

AGAR ADVISORY

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT
AGAR ADVISORY NUMBER (NO.) 88

**NATIONAL INSTITUTES OF HEALTH (NIH) CONTRACTOR PERFORMANCE
SYSTEM (CPS)**

INTRODUCTION: This Agriculture Acquisition Regulation (AGAR) Advisory cancels AGAR Advisory 51 dated April 21, 2008, and updates all references concerning past performance and the National Institutes of Health (NIH) Contractor Performance System (CPS). Updates have been made to the Summary and Specific Issues, Use of the NIH CPS-Guides. This AGAR Advisory has been prepared to consolidate information provided by prior AGAR Advisories concerning past performance and NIH CPS.

SUMMARY: The NIH CPS is the single USDA-wide system used to collect, maintain, and disseminate contractor performance evaluations. USDA renewed a financial arrangement with NIH to allow USDA access to CPS. Use of the NIH CPS is mandatory. This AGAR Advisory supplements the information at AGAR subpart 442.1502 and replaces AGAR Advisory No. 51, dated April 21, 2008.

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 may also be prepared for contracts of \$30,000 or less.”

- **AGAR Requirements – Use of NIH CPS.**

Effective October 1, 1998, the NIH CPS was designated as the primary USDA-wide system for maintaining contractor performance and evaluation information, and its use became mandatory for USDA. This requirement to utilize the NIH CPS was incorporated into the AGAR subpart 442.1502 by AGAR Acquisition Circular 96-03.

CPS will follow all FAR requirements for past performance.

- **NIH CPS Enhancements /Releases.**

When 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.

- **CPS Agency Contracting Activity Organization Administrator (OA).**

- Head of Contracting Activity Designee (HCAD) will designate individuals to serve as a CPS Organizational Administrator (OA) for their applicable agency. To create agency OA’s accounts, contact Jackie Kelly, USDA CPS System Administrator of the Procurement Policy Division (PPD) in the Office of Procurement and Property Management (OPPM) at (202) 690-0021 or by email at JacquelineE.Kelly@usda.gov.

- Once individuals receive access into CPS, HCAD will email Todd Repass at Todd.Repass@usda.gov to update USDA Procurement website CPS Organization Administrator Listing at, <http://www.da.usda.gov/procurement/toolkit/purchasingtools.htm>.
- For training opportunities, designated CPS OAs may contact Jackie Kelly at the contact information above.

- **NIH CPS Guides:**

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

- Access to NIH CPS and Information Page are available from the USDA Acquisition Toolkit at <http://www.usda.gov/procurement/toolkit>.
- The NIH CPS Manuals for various types of users are available at <http://cps.od.nih.gov/UserManual.html>.
- NIH CPS Frequently Asked Questions (FAQs) are available at <http://cps.od.nih.gov/CPSFAQ.html>.
- Best Practices for Collecting and Using Current and Past Performance Information is available at http://www.whitehouse.gov/omb/procurement/contract_perf/best_practice_re_past_perf.html.

For Non-Disclosure Agreements of contractor access contact the NIH CPS Help Desk at (301) 451-2771 or email at cps-support-1@list.nih.gov.

For government access and additional questions for CPS contact your Agency Contracting Activity OA. OAs will refer issues to the USDA System Administrator as necessary. A list of OAs is available on the USDA Acquisition Toolkit as part of the NIH CPS information at <http://www.da.usda.gov/procurement/toolkit/purchasingtools.htm>.

AGAR Advisories are posted on the USDA World Wide Web site at the following URL: <http://www.usda.gov/procurement/policy/advisories.html>. If you have questions regarding this advisory, please contact Todd Repass, Chief, PPD via email at Todd.Repass@da.usda.gov or by phone at (202) 690-1060; or send an email to procurementpolicy@usda.gov.

EXPIRATION DATE: This advisory will remain in effect 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).

/s/

12/18/2001