

**University of Washington****CONTRACTOR PERFORMANCE EVALUATION PROGRAM****I. POLICY**

The University of Washington through its Capital Planning and Development service group (Owner), is charged with the responsibility of ensuring that all public works improvement projects are awarded to the responsible bidder submitting the lowest responsive bid, and are performed in compliance with the Contract Documents and applicable federal, state, and local laws and regulations. The Owner is responsible to the citizens of the State to oversee the expenditure of public funds, and to secure the best possible results for that expenditure. To assist the Owner in evaluating a Contractor's responsibility, as well as its performance on contracts of the Owner, the Contractor Performance Evaluation Program has been developed. The implementation of a mandatory, standardized system of evaluating Contractors' performance is expected to yield consistency, objectivity, fairness, and accountability.

**II. PURPOSE**

The purpose of the Contractor Performance Evaluation Program is to better assure that Contractors considered for contract award on public works projects either possess, or will likely possess at the time contract performance is set to begin, all qualifications necessary to successfully complete the project on time. Among other things, the Program is intended to:

- Assist the Owner in exercising its discretion to determine a Contractor's qualifications and abilities to successfully perform a particular contract.
- Provide the Owner with a rational basis for determining that a Contractor is or is not responsible.
- Provide Contractors with a means of enhancing their qualifications and reputation by receiving recognition for high standards of performance.
- Encourage better working relationships between the Owner and Contractors.
- Provide official, verifiable references for Contractors who may be under consideration for award of, or approval on, contracts to be awarded by other public owners.
- Provide a history and an assessment of a Contractor's performance on prior contracts of the Owner for use in suspension or debarment proceedings.

The Contractor Performance Evaluation Program is not intended to determine whether a Contractor has breached a contract with the Owner, or to determine the acceptability of any particular noncompliance with Contract requirements.

**III. PERFORMANCE CATEGORY EVALUATION GUIDE**

The Performance Category Evaluation Guide establishes criteria to be used in evaluating the Contractor's performance in connection with each Performance Category, and describes five Performance Levels, which range in ascending order of merit from "Inadequate" to "Superior".

The "Standard" Performance Level is considered a baseline; it characterizes the level of acceptable performance normally associated with a reasonably prudent, diligent, and skilled Contractor working on projects of the same general type and size. Both the "Superior" and "Good" Levels characterize performance levels that exceed the baseline; they respectively connote consistent and substantial positive contributions to the overall project. Both the "Deficient" and "Inadequate" Levels characterize levels of performance that fall below the baseline, and respectively connote substantial and serious detriment to the overall project. The "No Evaluation" Level is to be used only where the Contractor had no direct or indirect responsibility for performance.

The five Performance Levels are more specifically described as follows, and the criteria set forth for each shall be applied in evaluating the Contractor's performance in connection with each of the Performance Categories listed in Section III of the Contractor Performance Evaluation Report:

A. Superior To merit an evaluation of "Superior" in any Performance Category, the Contractor must have consistently demonstrated:

- (1) Command or virtual mastery of the Contract Documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that always exceeded or surpassed the material requirements of the Contract;
- (3) A highly cooperative attitude in dealing with Owner's employees, consultants, and the public in connection with that Performance Category, which attitude made a substantial, positive contribution to the Project; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner without prompting by the Owner's Representative.

If the Contractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Good" Level by applying the criteria for that Level.

B. Good To merit an evaluation of "Good" in any Performance Category, the Contractor must have demonstrated:

- (1) Thorough knowledge of Contract Documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that always met, and often exceeded, the material requirements of the Contract;
- (3) A cooperative attitude in dealing with Owner's employees, consultants, and the public in connection with that Performance Category, which attitude made a positive contribution to the project; and

- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only minimal prompting by the Owner's Representative.

If the Contractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Standard" Level by applying the criteria for that Level.

- C. Standard To merit an evaluation of "Standard" in any Performance Category, the Contractor must have demonstrated:

- (1) Acceptable knowledge of the Contract Documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that met all material Contract requirements;
- (3) A generally cooperative attitude toward Owner's employees, consultants, and the public in connection with that Performance Category; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only moderate prompting by the Owner's Representative.

If the Contractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Deficient" and "Inadequate" Levels by applying the criteria for those Levels.

- D. Deficient To merit an evaluation of "Deficient" in any Performance Category, the Contractor must have demonstrated:

- (1) Marginal knowledge of the Contract Documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that did not always meet the material Contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;
- (3) An occasionally uncooperative attitude toward Owner's employees, consultants, or the public in connection with that Performance Category; or
- (4) Performance of his or her duties in connection with that Performance Category in a moderately unresponsive, inattentive, or dilatory manner, or after frequent or repeated prompting by the Owner's Representative.

- E. Inadequate To merit an evaluation of "Inadequate" in any Performance Category, the Contractor must have either: (a) failed to satisfy the criteria listed for the Performance Levels of "Superior", "Good", "Standard", and "Deficient" set out above and did not qualify for treatment under Section III.F below; or (b) must have demonstrated:

- (1) Inadequate knowledge of the Contract Documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category which seldom met the material Contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;
- (3) A seriously uncooperative attitude toward Owner's employees, consultants, or the public in connection with that Performance Category; or
- (4) Performance of his or her duties in connection with that Performance Category in a seriously unresponsive, inattentive, or dilatory manner, or only after frequent prompting by Owner's Representative.

F. No Evaluation. This rating should only be used in those circumstances where the Contractor had no contractual responsibility, either directly or through its subcontractors, suppliers, or materialmen, for performance related to that Performance Category. .

#### **IV. OVERALL EVALUATION GUIDE**

The Contractor's Overall Evaluation can be determined by placing the Overall Percentage Score calculated on the Contractor Performance Evaluation Report within the numerical ranges of the following narrative ratings in the Overall Evaluation Guide:

A. SUPERIOR (Overall Percentage Score of 90% or above)

The Contractor exceeded the Contract requirements and expectations in most or all of the areas evaluated. The Contractor was extremely or completely knowledgeable regarding Contract requirements and applicable laws and regulations. A consistently high level of cooperation, project management, and job site control appreciably contributed to an unusually good result. The Contractor is commended for excellent performance.

B. GOOD (Overall Percentage Score of 70% to 89%)

The Contractor met Contract requirements evaluated, and exceeded them in some areas. The Contractor was generally cooperative, and performed his/her work with a minimum of prompting. The results of the performance were very good.

C. STANDARD (Overall Percentage Score of 50% to 69%)

The Contractor generally satisfied the minimum requirements of the Contract as evaluated. The Contractor occasionally had to be prompted or reminded of Contract requirements, but overall management of the Project was good, producing a good result.

D. DEFICIENT (Overall Percentage Score of 30% to 49%)

Even though the Project may have been accepted, the Contractor's performance as evaluated was marginal overall. While the Contractor

performed some tasks satisfactorily, most elements evaluated reflected a less than satisfactory response to Contract requirements.

E. **INADEQUATE** (Overall Percentage Score of 29% or below)

The Contractor's performance as evaluated did not meet minimum Contract requirements, or so otherwise detracted from the Project as to seriously call it into jeopardy. While the Project may have been accepted by the Owner, the effort expended by the Owner's Representative in prompting the Contractor to perform was excessive. The Contractor's poor or uncooperative performance created serious unnecessary or avoidable difficulties in achieving contract completion.

A Contractor's Overall Evaluation, being based upon an averaged rate on a discrete number of Performance Categories, should not be read or interpreted as a measure of whether the Contractor did or did not breach the contract in question.

**V. PERFORMANCE EVALUATION REPORTS**

Each Contractor Performance Evaluation Report shall be prepared by, or at the direction of, the Owner's Representative who will include numerical ratings substantiated, when necessary, by one or more narratives which describe the Contractor's performance.

Every Contractor Performance Evaluation Report containing Performance Level evaluations of "Deficient" or "Inadequate", and all Overall Evaluations on projects the total cost of which is \$500,000 or more, shall contain one or more narratives which provide details substantiating the evaluations. Narratives may be provided for other Performance Categories as the evaluator deems necessary.

Narratives provided with a Contractor Performance Evaluation Report shall be based upon documentation prepared during the life of the project, e.g., project diaries, inspectors' reports, and other pertinent documents. Such documentation shall constitute a major portion of the administrative record to be used for any review, appeal, or litigation that may arise from the evaluation process.

Every Contractor Performance Evaluation Report shall be signed by the Owner's Representative and the supervisor of the Owner's Representative before a copy of the Report shall be transmitted to the Contractor. The Report shall not be considered final until such time as the review/appeal periods described in Section VI herein have been completed.

Generally, only one Contractor Performance Evaluation Report shall be issued, following completion of the contract Work. However, in addition to a final Report, one or more interim Reports may be issued at the discretion of the Owner when:

- A contract is of long duration, particularly those in excess of one year.
- An individual charged with primary responsibility for administration of the Contract will cease his or her involvement with the Project prior to completion of the Work.
- Contractor's performance at 50% completion is deficient or inadequate.

Interim Contractor Performance Evaluation Reports shall be considered to be preliminary and shall be designated as such, and shall be processed administratively in the same manner as a Final Report. A Contractor may request review of an Interim Report by the applicable project Director in Capital Planning and Development; and appeal to the Owner's Associate Vice President for Capital Planning and Development or his/her designee pursuant to the provisions of Section VI below. All Interim Reports shall be attached to, and considered when preparing, the Final Report.

If a Contractor Performance Evaluation Report is an Interim Report, the Report should indicate on its face that it is Interim, and shall contain the following language:

This Performance Evaluation Report is not the final report on this Contractor on this Project. The Contractor may dispute the Report or any part thereof, and need not seek review or appeal until completion and acceptance of the Project.

## **VI. NOTICE, REVIEW, AND APPEAL**

A. Notice. Contractors shall be mailed a copy of their Contractor Performance Evaluation Report within a reasonable time after completion of the Report. A Contractor who is given an Overall Evaluation of "Deficient" or "Inadequate" in connection with a project shall be provided with a copy of the Contractor Performance Evaluation Report via certified mail (return receipt requested).

B. Review. A Contractor who disputes, or is otherwise dissatisfied with, his or her Contractor Performance Evaluation Report may request review of the Report by the applicable project Director in Capital Planning and Development. The request must be submitted in writing within thirty (30) calendar days of receipt by the Contractor of the Final Contractor Performance Evaluation Report. The request must also state, with specificity, all bases for the requested review.

The applicable project Director shall, upon receipt of a proper and timely request, review the Contractor Performance Evaluation Report and any documentation submitted by the Contractor with his or her request. The applicable project Director shall, on the basis of his or her review, issue findings which may affirm, correct, or modify all or any part of the Report. A copy of the findings shall be mailed to the Contractor via certified mail, return receipt requested.

C. Appeal. Within ten (10) calendar days of receipt by the Contractor of the applicable project Director's findings on review, the Contractor may appeal therefrom to the Owner's Associate Vice President for Capital Planning and Development or his/her designee. Any such appeal shall be in writing, and shall state with specificity the bases or grounds for the appeal.

The Associate Vice President for Capital Planning and Development or his/her designee shall review and consider the objectivity, accuracy, completeness, and fairness of the Contractor Performance Evaluation Report, together with the applicable project Director's findings, engineers' diaries, job records and other documentation, including such documentation as the Contractor may provide with the appeal.

Upon hearing and review of the applicable Director's findings, the Associate Vice President for Capital Planning and Development or his/her designee shall issue a determination and findings which may affirm or modify the Contractor's Contractor Performance Evaluation Report. The

Associate Vice President for Capital Planning and Development or his/her designee shall notify the Contractor of its determination and findings by certified mail (return receipt requested).

**VII. NOT RESPONSIBLE DETERMINATION FOR WORK ON SPECIFIC PROJECT**

The Owner's Associate Vice President for Capital Planning and Development may determine, from Contractor Performance Evaluation Reports and other public documents relating to the project in question, that a Contractor who has received one or more Overall Evaluations of "Deficient" or "Inadequate" is not a responsible bidder and not able to successfully perform a specific project of the Owner for which the Contractor submitted a bid, and is therefore ineligible for award of that contract.

When, on that basis, the Owner's Associate Vice President for Capital Planning and Development believes that the low bidder is not a responsible bidder and not able to successfully perform a project, the Owner shall notify the low bidder in writing of its determination that the bidder is not a responsible bidder. The bidder may appeal the determination within the time period specified in the Instructions to Bidders by presenting additional information to the Owner. The Owner shall consider the additional information before issuing its final determination. In evaluating the additional information, the Owner may or may not meet with the bidder to hear additional information. If the final determination affirms that the bidder is not responsible, the Owner will not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

**VIII. DEBARMENT OF CONTRACTOR**

The Owner's Associate Vice President for Capital Planning and Development or his/her designee, after conducting a hearing with the Contractor and evaluating the evidence, may debar a Contractor from contracting with the Owner for a period of up to two years if a Contractor has received overall evaluations of their performance of "Deficient" or "Inadequate" on three or more projects of the Owner physically completed during the preceding five (5) year period.

**IX. RELEASE OF INFORMATION**

Contractor Performance Evaluation Reports are public documents subject to disclosure to other governments and to the public. Because the Reports and the Overall Evaluations they contain may be used as a basis for contract award and may reflect upon the Contractor's reputation, care must be taken to assure that only accurate, complete, and current information is released.

A. Final Reports. Contractor Performance Evaluation Reports may be released when:

- (1) The Report becomes final as set forth in Section V herein; or
- (2) The Owner has relied upon the Report for the purpose of taking further action with respect to the Contractor; or
- (3) A court has ordered release of the Report.

B. Interim Reports. Interim Contractor Performance Evaluation Reports may only be released when:

- (1) The Contractor has consented in writing to the release; or

- (2) The Contractor has requested and received final administrative review of an Interim Report; or
  - (3) The Owner has used or relied upon the Interim Report to take action with respect to the Contractor; or
  - (4) A court has ordered release of the Report.
- C. Termination for Cause and Pending Litigation. In the event that the Contract is terminated by Owner for cause, this fact shall be noted on the Contractor's Contractor Performance Evaluation Report. In the event that a Contractor commences suit against the Owner, that Contractor's Performance Evaluation Report shall not be released without approval from the Washington State Attorney General's Office.
- D. Intergovernmental Cooperation. All requests for Contractor references from agencies of foreign, federal, state, or local governments shall be referred to the Owner's applicable project Director or his/her designee. If such a request is honored, the requesting agency shall be provided with copies of all Contractor Performance Evaluation Reports on the Contractor, together with any written objections or refutations filed with the Owner by the Contractor in connection therewith.

#### **X. INSTRUCTIONS FOR COMPLETING EVALUATION FORMS**

The Owner's Representative shall complete Sections I (Contractor Data) and II (Project Data), and then evaluate the Contractor's performance in each of the Performance Categories listed in Section III (Performance Data) of the Contractor Performance Evaluation Report, and shall assign points for each category based on the Performance Level applicable for the Contractor's performance.

The descriptions provided on the Contractor Performance Evaluation Report form for each Performance Category will not necessarily match precisely with the Contractor's actual performance of the task(s) on a given portion of the project.

The Owner's Representative should consider the general character of the Contractor's performance for each Performance Category evaluated and select the Performance Level that most closely matches the actual performance.

If the Contractor was not responsible for any performance in connection with a given Performance Category, then the Contractor's evaluation in that Category should be "No Evaluation," and no points should be assigned.

When rating a Contractor, the Owner's Representative should consider all the work performed by the Contractor as well as work performed by all subcontractors, since the Contractor is contractually responsible to the Owner for all of the work under the Contract, whether or not the Contractor actually performs the work. Interim Reports, if issued, shall be attached to the Final Report.

Comments are always encouraged, and may be written on the Contractor Performance Evaluation Report or on an attachment to the Report.

However, for each Performance Category evaluated as "Deficient" or "Inadequate", the Owner's Representative must prepare a written narrative substantiating the facts and circumstances giving rise to the evaluation.

After evaluating the Contractor on Performance Categories listed in Section III of the Contractor Performance Evaluation Report, the Owner's Representative shall total all of the points assigned and divide that into the total points possible (excluding those Performance Categories evaluated as "No Evaluation"). The evaluator will enter the resulting Overall Percentage Score on the Report, and will enter the appropriate Overall Evaluation on the basis of the following ranges:

Superior	Overall percentage score of 90% or above
Good	Overall percentage score of 70% to 89%
Standard	Overall percentage score of 50% to 69%
Deficient	Overall percentage score of 30% to 49%
Inadequate	Overall percentage score of 29% or below

The Owner's Representative shall sign the Report and forward it to his or her supervisor for concurrence signature and submission to the Owner's Contracts Department. The Contracts Department staff shall then forward signed copies of the completed Report to the Contractor.

END OF SECTION 00 73 20