

## Federal Acquisition Regulation

## 42.1502

pricing data, or information other than cost or pricing data.

[48 FR 42159, Sept. 19, 1983. Redesignated and amended at 60 FR 48241, 48249, Sept. 18, 1995]

### 42.1305 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-14, Suspension of Work, in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated.

(b)(1) The contracting officer may, when contracting by negotiation, insert the clause at 52.242-15, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development.

(2) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its *Alternate I*.

(c) The contracting officer shall insert the clause at 52.242-16, Stop-Work Order—Facilities, in solicitations and contracts when a facilities acquisition contract or a consolidated facilities contract is contemplated.

(d) The contracting officer shall insert the clause at 52.242-17, Government Delay of Work, in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

[48 FR 42159, Sept. 19, 1983, as amended at 50 FR 2270, Jan. 15, 1985; 50 FR 25680, June 20, 1985. Redesignated and amended at 60 FR 48241, 48249, Sept. 18, 1995]

### Subpart 42.14 [Reserved]

### Subpart 42.15—Contractor Performance Information

SOURCE: 60 FR 16719, Mar. 31, 1995, unless otherwise noted.

#### 42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. This subpart does not apply to procedures used by agen-

cies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

[60 FR 16719, Mar. 31, 1995, as amended at 65 FR 36014, June 6, 2000]

#### 42.1501 General.

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.

#### 42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold at the time the work under the contract is completed. In addition, interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements. These procedures shall require an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at 52.219-9, Small Business Subcontracting Plan.

## 42.1503

(b) Agencies shall not evaluate performance for contracts awarded under 48 CFR part 8, subpart 8.7. Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 48 CFR 36.201 and 36.604, respectively.

[60 FR 16719, Mar. 31, 1995 as amended at 62 FR 51258, Sept. 30, 1997; 68 FR 28096, May 22, 2003; 68 FR 60006, Oct. 20, 2003; 71 FR 57368, Sept. 28, 2006]

### 42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see 8.604) when FPI is a mandatory source in accordance with subpart 8.6. 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. Evaluations used in determining award or incentive

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fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(c) Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.

(d) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) The past performance information shall not be retained to provide source selection information for longer than three years after completion of contract performance.

60 FR 16719, Sept. 30, 1997, as amended at 62 FR 51258, Sept. 30, 1997; 68 FR 28096, May 22, 2003; 69 FR 16150, Mar. 26, 2004]

### Subpart 42.16—Small Business Contract Administration

#### 42.1601 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

[60 FR 48230, Sept. 18, 1995]