

## Attachment-- FAR Deviation Text

Additions are **[bracketed]**.

Deletions by ~~striketrough~~.

### Part 42 CONTRACT ADMINISTRATION AND AUDIT SERVICES

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#### Subpart 42.15 --- Contractor Performance Information

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##### 42.1502 Policy. (DEVIATION)

(a) *General.* Past performance evaluations shall be prepared at least annually and at the time the work under a contract or order is completed. Past performance evaluations are required for contracts and orders as specified in paragraphs (b) through (f) of this section, including contracts and orders performed outside the United States. These evaluations are generally for the entity, division, or unit that performed the contract or order. Past performance information shall be entered into CPARS, the Governmentwide evaluation reporting tool for all past performance reports on contracts and orders. Instructions for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

(b) *Contracts.* Except as provided in paragraphs (e), (f), and (h) of this section, agencies shall prepare evaluations of contractor performance for each contract (as defined in FAR part 2) **[and order awarded to a small business concern]** that exceeds the simplified acquisition threshold and for each **[contract and]** order **[awarded to other than a small business concern]** that exceeds the simplified acquisition threshold **[\$1 million]**. Agencies are required to prepare an evaluation if a modification to the contract causes the dollar amount to exceed the simplified acquisition threshold **[for awards to small business concerns or \$1 million for awards to other than small business concerns]**.

(c) *Orders under multiple-agency contracts.* Agencies shall prepare an evaluation of contractor performance for each order **[awarded to a small business concern]** that exceeds the simplified acquisition threshold **[or \$1 million for other than a small business concern]** that is placed under a Federal Supply Schedule contract or placed under a task-order contract or a delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract). Agencies placing orders under their own multiple-agency contract shall also prepare evaluations for their own orders. This evaluation shall not consider the requirements under paragraph (g) of this section. Agencies are required to prepare an evaluation if a modification to the order causes the dollar amount to exceed the simplified acquisition threshold **[for awards to small business concerns, or \$1 million for other than small business concerns]**.

(d) *Orders under single-agency contracts.* For single-agency task-order and delivery-order contracts, the contracting officer may require performance evaluations for each order in excess of the simplified acquisition threshold **[when awarded to a small business concern and for each order in excess of \$1 million when awarded to other than a small business concern]**

when such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (e.g., when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

(e) Past performance evaluations shall be prepared for each construction contract of \$700,000 or more, and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$700,000.

(f) Past performance evaluations shall be prepared for each architect-engineer services contract of \$35,000 or more, and for each architect-engineer services contract that is terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$35,000.

(g) Past performance evaluations shall include an assessment of the contractor's—

(1) 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; and

(2) Reduced or untimely payments (as defined in 19.701), made to small business subcontractors, determined by the contracting officer to be unjustified. The contracting officer shall—

(i) Consider and evaluate a contractor's written explanation for a reduced or an untimely payment when determining whether the reduced or untimely payment is justified; and

(ii) Determine that a history of unjustified reduced or untimely payments has occurred when the contractor has reported three or more occasions of unjustified reduced or untimely payments under a single contract within a 12-month period (see 42.1503(h)(1)(vi) and the evaluation ratings in Table 42-2). The following payment or nonpayment situations are not considered to be unjustified:

(A) There is a contract dispute on performance.

(B) A partial payment is made for amounts not in dispute.

(C) A payment is reduced due to past overpayments.

(D) There is an administrative mistake.

(E) Late performance by the subcontractor leads to later payment by the prime contractor.

(h) Agencies shall not evaluate performance for contracts awarded under Subpart 8.7.

(i) Agencies shall promptly report other contractor information in accordance with 42.1503(h).