



JUN 29 1995

Procurement Memorandum 95-21

June , 1995

ACTION

MEMORANDUM FOR Heads of Contracting Offices
FROM: Kenneth J. Buck
Director, Acquisition Policy and Programs
SUBJECT: Past Performance

Federal Acquisition Circular (FAC) 90-26 changed the Federal Acquisition Regulation (FAR) to establish the following requirements as of July 1, 1995:

- Past performance must be included as an evaluation factor in all solicitations issued on or after July 1, 1995 for competitively negotiated acquisitions with an estimated value in excess of \$1,000,000, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated.
- Beginning July 1, 1995, evaluations of contractor performance must be prepared for each contract in excess of \$1,000,000 at the time the work under the contract is completed. The evaluations are required for all contracts in effect on July 1, 1995, regardless of the date of contract award. In addition, interim evaluations will be prepared for contracts having a period of performance exceeding one year, as specified below.

To assist agencies in implementing these new requirements, the Office of Federal Procurement Policy (OFPP) has issued *A Guide to Best Practices for Past Performance*, interim edition, May 1995. A copy of the guide is attached. It provides excellent guidance for agencies and we recommend that you use it in implementing the requirements in your respective offices.

The following are some highlights of the FAR coverage and the guide, and some additional guidance specific to Department of Commerce acquisitions.

PAST PERFORMANCE AS AN EVALUATION FACTOR

Past performance has most often been used to determine that an offeror is a responsible prospective contractor. In that context it is part of a "go/no go" decision that may be subject to review by the Small Business Administration under the Certificate of Competency process. Responsibility determinations must still be made pursuant to FAR 9.1 before award of any contract, and contractors having records of unsatisfactory contract performance should be screened out of the selection process as part of the responsibility determination. Contractor performance information prepared and maintained pursuant to FAR 42.15 may be used in making those determinations.

However, past performance assumes an added dimension on those acquisitions on which it must now be used as an evaluation factor in source selection. In such acquisitions, it should be included in the solicitation as a factor against which offerors' relative rankings will be compared. It should not be characterized as a minimum mandatory requirement. If a contractor's past performance record passes the responsibility determination, then its record should be compared to the other offerors to determine the offeror that provides the best value to the government. In this context it is a discriminating factor which compares the past track records of competing contractors to help identify which one, relatively speaking, is offering the best value.

CONTRACTOR PERFORMANCE EVALUATIONS

Evaluations will be performed at the completion of all contracts in effect on July 1, 1995. If the contract period will exceed one year, interim and final evaluations will be performed as follows:

- If the contract contains no options, an evaluation will be performed at the end of each one-year period of contract performance.
- If the contract contains options, an evaluation will be performed at the end of the base contract period and at the end of each option period.
- For service contracts subject to DAO 208-10, *Management of Contracted Services*, an evaluation will be included as part of the contract management report required to be prepared semi-annually pursuant to Section 7 of the DAO.

Performance evaluations (including the time allowed for contractor review) will be completed within 60 days after completion of each evaluation period, as specified above. The contracting officer is responsible for initiating the performance evaluation at required periods during contract performance and at contract completion. The development of the performance evaluation is the combined responsibility of the contracting officer and the technical/program office representative. Where the contract provides products or services to end users (persons outside the requiring technical organization), those customers should periodically be surveyed and a summary of their ratings included in the performance evaluation. Examples of contracts on which customer surveys might be used would be those for information technology, janitorial services, cafeteria operation, health services, etc.

Performance evaluations are not required for contracts awarded under FAR 8.6 (Federal Prison Industries) and FAR 8.7 (NIB/NISH).

Evaluations on construction contracts will be made in accordance with FAR 36.201, and SF 1420 is to be used for those evaluations. Evaluations on architectural and engineering (A&E) contracts will be made in accordance with FAR 36.604, and SF 1421 is to be used for those evaluations.

PAST PERFORMANCE INFORMATION SYSTEM

Although OFPP is not prescribing a standard government-wide performance evaluation system, they are encouraging voluntary development of a uniform government-wide format for ease of use by source selection officials from a variety of federal organizations. OFPP has asked, however, that any system that is used be translatable into five *basic* ratings: excellent, good, fair, poor and unsatisfactory; and one *exceptional* rating: excellent plus. The best practices guide includes a suggested format which was developed as a result of an interagency effort. In the interests of ease of exchange of information among agencies, we encourage you to use the format for evaluations and the rating system contained in Appendix 3 of the guide.

At this time no Department-wide information system will be developed. We anticipate that this requirement will eventually be incorporated into DOC Express. In the meantime, Heads of Contracting Offices (HCO) are responsible for maintaining a system of evaluation information on the contracts in their offices and for disseminating such information in response to requests related to their contracts. These systems of information shall include appropriate management and technical controls to ensure that only authorized personnel have access to the data. Evaluations of contractor performance shall not be retained for more than three years after final contract completion.

CONTRACTOR REBUTTALS

When a contractor submits a rebutting statement for any of the ratings of a performance evaluation and an agreement on the ratings cannot be reached between the contractor and the contracting officer, the HCO is authorized to make the final decision on the evaluation. The HCO's decision must be in writing. The contractor's statement and agency review must be attached to the performance evaluation report and must be provided to source selection officials requesting a reference check.

FUTURE REQUIREMENTS

The past performance requirements covered in this memorandum will eventually apply to all contracts in excess of \$100,000. They will be phased in on the following schedule:

- Past performance shall be evaluated in all competitively negotiated acquisitions expected

to exceed \$500,000 issued on or after July 1, 1997, and in those expected to exceed \$ 100,000 issued on or after January 1, 1999.

- Evaluations of contractor performance will be required for each contract in excess of \$500,000 beginning July 1, 1996, and for each contract in excess of \$100,000 beginning January 1, 1998.

If you have questions to which an answer is not provided either in this memorandum or the best practices guide or if you have suggestions for additional areas of guidance related to past performance, please contact Joyce Cavallini by e-mail or on (202) 482-0202.

Attachment

A Guide to
BEST PRACTICES
for
PAST PERFORMANCE

TABLE OF CONTENTS

FOREWORD	3
CHAPTER 1. INTRODUCTION	5
Acquisition Reform Legislation	6
Past Performance as a Method to Streamline the Evaluation Process	7
The Plan for Implementation	7
Small Purchases	9
CHAPTER 2. BASIC CONSIDERATIONS	11
Past Performance as an Evaluation Factor Versus a Responsibility Criterion	12
Price Performance as a Separate Non-Cost/Price Factor	12
General Indicia of Past Performance	12
Eliciting Specific Information	14
How to Weigh Past Performance	16
CHAPTER 3. SOLICITATION LANGUAGE FOR USING PAST PERFORMANCE	19
Section J	21
Client Authorization Letter	21
Section L	21
Section M	23
CHAPTER 4. OBTAINING INFORMATION ON A CONTRACTOR'S PAST PERFORMANCE	27
Reference Checks	27
Customer Evaluations of Previously Performed Contracts	31
Quality Certifications	31
Discussions on Past Performance	33
CHAPTER 5. RATING PAST PERFORMANCE	35
New Contractors	36
CHAPTER 6. CONTRACTOR PERFORMANCE REPORTS	37
Completion of the Performance Evaluation	38
Ratings Areas	38

Performance Ratings	40
Contractor Response and Agency Review	41
Release of Information	42

[APPENDIX 1. PAST PERFORMANCE PLEDGE AND AGENCY CONTACT POINTS](#)

[APPENDIX 2. SAMPLE QUESTIONNAIRES](#)

Bureau of Prisons
U.S. Army Information Systems Selection and
Acquisition Agency

[APPENDIX 3. CONTRACTOR PERFORMANCE REPORT FORM AND INSTRUCTIONS](#)