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| | Procurement SERVICE AND SUPPLY CONTRACTOR PERFORMANCE EVALUATIONS | |
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CEPR-P

Regulation
No. 715-1-19

5 July 1996

Procurement
SERVICE AND SUPPLY CONTRACTOR PERFORMANCE EVALUATIONS

1. **Purpose.** This regulation establishes procedures for evaluating all service and supply contractor performance as mandated by the Federal Acquisition Regulations (FAR) Subpart 42.15-Contractor Performance Information. Additionally, this regulation establishes and defines the policies for the use of Service and Supply Contractor Appraisal Support System (SSCASS) under this regulation.

2. **Applicability.** This regulation is applicable to all USACE commands and elements having responsibility for procurement of military and civil works service and supply contracts. This regulation shall immediately apply to all current contracts in excess of \$100,000 regardless of the date of contract award. Evaluations will not be performed for contracts awarded under FAR Subpart 8.6-Acquisition from Federal Prison Industries, Inc. and Subpart 8.7-Acquisition from Non-Profit Agencies Employing People Who Are Blind or Severely Disabled. This regulation is not applicable to Architect-Engineer or construction contracts which are covered in the references below.

3. **References.**
 - a. FAR 42.15 - Contractor Performance Information

 - b. AFARS 42.15- Contractor Performance Information

 - b. ER 415-1-17 Contractor Performance Evaluations - Construction

 - c. ER 715-1-17 Architect-Engineer Performance Evaluation - Procurement

4. **Policy.** Past performance is relevant information regarding a contractor's actions and conduct under previously awarded contracts that is useful for future contract source selection purposes and responsibility determinations. It includes such things as ability to conform to contract requirements and specifications, adherence to contract schedules, forecasting and cost control, administrative aspects related to performance, reasonable and cooperative behavior, and commitment to customer satisfaction. Accurately assessing and recording contractor past performance is mandated by FAR 42.15 and required under the Federal Acquisition Streamlining Act to be used as a primary source selection factor in all solicitations exceeding \$100,000.

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5. **Procedures.**

a. Contracting Officer Representatives (COR) will prepare and recommend to the Contracting Officer (CO) a written evaluation of a contractor's performance in accordance with this regulation. Architect-Engineer and construction contracts will follow the evaluation procedures listed in ER 715-1-17 and ER 415-1-17, respectively. All other performance evaluations for service and supply contracts will comply with this regulation and be prepared in the Service and Supply Contractor Appraisal Support System (SSCASS) for all contracts and delivery/task orders in excess of \$100,000. All applicable contracts, regardless of contract type, shall have a final performance evaluation.

b. Interim performance evaluation shall be prepared in SSCASS for two specific instances: unsatisfactory performance and annually. Interim performance evaluations shall be prepared whenever the COR determines that a contractor's performance is generally unsatisfactory in any element for a period of one month or longer, or as appropriate. Interim performance evaluations are also required annually as listed in paragraph 6.b. Specific guidance on issuing interim unsatisfactory evaluations is contained in paragraph 6.d. Satisfactory interim performance evaluations may be used at any time and are encouraged as a means of constructive contractor feedback and partnering tool. Once completed, interim evaluations will be immediately transmitted to the central database and later purged from SSCASS upon completion of the final evaluation.

c. Under this regulation, final performance evaluation reports shall be prepared in SSCASS within 45 days of substantial completion of the contract or termination. Contracting activities are to provide the completed evaluation to the contractor as soon as practicable. Copies of the evaluation, contractor responses and review comments if any are to be retained as part of the evaluation and included in the contract file. Since the evaluation may be used to support future award decisions, it is to be marked as "Source Selection Information" and "For Official Use Only". Completed evaluations are to be released only to the evaluated contractor and government personnel whose official duties require the use of such information. Past performance information and evaluations will be retained no longer than three years after completion of the contract. Final evaluations will be transmitted to the central database once all appeals actions under this regulation are complete.

d. Previous performance evaluations of contractors in the SSCASS system must be used in making responsibility determinations. Before selecting qualified responsible contractors for future awards, the CO must retrieve from the SSCASS central database performance evaluations pertaining to the prospective awardee and make a determination of responsibility regarding the contractor's previous performance on DOD contracts.

6. Implementation.

a. Evaluating contractor performance begins once a contractor is notified of the performance elements on which its actions will be evaluated. The notification is to consist of a letter and a copy of a blank evaluation. The contractor will acknowledge the notification and return it to the CO for inclusion in the contract file. Documentation to support the evaluation will be collected by the COR throughout the course of the contract.

b. During contract performance, interim performance evaluations are to be used as appropriate. Interim performance evaluations are required annually for contracts whose period(s) of performance exceed 18 months. Evaluations used in determining award fee (AF) or incentive fee (IF) payments may be used to satisfy annual interim evaluation requirement as allowed in FAR 42.1053.

c. An interim or final unsatisfactory performance evaluation will normally precede any cure or show cause notices issued to the contractor by the Contracting Officer. Final unsatisfactory evaluations will be completed for all Terminations for Default.

d. Unsatisfactory or Marginal Interim Performance Evaluations.

(1) An interim unsatisfactory or marginal performance evaluation shall be initiated when a contractor's performance is unsatisfactory on one or more elements for a period of one month or longer, or when circumstances dictate otherwise.

(2) The administrative contracting officer (ACO) or the COR must be alert for indications of poor performance. Once noted, the performance will be immediately discussed with the contractor for resolution. Generally, contractors will be allowed a reasonable period (normally 30 days) to correct poor performance. A Memorandum for Record (MFR) will be prepared and added to the contract file to document the meeting and the period allowed to correct the deficiencies.

(3) Once a contractor's corrective action is underway, ACOs and CORs will closely monitor the deficient areas for improvement. If no material improvement is noted, a letter will be sent to notify the contractor of the government's intent to issue an interim unsatisfactory performance rating under this regulation. The letter must address all previous meetings and identify the facts on which the interim unsatisfactory rating is based. If appropriate, a copy of this correspondence shall be forwarded to the contractor's bonding company. At all times, the CO shall be kept fully aware of the contract status.

(4) Prior to issuing an interim unsatisfactory rating, the contractor must be offered the

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opportunity to meet with the CO to discuss the evaluation. Contractors are allowed a maximum of 14 days to respond in writing to the notification letter. If, at the end of the specified time period, there is no response or evidence of substantial improvement, the interim unsatisfactory rating will be sent to the Contracting Division for processing. If appropriate, the contractor's bonding company will be notified of the actions taken. If no response is received, the contractor's lack of response will be noted and included in the evaluation. Should the contractor respond to the "letter of intent" within the allotted time frame, any written comments made by the contractor shall be included in the evaluation and factual discrepancies alleged shall be discussed, resolved if possible, and made a part of the evaluation. Changes in the evaluation may be made, if appropriate.

(5) As stated in paragraph 6d(1) above, the normal time frame for initiation of an interim unsatisfactory performance evaluation occurs after 30 days of unsatisfactory performance. However, in circumstances involving a critical service or if the service or supply contract is of a short duration, an unsatisfactory rating for poor performance may be issued without waiting for the end of the 30-day evaluation period.

(6) Interim unsatisfactory ratings alert contractors of shortcomings and serve as a valuable tool to improve performance, correct deficiencies, and to avoid a final unsatisfactory rating. After the issuance of an interim unsatisfactory rating, the ACO/COR must continue to closely monitor and document the contractor's performance. Documents to support unsatisfactory ratings shall be memorandums of meetings, "cure" letters to the contractor, quality assurance reports, photographs, video recordings and show cause letters.

(7) ACOs/CORs will re-evaluate interim unsatisfactory ratings every three months until the contract is complete or terminated. Re-evaluations will include any rationale as to why it is in the Government's best interests to allow the contractor to continue performance of the contract. A new evaluation is not required if the unsatisfactory performance continues for additional periods, although the files should continue to be fully documented. However, should the contractor's performance on any performance evaluation element change, the original interim rating may be amended with a written addendum which reflects the changes. This written amendment must be forwarded to both the original contract file and to the SSCASS file.

e. Final Performance Evaluations.

(1) Within 45 days of completion of a contract, a performance evaluation shall be prepared and forwarded to the appropriate contracting activity. Evaluations are not final until the appeal process under this regulation is complete.

(2) The original performance evaluation for each contract is retained by the originating

contracting activity/district in the contract file for a minimum of three years after the date of the report. A copy of the evaluation shall be transmitted to the SSCASS central data base system within three working days after competition and retained for three years.

(3) The contract's COR will normally be the evaluating official who prepares the rating. Each performance evaluation shall be reviewed for accuracy and fairness by an individual having knowledge of the contractor's performance at a supervisory level above that of the evaluating official.

(4) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the evaluation. The contractor must be afforded the opportunity to submit written comments, which should be addressed and included in the evaluation. There are no rigid rules governing the number of items on a performance evaluation which must be unsatisfactory before an overall unsatisfactory rating is issued. Unsatisfactory performance on one or more of the elements to be rated, may be sufficient to justify an overall unsatisfactory rating.

(5) If an unsatisfactory rating is contemplated, the CO and the Office of Counsel should be involved in reviewing the necessary documentation. Final unsatisfactory ratings should not be a surprise to the contractor. Final unsatisfactory evaluation ratings will normally be issued to contractors who fail to sufficiently correct deficiencies noted in previously issued interim unsatisfactory performance evaluations. However, an interim unsatisfactory evaluation is not to be interpreted as a prerequisite for issuing a final unsatisfactory rating.

(6) The CO must be satisfied that the justification and documentation supporting an unsatisfactory rating is adequate to concur with the overall evaluation. Interim and final unsatisfactory performance evaluation reports prepared by the evaluating official must be signed by the CO. If the CO nonconcur with the evaluation, the performance evaluation will be returned to the rating official and not transmitted to SSCASS.

(7) The final performance evaluation will supersede any previous interims. Final unsatisfactory ratings can be amended, if warranted, to reflect changes in the evaluation of performance elements caused by resolution of contractor claims or compliance with warranty requirements. Amendments to final unsatisfactory reports in the SSCASS database must be made in writing by the CO for the contract and sent to the SSCASS database manager, stating why an amendment to the rating is necessary, and which elements to change.

(8) Indefinite delivery type service contracts will have a final performance evaluation prepared for each delivery/task order over \$100,000.

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f. Debarment. Following issuance of a final unsatisfactory performance evaluation, the CO shall promptly make a determination regarding the appropriateness of pursuing a debarment action against the contractor based on its record of unsatisfactory performance and previous evaluations. This written determination shall indicate the CO's rationale for seeking or not seeking debarment based on guidance found in FAR 9.406.

g. Outstanding Performance Ratings. When appropriate, contractors should be recognized for outstanding performance on projects. When submitting an outstanding rating, the evaluating official will include a draft letter of appreciation to the contractor with a copy of the evaluation. Contractors with outstanding performance ratings should be considered for USACE recognition and division awards.

h. Appeals. The contractor receiving a final unsatisfactory performance evaluation has the option of appealing the rating to the Commander of the Contracting Activity. The appeal must be made within 30 calendar days of receipt by the contractor of the unsatisfactory evaluation. The appeal must be a written request to the CO stating the reasons why a further review of their performance evaluation is justified, and the circumstances which may cause the government to revise its performance rating of the contractor. Unsatisfactory performance evaluations should not be entered into the SSCASS system until the 30-day appeal rights expire or the appeal procedure is completed. Interim unsatisfactory performance evaluations cannot be appealed.

i. Contractor Notice. A copy of each completed evaluation shall be formally transmitted to the contractor, regardless of the rating. This action is especially important for contractors who are performing in an unsatisfactory manner. Contractors performing unsatisfactorily , should be given a copy of the performance evaluation report as soon as it has been processed and signed by the CO.

FOR THE COMMANDER:



ROBERT H. GRIFFIN
Colonel, Corps of Engineers
Chief of Staff

2 Appendixes:

- APP A - Guidance for Documenting
Contractor Performance Evaluations
- APP B - SSCASS

APPENDIX A

GUIDANCE FOR DOCUMENTING CONTRACTOR PERFORMANCE EVALUATIONS

1. A primary concern of an ACO/COR evaluating a contractor's performance is ensuring that sufficient and proper documentation is available to justify the proposed rating. Insufficient documentation may lead to the overturning of the evaluation by either the reviewing official, contracting officer or even the contractor by appeal. The performance documentation can also be used for possible termination, suspension or debarment. Consequently, it is imperative that good documentation be collected by the ACO/CORs in either written form or video tape. Areas that should be evaluated are as follows:

a. Quality of Work (Contractor Quality Control).

(1) Quality of Work reflects the contractor's management of the quality control program, as well as the quality of the work performed. Questions which should be addressed are as follows: Has a quality product been provided? If not, specifically describe the deficiency in quality and the shortcomings in the contractor's quality control system responsible for it, such as:

- (a) Inadequate control.
- (b) Failure to perform necessary testing.
- (c) Failure to implement quality control inspection process.
- (d) Inadequate or incomplete documentation.
- (e) Failure to identify, and correct deficient work
- (f) Inadequate reviews of materials and shop drawings
- (g) Incorporation of unspecified or substandard materials

(2) To back up any proposed unsatisfactory rating, the remarks area of the evaluation must contain detailed comments, based on back-up material and with specific instances of deficiencies, as appropriate.

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b. Timely Performance:

(1) Does the contractor complete activities in a timely manner? This includes administrative activities such as submittal management, response to RFP's, etc.

(2) Did the contractor adequately schedule the work?

(3) Has the contractor met administrative milestone dates?

(4) Has the contractor met physical milestone dates specified by contract or agreed to in the project schedule?

(5) If the schedule has slipped as a result of the contractor's fault or negligence, has he taken appropriate corrective action of his own volition?

(6) Has the contractor furnished updated project schedules on a timely basis?

(7) Has the contractor submitted required subcontracting reports (SF 294 and SF 295) on time?

c. Effectiveness of Management:

(1) Are the contractor's on-site and home office management personnel exhibiting the capacity to adequately plan, schedule, resource, organize and otherwise manage the work? If not, describe and relate to other rated elements.

(2) Is the contractor complying with its subcontracting plan?

d. Compliance with Safety Standards:

(1) Has the contractor implemented an effective safety program; one which minimizes/mitigates potential accidents?

(2) Has the contractor provided appropriate personnel protective equipment and associated training?

(3) Has the contractor taken necessary corrective actions when safety deficiencies are noted or are violations only corrected after significant Government intervention?

e. Compliance with Labor Standards:

- (1) Has the contractor complied with all required labor standards and provisions?
- (2) Have necessary corrective actions been made without significant Government intervention?
- (3) Is the contractor complying with affirmative action and EEO compliance requirements?

f. Evaluation Preparation :

- (1) The telephone number of the ACO/COR or evaluating official who prepares the report should be in block 11.
- (2) The contractor's Contractor Establishment Code (formerly referred to as the DUNS number) should be shown in block 5.a.
- (3) The signature of the appropriate evaluating official designated by the Contracting Officer.

g. Coordination with the Using Activity (Customer). It is recommended that the evaluating official solicit observations and written comments from the Using Activity (Customer) concerning the contractor's overall performance prior to finalizing the evaluation.

2. The above questions are not intended to be all inclusive, but should provide a point of departure to develop additional questions and responses which will result in the preparation of a well-documented performance evaluation. Also, the Office of Counsel should be brought into the process, as early as possible, if an unsatisfactory rating is expected, so that they can assist in reviewing and developing adequate documentation.

APPENDIX B

SERVICE AND SUPPLY CONTRACTOR APPRAISAL SUPPORT SYSTEM

1. The Service and Supply Contractor Appraisal Support System (SSCASS) is a centralized and automated data base containing performance evaluation information on U.S. Army Corps of Engineers and DOD service and supply contractors. The Service and Supply Contractor Performance Evaluation is electronically transmitted to the SSCASS central data base, which is maintained in CENPP. Preparation of the evaluation will be completed using the SSCASS PC Program, Version 1.0.
2. This software program is designed to assist the contracting activities, project offices, resident and field offices in preparing the evaluation and electronically distributing the evaluation to the district office and the centralized data base. This is a self-directed program which requires some knowledge of personal computers and telecommunication facilities. The user interface allows the entering of data to any block, in no specific order.
3. The PC program will store the information contained in the blocks reserved for remarks and will allow you to print a hard copy of the evaluation for use as the official record copy.
4. Before the performance appraisal is transmitted to the USACE database, the system performs a series of edit checks. Copies of the user guide, computer access information, the necessary software, and additional assistance on the operation of the system is available by contacting the SSCASS database manager. If for any reason it is not possible to electronically transmit the evaluation, a copy, along with a computer disk containing the file, shall be mailed to the address below.

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