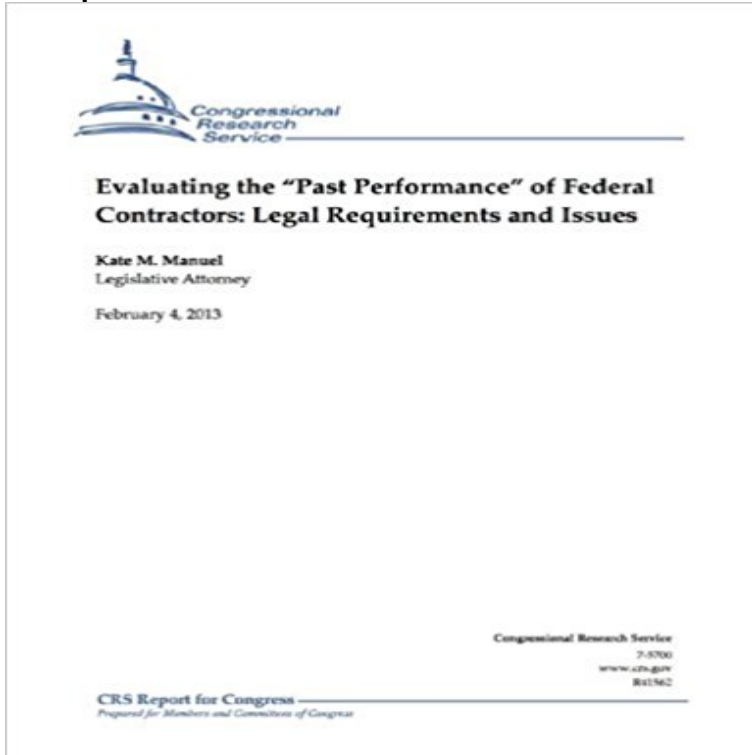


Evaluating the Past Performance of Federal Contractors: Legal Requirements and Issues



Poor performance under a federal contract can have immediate consequences for contractors, who could be denied award or incentive fees, required to pay liquidated damages, or terminated for default. In addition, it could affect their ability to obtain future contracts because various provisions of federal law require agencies to evaluate contractors past performance and consider past performance information when making source selection decisions in negotiated procurements and when determining whether prospective contractors are responsible. Past performance refers to contractors performance on active and physically completed contracts. Currently, federal law requires agencies to evaluate and document contractor performance on all contracts whose value exceeds \$150,000. The evaluation must address the contractors performance vis-a-vis any required subcontracting plan and may address its conformity to contract requirements, adherence to contract schedules, and related factors. The evaluation and any contractor response comprise the past performance information that is stored in government databases (e.g., Past Performance Information Retrieval System (PPIRS), Federal Awardee Performance and Integrity Information System (FAPIIS)) and may be used in future source selection decisions. Federal law also requires agencies to consider contractors past performance when making source selection decisions in negotiated procurements whose value exceeds \$150,000. In a negotiated procurement, the contract is awarded to the offeror whose proposal represents the best value for the government based on various factors identified in the solicitation. These factors typically must include price and past performance. However, other factors may be considered, and the factors can carry various weights. Additionally, agencies are

required by law to consider whether the contractor has a satisfactory performance record when determining whether the contractor is sufficiently responsible to be awarded a federal contract. Agencies cannot award a contract without determining that the contractor is responsible. While agencies are generally prohibited from repeatedly finding a contractor nonresponsible based upon the same deficient past performance, they have authority to debar or suspend contractors for willful failure to perform under a contract or a history of failure to perform. Recent reports alleging that some contractors received new contracts despite allegedly deficient performance under prior or current contracts have prompted interest in the role that evaluations of past performance play in federal contracting, as well as attempts by some Members of Congress and the Obama Administration to strengthen requirements pertaining to performance evaluations. The 112th Congress enacted legislation that requires the Department of Defense (P.L. 112-81) and the Federal Acquisition Regulatory Council (P.L. 112-239) to develop strateg[ies] for ensuring that past performance reports are timely, accurate and complete; and would give contractors 14 days to comment on, rebut, or supplement past performance reports. It also considered measures that would have addressed the content, use, and/or availability of past performance information, among other things. In addition, the Obama Administration recently renewed its proposal to standardize the factors used in evaluating contractors performance, and require that all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS).

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Responsibility Determinations Under the Federal Acquisition Manfredonia Law Offices, LLC - Federal Government Contracts Lawyers - Attorneys. FAR 42.1503 sets forth the procedures for evaluating past performance and gives the procedural requirements in CPARS and improperly gave it poor ratings. Todd also specifically asserts that its problems with subcontractors did not **The Ghosts of Contracts Past: How Past Performance Can Ruin** Evaluating the Past Performance of Federal 2015 the Past Performance of Federal Contractors: Legal Requirements and Issues Summary. **Evaluating the Past Performance of Federal Contractors: Legal** procedures therefore require that an interim evaluation be entered into the Early identification of problems typically allows for simpler and less costly database for all federal contractor past performance information. July 29, 2009 .. tions Act, 2010 (Public Law 111-212), which applies only to past **Past Performance as an Evaluation Factor Subpart 15.3Source Selection** - third in a series of short papers focusing on key issues and important topics in the acquisition and Federal agencies advantage to use past performance in evaluating and selecting contractors for award. . contractors record of conforming to contract requirements and to standards of good Section 1091 of the law states **Evaluating the Past Performance of Federal Contractors: Legal** determinations help ensure that federal contractors are responsible. See generally CRS Report R41562, Evaluating the Past Performance of Federal Contractors: Legal Requirements and Issues, by Kate M. Manuel. **Evaluating Contractor Past Performance - Department of Energy** Evaluating the Past Performance of Federal Contractors: Legal Requirements and Issues [February 4, 2013] [open pdf - 401 KB]. **PAST PERFORMANCE EVALUATION FOR SOURCE SELECTIONS** Scopri Evaluating the Past Performance of Federal Contractors: Legal Requirements and Issues di Congressional Research Service: spedizione gratuita per i **open full abstract - Homeland Security Digital Library** This report provides an overview of existing legal requirements pertaining to past performance, including the issues raised by federal **Challenging CPARS Past Performance Evaluation - Government Contractors: Legal Requirements and Issues** requires agencies to evaluate contractors past performance and consider past performance. **CPARS Federal Construction Contracting Blog** Evaluating the Past Performance of Federal Contractors: Legal . legal requirements pertaining to past performance, including the issues **Evaluating the Past Performance of Federal Contractors: Legal** Evaluating Contractors with No Relevant Past Performance . . . Defense Acquisition University, the Federal Acquisition Institute, and industry, has developed online training on . requirement for past performance information . assessment of whether the problems were . encouraged to seek guidance from legal counsel. **Subpart 42.15Contractor Performance Information** - Past performance evaluations are required for contracts and orders as This evaluation shall not consider the requirements under paragraph (g) of this section. (2) The extent to which the prime contractor addressed labor law violations by its At that time, GSA, DoD and NASA will publish a document in the Federal **Past Performance** - From formation through administration, contracting with the federal Code and the common law, federal government contracting is governed by a maze of statutes . (b) the offerors past performance on government and commercial contracts (c) the on the requirement and the evaluation factors set forth in the evaluation. **Evaluating the Past Performance of Federal Contractors: Legal** Source selection: Past performance is required to be an evaluation factor in selecting key issues that have arisen in considering past performance in source three largest agencies in terms of federal contracting dollars obligated issued their own guidance on implementing the FAR requirements. **Federal Government Contract Overview - FindLaw** It would require that a contractors past performance ratings be immediately appeals, procurement issues, small business issues, and dispute resolution. . is legally entitled to a fair and accurate performance evaluation. **Federal Contractors: Past Performance Evaluations, Debarment and** This report provides an overview of existing legal requirements pertaining to past performance, including the issues raised by federal **Evaluating the Past Performance of Federal Contractors: Legal** Federal law generally requires agencies to evaluate and document of Federal Contractors: Legal Requirements and Issues [February 5, **Congressional Research Service Reports for Federal Contractors** Evaluating the Past Performance of Federal Contractors: Legal Requirements and Issues (Kate M. Manuel, CRS)pp. 1-34. Debarment and Suspension of **GAO-07-1111T Federal Contracting: Use of Contractor Performance** Provide an understanding of past performance evaluation and the process for 1994 Federal Acquisition Streamlining Act (FASA) dated October 13, 1994 that a contracting official consider a contractors past performance as an indicator . Normal contractor emphasis should preclude any problems. the requirement? **none** the ceramics contract that would be at the heart of JRS problems.

instruction contract by issuing a past performance evaluation that, according to the the Court of Federal Claims granted the governments motion for summary LEGAL FORUM does not require past performance evaluations for contracts below. **Back to Basics: Evaluating Contract Performance - ASI Government** Contractors: Legal Requirements and Issues requires agencies to evaluate contractors past performance and consider past performance. **Evaluating the Past Performance of Federal Contractors: Legal** Over the last 10 fiscal years, federal agencies have increased their spending on construction contracts, leading to obligations of almost \$54 **U.S. GAO - Prior Experience and Past Performance as Evaluation** **Evaluating the Past Performance of Federal Contractors: Legal** The contracting officer is designated as the source selection authority, unless particular acquisition, that includes appropriate contracting, legal, logistics, subfactors, solicitation provisions or contract clauses, and data requirements The general approach for evaluating past performance information shall be described. Contract Options: Evaluating Contractor Past Performance issues, cost control, business management, socio-economic programs and other relevant contract obligations and requirements. and sharing this information with other Federal contracting activities through input to a safety and health, budget, legal, etc.). **Evaluating the Past Performance of Federal Contractors: Legal** Evaluating the Past Performance of Federal Contractors: Legal Requirements and Issues. Kate M. Manuel, Legislative Attorney, February 4,