

# AGAR ADVISORY

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT  
AGAR ADVISORY NO. 51, Revision 01.

## PAST PERFORMANCE INFORMATION AND THE CONTRACTOR PERFORMANCE SYSTEM (CPS)

**INTRODUCTION:** This Agriculture Acquisition Regulation (AGAR) Advisory supersedes AGAR Advisory 51, dated April 22, 2003 and updates information concerning prior AGAR Advisories concerning past performance and the National Institutes of Health (NIH) Contractor Performance System (CPS). Specific updates have been made to Specific Issues, Federal Acquisition Regulation (FAR) Requirements. This AGAR Advisory has been prepared to consolidate information provided by prior AGAR Advisories concerning past performance and the NIH CPS.

**SUMMARY:** The NIH CPS is the single USDA-wide system for maintaining contractor performance/evaluation information. Use of the system is mandatory. This AGAR Advisory supplements the information at AGAR subpart 442.1502 and replaces AGAR Advisories No. 28 dated May 5, 1999, No. 31, dated December 15, 2000 and No. 41, dated March 21, 2002.

### SPECIFIC ISSUES:

- **Federal Acquisition Regulation (FAR) Requirements – Past Performance.**
  - *Source Selection:* FAR 15.304(c)(3)(i) states that “past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.”
  - *General Evaluation Requirements:* FAR 42.1502(a) states that “agencies shall prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold at the time the work under the contract is completed. In addition interim evaluations should be prepared . . . to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year.”

- *Construction:* FAR 36.201(a)(1) states that “The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaluation (Construction Contracts), for each construction contract of – (i) \$550,000 or more; or (ii) More than \$10,000 if the contract was terminated for default.”
- *Architect-Engineer:* FAR 36.604(a) states that “For each contract of more than \$30,000, performance evaluation reports shall be prepared by the cognizant contracting activity, using the SF 1421, Performance Evaluation (Architect-Engineer). Performance evaluation reports are also be prepared for contracts of \$30,000 or less.”
- **AGAR Requirements – Use of CPS.**

Effective October 1, 1998, the CPS was designated as the primary USDA-wide system for maintaining contractor performance/evaluation information, and use of the CPS became mandatory for USDA at that time. (AGAR Advisory No. 19, dated April 8, 1998 applies. This advisory has since expired.) This designation and requirement to utilize the NIH CPS was incorporated into the AGAR subpart 442.1502 by AGAR Acquisition Circular 96-03.
- **When to use the CPS.**

As a minimum:

  - The CPS shall be accessed for performance information when evaluating past performance pursuant to FAR part 15.3;
  - Information resulting from evaluations of contractor performance in accordance with FAR 42.15 and FAR 36.2 shall be entered into and maintained in this system.
  - When the NIH releases the Architect-Engineer (A&E) module, the information from the performance evaluation reports currently completed on the SF 1421s shall be entered into and maintained in the system.
- **Applicable Deviations.**
  - The USDA Senior Procurement Executive has authorized a class deviation permitting USDA, as a subscriber of the NIH CPS, to use the NIH CPS Contractor Performance Insert Forms in lieu of the SF 1420 and SF 1421.
  - A 1999 NIH class deviation permitted the use of the NIH CPS Insert Form in lieu

of the SF 1420 (construction). The attached class deviation authorized by USDA, expands the 1999 deviation to also include the SF 1421 (architect-engineer).

- The attached class deviation is effective until issuance of a change to the FAR.
- **Use of the NIH CPS – Reminders.**

Based on a review of USDA and USDA agency information in the NIH CPS the following reminders are provided:

- Links to the CPS System and Information Page are available from the USDA Acquisition Toolkit at <http://www.usda.gov/procurement/toolkit>.
- There are Manuals for Organization Administrators, Contracting Officers, Project Officers, Contracting Officer Representatives, et.al. available on the CPS Information Page.
- During initial set up of an evaluation:
  - For Host Agency - select USDA
  - Contracting Office – Should be the “contracting organization” (e.g., FS, ARS, FNS, etc.)
- The organization administrator (system administrator) for the NIH CPS for USDA is Mary Coleman, NIH CPS System Compliance Officer, Procurement Systems Division.

Additionally, each USDA Agency Contracting Activity has an organization administrator established. Questions should be directed to your agency organization administrators. If necessary, they will refer the questions/issues to the USDA organization administrators. A list of the USDA agency administrators is available on the USDA Acquisition Toolkit at <http://www.usda.gov/procurement/toolkit>, as part of the NIH CPS information.

If you have questions about this advisory, please contact Jacqueline Kelly by telephone at (202) 690-0021, by fax at (202) 720-3339, or by email to [JacquelineE.Kelly@usda.gov](mailto:JacquelineE.Kelly@usda.gov). This advisory is available on the USDA homepage at <http://www.usda.gov/procurement/policy/advisories.html>.

**EXPIRATION DATE:** Until cancelled.

**[END]**

December 13, 2001

TO: W. R. Ashworth  
Senior Procurement Executive

FROM: David J. Shea /s/  
Chief  
Procurement Policy Division

SUBJECT: Request for Class Deviation from Federal Acquisition Regulation (FAR) Sections 36.201, 36.604, 53.236-1(b) and 53.236-2(d)

In accordance with the FAR 1.404 and Agriculture Acquisition Regulation (AGAR) 401.404, your approval to deviate from FAR sections 36.201, 36.604, 53.236-1(b) and 53.236-2(d) is requested.

FAR subpart 36.201 requires the use of the Standard Form (SF) 1420, "Performance Evaluation – Construction Contracts" when evaluating a contractor's performance under a construction contract. FAR subpart 36.604 requires the use of the SF 1421, "Performance Evaluation (Architect-Engineer)," when evaluating a contractor's performance under an architect-engineer contract.

The purpose of this deviation is to permit the Department of Agriculture, as a subscriber of the National Institutes of Health (NIH) Contractor Performance System (CPS), to use the NIH CPS Contractor Performance Insert Forms in lieu of the SFs 1420 and 1421. The NIH CPS Contractor Performance Insert Forms include all of the data elements required by the SFs 1420 and 1421.

A 1999 NIH class deviation permitted the use of the NIH CPS Insert Form in lieu of the SF 1420 (construction). This requested class deviation will expand the 1999 deviation, by also including the SF 1421 (architect-engineer), and will be effective until issuance of a change to the FAR.

This request has been coordinated with the Chairman of the Civilian Agency Acquisition Council (CAAC). Reference CAAC letter number 2001-03, dated October 17, 2001.

APPROVAL:

In accordance with FAR 1.404 and AGAR 401.404, I authorize the class deviation from FAR sections 36.201, 36.604, 53.236-1(b) and 53.236-2(d).

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/s/

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12/18/2001