

THE

TETON UPDATE

TETON CONSTRUCTION CONSULTANTS

CONTRACT ADMINISTRATION CLAIMS PREVENTION DISPUTE RESOLUTION

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Stephen C. Forget

“PERFORMANCE POSITIONING” IS YOUR FIRM ACTIVELY ENGAGED?

Performance Positioning is the pro-active management and control of your company's ongoing and historical performance ratings. It has two parts: the proactive component applicable to current projects and the historical component which focuses on the content and accuracy of existing Past Performance Information (PPI).

The hard bid Federal marketplace is shrinking and more of the remaining solicitations involve design-build, short-listed and negotiated work which provide Contracting Officers substantial pre-award discretion. The Government now utilizes a WEB based retrieval systems whereby it collects past and current performance information on Federal contractors. Contracting Officers utilizes this information as a discriminator for source selection and award. In today's tight Federal marketplace it is simply not enough to do a good job. Rather, you must be actively engaged in Performance Positioning to establish and maintain a competitive advantage.

CURRENT PROJECTS:

The Government is required annually and at contract completion to rate contractor performance. The contractor has the ability to influence the ratings not only through performance but also with effective dialogue with the Contracting Officer. Performance positioning starts with understanding the detailed internal regulations and policy which govern the performance rating system. The rules are somewhat complicated, often conflicting and vary by agency. But knowledge of the rules permits the contractor to essentially negotiate its performance rating in a language that the Contracting Officer understands thereby enhancing the opportunity for more favorable results.

PAST PERFORMANCE INFORMATION:

The final performance ratings, with supporting narratives, are submitted to various WEB based central retrieval systems. The DoD system is known as the Past Performance Automated Information System (PPAIS). It is the de facto clearinghouse of PPI for the Federal sector. Any Federal agency Contracting Officers may use the system. Contractors are also permitted limited access and the information can be downloaded. Contracting Officers utilize PPI to discriminate among offerors. Federal policy encourages Contracting Officers to share PPI and to provide the offerors a chance to reply to adverse information. But policy and reality often diverge. Thus unfavorable or

P.O. Box 2054 OR 1200 JEFFERSON STREET • WASHINGTON, MO • 636-239-2160

FAX 636-239-1439 teton@fidnet.com

incomplete PPI may, unknown to the contractor, impact its award or short listing. Such situations have resulted in bid protests where the contractor has been able to identify this problem. Obviously, it is incumbent upon the contractor to know what PPI the Government possesses and be ready to aggressively redress adverse comments. The selection of a partner for design-build solicitations must also consider the partner's PPI or you could be at a competitive disadvantage at the start of a costly solicitation process.

The PPAIS website is at <http://dodppais.navy.mil/>. It is not entirely user friendly, but with perseverance it will permit limited access to the PPI being reviewed by the Contracting Officer. The site also includes links to other automated PPI systems, including:

- Architect-Engineer Contract Administration Support System (ACASS)
- Construction Contractor Appraisal Support System (CCASS)
- Contractor Performance Assessment Reporting System (CPARS)
- Contractor Performance System (CPS)
- Past Performance Database (PPDB)
- Past Performance Information Management System (PPIMS)

WHAT IF THE INFORMATION IS INCORRECT OR OUTDATED?

Actively assert your rights to comment on and rebut any adverse findings. The opportunity to comment should have been provided by the rating agency prior to submission of the PPI data to central retrieval system. If this opportunity was not provided, the contractor should be given the opportunity during the source selection. The procedures, timing and ability to comment vary by the facts, circumstances and agency.

The adage, "What you don't know will hurt you" takes on a new meaning with WEB based PPI. In other words, don't rely upon the government to follow suggested practices or even policy when your award is at stake. Rather, engage in Performance Positioning to establish and maintain a competitive advantage.

Teton assists clients in all stages of Performance Positioning to include strategic planning to optimize ratings, identification/resolution of problem performance information and initiation of remedy procedures clients are harmed due to the Government's failure to follow policy and procedures.

About the Author

Mr. Forget founded Teton Construction Consultants in 1984. His background is unique in that he has concentrated primarily on the early resolution of construction changes and claims based on his extensive knowledge of government procurement regulations. Steve is a nationally recognized instructor on the subject of construction contract negotiations and is called upon by the Corps of Engineers to present dispute resolution programs to its contract administrators. Prior to 1984 Steve was a military officer and civilian with the Corps of Engineers, negotiating changes and claims on construction contracts.