

Contract Options: Evaluating Contractor Past Performance



Guiding Principles

- Linking contract continuation to contractor performance can serve as an incentive for performance excellence.
- Thorough review of past performance contributes important information to the Department's decision making regarding the exercise of options.
- Past performance assessment should include program and technical issues, cost control, business management, socio-economic programs and other relevant contract obligations and requirements.
- A team approach to assessment of past performance, including program, procurement, and other specialists will ensure comprehensive and meaningful evaluation.

[Reference: FAR 17.2, 17.6, 42.15, DEAR 917.6, 970.1706]

Overview

Use of options to extend contract terms may make good business sense because it sustains long-term business relations, particularly on complex contracts with steep learning curves, such as the Department's major operating contracts. Linking the exercise of such options to the quality of performance under the contract ensures that the continuation of the relationship is beneficial and that it will provide a significant incentive for the contractor to attain, and sustain, high levels of performance.

In making decisions on whether or not to exercise contract options to extend a contract's period of performance, the Department, therefore, relies heavily on a contractor's demonstrated past performance under the contract. This Guide section provides model guidelines for the Department's procurement and program personnel to use in assessing a contractor's past performance under a DOE contract for the purpose of making decisions regarding the exercise of contract options.

Background

In making decisions about whether or not to exercise a contract option for an additional period of performance, contracting officers are required to review a contractor's overall performance, and to consider factors relating to the contractor's technical, administrative, and cost performance.

DEAR 970.1702-1(b) requires, as part of the review identified in FAR 17.605, the contracting officer to assess whether the exercise of an option is in the Government's best interest. Other than a continuing need for the services to be performed, the contractor's performance record is the most important factor to be considered in the contracting officer's determination.

DOE contracting activities have already established local procedures for the collection and maintenance of information on contractor performance. These procedures identify the responsibilities of the technical and contracting offices for collecting, maintaining, disseminating, and using past performance information.

The procedures identify pertinent performance data elements for collection. Contracting activities are responsible for

the collection of such data. Contracting activities are responsible for collecting, reviewing, and utilizing information on contractor performance and sharing this information with other Federal contracting activities through input to a Government-wide past performance database.

Past Performance Evaluation Model

The following guidelines for conducting a past performance evaluation for consideration in exercising a contract option are provided to the Department's Contracting Officers as a model to assist in making reliable and accurate decisions about exercising options with contractors to extend the term of their contracts.

These guidelines should be further tailored by each office to appropriately address site-specific issues and concerns relating to an incumbent contractor's performance history.

Advance Planning

Adequate advance planning will ensure timely consideration of all logistical issues, including selection of the Evaluation Team members and notification to appropriate DOE management and program personnel who routinely interact with the contractor under review.

Attachment A is a sample list of information that the Evaluation Team should obtain prior to the review.

Evaluation Team Members

The evaluation team should consist of qualified reviewers and experts from the cognizant program and procurement offices, as well as representatives from other disciplines as determined necessary by the Contracting Officer (e.g. safety and health, budget, legal, etc.). Team leaders should be external to the DOE organization responsible for day to day monitoring of contract performance.

Additionally, a well balanced team approach should ensure the inclusion of knowledgeable and objective team members who are from outside the office whose contract is under review. These independent reviewers should ensure a certain degree of objectivity and credibility in the review process.

Resources

Attachment A provides a listing of information sources relevant to past performance determinations. Note that while performance reviews associated with contract performance objectives are most relevant, other data sources relating to contract oversight activities, contractor compliance with contractual terms and conditions, contractor cooperation, etc., are useful in providing an overall perspective on the contractor's performance.

Conducting the Review

The specifics relating to the methodology and approach for conducting and documenting the review should be developed by the team and clearly articulated and understood by all reviewers.

The methodology for conducting the evaluation should include:

- Review of relevant contract file documentation.
- Review of relevant documentation provided by the contractor.

- Review of any existing performance assessments, oversight reports, OIG/GAO audits, and contractor self-assessments.
- Interviews with cognizant DOE program, procurement, legal, and administrative personnel.
- Interviews with appropriate contractor personnel.

Areas of Review

Past performance information includes all relevant information regarding a contractor's actions and performance under the contract. The general areas that should be considered in the review of an incumbent contractor's performance history include the following, as appropriate:

- Accomplishment of Specified Contract Performance Objectives
- Financial Business Management Performance
- Safety, Health and Environmental Performance
- Safeguards and Security Performance
- Performance under Greening the Government Initiatives
- Performance under Socio-economic programs; Diversity clause requirements; EEO compliance; and implementation of restrictions against racial profiling
- Specific criteria should include:
 - 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, such as: timeliness of delivery/performance; resolution of delays; number of "show cause" letters and "cure" notices issued;
 - number of delinquent deliveries; and, timely performance of required tests;
 - The contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction;
 - The number of customer complaints recorded against a contractor and the adequacy of the contractor's resolution of such complaints;
 - On the job safety performance record, including the number of lost or restricted workdays due to occupational injuries;
 - Adequacy of contractor's quality assurance system, including, as appropriate, quality deficiency notices;
 - Compliance with other key contract provisions (e.g., subcontracting programs, labor standards, safety standards, reporting requirements; and,

- The contractor's business-like concern for the interest of the customer.

Documentation and Review

At the conclusion of the review, a written report should be prepared that identifies the methodology of the review and the Evaluation Team's findings. The report should address all significant areas of performance and highlight the strengths and weaknesses found in the contractor's past performance history.

The report will be relied on by the contracting officer in making the determination that the exercise of the Option is in the Government's best interest pursuant to DEAR 970. 1706-1(b), and the cognizant Assistant Secretary and the DOE Procurement Executive will review the report when determining whether to approve the contracting officer's decision.

Copies of the report should be provided to the Head of the Contracting Activity and the Headquarters Office of Contract Management (ME-62).

Evaluations of contractor performance may involve information considered to be "Source Selection Information" and, as such, should be protected from unauthorized disclosure in accordance with applicable FAR requirements.

Attachment B is a model outline for a Past Performance Evaluation Team Report.

Role of the Headquarters Office of Contract Management (ME-62)

This office provides overall guidance concerning DOE's efforts to effectively evaluate a contractor's past performance. It assists contracting activities in the development of procedures and promotes uniformity to help ensure that DOE contracts only with responsible contractors. The Office of Contract Management also assists the contracting activities in assuring the effectiveness of their local procedures.

Headquarters Point of Contact

Questions regarding past performance issues maybe directed to the Office of Contract Management, ME-62, at (202) 287-1365.

Attachment A

Information Supporting the Contractor Past Performance Review
(Include as appropriate)

1. Copy of the contract and supporting documentation.
2. Baseline of each major subproject or work activity and related schedules.
3. Contract performance evaluations, fee award decisions, performance report cards, and other performance assessments pertaining to performance under the contract.
4. Organizational structure of the contractor at the start of the contract period and the current organizational structure with any interim organizational charts for each significant change over the contract period (showing integrator, subcontractors, and enterprise company relationships).
5. Any Facility Evaluation Board results *for* each year and the positive and negative trends found by the FEB plus corrective actions taken to address negative trends.
6. Any oversight reports relating to contract performance and/or compliance, including but not limited to BMOP, CPSR/BSC, DOE/Office, OIG, and GAO.
7. The number, type and summary of any Type A or Type B accident investigations on the site during the contract period. .
8. Any oversight reports/issues relating to safe guards and security concerns, including the number, type and summary of any security violations during the contract period. The local *DOE* safeguards and security organization should be contacted for any information available in this area.
9. Copies including any assessments made on major subcontractors.
10. Copies of any show cause letters issued during the contract period to any major subcontractors or companies and the outcome or resolution of those show cause letters
11. Number of any Employee Concerns submitted and the disposition for each year of the contract, including the time periods taken for disposition of the concerns; the number of employee concerns currently open; and, the number of Whistle Blower incidents and their disposition. ..
12. Any contractor performance, outsourcing and staffing goals that were established at the start of the contract and a description of how actual performance has compared to the goals.

13. Copies of any “letters of direction” to the contractor identifying or requiring actions to be taken to address unacceptable conditions, actions, or operations.
14. Documentation that evidences the contractor’s compliance with socio-economic programs.

Attachment B

Model Outline for a Past Performance Evaluation Team Report

I. Introduction

This section of the report provides relevant background on the DOE office's mission and the contractor's effort in meeting the objectives of the mission.

II. Summary of Findings

This section of the report provides a description of the approach used by the Past Performance Evaluation Team and summarizes the Team's findings.

III. Detailed Findings

This section of the report provides the specific details of the Team's findings in the following areas (as appropriate):

- *Program/Project*
- *Financial/ Business*
- *Safety, Health and Environment Safeguards and Security*
- *Greening the Government Initiative*
- *Socio-economic Programs*

IV. Appendices

This section of the report identifies other relevant information on the review including the team composition and a list of the reference documents reviewed by the team.