



Evaluating the "Past Performance" of Federal Contractors: Legal Requirements and Issues (CRS Reports)

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Poor performance under a federal contract can have immediate consequences for contractors, who could be denied award or incentive fees, required to pay damages, or terminated for default. In addition, it could affect their ability to obtain future contracts because federal law generally requires agencies to evaluate contractors' past performance and consider past performance information when making source selection decisions in negotiated procurements and determining whether prospective contractors are "responsible." "Past performance" refers to performance on "active and physically completed contracts" and certain orders under existing contracts. Federal law generally requires agencies to evaluate and document contractor performance on contracts or orders whose value exceeds the simplified acquisition threshold (generally \$150,000). The evaluation must generally address the quality of the product or service supplied by the contractor, its efforts to control costs, its timeliness and compliance with schedules, its conduct of management or business relations, its performance in subcontracting with small businesses, and other applicable factors (e.g., tax delinquency). 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 (FAPIS)) and may be used in future source selection decisions. Federal law also generally requires agencies to consider contractors' past performance when making source selection decisions in negotiated procurements whose value exceeds the simplified acquisition threshold. 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 procuring agencies determine the weight given to various factors. 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 generally 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 may debar or suspend contractors for willful failure to perform under a contract or contracts, or for a history of failure to perform or of unsatisfactory performance of a contract or contracts.

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