

PUBLIC SUBMISSION

As of: 4/13/21 9:15 AM Received: April 12, 2021 Status: Pending_Post Tracking No. knf-gasr-qf2p Comments Due: April 12, 2021 Submission Type: API
--

Docket: FAR-2021-0053

Federal Acquisition Regulation (FAR) Information Collections -2021

Comment On: FAR-2021-0053-0005

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Past Performance Information

Document: FAR-2021-0053-DRAFT-0002

Comment on FR Doc # 2021-02690

Submitter Information

Email: chris.lang@voith.com

Organization: Voith Hydro, Inc.

General Comment

Please see the attached document.

Attachments

FR 9000-0142 Past Performance Information



Voith Hydro Inc., 760 East Berlin Road, York, PA 17408-8701

Voith Hydro Inc.
P. O. Box 15022
York, PA 17405-7022
Tel. 717-792-7000
Fax 717-792-7263
www.york.voithhydro.com

A Voith and Siemens Company

April 12, 2021

Subject: OMB Control No. 9000-0142, Past Performance Information

To whom it may concern:

Voith Hydro, Inc. welcomes the opportunity to respond to this notice (OMB Control No. 9000-0142, Docket No. 2021-0053 Sequence No. 4) and request for comment. There is certainly need for a revision to the practices of acquiring, analyzing, and utilizing past performance information for source selection in federal acquisitions.

Our company generally responds to complex Construction and Supply-Install solicitations from DoD (USACE) and Interior (USBR) following FAR Part 15, Best Value Trade-Off (BVTO), and which are essentially Progressive Design-Build, but following a Design-Bid-Build commercial structure. In these contracts, a company's experience with the required technology and its proven ability to perform the work to the required quality is a critical factor which is rightly given preeminence in the source selection evaluation criteria.

However, there have emerged in recent years a number of issues that result in a misleading, incomplete, deceptive, or distorted assessment of an Offeror's Past Performance that is not allowing fair competition for contracts which evaluate this factor. The following describes the issues that we feel are most disruptive in evaluating Past Performance, and some recommendations for improvement.

1 Pre-Award

CONTRACTOR PERFORMANCE ASSESSMENT REPORTING SYSTEM (CPARS)

The Contracting Activity responsible for the Source Selection is supposed to have access to the Past Performance information – Contractor Performance Assessment Reports, or CPARs – stored in CPARS for a given bidder. However, in practice, we are always required to submit all of our CPARs with our proposal in order for the Past Performance of the assessed contracts to be considered. Past Performance information is evaluated for its recency and relevancy [to the requirement being solicited] and then the actual reported performance is also evaluated.

Our practice when submitting a proposal is to address all Past Performance information for our contracts in CPARS, whether that contract was assessed positively or negatively. However, we are aware that others will exclude negative reports from their submittals in hopes to avoid evaluation of reported poor performance. We are also aware that some Contracting Officers will audit CPARS for all Past Performance reports on bidders, and that some don't.

In addition to the extra work required to retrieve individual CPARS for submittal when the Government is supposed to have access to this information, this leaves an obvious potential for the breakdown of the usefulness of CPARS if certain (particularly negative) information is excluded and this allows for an unfair assessment of a bidders past performance.

A better practice could be to leave the bidders to identify which projects they deem to be the most relevant and recent which should be evaluated, but that the Government should also audit CPARS for ALL reports within the specified timeframe and include an evaluation of the totality of the contractor's historical performance.

PAST PERFORMANCE QUESTIONNAIRES

It is also common practice for the Government to require bidders to submit Past Performance Questionnaires (PPQs) – performance survey templates – to the key Points of Contact (PoCs) for contracts which they nominate for evaluation for Past Performance, particularly for non-Federal contracts. These PPQs are to be filled out by the Owner's PoC and either returned to the bidder for submittal or directly to the Contracting Officer.

It is becoming increasingly difficult to obtain responses to these PPQs as our customers are increasingly instituting policies against contractor endorsements, and prohibiting the completion of these surveys in order to abide by these policies. Even Government ACOs and CORs have refused to fill out these surveys citing federal policy against contractor endorsement, ignoring that they were at the same time requesting the same from other owners.

We – and others in our industry – have brought this to the Government's attention, and work-arounds have been suggested. One of those work-arounds was that we were to identify the contract and the PoC, and if they were not at liberty to submit a response to the PPQ, the Government would attempt to contact them for a confirmation of the performance, but that this would not be considered as a forfeit or a negative past performance reference.

However, on a recent solicitation, we followed the directions, and even submitted with our proposal a PPQ filled out by our customer confirming that we had performed the work, but stating that they could not provide the requested performance ratings due to their company policy against endorsement. We were informed in our briefing that this reference was disqualified from being evaluated because the "information provided was incomplete." This cannot be acceptable, especially considering the decreasing number of Owners from which this information can be obtained.

Furthermore, this is a very time-consuming endeavor, and obviously obtaining useful responses is becoming difficult. If no alternative method can be developed, we would like to see it become policy that that PPQs obtained in the preparation of one proposal may be used

in subsequent proposals, so long as they remain relevant. This is left to the Contracting Authority's discretion currently, leading to vastly inconsistent application of the rules from one solicitation to the next.

PAST PERFORMANCE VS EXPERIENCE

The separate evaluation of Past Performance and Experience in Source Selections can lead to additional work and redundancy at best, but at worst it is confusing and confounding, or could result in an unintentional doubling of the importance of the factors, skewing the evaluation. In spite of this, it remains a standard practice.

But if the inability to obtain a PPQ to confirm Past Performance results in the potential for disqualification of a reference, the impact of this is multiplied by the fact that most Solicitations link the evaluation of Experience in one evaluation factor to the presence of Past Performance documentation in a second Factor.

This can ultimately lead to a bidder receiving a negative rating in two key evaluation factors because the reference contract's Owner had a policy that is interpreted to prohibit completion of PPQs.

There should be a consideration on how to best combine or further decouple the evaluations of experience and past performance.

EVALUATION FOR BEST VALUE IN SOURCE SELECTION

It is understood, if not grudgingly accepted, that the Contracting Authority will not share the methods or algorithm used to calculate the value of ratings of evaluation factors, or the perceived strengths and weaknesses contained in the criteria being evaluated. Therefore, there is no transparency on how significantly (or not) good past performance is valued in a Best Value Trade-Off compared to great or poor past performance – apart from the vague 'importance rankings' included in most solicitations (i.e. Factor 1 and Factor 2 are of equal importance, Factors 1 and 2 are of significantly greater importance than Factor 3, etc.).

There is a tremendous differential in value for the Government in a contract performed by an able and competent contractor and one that suffers from contractor incompetence and unpreparedness. But there does not seem to be a proper – or consistent – accounting for the value a truly superior performing contractor delivers when making the Source Selection.

With current Agency policy prescribing the use of Past Performance as a top evaluation criteria in most of the Solicitations that we consider, a better defined and realistic – as well as transparent – assessment of the value of past performance would be welcome.

2 Post-Award

CONTRACTOR PERFORMANCE ASSESSMENT REPORTS

- Timeliness

Our contracts generally span a duration of multiple years and warrant interim evaluations of performance (interim CPARs). While there is policy and regulation requiring these annual interim reports, their timeliness is lacking in practice, sometimes not being posted to CPARs until years after their due date, which renders them practically useless as a tool to motivate contractor performance or evaluate a contractor's recent performance for a Source Selection.

- Uniformity of Evaluations

It wouldn't be correct to say that CPARs are graded on a curve, but there is vast inconsistency on how performance is documented and rated in a CPAR. Some evaluators are very miserly with the acknowledgment of truly outstanding (or even satisfactory) performance. Some allow emotional reactions to inform an undeserved missive. Sometimes the lack of evaluator experience with the work for which performance is being evaluated misses the real reason for what leads to a delay, quality issue, or cost overrun, or cannot properly identify the value created by a high-performing contractor.

It would be useful to have more specific standards and criteria for the ratings, or to in some way recognize that some very specialized work requires an evaluator with pertinent experience for a proper assessment.

- Obscured poor performance

It has come to our attention that some of the other concerns operating in our market have been successful in preventing negative past performance information from being communicated through CPARs or other means, under threat of downing tools or litigation. This is unacceptable for both the companies that will compete for the next contracts, but also for the Agency that unwittingly selects the poor performing firm for their next requirement.

- Assessment categories

It would be helpful to include additional assessment categories that more accurately identify where value is created or destroyed by a contractor's performance. In our industry, this could take the form of evaluations acknowledging where performance exceeded the contractual requirements in ways that brought clear net present value to the requirement; or an evaluation of whether there were warranty claims and how efficiently they were handled; or an evaluation of contract budget expansion, particularly when due to a contractor who is particularly aggressive with contract change orders.

These are major impacts that can define a project's success (or failure) in areas that are practically entirely the product of a contractor's competence and contract performance, and should certainly be given at least as much weight as the on-time delivery of minor documentation deliverables in most cases.

- Disputes

From a contractor's perspective, there is little recourse when it believes it has received an inaccurate or unfair evaluation. While it is helpful that the contractor is allowed to submit comments in agreement with, or in opposition to the published assessment, it is of little worth in practice and application. Furthermore, the appeal and dispute process has not proven to result in a fair hearing of contractor grievance in practically any case that we are aware of, even considering the relatively few egregious examples that rise to the Court of Federal Claims or Federal Circuit.

Considering the purported weight given to Past Performance in Source Selection, a less unilateral approach would be welcome.

- Changes in Contractor Representative

It has happened on occasion that the employee who was assigned as the Contractor's Representative for a specific contract (sometimes unilaterally assigned by the Contracting Officer without consultation with the Contractor) terminates employment with that contractor, and we have been unable to reassign those responsibilities to another employee. Attempts to contact the ACO or Assessing Official are often ignored, and the time for comment or dispute expires without us having the ability to intervene.

There should be capability for the Contractor's main focal point to change the Contractor's Representative without having to rely on the Agency's CPARS Focal Point.

We hope that these concerns and suggestions are considered as the approval of the use of Past Performance information is considered for renewal. We remain available to expand on any of the examples or to discuss remedies, as practical.

Very truly yours,

Christopher Lang
Federal Business Development Manager
Voith Hydro, Inc.
(717) 793-7386