

OMB Direct Federal Agencies to Get Serious About Contractor Performance Information

Written by Administrator
Sunday, 02 August 2009 17:42

On July 29, 2009 the Whitehouse Office of Management and Budget (OMB) issued a memo entitled "Improving the Use of Contractor Performance Information" to all Federal Chief Acquisition Officers (CAOs) and Senior Procurement Executives (SPEs). The memo, citing a GAO report (GAO-09-374), called for Federal agencies to hold their contractors "accountable for past performance," and provides direction to CAOs and SPEs as to the methods for doing so. In particular, the memo describes recent changes to the Federal Acquisition Regulation (FAR) (effective July 1, 2009) that, among other things, create a single, government-wide repository for contractor performance information (called "Past Performance Information Retrieval System" or PPIRS), identify those agency officials responsible for preparing interim and final performance evaluations, and mandate that achievement (or lack thereof) of small business goals must be considered in evaluating contractor performance when the contract includes a Small Business Subcontracting Plan.

The memo promises that the OMB will begin to "conduct regular compliance assessments and quality reviews to make certain that agencies subject to the CFO Act are submitting to PPIRS timely performance evaluations" and that part of the OMB reviews will be to ensure that "those evaluations provide clear, comprehensive, and constructive information that is useful for making future contract award decisions". The OMB memo states that evaluations are expected on all

contract actions, including individual orders placed under ID/IQ or GWACS contracts, unless the price of those actions fall under a FAR or agency-specific threshold.

Moreover, the OMB memo promises that the FAR soon will be revised to require reporting of all terminations for cause or default, as well as "defective cost or pricing information" into PPIRS. At this point it is unclear what is meant by "defective cost or pricing information" or when such would be reported. If the OMB is referring to "defective pricing" (i.e., submission of "cost or pricing data" that is subsequently found to be non-current, inaccurate or incomplete despite a contractor certification to the contrary) then that situation is already addressed by the Truth in Negotiations Act (TINA) and it is (again) unclear what a Contracting Officer would be reporting into PPIRS or when it would be reported, since an allegation of defective pricing can take years to resolve, as the case makes its way through the Federal court system.

Federal contractors have always been sensitive to evaluations and past performance information. As the new regulatory and agency guidance makes clear, agencies will be looking at new performance criteria (e.g., socioeconomic subcontracting percentages) and will be using that information to the benefit (or detriment) of contractors. It is not an especially well-known fact, but past performance evaluations have been deemed to be contracting officer decisions subject to appeal under the Contract Disputes Act; however, it is not yet clear whether these new regulations and corresponding agency policy and procedures will affect the ability of contractors to challenge evaluations they believe to be inaccurate. Regardless of their legal ability to appeal, it will be absolutely critical for contractors to review interim and final evaluations, to ensure that information entered into PPIRS is accurate and fair.

The OMB Memo can be found [here](#)

The OMB report can be found [here.](#)