U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

Non-Facility Contractor Prior Performance

DOE/IG-0857 October 2011

Department of Energy
Washington, DC 20585

October 28, 2011

MEMORANDUM FOR THE SECRETARY

FROM: Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Audit Report on "Non-Facility Contractor Prior Performance"

INTRODUCTION AND OBJECTIVE

The Department of Energy obligated approximately $89 billion during Fiscal Years 2009 and 2010, through various contracts and financial assistance awards, including contracts funded by the American Recovery and Reinvestment Act of 2009. Holding contractors accountable for past performance is an important tool for making sure that the Federal government and the taxpayers that it represents, receive good value from its contracts. To determine whether a prospective awardee is responsible, the Federal Acquisition Regulation (FAR) and the Code of Federal Regulations contain provisions requiring contracting officials to consider the prospective awardees past performance. Officials are also required to determine, prior to award, whether an offeror is excluded from receiving Federal contracts and financial assistance awards because of, among other things, past poor performance. To provide current information for source selection purposes, agencies are also required to prepare and submit an evaluation of contractor performance within 120 calendar days after the end of the evaluation period for each contract that exceeds the simplified acquisition threshold. Simplified acquisition threshold amounts during the audit period were $550,000 for construction, $100,000 for supplies and services, and $30,000 for architect and engineering services contracts.

Both the U.S. Government Accountability Office and the Office of Management and Budget (OMB) have stressed the importance of ensuring that past contractor performance is adequately documented and considered prior to subsequent awards. In a January 2011 memorandum to Chief Acquisition Officers, OMB noted that its comparison of data from the Federal Procurement Data System and the Past Performance Information Retrieval System indicated that past performance assessments had been completed for only a small percentage of awards, especially in civilian agencies. We initiated this audit to determine whether the Department adequately considered contractor prior performance when making new non-facility contract and financial assistance awards.

RESULTS OF AUDIT

The Department had not always considered prior contractor performance nor completed contractor performance assessments in a timely manner for non-facility contract and financial assistance awards. In particular, our review of contractor performance assessment reports and a random sample of contract and financial assistance awards and close outs, of the same types of actions at three sites, found that the Department could not demonstrate that it had:

- Evaluated contractor prior performance before making 104 of the 519 (20 percent) contracts and financial assistance awards we reviewed. As such, the Department had not

ensured that it was making best value selections in competitive awards and in making contractor responsibility determinations for sole source contracts;

- Reviewed the Government-wide Excluded Parties List System to ensure that offerors and applicants were not debarred from doing business with the Federal Government for 42 of 519 (8 percent) of our sample items. Even though the Department could not confirm that a review of the contractor's eligibility had been performed, we were able to readily discern based on our own testing that none of the 42 contractors had been debarred; and,

- Completed post award contractor performance evaluations within the required 120 calendar days after the evaluation period for 323 of the 881 (37 percent) contracts requiring such an evaluation that we reviewed. In fact, 192 evaluations were overdue by 6 months or more. This practice deprives the Department and other Federal agencies of information necessary to make informed procurement decisions.

Pre-award evaluations of a prospective contractor's prior performance and reviews of the Excluded Parties List System were not always conducted primarily because procurement officials and/or contracting personnel did not follow or apply Federal and Departmental requirements and procedures. With regard to sole source procurements, officials at the National Energy Technology Laboratory and the Office of Headquarters Procurement Services indicated that they did not evaluate prior performance for such awards because, presumably, the contractors were the only sources available to obtain the services. Yet, we determined that the FAR requires contracting officers to make determinations about the responsibility of prospective contractors as evidenced, in part, by their performance record – with no specific exclusion for sole source procurements. Under the FAR, even in sole source situations, contracts can only be awarded to responsible contractors; thus, the essential need for a responsibility determination.

Officials at the National Nuclear Security Administration's (NNSA) Albuquerque Complex indicated that the signature of an appropriate Federal contract professional on a sole source contract award provided sufficient evidence to support that an assessment of past performance had been performed. However, they could not provide additional support such as documents and reports that would show that the contractor's prior performance had been evaluated or other contracts where an evaluation of prior performance had been performed.

Department officials also indicated that they did not believe that evaluations of prior performance for financial assistance awards were required. Although the FAR does not address financial assistance awards, the Department's *Guide to Financial Assistance* states that the contracting officer is responsible for assessing a prospective award recipient's past performance to determine whether the recipient has a history of poor programmatic performance. We also noted that OMB Circulars and the Code of Federal Regulations allow the Department to impose additional requirements as needed if, among other things, an applicant or recipient has a history of poor performance.

Finally, Department officials stated that post award evaluations of contractor performance were often not performed because contracting officer's representatives did not place sufficient emphasis on completing this requirement. They also told us that the contracting officer's representatives

generally are employed by a program office outside of the contracting organization, which limits the ability of procurement officials to affect the contracting officer's representatives' input into the Contractor Performance Assessment Reporting System. Procurement officials at the three sites we visited told us that they were aware of the magnitude of the overdue evaluation reports and were actively working to eliminate the backlog of uncompleted evaluations.

With literally billions of dollars in taxpayer provided funds in play for Department contracts, grants and financial assistance awards, procurement and program officials need all of the information they can gather to ensure that they make the best possible award decisions. Developing meaningful post award performance assessments and objective evaluations of contractor past performance prior to award are critical to ensuring that the Government does business with companies that deliver quality goods and services on time and within budget; and, that the taxpayer's interests are protected.

We have provided several recommendations involving the adoption of best practices that should help the Department improve its controls over the evaluation of contractor prior performance and help resolve the particular issues identified in this report.

MANAGEMENT COMMENTS

The Office of Management and NNSA provided comments on a draft of this report. NNSA generally agreed with the report's findings and recommendations and stated that it would take action to address each of our recommendations. The Office of Management, while agreeing with portions of the finding and recommendations, disagreed that contracting officers were required to review a prospective awardee's prior performance as part of the financial assistance selection process. We recognize that Federal regulations do not require such an evaluation as part of the selection process. However, contracting officers are required to evaluate the awardee's prior performance in order to determine whether special terms and conditions should be included in the award. In addition, management provided specific points of clarification for consideration, specifically in the financial assistance awards and documentation areas. As appropriate, we modified our report in response to management's comments which are included in their entirety in Appendix 3.

Attachment

cc: Deputy Secretary
Associate Deputy Secretary
Administrator, National Nuclear Security Administration
Under Secretary for Science
Acting Under Secretary of Energy
Director, Office of Management
Chief of Staff

REPORT ON NON-FACILITY CONTRACTOR PRIOR PERFORMANCE

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Use of Contractor Performance Information

The Department of Energy (Department) had not always effectively used contractor performance data in its procurement process. Specifically, the Department could not always demonstrate that it had:

- Evaluated prior contractor performance before making contract awards and finalizing financial assistance awards;
- Reviewed the Government-wide Excluded Parties List System (EPLS) to ensure that offerors and applicants were not debarred from Federal Government contracts and financial assistance awards; nor,
- Completed contractor performance evaluations in a timely manner.

The Federal Acquisition Regulation (FAR) requires the use of past performance information in source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold. Simplified acquisition threshold amounts are based on the type of goods and services procured. During the audit period, threshold amounts were $550,000 for construction, $100,000 for supplies and services, and $30,000 for architect and engineering services contracts. For those awards that are not competitive, the FAR indicates that purchases shall be made from, and contracts awarded to, responsible contractors only. A contract is not to be awarded unless the contracting officer has made an affirmative determination of the awardee's responsibility, which includes a satisfactory performance record. Special award conditions can be applied to financial assistance awards governed by Office of Management and Budget (OMB) Circulars A-102 and A-110 if, among other things, the applicant or recipient has a history of poor performance. The FAR also requires that agencies prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold in order to provide current information for source selection purposes.

Further, a July 2002 memorandum from OMB required all Federal contractor past performance information to be centrally available online for use by all contracting officials through the Past Performance Information Retrieval System (PPIRS). The PPIRS is designed to provide the acquisition community with timely and pertinent contractor information that can be used in making source selection decisions and can be expanded to include information on grantee performance and final reporting.

The following sections of this report discuss in more detail the results of our review of Contractor Performance Assessment Reporting System (CPARS) status reports at the National Energy Technology Laboratory (NETL), the National Nuclear Security Administration's (NNSA) Albuquerque Complex, and the Department's Office of Headquarters Procurement Services (Headquarters); and random samples of 224 of 861 contracts and 295 of 2,042 financial assistance awards that were either awarded or closed during Fiscal Years 2009 and 2010, by these three sites.

Evaluation of Prior Performance When Making Award

Award files did not always include evidence that contracting officers at each of the three locations reviewed had assessed prospective awardees' prior performance before making the final award decision. Pre-award evaluations are designed to result in an assessment of the offeror's ability to successfully accomplish the award. As illustrated in the table below, the Department could not confirm that it had evaluated contractor prior performance before making an award for 20 percent of the contracts and financial assistance awards we reviewed.

Location/Type	Sample Size	Prior Performance Not Evaluated	Percent
NETL Contracts	35	3	9%
NNSA Contracts	74	21	28%
Headquarters Contracts	115	27	23%
NETL Financial Assistance	128	6	5%
NNSA Financial Assistance	79	12	15%
Headquarters Financial Assistance	88	35	40%
Total	**519**	**104**	**20%**

Of the 104 instances in which contractor prior performance was not evaluated prior to making an award, we found that:

- 47 were financial assistance awards;
- 36 were competitive awards;
- 15 were sole source awards; and,
- 6 were legacy awards transferred from sites not included in our review.

Pre-award evaluations of a prospective awardee's prior performance enable the Department to better predict the quality of, and satisfaction with, future work when making best value selections, and to help ensure that taxpayer dollars are not wasted on awards to non-responsible recipients.

In contrast to other locations, our review noted that NETL consistently evaluated contractor prior performance when making new contract and financial assistance awards. According to NETL officials, six of the financial assistance awards where contractor prior performance was not evaluated were legacy awards, which were awards assigned to NETL for administration after the awarding Energy Efficiency and Renewable Energy regional office was closed. Additionally, NNSA indicated that it had recently visited NETL to evaluate NETL's contractor prior performance evaluation procedures with a view toward potentially incorporating them into its own financial assistance award procedures.

Utilization of the Excluded Parties List System

We also found that award files did not always include evidence that prospective contractors were reviewed against the EPLS at each of the three locations visited. The purpose of the EPLS is to provide a single comprehensive listing of individuals and firms excluded by Federal Government agencies from receiving Federal contracts and financial assistance awards. Contracting officials are required to review the EPLS to ensure that contracts and financial assistance awards are made to responsible contractors only and that no award is made to an excluded individual or firm. Based on our review, we determined that no awards had been made to an individual or firm listed on the EPLS at the three sites we visited. However, as illustrated in the table below, we noted 42 instances where the Department could not confirm that a review of the EPLS had been performed.

Location/Type	Sample Size	EPLS Not Utilized	Percent
NETL Contracts	35	0	0%
NNSA Contracts	74	14	19%
Headquarters Contracts	115	19	17%
NETL Financial Assistance	128	2[1]	2%
NNSA Financial Assistance	79	3	4%
Headquarters Financial Assistance	88	4	5%
Total	**519**	**42**	**8%**

[1] NETL officials indicated that these two exceptions were awards assigned to NETL for administration after the awarding Energy Efficiency and Renewable Energy regional office was closed.

While the Department lacked assurance of the appropriateness of these awards, we were able, however, to readily determine through our independent test work that none of the awards were made to excluded parties. Failure to routinely utilize the EPLS places the Department at risk of unknowingly making an award to an individual or firm that is suspended or debarred from doing business with the Federal Government.

Evaluation of Post Award Contractor Performance

Department contracting personnel had also not always completed and submitted post award contractor performance evaluations in a timely manner for a significant number of contract awards at each of the three locations visited. To provide current information for source selection purposes, agencies are required to prepare and submit an evaluation of contractor performance within 120 calendar days after the end of the evaluation period for each contract that exceeds the simplified acquisition threshold. Interim evaluations are required to be prepared annually for contracts with a period of performance greater than one year. These evaluations are to be reported in PPIRS through CPARS, the Department's mandated system used to report performance information. CPARS accumulates contracts requiring post award performance evaluations and establishes due dates for their completion. However, at the time of our site visits, almost two-thirds of the required evaluation reports at Headquarters and nearly half of NETL's evaluation reports had not been submitted. Additionally, some of the required evaluation reports had been overdue for more than a year. While the Department has made progress since then, many of the required reports remain overdue, as shown in the table below.

Location	Total Number of Contracts	0-6 Months Overdue	6 to Over 12 Months Overdue	Total Overdue
NETL	274	50	31	81
NNSA	302	42	65	107
Headquarters	305	39	96	135
Total	**881**	**131**	**192**	**323**

Timely, accurate and complete performance evaluations are essential to ensure that accurate data on contractor performance is current and available for use in all source selections. The evaluations provide a record of performance, both positive and negative, on a given contract during a specified time period. Failure to complete and submit timely post award evaluations deprives the Department, and other Federal agencies, of the information necessary to make informed procurement decisions.

We determined that procurement offices for the three sites included in our review were aware of the magnitude of the overdue evaluation reports and were actively working to reduce those numbers. For example, NETL officials indicated that they had implemented a process to identify overdue CPARS evaluations under their purview to reduce the number of delinquent evaluations and promote awareness and responsiveness by the evaluators. Officials at NNSA also indicated that they had developed a CPARS corrective action plan which includes training, incorporation of reporting responsibilities in contracting officer's representative designation letters, and the distribution of periodic delinquent CPARS performance reports; and are currently participating on a Department-led team that is redefining the roles and responsibilities of contracting officers and contracting officer's representatives.

Consistent Application of Requirements

Pre-award evaluations of a prospective contractor's prior performance and reviews of the EPLS were not always conducted primarily because procurement officials and/or contracting personnel did not follow or apply Federal and Department requirements and procedures. Specifically, procurement officials did not properly follow existing Federal and Departmental requirements for evaluating past performance in competitive acquisitions. As previously discussed, the FAR states that past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold. Furthermore, Department officials stated that post award evaluations of contractor performance were not always conducted because contracting officers and/or contracting officer's representatives did not place a high enough priority on completing this requirement.

Officials at NETL and Headquarters indicated that they did not evaluate prior performance for awards made via sole source because the contractors were the only source available to obtain the services. We determined, however, that in addition to specifically requiring pre-award evaluations for competitive awards, the FAR also requires contracting officers to make determinations about the responsibility of prospective contractors as evidenced, in part, by their performance record. Furthermore, contracting officers are required to document in the contract file how prior performance was considered in any responsibility determination. The FAR does not specifically exclude prospective contractors being considered under sole source procurements from the responsibility determination.

NNSA officials indicated that the signature of an appropriate Federal contract professional on a sole source contract award

provided sufficient evidence to support that an assessment of past performance had been performed. However, they could not provide additional support such as documents and reports that would indicate that the contractor's prior performance had been evaluated or other contracts where an evaluation of prior performance had been performed. In addition, our review of the Department's *Acquisition Guide* and site procedures disclosed that procedures had not been developed to evaluate past performance for sole source awards prior to making the award.

Additionally, Department officials indicated that they did not believe that evaluations of prior performance for financial assistance awards were required. Although the FAR does not address financial assistance awards, the Department's *Guide to Financial Assistance* states that the contracting officer is responsible for assessing a prospective award recipient's past performance to determine whether the recipient has a history of poor programmatic performance. We also noted that OMB Circulars and the *Code of Federal Regulations* allow the Department to impose additional requirements as needed if, among other things, an applicant or recipient has a history of poor performance.

Regarding reviews of the EPLS, officials at NNSA and Headquarters, where most of these instances occurred, indicated that the reviews should have been performed. NNSA indicated that current personnel have been advised that the EPLS shall be reviewed prior to making all awards.

Also, untimely post award evaluations of contractor's performance occurred, according to procurement officials, because the contracting officer's representatives typically had multiple assignments and competing priorities, and did not place sufficient emphasis on completing this requirement. Management officials indicated that the rating portion of the past performance evaluation is the responsibility of the contracting officer's representative. However, the contracting officer's representatives generally are employed by a program office outside of the contracting organization, which limits the ability of procurement officials to affect the contracting officer's representatives' input into CPARS. The CPARS system automatically generates e-mail reminders 30 calendar days before the evaluation report is due to help ensure that the reports are completed in a timely manner. Additional reminders are sent to the assessing official once the evaluations become overdue. These reminder e-mails continue to be sent on a weekly basis until the evaluations are completed. Despite these reminders, post award evaluations often remained overdue as a result of other work demands.

Insufficient Information to Make Informed Award Decisions

Failure to conduct post contract award evaluations or to review contractor prior performance may result in the contracting officer lacking all of the necessary information to make informed contract decisions for ensuring the Federal Government receives good value for its contracts. In a January 2011 memorandum to Chief Acquisition Officers, OMB expressed concerns about the low percentage of past performance assessments completed, noting that source selection officials rely on clear and timely assessments of contractor past performance to make informed business decisions when awarding Federal contracts. As a result, meaningful past performance assessments and a review of contractor prior performance are critical to ensuring that the Government does business with companies that deliver quality goods and services on time and within budget. Furthermore, past performance assessments of financial award recipients helps to ensure that an award recipient is capable of carrying out activities designed to serve a public purpose.

RECOMMENDATIONS

To ensure that the Department's contracting officials make informed business decisions when awarding Federal contracts and financial assistance, we recommend that the Administrator, National Nuclear Security Administration, and the Director, Office of Management, in conjunction with the Under Secretary for Science and the Under Secretary of Energy, direct their respective Senior Procurement Executives to require appropriate procurement offices to adopt best practices aimed at ensuring that Federal requirements are met. Specifically, Senior Procurement Executives should require that:

1. Procurement officials consistently follow existing procedures for evaluating a prospective contractor's or awardee's prior performance before a competitive contract is awarded or a financial assistance award is finalized;

2. Procurement officials consistently follow existing procedures for reviewing prospective contractors against the Excluded Party List System before an award is finalized; and,

3. Contracting officers and contracting officer's representatives complete all Contractor Performance Assessment Reporting System evaluations in a timely manner.

Further, we recommend that the Department's Senior Procurement Executive:

4. Revise the Department's *Acquisition Guide* to include procedures for evaluating a prospective contractor's prior performance before a sole source contract is made, in accordance with existing Federal determination of responsibility requirements.

MANAGEMENT REACTION

The Office of Management and NNSA provided comments on the draft of this report. NNSA generally agreed with the report's finding and recommendations and stated that it would take action to address each of our recommendations. The Office of Management, while agreeing with portions of the finding and recommendations, disagreed that contracting officers were required to review a prospective awardee's prior performance as part of the financial assistance selection process. As such, management suggested that we remove financial assistance awards from our first recommendation. Management also indicated that contracting officers are not required to specifically document the fact that an affirmative responsibility determination has been made or that they checked the EPLS. In fact, they stated a contracting officer's signature may constitute a responsibility determination without any further rationale.

AUDITOR COMMENTS

We recognize that past performance is not a required selection factor for financial assistance awards. However, we believe that past performance should be considered before a financial assistance award is finalized. Specifically, the Department's Financial Assistance Rules, included in the *Code of Federal Regulations*, establish the Department's responsibility to determine if special terms and conditions should be placed on a financial assistance award recipient in cases where an applicant has a history of poor performance. Additionally, the Department's *Guide to Financial Assistance* states that the contracting officer is responsible for assessing a prospective award recipient's past performance to determine whether the recipient has a history of poor programmatic performance.

We also recognize that a contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. However, we disagree that contracting officers are not required to specifically document the fact that an affirmative responsibility determination has been made. Specifically, the FAR requires contracting officers to document the contract file for each contract in excess of the

simplified acquisition threshold regarding how information was considered, including the use of EPLS, in any responsibility determination.

We modified our report, as necessary, in response to management's comments. Management's comments are included in their entirety in Appendix 3.

OBJECTIVE

To determine whether the Department of Energy (Department) adequately considered contractor prior performance when making new non-facility contract and financial assistance awards.

SCOPE

The audit was performed between October 2010 and October 2011, at the Department's Office of Headquarters Procurement Services in Washington, DC; the National Nuclear Security Administration's (NNSA) Albuquerque Complex in Albuquerque, New Mexico; and, the National Energy Technology Laboratory (NETL) in Pittsburgh, Pennsylvania. Our audit samples at these three sites were randomly selected from a universe of non-facility contracts and financial assistance awards that were either awarded or closed during Fiscal Years (FY) 2009 and 2010.

METHODOLOGY

To accomplish the audit objective, we:

- Reviewed applicable Federal laws and regulations and Department guides and procedures;
- Reviewed prior Office of Inspector General and Government Accountability Office reports;
- Obtained a listing of all non-facility contracts and financial assistance awards that were either awarded or closed during FYs 2009 and 2010 from each site visited;
- Reviewed random samples of 224 of 861 contract awards and 295 of 2,042 financial assistance awards that were either awarded or closed during FYs 2009 and 2010, by NETL, NNSA and the Department's Office of Headquarters Procurement Services;
- Reviewed supporting documentation for our samples of contracts and financial assistance awards;
- Obtained reports from the Contractor Performance Assessment Reporting System for each site visited indicating contracts with overdue performance evaluations; and,
- Interviewed officials from the Department's Office of Headquarters Procurement Services, NNSA and NETL regarding the Department's consideration of contractor prior performance.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective. The audit included tests of controls and compliance with laws and regulations necessary to satisfy the audit objective. We also assessed compliance with the *Government Performance and Results Act of 1993*. We examined performance metrics related to contractor prior performance and found that the Department had established performance measures as part of the balanced scorecard program. Because our review was limited, it would not have necessarily disclosed all internal control deficiencies that may have existed at the time of our audit. We obtained and reviewed the computer processed data made available to us in order to achieve our audit objective. We validated the reliability of such data, to the extent necessary to satisfy our audit objective, by tracing it to source documents or other supporting information.

Officials from the Office of Management and NNSA waived an exit conference.

RELATED REPORT

Government Accountability Office Report

- *Federal Contractors: Better Performance Information Needed to Support Agency Award Decisions* (GAO-09-374, April 2009). Contracting officials agreed that for past performance information to be useful for sharing, it must be documented, relevant, and reliable. However, The Government Accountability Office's (GAO) review of the Past Performance Information Retrieval System data for Fiscal Years 2006 and 2007, indicated that only a small percentage of contracts had a documented performance assessment. Other performance information that could be useful in award decisions, such as contract terminations for default and subcontract management, was not systematically captured across agencies. Specific to the Department of Energy, the GAO found only 22 percent of the estimated contracts requiring an assessment had one actually performed.

Department of Energy
National Nuclear Security Administration
Washington, DC 20585

September 9, 2011

MEMORANDUM FOR: GEORGE W. COLLARD
ASSISTANT INSPECTOR GENERAL FOR AUDITS
OFFICE OF INSPECTOR GENERAL

FROM: KENNETH W. POWERS
ASSOCIATE ADMINISTRATOR
FOR MANAGEMENT AND BUDGET

SUBJECT: NNSA's Comments on the IG's Draft Report Non-Facility Contractor Prior Performance, Project No. A11CP001/ IDRMS No. 2010-02169

The National Nuclear Security Administrator (NNSA) appreciates the opportunity to have reviewed the Inspector General's (IG) draft report on *Management Controls over Non-Facility Contractor Prior Performance.*

NNSA generally agrees with the report and recommendations. Even though we have always placed a high value on utilizing past performance as a source selection evaluation factor and have entered past performance evaluations in Contractor Performance Assessment Reporting System (CPARS), we understand that further work can be done. We will emphasize the importance of meeting regulatory requirements to our staff and reiterate management's expectations that our procurement professionals adhere to procedures regarding all aspects of prior performance.

With regards to the recommendations, NNSA will take the following actions:

Recommendation 1: Procurement officials consistently follow existing procedures for evaluating a prospective contractor's prior performance before a competitive contract or financial assistance award is made.

Concur: NNSA will, as appropriate, add a Specific Performance Objective to the contracting officer and contract specialist Performance Appraisal Management System addressing prior performance issues, such as: the use of past performance in Source Selections; monitoring contractor performance to ensure compliance with the contract/instrument's terms and conditions; ensuring documentation of contractor performance in the Department of Defense (DoD) CPARS; and/or collaborating with the contractor and program customer to resolve performance issues and address urgent changes in requirement. Action for this recommendation is to be completed no later than December 30, 2011.

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Recommendation 2: Procurement officials consistently follow existing procedures for reviewing prospective contractors against the Excluded Party List System before an award is finalized.

Concur. NNSA will brief staff and emphasize the importance of meeting regulatory requirements and reiterate management's expectations that our procurement professionals adhere to procedures regarding all aspects of prior performance, including review of the Excluded Party List. Action for this recommendation is to be completed no later than December 30, 2011.

Recommendation 3: Contracting officers and contracting officers' representatives complete all CPARS evaluations in a timely manner.

Concur. As stated in recommendation 1 NNSA will, as appropriate, add a Specific Performance Objective to the contracting officer and contract specialist Performance Appraisal Management System addressing prior performance issues, such as: the use of past performance in Source Selections; monitoring contractor performance to ensure compliance with the contract/instrument's terms and conditions; ensuring documentation of contractor performance in the DoD CPARS; and/or collaborating with the contractor and program customer to resolve performance issues and address urgent changes in requirement. Since NNSA will be tracking the action for this recommendation under Recommendation 1, NNSA believes this recommendation should be closed.

In addition to the above actions, the former NNSA Service Center's Office of Business Services [and now the Albuquerque Complex Business Services Division (Business Services Division)] has instituted the following for NNSA which will further support completion of CPARS evaluations in a timely manner:

- a CPARS Focal Point and 3 Alternate Focal Points for three Acquisition Branches have been designated under the Business Services Division;
- the Business Services Division promotes/facilitates the attendance of periodic CPARS/CCASS/ACASS Overview Training for employees conducted by the CPARS Webcast Training POC;
- the Business Services Division updates CPARS/CCASS/ACASS users such as Contract Specialists/Contracting Officers/Mgrs and Contracting Officer Representatives (CORs) on a continuous basis regarding CPARS/CCAS/ACAS requirements;
- the Business Services Division provides periodic status reports to CORs, Acquisition Managers and Program Offices on delinquent performance reports under CPARS; and,
- CPARS reporting responsibilities have been incorporated in the designation letters of CORs.

NNSA remains committed to continuous improvement in its business processes and believes the proposed actions are consistent with that goal and adequately address the IG's recommendations. I have also attached additional comments which propose changes to enhance the clarity of information presented in the report.

Department of Energy
Washington, DC 20585

September 20, 2011

MEMORANDUM FOR GEORGE W. COLLARD
ASSISTANT INSPECTOR GENERAL FOR AUDITS
OFFICE OF INSPECTOR GENERAL

FROM: INGRID KOLB
DIRECTOR
OFFICE OF MANAGEMENT

SUBJECT: Management Decision re Draft Audit Report "Management Controls over Non-Facility Contractor Prior Performance"

Thank you for the opportunity to respond to the draft audit report transmitted to the Office of Management via memorandum dated August 16, 2011. I generally agree with the recommendations and provide the following comments. Please consider the following clarifications regarding the assumptions stated in the draft audit:

- Past performance is not a required selection factor for financial assistance agreements; there is no regulatory requirement to review past performance in the selection of applicants in the financial assistance arena. An entity can be selected even if prior performance from the standpoint of reporting and other factors is poor, if funding the technology or research is desired. Award terms for additional oversight and requirements would be used in such a case.
- Past performance checks, e.g.. CPARS/PPIRS, are not required for financial assistance awards.
- Currently, no requirement exists to provide CPARS/PPIRS input for financial assistance agreements.
- While successful completion of projects funded by financial assistance awards is a goal, the objective is to fund research activities to advance a public purpose and not to obtain goods and services for Government use. 31 U.S.C. § 6304.
- Past performance is usually, but not always, a required selection factor for procurements, FAR 15.304.
- Contracting Officers are not legally required to specifically document the fact that an affirmative responsibility determination has been made; a Contracting Officer's signature may constitute a responsibility determination without any further rationale. FAR 9.105-2(a)(1); Marwais Steel Co. v. Department of Air Force, 871 F.Supp. 1448, 1455 (D.D.C. 1994); FN Manufacturing, Inc., B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212.

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- Likewise, Contracting Officers are not required to specifically document the fact that they performed an EPLS check.

I agree that:

- EPLS checks should be performed for all contract and financial assistance awards including sole source contract awards.
- Past performance assessments should be submitted by contracting officials in a timely manner.
- Past performance should be checked (e.g., CPARS/PPIRS) for all sole source contract awards.

Please direct the recommendations to the two Senior Procurement Executives for execution including that an Acquisition Letter be issued to provide direction to acquisition officials regarding this matter. Please remove the words "or financial assistance award" from Recommendation Number 1 as no requirement exists for past performance checks on financial assistance agreements. Generally, recipients have no or little financial assistance history and since performance assessments are not required for financial assistance there is likely no information to be found.

IG Report No. DOE/IG-0857

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3. What format, stylistic, or organizational changes might have made this report's overall message more clear to the reader?

4. What additional actions could the Office of Inspector General have taken on the issues discussed in this report which would have been helpful?

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