FEDERAL CONTRACTING

Use of Contractor Performance Information

What GAO Found

The government contracting process provides for consideration of various aspects of contractor performance at multiple points:

- **Source selection:** Past performance is required to be an evaluation factor in selecting contractors, along with factors such as price, management capability, and technical approach to the work.
- **Responsibility determinations:** Once a contractor is selected for award, the contracting officer must make a responsibility determination that the prospective awardee is capable and ethical. This includes, for example, whether the prospective awardee has a satisfactory performance record on prior contracts.
- **Surveillance under the current contract:** Once a contract is awarded, the government monitors a contractor's performance throughout the performance period, which may serve as a basis for performance evaluations in future source selections.
- **Debarment:** To protect the government’s interests, agencies can debar, that is preclude, contractors from receiving future contracts for various reasons, including serious failure to perform to the terms of a contract.

Agencies are required to consider past performance in all negotiated procurements above the simplified acquisition threshold of $100,000 and in all procurements for commercial goods or services. Although past performance must be a significant evaluation factor in the award process, agencies have broad discretion to set the precise weight to be afforded to past performance relative to other factors in the evaluation scheme. Whatever they decide about weights, agencies must evaluate proposals in accordance with the evaluation factors set forth in the solicitation, and in a manner consistent with applicable statutes and regulations. In evaluating an offeror’s past performance, the agency must consider the recency and relevance of the information to the current solicitation, the source and context of the information, and general trends in the offeror’s past performance. The key consideration is whether the performance evaluated can reasonably be considered predictive of the offeror’s performance under the contract being considered for award.

Although a seemingly simple concept, using past performance information in source selections can be complicated in practice. GAO bid protest decisions illustrate some of the complexities of using past performance information as a predictor of future contractor success. Some of the questions raised in these cases are:

- **Who:** Whose performance should the agencies consider?
- **What:** What information are agencies required or permitted to consider in conducting evaluations of past performance?
- **When:** What is the period of time for which agencies will evaluate the past performance of contractors?
- **Where:** Where do agencies obtain contractor performance information?