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A COR's Guide to Evaluating Contractor Performance

Evaluating contractor performance is a critical function of the contracting officer's representative (COR). In almost every contractual situation where a COR has been appointed, the contracting officer delegation means the COR has been placed on the "front lines" for ensuring contractor performance is meeting stated requirements and that outputs and outcomes from the contract's performance will contribute to fulfilling the agency's mission. The COR's oversight and management of performance is vital to ensuring the agency gets what it bargained for—as the performance is ongoing and while any shortcomings or misunderstandings that arise can still be corrected.

A second, and equally important, purpose for the COR's evaluation of contractor performance is to ensure the agency meets the specific requirements to collect contractor performance information and report it, accurately and completely, in the designated repositories. Past performance is required to be a significant evaluation factor in almost every source selection. For the COR, who usually is the individual with the closest or most comprehensive view of the contractor's day-to-day activities and accomplishments, evaluating contractor performance has taken on increasing importance in recent years. Any time a new contract is awarded, it must be clear who has responsibility for developing contractor performance evaluations and making sure the performance evaluation information is properly entered into the Contract Performance Assessment Reporting System (CPARS), the official repository for contractor performance data.

Do all contracts require performance evaluations and reporting?

Yes and no. The Federal Acquisition Regulation (FAR) requires that "quality assurance shall be performed . . . as may be necessary to determine that the supplies or services conform to contract requirements."¹ This means the

government must perform the appropriate surveillance (and/or testing) to ensure it receives supplies or services that meet the contract requirements. Often, specific deliverables—including formal reports and supplies—require formal acceptance. All supplies and services produced under a contract must be reviewed to assess whether contract requirements and, ultimately, agency needs are being met, i.e., to evaluate if contractor performance is acceptable.

Conversely, reporting of contractor performance information—i.e., relevant information regarding a contractor's actions under a current contract or order that will be made available to support past performance evaluations of future proposals—in CPARS generally is *required* only for contracts that exceed the simplified acquisition threshold (SAT; currently \$150,000).² However, CPARS reports *may* be provided for any size/value contract.³

Note that the mandate for reporting on contracts includes task and delivery orders issued by an agency against multiagency ordering vehicles, such as federal supply schedules and government-wide acquisition contracts (GWACs). Contracts or orders issued under FAR 8.7 (with nonprofit agencies employing blind or severely handicapped persons) are excepted from CPARS reporting.⁴ Performance evaluations also *may* be required at the order level under single-agency indefinite-delivery, indefinite-quantity (IDIQ) contracts if the contracting officer determines evaluations on individual orders would be better performance indicators than evaluations performed only at the IDIQ level. Also note that for certain specific categories of contracts, the reporting threshold is higher than the SAT and some agency-specific exemptions may exist.

If your contract is initially below the mandatory evaluation threshold but is later modified to exceed the threshold, an evaluation should be done in accordance with agency regulations. Some agencies specify that the evaluation should be done one year after the modification that raised the contract past the threshold.

ASI Government's *Quick Reference Guide* entitled "A COR's Guide to CPARS" provides extensive information on the history, responsibilities, and use of CPARS for complying with reporting requirements.⁵ It also outlines the categories of contracts that have higher thresholds for mandatory CPARS reporting, as well as how to find out whether other exemptions might apply.

Why is it important to evaluate contractor performance while the contract is ongoing?

The ultimate objective, of course, is to ensure contractor efforts and outcomes will meet the agency's needs. If performance is falling short, the COR will work with the contracting officer to determine and work toward appropriate corrective action(s), including assisting in the development of contract modifications as may be necessary to ensure agency needs are met. For services, a quality assurance surveillance plan (QASP) will govern the government's oversight and monitoring. In-process performance evaluation also is required for contracts that are performance-based and/or those contracts that include performance or schedule incentives. Inspection and/or testing procedures also may be needed for supplies. Regardless, the COR's role generally will be the key to success.

In addition, contractor performance evaluations will directly affect decisions as to whether and how much the contractor is entitled to be paid under the contract's terms. When the contractor submits billings, either for interim contract financing if provided for in the contract or for payments due upon deliveries, the COR usually is responsible for ensuring—as a result of his/her assigned duties—that the contractor is entitled to be paid the requested amount or for documenting why any lesser amount is appropriate. For contracts whose provisions include technical performance and/or schedule incentives, the results of contractor surveillance, performance evaluation, and related efforts are critical to determining entitlement to any incentive amounts paid. The exact nature of the COR's role in these processes will necessarily be contract-specific.

Finally, if the contract or order contains options, the results of these performance evaluations are a required input to the contracting officer's determination to exercise an option per FAR 17.207(c)(7).

What is the COR's role in evaluating ongoing performance?

The surveillance of contractor in-process efforts and pre-acceptance activities with respect to deliverables, as

well as actual acceptance of scheduled deliverables, all constitute contractor performance evaluations. Most often, when a COR has been appointed, the appointment letter will establish responsibilities that make the COR the key individual for ensuring—either personally or through coordinating the efforts of others—that all government performance monitoring and oversight efforts are conducted as required. Exactly what the COR's role will be should be made clear in the appointment letter, and any uncertainties should be clarified promptly upon receipt of the appointment letter.

The COR's role in contractor performance evaluation will include coordinating actions and information exchanges with the contractor and the contracting officer. The COR also will often need to coordinate among government personnel who may be operating under separate delegations of authority/responsibility from the contracting officer or who may be carrying out their own agency functional responsibilities. For example, if a COR is responsible for the overall performance evaluations but for any reason is not in the best position to personally collect some of the necessary information, a technical monitor, assistant COR, or other appropriate official may be assigned to perform the necessary evaluation and provide input for the COR's "report card." This may require a separate delegation from the contracting officer, or the COR may be able to appoint someone, depending on individual agency procedures.

How often are CPARS reports required and what is the COR's role in CPARS reporting?

CPARS reports, mandated in FAR subpart 42.15, are required at least annually and upon the conclusion of performance.

Performance data should be collected and documented continuously to support the formal CPARS evaluation. Documentation should include when all deliverables are received and their disposition, quality assurance reports, any measures of quality as established in the contract, customer feedback, etc. Final reports are to be completed in all cases after contract completion or termination; annual reports, in the case of contracts running more than one year, usually will be required by individual agency procedures. Some agencies also provide for out-of-cycle reports if there is a significant change in performance. If a contract requires periodic evaluations for determining award or incentive fees, these evaluations may also serve the purposes of FAR 42.15. In these cases, the frequency of the evaluations will be determined by the award fee plan and the provisions in the contract.

If you have been assigned to monitor a contract, and you are terminating your duties before the contract is physically complete, a good practice is to perform an evaluation before leaving. This is required by some agencies.

What elements of performance should be evaluated in CPARS reports?

While the details will depend on the type of requirement, the terms of the contract, and your agency's procedures, the minimum mandated reporting elements or factors, per FAR 42.1503(b)(2), are:

1. Technical (quality of product or service)
2. Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustment arrangements)
3. Schedule/timeliness
4. Management or business relations
5. Small business subcontracting
6. Other (as applicable) (e.g., late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost or pricing data, terminations, and suspension and debarments)

Reporting factors also may be separated into whatever subfactors are pertinent to the specific contractual effort. Evaluation of each factor and subfactor requires both a summary rating and a supporting narrative. Each factor other than small business subcontracting must be rated in accordance with a five-level rating scale (i.e., exceptional, very good, satisfactory, marginal, and unsatisfactory) as defined in Table 42-1 of FAR 42.1503. Small business subcontracting must be rated in accordance with Table 42-2 of FAR 42.1503.

When the contract provides for incentive fees, the incentive-fee contract performance evaluation shall be entered into CPARS. When the contract provides for award fee, the award fee-contract performance adjectival rating shall be entered into CPARS.

A good place to start in determining what should be evaluated in your particular case is Appendix D of the Department of Defense's (DoD's) "Guide to Collection and Use of Past Performance Information."⁶ The elements are aligned according to business sector, as defined in Appendix B. While only required for DoD, the appendices

to this guide may be helpful for any agency team developing plans for managing a contract.

Is the contractor provided a copy of any government evaluations?

For CPARS evaluations, yes. The contractor is to be provided a copy of a CPARS evaluation as soon as it is finalized, and is given at least 30 days to respond. If there is a disagreement, it will be resolved at a level above the contracting officer in accordance with agency procedures. The evaluation, the contractor's response, and any review comments all will become part of the record. Since this evaluation may be used in future source selections, however, it is to be marked "Source Selection Information" and released only to the contractor whose performance is being evaluated and to government personnel.

For contract performance monitoring and oversight evaluations, the answer depends on the situation, although whenever possible, the contractor should be provided a copy. In particular, evaluations and information that affect payments to the contractor should be made available. If there are disputes or points of contention with respect to payments withheld or reduced, the information ultimately will become discoverable in a formal dispute or litigation, so it would be best to try to preempt such disagreements via timely coordination and discussion of issues. For contracts with performance incentives or award fees, the contract terms generally will specify such coordination in a manner similar to the formal CPARS process.

Conclusion

Evaluating contractor performance is a critical COR function. It helps to determine whether the contractor is meeting its contractual obligations and whether options should be exercised and provides a baseline of past performance information for use in future source selections. If you are assigned this task, you will need to become familiar with your agency's procedures and the use of CPARS. More detailed background and other information is available in the Office of Federal Procurement Policy's "Best Practices for Collecting and Using Current and Past Performance Information."⁷ ♦

Endnotes

- 1 FAR 46.401(a).
- 2 For those contracts and orders in support of contingency operations, the agency head or designee MAY have authorized the SAT to be raised to as much as \$300,000. If so, the increased SAT threshold will be contingency-specific and applicable only to contract actions directly in support of the specified contingency operation. The CO will advise if performance reporting applies or does not.
- 3 FAR 42.1502(a).
- 4 FAR 14.1502(h).
- 5 Available at <https://www.gotovao.com/index.cfm?action=comment&id=0670040992000443>.
- 6 Available at http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003_final.pdf.
- 7 Available at http://www.whitehouse.gov/omb/best_practice_re_past_perf.

Other Relevant Quick Reference Guides

"A COR's Guide to CPARS"

"Top Ten Things Every COR Should Do – Postaward"

"A COR's Guide to the Quality Assurance Surveillance Plan"

"A COR's Guide to Contract Modifications"

"A COR's Guide to Options"

Viewable on the Virtual Acquisition Office™ (VAO) website (www.GoToVAO.com) under "CORToolkit."

The *Quick Reference Guide for CORs* provides a summary overview of a key topic in acquisition, with a focus on the COR perspective.

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