared by the contract officer, program manager, or COTR that documents contractor performance during the course of a contract. Evaluation is prepared in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements. See FAR 42.1502.

Contractor Performance Evaluation System—A department or agency-wide system for evaluating and collecting contractor performance information to be used in future source selections.

Objective Information—Information characterized by finite or factual data. (e.g., contractor exceeded delivery requirement by 50%, 99% of the time.)

Subjective Information—Information characterized by human judgment (e.g., identify how satisfied you are with a contractor's performance using a number between 1 to 5 (five being the highest)).

Past Performance/Past Performance Information—FAR parts 9, 15 and 42 all discuss past performance as follows:

- *FAR Part 9, Contractor Qualifications*, addresses past performance as one factor in determining contractor responsibility. Part 9.104-1(c) states:

"To be determined responsible, a prospective contractor must -

(c) Have a satisfactory performance record (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;"

- *FAR Part 15, Contracting by Negotiation*, addresses past performance as an evaluation factor. Part 15.608(a)(2) states:

"Past performance information is an indicator of an offeror's ability to perform the contract. The comparative assessment of past performance information is separate from the responsibility determination required under 9.103. The number and severity of an offeror's problems, the effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance information should be considered at the time it is used."

- *FAR Part 42, Contract Administration*, addresses the collection of contractor performance information during the performance of the contract. Part 42.1501 states:

"Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the

contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer."

2. LEGISLATIVE AND BACKGROUND MATERIAL

2.1 Historical Perspective

Past performance has historically played a key role in IT contracting and acquisition. Contracting officers have used past performance as a significant part of their responsibility determination for many years. Additionally, some Federal organizations have been routinely collecting and maintaining performance information on contractors and using this information in the source selection process for several years. What has changed is the mandatory requirement to collect and use past performance information on all acquisitions over specified dollar thresholds. Also changed is the dramatic increase in the relative importance past performance has in the source selection decision.

Federal agencies have embraced the increased role of past performance information. On January 26, 1994, 20 Federal departments and agencies pledged to make past performance a major selection criteria in the award of 60 contracts. In the January 26, 1997, OFPP issued a final report on the past performance pledge program. They noted the results proved the hypothesis that increased use of past performance as an evaluation factor in the contract award process can improve the procurement system's ability to select quality suppliers. Analysis of the test results indicated government satisfaction with contractor performance, on average, increased 21%. Reported benefits include:

- Higher customer satisfaction
- Better performance
- More value for the dollar
- Reduced process time (in some cases)

An additional benefit of using past performance in source selection is the anecdotal evidence noted during contract performance that contractors are now very concerned with past performance ratings and are taking extraordinary actions to ensure good reports. The contractor's enhanced performance is a direct result of OFPP actions to increase the importance of past performance in making source selection decisions.

The Federal Acquisition Streamlining Act (FASA), dated October 13, 1994, codified the requirement to consider past performance in making awards. It required the Administrator to provide guidance for using past performance. Federal Acquisition Circular 90-26 implemented the OFPP and FASA requirements into the FAR.

2.2 Federal Policy and Guidelines

The issuance of OFPP Policy Letter No. 92-5, Past Performance Information, began a new phase in the application of past performance information. While conceptually simple, implementation of policies and procedures for the collection and use of past performance information has proven difficult. Current policies and guidelines are presented below.

2.2.1 Legislative

The Federal Acquisition Streamlining Act of 1994 (FASA) (P.L. 103-355) Section 1091 - Congress found past performance to be a relevant and appropriate factor that executive agencies should consider when making awards. As such, FASA provided a statutory basis for the use of past performance as an evaluation factor. Section 1091 of the law states:

"(A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding the contract.

(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official."

FASA also required the Administrator of OFPP under the Office of Federal Procurement Policy Act to provide guidance for executive agencies regarding contractor past performance. The guidance shall include:

- Standards for evaluating past performance with respect to cost, schedule, compliance with technical/functional specifications and other relevant performance factors that facilitate consistent and fair evaluation
- Policies for the collection and maintenance of information that, to the maximum extent practicable, facilitates automated collection, maintenance and dissemination of information and provides for ease of collection, maintenance and dissemination of information by other methods, as necessary
- Policies for ensuring the offerors are afforded an opportunity to submit relevant information including performance under contracts with federal, state, and local governments and commercial contracts and that such information is considered
- The period for which information of offerors may be maintained and considered

It is important to note that FASA further gave instructions that offerors having no past performance information may not be evaluated favorably or unfavorably on the factor of past contract performance.

2.2.2 Policy

OFPP Letter No. 92-5, issued December 30, 1992, established requirements for evaluating contractor performance and for using past performance information in the contractor selection process (Appendix A). It stated that a contractor's past performance record is a key indicator for predicting future performance. The Policy Letter was intended to further the exercise of *good business judgment* and *improve* contractor performance. It required agencies to:

- Prepare past performance evaluations on all new contracts (over \$100,000)
- Use past performance information in award determinations for all sealed bid and competitively negotiated procurements
- Specify past performance as an evaluation factor for all competitively negotiated procurements expected to exceed \$100,000
- Allow new firms to compete even though they lack past performance history

(NOTE: By memorandum, December 16, 1996, the OFPP temporarily suspended mandatory implementation of the requirements of FAR 15.605 and 42.1502 to use past performance information in source selections below \$1,000,000 and collect performance evaluation data on contracts less than \$1,000,000.)

2.2.3 Regulatory

Federal Acquisition Circular 90-26 implemented the OFPP and FASA requirements into the FAR. Regulatory guidance for application of past performance is found in Part 9 - Contractor Qualifications; Part 15 - Contracting by Negotiation;

and Part 42 - Contract Administration. FAR Part 9.104-3(b) addresses past performance as it pertains to a responsibility determination. Part 15.405(2) [Part 15 rewrite] discusses past performance as part of the source selection process. Part 42.15 identifies the collection and maintenance of contractor past performance information.

FAR 15.605(b)(1) establishes past performance information, along with price/cost, as one of two mandatory evaluation factors in any source selection over a set dollar threshold. Implementation of past performance collection and use of past performance information was originally planned through a phase-in schedule. The original schedule required past performance evaluations for all solicitations with an estimated value in excess of \$1,000,000 issued on or after July 1, 1995, \$500,000 issued on or after July 1, 1997 and \$100,000 issued on or after January 1, 1999.

OFPP issued a memorandum on December 18, 1996 addressing the FAR implementation requirement (Appendix A). After discussions with agencies on the amount and type of information to be collected, and on the cost effectiveness of collecting and using past performance data on smaller dollar contracts, OFPP temporarily suspended the past performance implementation thresholds. The threshold of \$1,000,000 is effective until further notice.

3. PAST PERFORMANCE OVERVIEW

This section provides basic considerations of collecting and using past performance information, focusing on the past performance system's objectives. It also addresses the role of past performance in evaluating a potential contractor's ability to perform and general concerns in collecting and applying performance data.

3.1 Historical Role of Past Performance

Historically, past performance information has been used as part of the contracting officer's responsibility determination. FAR 9.104-1(c) states a prospective contractor *must have a satisfactory performance record* in order to do business with the government. It is the contracting officer's responsibility to ensure that an offeror has adequate financial resources, the ability to meet the required performance schedule, a satisfactory record of performance on other contracts, and similar, related attributes demonstrating its ability to perform the contract. The responsibility determination represents a "go/no-go" binary decision on the contracting officer's part.

Theoretically, a contractor with unsatisfactory performance would be eliminated from the competition. In reality only in the rarest cases, and then only with the most grievous performance records, were contractors determined "non-responsible" and eliminated from the competition. This greatly limited the effectiveness of past performance information.

The use of past performance information as an evaluation factor differs significantly from its use as a responsibility determination. FAR 15.305(a)(2)605(b)(1) requires past performance to be one of two mandatory evaluation factors, and cost/price is the other for all competitively negotiated acquisitions exceeding established thresholds. (Note: The contracting officer can waive this requirement if the file is documented as to why past performance should not be evaluated.)

As an evaluation factor, the extent and quality of an offeror's past performance is assessed by the source selection authority. It allows the source selection authority to compare offerors' past performance as part of the award determination. Following the stated evaluation criteria, the source selection authority can give those offerors with better past performance records additional credit or weight in the award decision.

3.2 Goal of Past Performance Evaluation System

While by no means infallible, past performance information is arguably the single best predictor of the quality of and potential customer satisfaction with future work. It gives insight into the contractor's actual ability to perform the work as opposed to relying strictly on proposal promises. To the maximum extent practicable, the collection of past performance information should be a cost effective and efficient process.

The principal goal of a past performance evaluation and rating system is to collect and present accurate and relevant contractor performance information to the official making a source selection decision. Providing quality past performance information gives the selection official a valuable data point to estimate the expected future performance of a contractor.

An additional goal of using past performance data in the source selection is to streamline the process. Currently, the government routinely relies on detailed technical and management proposals to compare relative strengths and weaknesses of offers. In many cases, if not all, this voluminous risk assessment information can be reduced or eliminated by evaluating how well the offerors performed on past similar contracts. Stated another way, the evaluation of past performance information is supposed to streamline the process, *not add to it*. Accurate and reliable past performance information has the potential to allow agencies to significantly reduce the time necessary to evaluate proposals.

It should be clearly understood, however, *there are no guarantees*. Using past performance information is not an exact science. Even at its best, the use of past performance information can only provide a degree of confidence that future performance will match or exceed that observed in the past. As such, any past performance system must be based on the reality that subjective judgment will always be a part of the process.

3.3 General Indicia of Past Performance Information

When used in the source selection evaluation process, past performance evaluation criteria must provide information that allows the source selection official to compare the "quality" of offerors. The considerations contained in OFPP Policy letter No. 92-5, as implemented in FAR Part 42, provides a realistic list of the types of factors that are best evaluated under past performance;

How well in contracts of similar size, scope and complexity did the contractor -

- Conform to the contract requirements and standards of good workmanship?
- Adhere to contract schedules?
- Forecast and control costs?
- Provide reasonable and cooperative behavior and commitment to customer satisfaction?
- Demonstrate business-like concern for the interest of the customer?

The answers to the above list provide the source selection authority with information to make a comparative assessment for the award decision.

When a source selection team requests information to evaluate past performance, the information should focus on that which will best predict the offeror's performance. This requires the information be relevant, current and accurate.

3.3.1 Relevancy of the Data

It is essential that data collected to evaluate past performance is relevant to the acquisition conducted. The major factor impacting relevancy is the similarity of past projects to the current acquisition. Obviously, the closer the past performance examples are to the planned acquisition, the better they are as predictors of future performance. Those that are similar in size, scope, and complexity provide a greater degree of confidence regarding the anticipated performance.

Consider the example where an agency is conducting a software development source selection. Two offerors propose. One offeror received a score of "5+" (Excellent plus) on a computer maintenance contract and does not have recent or relevant experience with software development efforts. The second offeror has received "3s" and "4s" (Good, and

Excellent) on multiple software development efforts. Even though receiving lower scores, the second offeror's past performance should carry additional weight in the selection decision. The selection authority must consider the relevancy of the performance when evaluating the two offerors past performance.

Given the importance of the data's relevancy, both the source selection team and competing contractors should make every effort to identify acquisitions that best match the planned procurement. Past performance information derived from contracts of similar size, scope, and complexity to the pending procurement should receive additional weight in the evaluation.

3.3.2 Currency of Past Performance Information

Another factor that impacts the "predictability" of past performance information is its currency. The more current the example, the more confidence a selection official can have in using it to predict future performance. Data from recent contracts may be more significant than those completed in past years. As such, additional weight should be accorded to the most recent past performance information.

3.3.3 Accuracy and Reliability of Past Performance Information

Perhaps the most difficult variable to consider is determining the accuracy and reliability of the past performance information. As a general rule, the collection of past performance data during contract performance improves its accuracy and reliability. Performance information obtained from periodic reports generated during contract performance should be the preferred source of data in any past performance evaluation. The processes put in place for collecting information during contract performance helps ensure it is timely and valid (e.g., contractor ability to comment on negative data). Periodic reporting allows trend analysis and can show contractor efforts over a period of time.

While the FAR requires agencies to collect past performance information for all acquisitions over a specified dollar threshold (currently \$1,000,000), as of the publication of this White Paper, few agencies have comprehensive systems in place to evaluate and retain such information. The lack of performance data collected during contract performance has required source selection teams to request past performance information via a questionnaire or survey.

The survey method of collecting past performance information places an additional burden on the source selection team. A survey has to be developed and included in the solicitation, along with instructions to the offerors identifying points of contact for programs of similar size, scope and complexity. In most cases, the past performance team has to spend time performing follow up calls to get surveys completed. Additionally, if any negative information is revealed in a survey, the contractor must be given the opportunity to review the information and provide comments. This adds to the source selection effort and conflicts with the objective to streamline the process.

Surveys requesting past performance information are generally subjective in nature and ask the respondent to rate or rank, on a scale, the contractor's performance over the entire contract period. Survey responses, while an important source of information, may be less reliable and accurate than data collected during contract performance. Questions such as "To what extent did the contractor display initiative in meeting the requirements?" and "To what extent was the contractor effective in interfacing with the government's staff?" call for highly subjective responses.

Another drawback to the reliability of survey data is that the source selection team has little control over who completes the survey. Although the team requests the program manager or contracting officer complete the survey, work schedules may preclude the most knowledgeable individual from providing information. Additionally, due to turnover, promotions, and other personnel moves, it is difficult to determine if the respondent had first hand information of the contractor's performance. A program manager could literally be on the job 2 weeks when asked to complete a survey covering a multi-year program.

Also, without some type of standard, the requester does not know if the respondent was a hard or easy grader. Further, it is difficult to determine if poor performance was the result of failure to meet contract requirements or unrealistic expectations of the program staff or customer. As a result, it may be difficult to combine survey responses from

multiple agencies and contracts.

In conducting a source selection, data collected from periodic reports during contract performance is the preferred source of past performance information. Agencies are encouraged to implement a past performance collection and reporting system. The disadvantages associated with survey data should not preclude the source selection team from soliciting this information. Survey data can identify useful trends and patterns and can be a valuable source of past performance information.

4. CONTRACTOR PERFORMANCE EVALUATION SYSTEM

The increased importance and use of past performance information has made it critical for agencies to develop, maintain, and apply an accurate and equitable process for evaluating and rating past performance information. Evaluating and rating must be a continual activity during the course of the contract to ensure that data is collected in a timely manner. The information gleaned from this system will provide accurate, historical information which source selection officials can use in future source selections.

This section provides guidance on collecting and rating contractor performance for use in comparing past performance between offerors, as well as providing for contractor responses and agency's reviews. OFPP is encouraging the voluntary development of a uniform government-wide format for recording contractor performance information. A standard format and rating system would facilitate the comparison of information across agencies.

4.1 Contractor Performance Evaluation Reports

In requiring agencies to collect performance data and use it in the source selection process, OFPP intended that contractor performance be gathered during the normal course of a contract. Performance information obtained from periodic reports generated during contract performance are the preferred source of data in any past performance source selection evaluation and is key to providing a successful past performance information system. Collecting and recording information during contract performance provides the most reliable and accurate information. In addition, collecting data as it occurs provides contractors an opportunity to comment on the report. It also provides feedback to the contractor allowing early corrective action if necessary.

While agencies are free to design and develop any reporting system that will provide a cost effective method of evaluating contractor's past performance, OFPP recommends all systems incorporate the rating categories in Section 4.1.1 and the rankings scale in Section 4.1.2. The standard rating categories and ranking scale will enhance data collection and comparison during the source selection process.

Appendix B includes an example of an interagency-developed Contractor Performance Report Form that agencies can use to collect and report contractor performance data. The sample report format can also be revised as necessary and used as a survey questionnaire.

4.1.1 Rating Categories

OFPP Policy letter No. 92-5 presents the performance considerations for which past performance can be effectively evaluated. These elements, discussed in Section 3.3, focus on the contractor's adherence to contract requirements, standards, schedules, and costs as well as their commitment to customer satisfaction and professional concern for their customers. These basic indicia can be grouped into five categories, which serve as the basis of performance ratings:

- Quality
- Timeliness
- Cost Control

- Business Relations
- Customer Satisfaction

These basic categories provide the information that allows source selection officials to adequately compare offerors. Agencies can expand on these categories considering the unique requirements of the specific contract.

To the extent possible, the program manager or COTR should objectively observe and record performance under the categories of Quality, Timeliness, and Cost Control. The ratings should reflect how well the contractor complied with specific contract performance standards developed by the Agency for each area. Whenever possible, the rater should use objective comments to support a given rating. For example, consider language such as "The contractor exceeded delivery on average by a minimum of 25%, reducing average delivery time from the contract standard of 20 days to 15 days". Objective comments reinforce contractor performance ratings and provide additional information for use in future source selection.

While contractor compliance with quality, timeliness, and cost control are important performance factors, business relations and customer satisfaction also provide useful insight into a contractor's approach to interacting with customers. While more subjective in nature, these categories can prove valuable in assessing the attitudes and cooperative nature of the contractor. When evaluating customer satisfaction and business relations, the evaluator can consider information such as:

- How cooperative was the contractor in working with the government to solve problems?
- Were contractor recommended solutions effective?
- Was the contractor responsive to the administrative issues of the contract?

Direct contact with end users also provides a valuable forum for determining customer satisfaction. In these instances, the agency's evaluation plan should contain the procedures for receiving customer feedback on contractor performance. When using customer surveys to assess performance ratings, the contracting officer should take into consideration the fact that end users are not always aware of the contract requirements and may hold contractors to an unrealistic standard. Therefore, it is helpful if the survey states the contract standard and asks the customer to rate performance against the standard. Even with this information, the contracting officer should be aware that some users may not be satisfied with the contracted level of service and may unfairly downgrade the performance. In these cases, the contracting officer must indicate that the contractor met or exceeded the performance requirements even if the users are not satisfied with the service.

One way to capture and present customer satisfaction information is to measure the percentage of end users that rate the product or service "satisfactory" or better. For example, an "excellent" rating, could be awarded when 95% of the end users rated the contractor satisfactory or better.

4.1.2 Rating Rankings

The interagency developed Contractor Performance Report (Appendix B) suggests that each category be rated in accordance with the following scale:

- Excellent Plus (for exceptional performance far exceeding the requirement)
- Excellent
- Good
- Fair

- Poor
- Unsatisfactory

It is important when applying these rankings that each evaluator use the same definition. For example, the unsatisfactory rating means the contractor was non-conforming in some aspect of the contract or ineffective and unresponsive to business and customer satisfaction issues. A description of rating definitions is found in Appendix B.

The rating systems should also allow for a narrative description to support the rating. For example, the excellent "plus" rating should be reserved for instances where a contractor demonstrates truly exceptional performance. The type of effort which may warrant an excellent plus rating is an emergency situation where the contractor responds much faster than the contract requires. If this rating is given, it is important the evaluating activity provide comments, which clearly explain what actions were so exceptional to justify the assessment. This information greatly assists the source selection official's understanding and ability to apply the data to the acquisition.

4.1.3 Completion of Performance Evaluations

Contractor performance evaluations should be a standard part of the contract administration function. The contracting officer and program manager should share the responsibility of developing the performance. If there is no formal program manager, the COTR or other designated technical oversight individual should be included. Additionally, where products and services are provided directly to the end user (e.g., services contracts), contracting officers and the performance evaluation should seek end user input and assessments for performance reports.

To the maximum extent, the collection of past performance information should be integrated into and take advantage of administration activities presently conducted. Information from award fee determinations and other incentive type awards can be directly input into the past performance record. Additionally, performance based statements of work require COTRs or program managers to periodically report on contractor's performance against objective standards. This type of objective performance information can be extremely valuable to a source selection official as it represents actual performance against established contract standards.

Best Practice

Customer Process Improvement Working Group

The Departments of the Air Force and Veterans Affairs have initiated a test case on their Desktop V and Procurement of Computer Hardware and Software (PCHS) contracts whereby they track and manage customer satisfaction metrics. As part of the original proposal, the offerors were asked to submit customer satisfaction metrics. The agencies were interested in what factors/metrics did the offerors track both for their government and commercial clients to determine customer satisfaction. Such factors as on time delivery, average response time to trouble calls, warranty calls, etc. were all baselined against the contracts requirement.

Periodically, the government and contractor meet in a Customer Process Improvement Working Group (CPIWG) to report and review the metrics. This information provides a snapshot of customer satisfaction and contract performance, which can be directly applied to the periodic performance report. More importantly, the purpose of the CPIWG is for government and contractor to work together to find ways to improve customer satisfaction. This could include changing internal procedures to allow faster delivery. This establishes a true *win-win-partnership* between government and contractor. The better the contractor performs - the higher the customer satisfaction - the better the performance ratings.

4.1.4 Timing of Reporting

The frequency of performance evaluations varies depending on the type and length of the contract and schedule of

deliverables. At a minimum, evaluations are required when the work under a contract is completed. Interim evaluations are required if the contract period of performance (including options) exceeds one year. The period between evaluation reports should be sufficient to allow contractors to accomplish meaningful work. Recommended evaluation collection points include:

- At the end of a milestone
- Every 6 months
- Before the exercise of a contract option

Although there is no set time interval that applies to every situation, collecting data every 6 months is the recommended frequency. For most programs, the 6-month period provides sufficient time to observe performance. It further allows the contractor to take action to correct problems before the contract expires. This may include replacing or adding personnel, replacing subcontractors and/or generally responding to the government's performance concerns. Such actions to improve performance may in itself indicate a contractor's commitment to customer satisfaction.

4.2 Contractor Response and Agency Review

While the frequency and content of the performance evaluation is a decision of the contracting agency, the FAR requires that agencies provide contractors the opportunity to comment on performance evaluations. Upon completion of the evaluative report, the agency must forward the performance report to the contractor for review and comment. Per FAR 42.1503 (b), the contractor has a minimum of 30 days for review and comment.

If the contractor fails to respond by the established deadline, the contracting officer should note that no response was received and the government's comments will stand alone.

If the contractor submits a rebuttal statement for any or all of the ratings, the government shall review the information to see if the performance report should be modified or changed. The contractor should then be given the opportunity to review the revised report. If the contractor provided information does not result in a change to the performance report, the agency will process the disagreement as follows:

- The information must be reviewed at a level above the contracting officer (See FAR 42.1503(b)). Where contract administration has been delegated to an Administrative Contracting Officer (ACO), the Procurement Contracting Officer (PCO) may be considered one level above for the review.
- Agencies must issue the decision from the review in writing, preferably within fifteen working days from receipt of the contractor's rebuttal statement.
- The Agency must attach the contractor's statement and agency review to the performance evaluation report and provide to source selection officials requesting a reference check.
- The completed evaluations must be filed in the contract file or in a separate file or database where they can be readily accessed by contracting office personnel. Interim evaluations should be retained for the duration of the contract and included with the final evaluation for the file. Keeping the interim evaluation will allow analysis of trends and provide historical source data for the final report. However, the evaluations should not normally be retained beyond three years after completion of contract performance because the information contained in them would most likely be outdated.

5. PAST PERFORMANCE IN THE SOLICITATION

Using past performance as major selection criteria requires comprehensive planning that begins during development of the solicitation. Agencies should thoroughly address the role of past performance in the solicitation to ensure that all

offerors fully understand the role it will play in the selection process.

Key to the successful application of past performance, as any other evaluation factor, is the establishment of a clear relationship between the statement of work (SOW), Section L - Instruction to Offerors, and Section M - Evaluation Factors. The factors chosen for evaluation must track directly to the requirements of the SOW. These factors should be carefully crafted to provide the source selection team information to compare offerors.

Accordingly, Sections L and M should be clear with respect to what past performance information the government will evaluate and how it will be weighted - at least in relative terms. It is important the government tailor the request for information to obtain relevant, current, and accurate information for the source selection. Section 3.3 discusses the criticality of obtaining relevant, current, and accurate information for evaluating past performance.

The way the contracting officer presents past performance information in the solicitation can determine whether it is viewed as a responsibility determination or an evaluation factor. Applying past performance to the source selection allows the agency to compare performance between offerors allowing the selecting official to identify which has the best past performance record. This information can then be used to determine which offeror provides the "best value". To ensure past performance information is used to compare offerors and serve as part of a best value decision, the solicitation must clearly state that past performance will be used as an evaluation factor. As an evaluation factor, there is no "pass/fail" determination. Offerors are measured against the past performance evaluation factor and ranked according to their "scores". The source selection authority can then properly assess the information in making an integrated best value decision.

Past performance requirements stated as mandatory requirements or factors, in order to be eligible for award, are considered to be part of the responsibility determination. Making past performance a "go/no-go" decision effectively limits the competition to those firms meeting the stated requirements. While this may be appropriate if the acquisition requires specialized expertise or specialized facilities for adequate contract performance, failure to meet the requirement(s) eliminates the offeror from the competition and may be considered part of the responsibility determination.

While past performance information collected during contract performance is the preferred source of data, the current general lack of such information requires the use of surveys. As past performance databases become more robust and comprehensive more information can be obtained from those preferred sources. However, there exists a paradox whereby the agency cannot know if past performance information is available on offerors until proposals are received. It is only then does the government know the identity of the offerors and whether information on their performance exists in the database. Agencies will for the foreseeable future have to include in their RFP's a request for past performance information and survey. The following procedures are recommended to include the request for past performance information into the RFP.

5.1 Section L - Instructions

Section L should request offerors to identify previous Federal, state, local and commercial contracts that are similar in size, scope, and complexity to the requirements in the solicitation. The similarity in projects increases the degree of confidence that the source selection team can better predict the offeror's ability to perform the work as stated in the SOW. Requesting, rather than requiring, information on past performance assists in ensuring firms new to the Federal process are given a fair opportunity to compete. (Note: If the agency decides that non-Federal work is to be given lower consideration vis-a vis Federal, this must be clearly specified in the evaluation criteria)

Requests for information should focus on recent contracts. FAR 42.1503 (e) states that "past performance information shall not be retained to provide source selection information for longer than 3 years after completion of contract performance." Since agencies are not required to retain the past performance information for more than 3 years, the solicitation should ask the offeror for references for ongoing and/or contracts completed within the last 3 years.

In requesting references for past performance, offerors should not be allowed to "cherry pick" references and provide information only on favorable contracts. On the other hand, asking for every contract performed in the last 3 years can

be unreasonable. In some cases, contractors may have hundreds, if not thousands, of contracts. Requiring an offeror to compile a list of 500 plus contracts is unduly burdensome and is of little value to the government. In order to eliminate this type of unmanageable response, the agency should provide parameters for offerors. For example, agencies should ask for references of recently completed contracts of similar size, scope, and complexity with defined dollar ranges.

Additionally, it is recommended the solicitation allow the offeror to provide past performance information on major subcontractors and teaming partners. Major subcontractors are often selected by the prime contractor due to their unique capabilities and ability to satisfy the requirements. Since past performance information is being used to "predict" future performance, it is good business practice to evaluate the proposed team's records.

The solicitation should request minimal information regarding the previous contracts. This includes the basic information necessary for the government to determine relevancy of the scope of the identified contracts and two reference points of contact.

Section L should also contain a statement that the government may use past performance information obtained from a variety of sources and not just those contracts identified by the offeror. The offerors should also be informed that all information will be used in both the responsibility determination and best value decision.

Section L should reference the past performance questionnaire the source selection team will use to record the information collected from the reference(s). The questionnaire would be listed as an attachment in Section J. This allows offerors knowledge of what is important to the government on a given contract and helps offerors make appropriate proposal decisions.

The questionnaire should target issues relevant to the contract to be awarded. The individual developing or tailoring the questionnaire should be familiar with the contract requirements and determine the data that would best demonstrate the offeror's ability to succeed in performing the new contract. The key is to *keep it simple*, asking the minimum number of questions necessary to obtain the desired information. Extensive and detailed questionnaires are a deterrent to receiving quality, timely feedback. In developing the questionnaire, the drafter should focus on what information would allow the source selection official to predict that one offeror would be more likely to provide excellent performance versus another.

5.2 Section M - Evaluation Factors for Award

FAR 15.304605 mandates past performance as one of the two evaluation factors in any source selection over a \$1,000,000 threshold. Section M evaluation factors should clearly indicate the relative weighting or score that past performance will receive. Past performance should be accorded sufficient weight to ensure it is meaningfully considered. To be meaningful in the source selection process, and to ensure contractors are aware that actual contract performance will be a significant factor in future awards, past performance should be at least equal in value to any other non-cost evaluation factor. If a numeric rating system is used, past performance should be rated at 25% or more.

For example:

Technical approach is rated at 30 percent, past performance is rated at 30 percent, management is rated at 20 percent and price is rated at 20 percent.

or

Technical capability and past performance are considered equal in importance followed by test and evaluation, logistics management, subcontract management and price in descending order of importance.

The type of evaluation scheme is unimportant. What is important is that to be effective as a positive motivator and force in the source selection decision, past performance must be a significant factor in the award decision.

6. PAST PERFORMANCE IN SOURCE SELECTION

To successfully employ past performance in the source selection process, agencies must develop a systematic procedure for collecting and evaluating the information. This section provides guidance on obtaining past performance information, rating the performance, and using the information to make the best value decision.

6.1 Obtaining Past Performance Information

In beginning the initiative to increase the importance of past performance, OFPP intended that performance data collected during contract performance would be available to source selection officials with a minimum of cost and effort. Agencies that routinely collect contract performance information will be able to readily provide valuable information regarding contractor's past performance.

In collecting past performance data, the source selection teams can obtain the information from Agency past performance databases or request and contact the references identified in the offeror's proposal. The agency does not know the identity of the offerors until proposals are received. They therefore cannot determine whether they have past performance information on the offerors in government databases until proposals are received. This requires that agencies be prepared to obtain survey information and points of contact and include this process in their RFPs. Conducting surveys involves soliciting information regarding the contractor's performance, providing the offeror the opportunity to comment on any unfavorable information obtained, and compiling an evaluation report summarizing the data for the source selection official.

Source selection teams should not rely solely on Federal agencies for past performance information, but should refer to other sources, including but not limited to:

- Commercial contracts
- Dunn and Bradstreet reports
- State and local contracts
- Publications (all types)

6.2 Quality Certifications and Awards

In addition to past performance information, a valid indicator of a contractor's commitment to quality performance can be receipt of national or international quality awards or certifications. Contracting officers are encouraged to request offerors identify significant quality awards for consideration by the government. Samples of the more significant and notable awards or certifications include:

- **The Baldrige Award** Named for former Commerce Secretary Malcolm Baldrige, this prestigious award signifies the company is one of the top in the nation in applying quality management focus in their business relationships both internal and external to the firm.
- **The President's Quality Award** This award and other agency-specific awards are modeled closely on the Baldrige award. Several agencies have "blue ribbon" programs that award contractors who consistently provide high quality and on-time performance.
- **The International Standards Organization** International Standards Organization has proposed a series of quality standards (e.g., ISO 9000 series) that are increasingly being used by US firms to identify suppliers who meet the quality standards. However, the ISO standard does not require organizations to constantly improve

their process. It therefore limits the value of this certification for judging the quality of an organization's process.

6.3 Release of Information

Agencies should ensure access to performance reports is controlled and only authorized government individuals have access to the source selection information. FAR 42.1503 provides guidance on release of performance report evaluations as follows:

"Contractor evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". The completed evaluation shall not be released to other than government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the government and to the competitive position of the contractor being evaluated as well as impede the efficiency of government operations.

Additionally, while the results of a survey may be provided to offerors, FAR 15.610 says the names of individuals providing the information are confidential.

6.4 Rating Past Performance

Once past performance information is collected and assembled, the assigned evaluators must produce the final past performance report. This report summarizes the past performance information received from each offeror remaining in the competitive range. As noted above the information collected by the past performance team can come from a variety of sources (e.g., databases, surveys, quality awards, etc.). The team compiling the report will be faced with the difficult task of compiling a report with differing levels of relevancy, accuracy, and currency of data. They will also be faced with differing quantity of data where one offeror may have multiple references and another a relative few. The team must strive to consolidate the information in such a manner that the source selection authority has insight into the source data and can base decisions and make reasoned judgments based on the information. The report should identify good or poor performance (including the contractor's response to poor performance information obtained by survey) problems, which may have been noted. Additionally, the report should identify any trends in an offeror's past performance.

The final report may use colors, numbers, or some other means to indicate the relative ranking of the offerors. Whatever system is used, it is essential that the report and methodology comply and be consistent with the evaluation criteria stated in Section M. For example, in some source selections, past performance is a stand-alone factor with no subfactors. In this case, a simple final rating can be made. In others, the past performance evaluation factor may contain subfactors which may be weighted to emphasize performance aspects that most directly apply to the requirements of the SOW. The age of the information may be weighted giving more recent contracts more emphasis. Contracts with Federal agencies may be weighted in preference to state and local or commercial contracts. The report must consistently apply the stated evaluation criteria to each offeror.

6.5 Rating Offerors With No Past Performance

In referring to new contractors, FASA states "in the case of an offeror with respect to which there is not information on past contract performance or with respect to which information on past contract performance is not available, the offeror may not be evaluated favorably or unfavorably on the factor of past contract performance". This direction has been implemented in FAR 15.305(a)(2)(iv).

The proposed revised FAR 15 states in 15.405(a)(2)(iii) that:

Accordingly, in the rare instance that an offeror has no relevant experience, the offerors' lack of past performance

should be rated as "neutral". This means the offeror is neither rewarded nor punished in the rating. The source selection official must consider the neutral rating as neither a positive or negative in the integrated assessment of the proposals. Following is a sample language for inclusion in Section M:

"If an offeror, or the proposed employees for the offeror, do not have a past performance history relating to this solicitation, the offeror will not be evaluated favorably or unfavorably on this factor."

In a recent protest regarding the use of a neutral rating in the decision the GAO stated:

"...we think the use of a neutral rating approach...does not preclude, in a best value procurement, a determination to award to a higher-priced offeror with a good past performance record over a lower-cost vendor with a neutral past performance rating," [although it does preclude evaluation scoring that penalizes an offeror for receiving a neutral rating, added GAO in a footnote].

6.6 Source Selection Decision

Once the past performance information is collected and analyzed and the report completed, the source selection official must integrate the data into the best value decision. The single most important rule is that the source selection official follow what was prescribed in the Section M, "Evaluation Factors for Award". The most common reason for protest is the government *deviating* from the evaluation criteria as stated in the solicitation. Offerors are more likely to protest an award if they believe it did not comply with the stated criteria.

It is the responsibility of the evaluation team to provide accurate and relevant information so the SSA is able to fully understand the performance ratings and the nature and source of the data considered. The Source Selection Authority (SSA) has the responsibility of making the award decision.

Analysis of GAO Protest Decisions

GAO has accorded the government great discretion in its use and application of past performance as a significant best value determinant. As reported in the May 19, 1997 Federal Contract Reports (Vol. 67, No 20, Page 590), Attorney William W. Goodrich, of Arent Fox Kintner Plotkin & Kahn, speaking in Boston to the American Bar Association Section of Public Contract Law, reported his firm's analysis of over 300 protests involving past performance issues. Out of 300 protests involving past performance issues, only 13 (4%) were sustained. In analyzing the decisions where the GAO sustained the protest, Mr. Goodrich identified four categories of government where government's actions led to a sustained protest:

- a) disregard of past performance evaluation criteria
- b) unsupported evaluation of a protester's or the awardee's past performance
- c) irrational past performance evaluation
- d) inadequate discussions of unfavorable past performance information

The source selection official should be aware that past performance data is by its nature subjective information. Even formal systems require the program manager to make subjective judgments about the contractor's performance. Surveys and other forms of data collection can be even more subjective. It should be noted that even with the most objective of data, only in rare cases is the source contract identical in size, scope and complexity. An additional complicating factor is in most cases the teaming or subcontracting relationships have changed.

Attempts to make subjective information "objective" can add a degree of confusion and mask the subjective nature of the data. Using surveys based on a scale and averaging the scores is at best misleading and gives a false sense of

accuracy. For example, again considering a software development source selection, a contractor with an average of 4.5 where the majority of reports were for non development efforts should not be considered superior to a contractor with an average score of 4.1 whose contracts were software development efforts. It is important that the source selection authority have insight into the nature of the source data and that it not be summarized in such a manner that masks its true identity.

When making a selection decision, the source selection authority will be faced with a significant amount of data. This data will include past performance information from various sources. The data will differ in both amount of information and degrees of relevancy and currency. Interpreting and assessing this information into the selection decision is a difficult task. The source selection authority must apply judgment and weigh this information to make a fair and defensible decision.

7. INDUSTRY ISSUES AND CONCERNS

In general, industry strongly supports the use of past performance in source selections. They believe it can be a strong, but not infallible, predictor of future contractor performance. However, given the importance of this factor in the award decision, industry is increasingly concerned with its application and use. It is important for government to understand industry's concerns as disgruntled contractors often turn to protests or to the courts when they believe they have not been treated fairly.

It is understandable that industry is concerned with the application and use of past performance information. One negative report could severely limit a company's competitive standing and could effectively become a de-facto debarment. Past performance factors, such as "customer satisfaction", are highly subjective in nature. Additionally, these ratings may not be correlated with adherence to contract requirements. The contractor may have met or exceeded the contract requirements but still not receive high customer satisfaction ratings.

In some cases, a poor rating may be the result of circumstances beyond the control of the contractor. For example, one of the reasons why the government awards cost type contracts is that the risk of performance is so great it must be shared with the contractor. Cost overruns that are not the responsibility or fault of the contractor should not be viewed negatively. Unfortunately, some offices take an overly mechanical approach to reporting and automatically downgrade a contractor's performance when the original cost projections are not met.

After viewing the application of past performance for several years, some of industries concerns include:

- Lack of a real definition of past performance
- How past performance information will be implemented
- Wide variance in interpretation and implementation
- No established/consistent policies and procedures

The above issues all deal with concern for the fairness of evaluations and the evaluation process. Industry believes the system can work if it is open and accessible to the contractors. However, the solicitation must clearly define the procedures and articulate the evaluation factors to be considered. Agencies can go a long way in preventing protests by ensuring offerors know the rules, the importance of the data and how it will be evaluated, and have the ability to rebut negative or less than favorable information.

APPENDIX A

OFPP POLICY LETTER 92-5

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OFPP Policy Letter 92-5

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503**

Office of Federal Procurement Policy December 30, 1992

POLICY LETTER NO. 92-5

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Past Performance Information

1. Purpose. This Policy Letter establishes requirements for evaluating contractor performance and for using past performance information in the contractor selection process. The Policy Letter is intended to further the exercise of good business judgment and improve contractor performance.

2. Authority. The Policy Letter is issued pursuant to Section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405.

3. Definitions.

a. Executive Agency. Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103 (1) and 104 (1), respectively.

b. Contractor. A contractor is an entity, or in a large company a specific division or unit, identified by a Contractor Establishment Code pursuant to the Federal Acquisition Regulation (FAR) 4.6.

c. Past Performance Information. Past performance information is relevant information

regarding a contractor's actions under previously awarded contracts. It includes the contractor's record of conforming to specifications and to standards of good workmanship; the contractor's record of conforming and to standards of good workmanship; the contractor's record of containing and forecasting costs on any previously performed cost reimbursable contracts; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer.

d. Past Performance Information System. A past performance information system is an ongoing effort to collect and record past performance information for subsequent use in determining contractor eligibility and selection.

4. Scope. This Policy Letter pertains to past performance information as defined above. The Policy Letter does not pertain to procedures used by agencies in assessing performance for purposes of determining fees under award or incentive fee contracts. Similarly, the Policy Letter is not intended to supplement contracting officials' judgments in initiating or conducting debarment and suspension proceedings under Federal Acquisition Regulation (FAR) 9.4. The Policy Letter is applicable to direct Federal procurements, it is not applicable to procurement under grants or cooperative agreements or to procurement made by Government contractors.

5. Background. A contractor's past performance record is a key indicator for predicting future performance. A satisfactory performance record is a prerequisite to being determined a "responsible source" pursuant to 41 U.S.C. 403. In addition, FAR 15.605 requires that quality be addressed in every source selection and recognizes past performance as a factor in assessing quality. Several agencies have established policies and procedure for collecting, recording and using past performance information. These practices are extremely important to both the Government and to contractors, and requirements are necessary to help ensure their integrity and fairness. This Policy Letter provides such requirements.

6. Policy. It is the policy of the Federal Government that Executive agencies shall:

- a. Prepare evaluations of contractors' performance on all new contracts over \$100,000. Evaluations shall be made during contract performance, as required for contract administration purposes, and at the time the work under the contract is completed.
- b. Use past performance information in making responsibility determinations in both sealed bid and competitively negotiated procurements. Performance information is one factor, among many, that must be considered in making such a determination (see FAR 9.1).
- c. Specify past performance as an evaluation factor in solicitations for offers for all competitively negotiated contract expected to exceed \$100,000 except where the contracting office determines that such action is not appropriate. Such determinations shall be in writing and included in the contract file. As an evaluation factor, past performance should be used to assess the relative capabilities of competing offer's and to help assure greatest value source selections.
- d. Allow newly established firms to compete for contracts even though they lack a history of past performance.

7. Responsibilities.

a. Heads of Executive Agencies. In implementing the policies in Paragraph 6, above, Executive agencies shall comply with the following:

- (1) **Agency Regulations.** Heads of departments and agencies are responsible for taking all

necessary actions to assure effective implementation of these policies, such as disseminating this Letter to appropriate program and other staff, developing implementation strategies and initiating staff training. Since these policies must be implemented in the FAR, agencies should not duplicate the development of implementing procurement regulations being undertaken by the Federal Acquisition Regulatory Councils. However, implementation of these policies in the FAR must be accomplished within the time period specified in Paragraph 8 below, with inclusion in agency solicitations and resulting contracts, as appropriate, to occur immediately thereafter.

(2) **Public Notice.** Regulations developed to implement provisions of this Policy Letter must conform to the publication requirements of Section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418 (b)) and FAR, Part 1.5.

(3) **Notification to Contractors.** Contractor evaluations shall be provided to the contractor at the time they are completed. Contractors shall be given a minimum of 30 days to discuss any evaluation with the contracting officer or if the contracting officer does the evaluation with the head of the contracting activity. While the ultimate conclusion and content of an evaluation is a decision of the contracting agency, the contractor may submit rebutting statements or additional information at any time. Copies of any such statements shall be appended to the evaluation and included in the contract file.

(4) **Confidentiality of Information.** Upon request, past performance information should be made available to other Federal procurement activities. However, past performance information about a contractor shall not be provided, without the contractor's consent, to any private party, except where the agency determines that such information must be released pursuant to a Freedom of Information Act request. Additionally, because of the sensitive nature of contractor histories, appropriate management and technical controls should be made a part of any automated system used for tracking contractor performance to assure that only authorized personnel have access to the data.

(5) **Permanency of Information.** Performance information should not be considered a permanent indicator of a contractor's capability. The age and relevancy of the information should be considered at the time it is used. It should not be maintained for more than 6 years without being disposed of or updated.

(6) **Preservation of Contracting Officer's Judgment.** Information about a contractor's performance shall not be used to supplant the judgment of contracting officers in their selection of contractors. Past performance information is, in part, subjective and must be interpreted and considered by the contracting officer within the context of all other available data.

(7) **Obtaining Past Performance Information.** Data on a contractor's performance may be obtained from a variety of sources. Information on prior agency contracts should be available from within the agency. Information on contracts outside the agency may be obtained from past performance assessments made by other contracting activities including private firms. The methods used to obtain past performance information should be tailored to focus on information that demonstrates the quality of information that demonstrates the quality of performance relative to the size, content, and complexity of the requirements for the instant procurement.

(8) **Using Past Performance Information.** Past performance information should be used to assess risk. Each performance evaluation and risk assessment should consider the number and severity of a contractor's problems, the effectiveness of corrective actions taken, and the contractor's overall work record. The assessment of performance risk should

consider the relative merits of the contractor's prior experience and performance as compared to that of other competing offerors.

(9) **Review of Existing Systems.** Existing past performance information systems shall be reviewed to determine if multiple systems can be consolidated, and to ensure compliance with this Policy Letter. Agencies considering the establishment of a past performance information system.

(a) Special Requirements for Architect/Engineer (A/E and Construction Contracts. Agencies shall evaluate construction contractor performance in accordance with FAR 36.201 and A/E contractor performance in accordance with FAR 36.604. Rather than establishing independent systems for maintaining performance evaluation forms - Standard Forms 1420 (Construction Contracts) and 1421(Architect Engineer Contracts) - agencies are encouraged to use the following existing systems operated by the Corps of Engineers:

ñ The Construction Contract Appraisal Support System (CCASS) which contains over 15,000 performance appraisals covering approximately 7000 construction firms.

ñ The A/E Contract Administration Support System (ACASS) which contains 18,000 performance appraisals covering approximately 4,000 A/E firms.

The present point of contact for ACASS is Ms. Judy McGinnis, (503) 326-4910, and for CCAS, Ms. Kem Morrow at the same telephone number.

8. Federal Acquisition Regulatory Councils. Pursuant to Subsection 6(a) of the Office of Federal Procurement Policy Act, as amended, (41 U.S.C. 401 **et seq.**, the Federal Acquisition Regulatory Councils shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in final form in the **Federal Register**. Promulgation of final FAR regulations within that 210 day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b))."

9. Effective Date. This Policy Letter is effective upon issuance.

10. Information. Questions or inquires about this Policy Letter should be directed to Charles W. Clark, Office of Federal Procurement Policy, 725 17th St., NW, Washington, DC 20503, telephone (202) 395-6803.

OFFICE OF FEDERAL PROCUREMENT POLICY (OFPP)

December 18, 1996

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES AND THE DEPUTY UNDER SECRETARY OF DEFENSE (ACQUISITION REFORM)

FROM: Steven Kelman Administrator

SUBJECT: Temporary Suspension of Past Performance Implementation Thresholds

The Federal Acquisition Regulation (FAR) at sections 15.605 and 42.1502 requires the use of past performance

information in source selection and the evaluation of current performance on a periodic basis at specified thresholds over the next two years. Currently, FAR requires the use of past performance as a source selection factor in all procurements of \$1 million or more and the preparation of past performance evaluations for contracts at or above \$500,000. Feedback from agencies indicates that our concerted efforts to increase the use of past performance is motivating contractors to improve their performance and is enabling source selection officials to make better determinations of what constitutes "best value". However, there has been discussion among the agencies on the amount and type of information that should be collected, and on the cost effectiveness of collecting and using past performance data on smaller dollar contracts.

As a result of these discussions, I am temporarily suspending mandatory implementation of the requirement to use past performance information in source selections on contracts below \$1 million and the requirement to provide past performance evaluations on contracts of less than \$1 million while we work together to revisit the threshold timing and amount, and the type of data to collect in various business areas.

Training and other management efforts to ensure that past performance is effectively and economically used to help achieve best value source selections remains a top priority. I hope this matter remains a priority for your management attention and urge you to actively participate in this important discussion.

APPENDIX B

INTERAGENCY CONTRACTOR PERFORMANCE REPORT

APPENDIX B

INTERAGENCY CONTRACTOR PERFORMANCE REPORT

CONTRACTOR PERFORMANCE REPORT

Final Interim - Period Report: From _____ To _____

1. Contractor Name and Address:
(Identify Division)

2. Contract Number:

3. Contract Value (Base Plus Options):

4. Contract Award Date:
Contract Completion Date:

5. Type of Contract: (Check all that apply) ñ

FP FPI FP-EPA Award Fee

CPFF - Completion CPFF - Term CPIF CPAF

ID/IQ BOA Requirements Labor Hour

T&M SBSA 8(a) SBIR Sealed Bid

Negotiated Competitive Non-Competitive

6. Description of Requirement:

7. Ratings. Summarize contractor performance and circle in the column on the right the number, which corresponds to the performance rating for each rating category.
Please see page three for explanation of rating scale.

Quality 0 1 2 3 4 +

Comments

Cost Control 0 1 2 3 4 +

Comments

Timeliness of Performance 0 1 2 3 4 +

Comments

Business Relations Comments 0 1 2 3 4 +

Comments

Customer Satisfaction (End Users) 0 1 2 3 4 +

Comments

Mean Score (Add the ratings above and divide by number of areas rated)

8. Key Personnel

Project Manager Name Employment Dates _____

Comments/Rating

Name Employment Dates

Comments/Rating

Name Employment Dates

Comments/Rating

Name Employment Dates

Comments/Rating

Name Employment Dates_

Comments/Rating

9. Would you select this firm again? Please explain.

10. Program Officer Name Signature

Phone/FAX/Internet Address Date

11. Contractor's Review. Were comments, rebuttals, or additional information provided?

No Yes. Please attach comments.

12. Contractor Name Signature

Phone/FAX/Internet Address Date

13. Agency Review. Were contractor comments reviewed at a level above the contracting officer?

No Yes. Please attach comments. Number of pages _____

14. Final Ratings. Re-assess the Block 7 ratings based on contractor comments and agency review. Revise block 7 rating, if appropriate.

Quality _____ Cost Control _____ Timeliness _____

Customer Satisfaction: CA Team _____ End User _____

Mean Score (Add the ratings above and divide by number of areas rated)

15. Contracting Officer Name Signature

Phone/FAX/Internet Address Date

Summarize contractor performance in each of the rating areas. Assign each area a rating of 0 (Unsatisfactory), 1 (Poor), 2 (Fair), 3 (Good), 4 (Excellent), or ++ (Plus). Use the following instructions as guidance in making these evaluations. Ensure that this assessment is consistent with any other Agency assessments made (i.e., for payment of fee purposes).

Quality of Product/Service	Cost Control	Timeliness of Performance	Business Relations

<ul style="list-style-type: none"> ● Compliance with contract requirements ● Accuracy of reports ● Appropriateness of personnel ● Technical excellence 	<ul style="list-style-type: none"> ● Within budget (over/under target costs) ● Current, accurate, and complete billings ● Relationships of negotiated costs to actuals ● Cost efficiencies ● Change order issues 	<ul style="list-style-type: none"> ● Met interim milestones ● Reliable ● Responsive to technical direction ● Completed on time, including wrap-up and contract administration ● No liquidated damages assessed ● Effective contractor-recommended solutions 	<ul style="list-style-type: none"> ● Effective management ● Businesslike correspondence ● Responsive to contract requirements ● Prompt notification of problems ● Reasonable/cooperative ● Flexible ● Pro-active ● Effective small/small disadvantaged business subcontracting program
0. Unsatisfactory			
Nonconformances are comprising the achievement of contract requirements, despite use of Agency resources.	Cost issues are compromising performance of contract requirements.	Delays are compromising the achievement of contract requirements, despite use of Agency resources	Response to inquiries, technical/service/administrative issues is not effective and responsive.
1. Poor			
Nonconformances require major Agency resources to ensure achievement of contract requirements	Cost issues require major Agency resources to ensure achievement of contract requirements.	Delays require major Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical/service/administrative issues is marginally effective and responsive
2. Fair			
Nonconformances require minor Agency resources to ensure achievement of contract requirements	Cost issues require minor Agency resources to ensure achievement of contract requirements.	Delays require minor Agency resources to ensure achievement of contract requirements.	Response to inquiries, technical/service/administrative issues is somewhat effective and responsive
3. Good			
Nonconformances do not impact achievement of contract requirements.	Cost issues do not impact achievement of contract requirements.	Delays do not impact achievement of contract requirements.	Response to inquiries, technical/service/administrative issues is usually effective and responsive.
4. Excellent			
There are no quality problems.	There are no cost issues.	There are no delays.	Response to inquiries, technical/service/administrative issues is effective and responsive.

++ PLUS The contractor has demonstrated an exceptional performance level in any of the above four categories that justifies adding a point to the score. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceeds the performance levels described as "Excellent."

CONTRACTOR PERFORMANCE REPORT INSTRUCTIONS

Block 1: Contractor Name and Address. Identify the specific division evaluated if more than one exists.

Block 2: Contract number of contract evaluated.

Block 3: Contract value shall include base plus options. If funding was increased or decreased during the evaluation period, the value in this block should reflect the change.

Block 4: Contract award date and/or anticipated contract completion date.

Block 5: Type of Contract: Check all that apply.

Block 6: Provide a brief description of the work being done under the contract and identify the key performance indicators. This description will allow agencies calling for reference checks to compare statements of work.

Block 7: Circle rating in far right column and provide brief narrative for each of the categories rated. Indicate the contract requirements that were exceeded or were not met by the contractor and by how much. Also calculate the mean score of the ratings.

Block 8: List the names and employment dates of the contractor's key personnel. This will provide a record of how long these managers worked on the contract. If there were many changes in these managers a second page may be necessary. On the comment/rating line, briefly describe the manager's performance.

Block 9: If given a choice, please explain why you would or why you would not reselect the contractor for this contract.

Block 10: The program office person most familiar with the contractor's performance should sign this block. The rating is a combined program office, contracting officer decision. The contracting officer's signature in block 15 signifies concurrence with this rating and the final rating, if a revised rating is necessary.

Blocks 11-12: The contractor may provide comments but must sign block 12 to indicate review of the rating.

Block 13: If the contractor and contracting officer are unable to agree on a final rating, an agency review at a level above the contracting officer is required.

Block 14: Adjust the ratings assigned in block 7, if appropriate, based on any comments, rebuttals, or additional information provided by the contractor and, if necessary, by the agency review. Calculate a mean score of the contractor's performance.

Block 15: The contracting officer's signature certifies concurrence with the initial and final ratings.