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NAVAL POSTGRADUATE SCHOOL Monterey, California



THESIS

**COMPARISON OF PAST PERFORMANCE PRACTICES
BETWEEN THE DEPARTMENT OF THE NAVY AND
COMMERCIAL INDUSTRY**

by

Ricky L. Robins

June 2002

Co-Thesis Advisors:

E. Cory Yoder
Gail Fann Thomas

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**COMPARISON OF PAST PERFORMANCE PRACTICES BETWEEN THE
DEPARTMENT OF THE NAVY AND COMMERCIAL INDUSTRY**

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Lieutenant, Supply Corps, United States Navy

B.S., University of Utah, 1994

Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the

NAVAL POSTGRADUATE SCHOOL

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ABSTRACT

Since the passage of the Federal Acquisition Streamlining Act of 1994, all Federal Departments and Agencies have initiated procedures to use past contractor performance information in source selections and to record contractor performance on in-process contracts. Past performance information is intended to aid the government in determining "best value" contractors and to provide a monitoring process that encourages contractors to perform at their best.

This thesis investigates the use of past performance information in the Federal acquisition process by looking at the Navy's mandatory requirements for gathering past performance information and reviewing the current policies and practices for the collection and use of past performance information within two Department of the Navy buying commands. It then reviews the current practices of collection and use of past performance information within four firms in commercial industry, identifying any similar standards or guidance. The practices of the two "buying commands" are compared with the practices of the four commercial firms.

Key findings of this study are 1) Government commands find it difficult to complete all past performance information requirements as regulated; 2) no set standards or prescribed guidance exist for commercial firms' collection of past performance information; 3) commercial firms employ practices that streamline the gathering and use of past performance information; 4) the Department of Navy could improve their use of past performance information by incorporating some of the commercial practices into their acquisition and contracting process.

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LIST OF ACRONYMS

COR	Contracting Officer's Representative
COTR	Contracting Officer's Technical Representative
CPARS	Contractor Performance Assessment Reporting System
DoD (A&T)	Department of Defense (Acquisition & Technology)
DoDPPAIS	Department of Defense Past Performance Automated Information System
DoN	Department of the Navy
EMS	Electronics Manufacturing Services
FA	Field Activity
FAR	Federal Acquisition Regulation
FASA	Federal Acquisition Streamlining Act
IDIQ	Indefinite Delivery, Indefinite Quantity
LG CX	Large Government Contractor X
MSC	Major Systems Command
NAVSUP	Naval Supply Systems Command
OEM	Original Equipment Manufacturers
OFPP	Office of Federal Procurement Policy
SAP	Simplified Acquisition Procedures

I. INTRODUCTION

A. PURPOSE

This thesis reviews the Department of the Navy's (DoN) collection, evaluation, and use of past performance data. It investigates how selected organizations within the commercial industry collect and use past performance information and determines if there is a set standard or set guidance that industry uses. It will then compare the DoN's procedures with commercial organizations' procedures and discuss any commercial practices that the DoN might adopt to improve the process of collecting and using past performance information.

B. BACKGROUND

The Federal Acquisition Streamlining Act (FASA) of 1994, at section 1091, amended the Office of Federal Procurement Policy (OFPP) Act to specify that past performance is a relevant factor to consider when selecting a contractor in the acquisition process. It directs OFPP to issue guidance on the use of past performance in the contractor source selection.

The Federal Acquisition Regulation (FAR) additionally echoes this requirement in section 15.304(c) where it states that past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$100,000. Additionally, the FAR states that agencies shall establish local procedures for the collection and maintenance of information on contractor performances.

While the FAR provides contracting officials with direction on the use of past performance as an evaluation criterion, the FAR provides very little guidance on how contracting officials are to evaluate past performance. In the absence of any standardized process or norms, the evaluation of past performance may become subjective in nature.

Commercial industry, like the DoN, also performs in the acquisition arena creating contracts with other commercial firms to accomplish its tasks. Almost every commercial firm enters into a written contract to buy goods or services. Commercial firms, additionally, go through some sort of source selection process to choose the best

offeror for the job. “Price” and “technically acceptable” are key criteria within the private sector as they are in the DoN. Past performance also plays a key role in the private sector when source selecting but in a somewhat different form than in the DoN.

C. RESEARCH OBJECTIVE

The core part of the thesis will be to determine if commercial industry has a set standard or guidance in the way they collect and use past performance information in the pre- and post-award phase. The study will then examine if the commercial industry has an effective system for collecting past performance information and how it compares to the way the DoN collects past performance information.

The thesis will conclude with the examination of possible commercial practices that the Department of the Navy could adopt (if any) to improve the system that Naval activities use today.

D. RESEARCH QUESTIONS

1. Primary Research Question

How does commercial industry use past performance information in its procurement process and are there any commercial practices that the Department of the Navy might adopt?

2. Secondary Research Questions

- Are the mandatory requirements for the collection and use of past performance information being followed within the Department of the Navy and what are the impediments to collecting past performance information?
- Are there set standards or prescribed guidance for commercial industry to collect and use past performance information?
- How does the Department of the Navy compare with commercial industry in the arena of collecting and using past performance information?

E. SCOPE AND LIMITATIONS

The thesis investigates the past performance practices of four commercial firms and compares them to two DoN activities. The study concentrates on four companies that are recognized leaders in their field and have achieved set standards for ISO 9000 and/or Malcolm Baldrige.

The limitation of this research is the limited number of DoN activities and number of commercial firms that will be used. Due to time, geographical location and funding constraints, the researcher will use only two DoN buying commands and four commercial firms. This limits the generalizability of actual past performance practices within the DoN as a whole, but will provide exploratory findings for future research.

F. METHODOLOGY

The research for this thesis consisted of the following steps:

- Conducted a literature review of books, magazine articles, Internet sites, and other library information resources. Resources came from the Naval Postgraduate School's Dudley Knox Library as well as a variety of Internet databases.
- Conducted interviews with two DoN buying commands to determine how they collect and use past performance information. The research focused on one Field Activity (FA) and one Major Systems Command (MSC). The FA will provide the perspective of a buying command that supports numerous customers with a variety of goods and services. A MSC brought in a perspective of a command where the customers and goods/services are few, but the dollar value is large for most contracts.
- Conducted interviews with four commercial firms that are leaders in their field and are compliant with set standards for ISO 9000 and/or Malcolm Baldrige. The standards set forth by ISO 9000 and Malcolm Baldrige are internationally recognized and reflect that they are leaders in industry.

- Interviews were conducted with Purchasing Directors, Contracting Officials, and/or other key personnel associated with the contracting/purchasing process. Interviewees had first-hand knowledge of contracting requirements for their activity/firm and were experts in the acquisition field. All interviews lasted approximately one hour and were tape recorded and transcribed. A list of questions that were posed to the DoN interviewees as well as a list of questions that were posed to commercial firm interviewees can be found in Appendices A and B.
- Data used to determine the past performance practices of the two DoN commands came from telephone interviews with contracting officials. Data concerning the past performance practices of the four commercial firms came from face-to-face interviews with buying agents, purchasing directors and contracting officials.

G. BENEFITS OF THE RESEARCH

The collection and evaluation of past performance information and the determination of best value is a critical area within the acquisition field today. Since the signing of FASA, past performance has become mandatory and therefore should be conducted properly to ensure the best offeror will be selected for a contract. One of the goals for using past performance that arose from making past performance information mandatory in the acquisition process was to streamline the process and not add to the work. This study will allow the researcher to examine current practices of the DoN activities and commercial industry to determine if more streamlined processes might be developed.

H. ORGANIZATION OF THE THESIS

Following this introductory chapter, Chapter II provides the current working definition of past performance information. The chapter provides background information on the evolution of procurement policies with respect to the collection and evaluation of past performance information. It also touches on some issues surrounding the collection and use of past performance information.

Chapter III will then focus on two DoN buying commands. A Field Activity command will be used in the research to allow insight on how a command that supports numerous customers performs past performance. The second command will be a Major Systems Command to allow insight on how a command that has a small customer base, but high dollar value of purchases performs past performance.

Chapter IV then turns to the commercial sector. The chapter will review each of four commercial firms that are located within the Northern California region. Each firm's past performance practices will be looked at in detail concerning the way they perform past performance evaluations, and how that information is used within the company. The chapter will then compare and contrast some of the key elements from each company and determine if there are any similarities amongst them.

Chapter V will compare the past performance practices of the two DoN buying commands with the four commercial firms. The chapter will identify any short falls that the DoN may have with past performance and then look at if any of the practices of the commercial firms could be adopted by the DoN to improve upon the way they use past performance.

Chapter VI will provide a summary of findings by answering the research questions posed in this chapter. The chapter will also provide the researcher's conclusions and recommendations. The last part of the chapter will provide the researcher's recommendations for areas of further research.

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II. U.S. GOVERNMENT'S PAST PERFORMANCE SYSTEM

A. INTRODUCTION

Chapter II will discuss the Government's view of past performance. The chapter will begin by giving a simple definition of past performance and then discuss how this information is collected and used. Policy, statutes and regulations will then be reviewed to help further describe past performance and how its use came about.

The chapter will continue by describing the purpose of collecting past performance information and the goals for obtaining a best value product or service. The chapter will conclude by showing the difficulty of using past performance information and then indicating where the downfalls appeared to have occurred.

B. WHAT IS PAST PERFORMANCE?

Past performance is information obtained about a contractor and how that contractor performed on a previous contract. This information is used to indicate the probability of the contractor's future action on a similar contract within a similar environment.

The collection and use of past performance information is not a new concept within the Government. For years contracting officials have collected and used past performance information as a way of determining if a contractor is capable of satisfactory performance of an assigned task. It motivates contractors to improve their performance because of the potential use of that information in a future source selection for another Government contract. Legislation and policy guidance has vastly increased the importance of the collection and use of past performance information.

The Federal Acquisition Regulation (FAR) dictates that agencies only award contracts to "responsible prospective contractors." [Ref. 1] Using a fixed set of criteria, a determination can be made whether a contractor is responsible (qualified) to serve as a government contractor. The minimum requirements of responsibility include "a satisfactory performance record" and "a satisfactory record of integrity and business ethics." [Ref. 2]

Past performance information is collected and used in two instances: 1) in a responsibility determination, and 2) as an evaluation factor. Using past performance in a responsibility determination differs from using it as an evaluation factor in a source selection. The FAR states that a prospective contractor must have a satisfactory performance record to do business with the Government. It is the contracting officer's responsibility to ensure that an offeror has adequate financial resources, the ability to meet the required performance schedule, a satisfactory record of performance on other contracts that are similar in scope and price, and related attributes demonstrating its ability to perform the contract.[Ref. 3] The responsibility determination represents a "go/no-go" binary decision on the contracting officer's part.

In contrast, when past performance is collected and used as an evaluation factor during the earlier phases of the source selection process, past performance helps distinguish between offerors and serves as one basis for choosing an offeror over all the others. The FAR requires past performance to be one of two mandatory evaluation factors. Cost/price is the other factor that is used for all competitively negotiated acquisitions exceeding established thresholds.[Ref. 4]

1. Policy

The Federal Government's effort to increase the use of past performance information began with the issuance of Office of Federal Procurement Policy (OFPP) Policy Letter No. 92-5, Past Performance Information, of December 30, 1992. This policy letter requires all agencies to prepare past performance evaluations for new contracts and use past performance information as an evaluation factor in awarding contracts. The letter states that, "a contractor's past performance record is a key indicator for predicting future performance." [Ref. 5] It cites the need for a satisfactory performance record to be considered "responsible" and, therefore, eligible to receive a contract from a federal agency. The letter establishes the policy that agencies shall:

- use past performance information in making responsibility determinations in both sealed bid and competitively negotiated procurements;

- specify past performance information as an evaluation factor in solicitations for offers for all competitively negotiated procurements expected to exceed \$100,000;
- prepare performance evaluations on all new contracts over \$100,000 during contract performance, as required, and at the time the work is completed;
- allow newly established firms to compete even though they lack a performance history.[Ref. 6]

2. Statute

In the Federal Acquisition Streamlining Act of 1994 (FASA) (P.L. 103-355) Section 1091, Congress found past performance to be a relevant and appropriate factor that executive agencies should consider when making awards. As such, FASA provided a statutory basis for the use of past performance as an evaluation factor. Section 1091 of the law states:

“(A) Past contract performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding the contract.

(B) It is appropriate for a contracting official to consider past contract performance of an offeror as an indicator of the likelihood that the offeror will successfully perform a contract to be awarded by that official.”

FASA required the Administrator of OFPP under the Office of Federal Procurement Policy Act to provide guidance for executive agencies regarding contractor past performance. This was accomplished by the drafting and implementation of the OFPP “Best Practices for Collecting and Using Current and Past Performance Information” guide. The law also requires OFPP to establish standards for evaluating past performance, policies for collecting and maintaining information on past performance, policies to ensure that offerors can submit relevant information, and the period for which performance information may be maintained. FASA states that an

offeror may not be evaluated either favorably or unfavorably in this regard when no past performance information is available.[Ref. 7]

The same day that the President of the United States signed FASA, October 13, 1994, he issued Executive Order 12931, which required several actions to make federal procurement more effective. One was the order to place more emphasis on past contractor performance; another was to promote best value rather than simply lowest-cost technically acceptable in selecting sources for supplies and services.[Ref. 8]

3. Regulation – Federal Acquisition Regulation

In 1995, the Federal Acquisition Circular 90-26 implemented the OFPP and FASA requirements into the Federal Acquisition Regulation (FAR). The emphasis of past performance was divided into two parts within the FAR. The collection and evaluation of past performance information from existing contracts was placed under FAR Part 42 and the use of past performance information in source selections under FAR Part 15.

a. FAR Part 42 – The Collection and Evaluation Phase

FAR Part 42 establishes the rules and procedures for collecting and evaluating past performance information from existing contracts. Agencies must now prepare past performance evaluations for each contract exceeding \$100,000. [Ref. 9] The inputs for these past performance evaluations must generally come from the technical and contracting offices and from the end users. Once an evaluation is completed, the agency must provide the evaluation to the contractor as soon as practicable. From the time the contractor receives the evaluation, the agency must give the contractor a minimum of 30 days to submit comments, rebutting statements, or additional information.[Ref. 10] Should a disagreement ensue over the past performance evaluation, the agency must provide the contractor a level of review above the agency's contracting officer. Nonetheless, the final result of the evaluation is ultimately the agency's decision.[Ref. 11]

After the evaluation, copies of the evaluation and the contractor's response/appeal must be retained as part of the evaluation, which is used to support future

award decisions. These evaluations may not be released except to other government personnel and to the contractor. [Ref. 12] The information in these evaluations is retained to provide source selection information for no more than three years after the contract is completed.[Ref. 13]

b. FAR Part 15 – The Use as an Evaluation Factor Phase

FAR Part 15 provides the rules and procedures for the use of past performance as an evaluation factor in source selections. First and foremost, past performance must be an evaluation factor in all competitively negotiated procurements expected to exceed \$100,000. The only time past performance is not mandatory is when the agency contracting officer documents why past performance is not an appropriate evaluation factor in the procurement.[Ref. 14]

In contracts where past performance will be an evaluation factor, the solicitation must describe the approach the agency will take for evaluating past performance. While evaluating a contractor’s past performance, a contracting official must consider the currency and relevance of the information, source of the information, context of the data, and general trends in the contractor’s performance.[Ref. 15]

Contractors also have the opportunity to provide past performance information under FAR Part 15. Agencies must provide the offerors with a chance to identify similar past or current contracts and allow them to give information and corrective actions regarding any problems they had on those particular contracts.[Ref. 16] Contractors must be advised however, that although they are permitted to give this information, they may not be given the opportunity to verbally explain this information to the contracting officer if he/she selects to award the contract without discussions.

c. Past Performance in Other Parts of the FAR

The use of past performance information is also suggested in other sections of the FAR. The FAR provides that past performance should be an important element for every evaluation in contract awards for commercial items[Ref. 17] and even contemplates the use of past performance in simplified acquisition procedures.[Ref. 18]

The FAR also suggests considerations of past performance in decisions to award orders under multiple award contracts.[Ref. 19] Although these provisions are not mandatory, they do demonstrate the growing importance of past performance in the various areas of federal procurement.

C. WHY DO WE NEED PAST PERFORMANCE?

Past performance is a valuable tool in the government for helping the contracting officer determine which contractor should be awarded a contract during the source selection phase of the acquisition phase. It is one of the single best identifiers for determining the potential reliability of a contractor by viewing the contractor's past performance on similar contracts.

Past performance information is not limited to just source selection. It may also be used to establish competitive ranges, to discuss progress with contractors during the course of contract performance, decide whether to exercise contract options, and decide between different vendors on multiple award contracts when awarding delivery orders.[Ref. 20]

Past performance information collected on contractors in the same or similar business areas, or for the same or similar goods or services, can also be very useful in market research and in the development of acquisition strategies. It can also be very useful in motivating contractors to improve their performance because of knowledge that the government has decided that it will evaluate past performance when making new contract awards.

The collection of past performance is most important when using it to obtain best value for goods and services. This collection is done by a performance evaluation and rating system. To obtain this best value, the Government established two goals for the use of past performance information: a) to collect and present accurate and relevant contractor performance information, and b) to streamline the process.[Ref. 21]

The principle goal to collect and present accurate and relevant contractor performance information is to help the official making a source selection decision choose the right contractor for the job. Providing quality past performance information gives the

selection official a valuable data point to estimate the expected future performance of a contractor.

The second goal for using past performance data is to streamline the source selection process. Currently, the government routinely relies on detailed technical and management proposals to compare relative strengths and weaknesses of offers. In many cases, this enormous amount of information can be reduced or eliminated by evaluating how well the offerors performed on past similar contracts. Stated another way, “the evaluation of past performance information is supposed to streamline the process, *not add to it*. Accurate and reliable past performance information has the potential to allow agencies to significantly reduce the time necessary to evaluate proposals.”[Ref. 22]

There are no guarantees when using past performance information. It is not an exact science. The use of past performance information, no matter how reliable the data, can only provide a degree of confidence that the future performance of a contractor will match or even exceed that observed in the past. Any past performance system must be based on the reality that subjective judgment will always play a part of the process.

However, while by no means infallible, past performance information is still arguably the single best predictor of the quality of and potential customer satisfaction with future work. It gives insight into the contractor’s actual ability to perform the work as opposed to relying strictly on proposal promises. To the maximum extent practicable, the collection of past performance information should be a cost effective and efficient process.[Ref. 23]

D. PAST PERFORMANCE IS NOT WORKING

It has been seven years since the Federal Acquisition Regulation required the use of a contractor’s past performance information as a major factor in source selection for negotiated contracts. Compliance with this requirement has been slow and has not always been performed in accordance with the regulations. Although past performance is the best indicator on how a contractor may perform in the future, the lack of relevant and current information about past performance makes source selection decisions difficult.

Over the past few years, past performance has not been conducted as the regulations state. One reason is that those individuals who have to evaluate the performance of a contractor and then document it find it too time consuming and cumbersome. The evaluators know that the evaluation must be completed nevertheless, for practical reasons the focus is not on the competition of the contract. Instead, the evaluators most often focus on the planning side of the contract and the execution of the contract. Contracting officers, who are ultimately responsible for the completion of the performance evaluation, are more concerned about new contracts than existing contracts that have been completed and now only require minor paper work.

Past performance, however, can only be effective in a source selection process when more and better past performance information is available. Sufficient past performance information would be available if agencies complied with the FAR requirement to evaluate all contracts at completion and all multi-year contracts annually. This information is often not documented because there are no consequences that severely affect the contracting officer or the contracting office for not completing their requirements.

There are three indications that point to the ways that past performance is not working according to regulations. The areas of concern are: a) past performance is not being collected in the manner prescribed in the FAR, b) debarred or suspended contractors may still be receiving Government contract awards, and c) an increasing number of past performance protests are being filed and sustained.

1. Past Performance is not Being Properly Collected.

Past performance is not being collected in the manner prescribed in the FAR. Beausoleil, a long time advocate for the use of past performance within the Federal Government and contributor of information to the OFPP “Best Practices for Collecting and Using Current and Past Performance Information” guide, points out that less than 20 percent of all the contracts that were completed in 1998 and 1999 were evaluated in a way that met the FAR requirements.[Ref. 24] Beausoleil states in his article, *Past*

Performance is Not Working, that even if 40 percent of all contracts were completed in a way that met with the FAR requirements the system would still be insufficient.”[Ref.25]

The system would be considered insufficient because past performance is designed to work if, and only if, everyone is contributing information. If only a portion of performance evaluations are being performed, which is the case, then there are contractors that are not being adequately evaluated. The lack of a proper performance evaluation from a previous contract will hinder the next source selection process because there will be no past performance information on file for the awarding contracting officer to consider.

Past performance information is an effective factor in the source selection process only if the collection of that information is done properly and if all contracts are evaluated in accordance with FAR 42.15. Achieving complete compliance with the regulations is important to the Government because past performance will help find the best contractor for award. Compliance with the regulations begins by all the buying commands and the personnel that work within those commands to start evaluating each contractor at the end of each contract, and to ensure that the information collected is accurate.

Besides performance evaluations not being conducted, another hindrance in the process is that the contractor performance evaluations are not being recorded to conform to the guidance found in FAR 42.15. In a phone interview, Beausoleil stated:

Conducting evaluations of performance related to contracts is not high on a contracting officer’s list of priorities. In some situations, evaluations are not even initiated because of time constraints. Of the evaluations that are initiated, many are not completed because obtaining information from the technical office is too difficult.

He went on to say that:

Undoubtedly, the process is too time consuming. The evaluation form used by most agencies collects too much information, the process involves too many people, and the information collected is often too subjective to be useful.[Ref. 26]

To sum up what Beausoleil says in his article, evaluating a contractor's performance should not be difficult. If every Government contract received a performance evaluation at the end of the contract (and for multi-year contracts, at least annually), then sufficient past performance information would be available so source selection decisions could be based almost exclusively on a contractor's actions.

However, the deficiency of completing performance evaluations accurately is not the only reason that past performance is believed not to be working. There are reports that contracting officers are awarding contracts to contractors who have been debarred from doing business with the Federal Government.

2. Debarred Contractors Receive Contract Awards

According to FAR regulations, the Federal Government is not allowed to award contracts to anyone who has been debarred. Debarment, as defined in FAR Part 9.403, means:

Action taken by a debarring official under [FAR Part] 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

An *Associated Press* article by Solomon and Pflieger identified 1,020 companies that were sued or prosecuted for fraud between 1995 and 1999. By checking the master list of companies that were barred from Federal business, the authors found that 737 of these companies were still eligible for future contracts.[Ref. 27]

Solomon and Pflieger discovered that approximately 24,000 companies or individuals are barred from doing business with the government for infractions that range from drug-free workplace laws to embezzlement and contract fraud. The bans can range from indefinite to just a few years.[Ref. 28]

Contractors can easily get around the rules of debarment by changing the name of their company to something different and then having the company registered under a family member or friends name. The Environmental Health Research & Testing in Lexington, KY, and one member of the family that owns it were banned from

government business after being convicted of bribing officials in 1995. Rather than close their doors, the family drained the company's assets and went back to federal contracting under a different name. By the start of the year 2000, the company had secured about \$55 million in new Government contracts.[Ref. 29]

In Solomon and Pfleger's conclusion, they point out that several companies have, like Environmental Health Research & Testing, won contract awards from the Federal Government. The article plainly points out that the procurement system places very little value on the validity of the information that is obtained when collecting past performance information on an offeror.

3. Increase Number of Past Performance Protests

The third indicator that past performance is not working is the increased number of past performance protests that have been filed and sustained in the past few years. Walkner, a graduate from the Naval Postgraduate School, School of Business and Public Policy, conducted a comprehensive review of protests involving past performance. Table 2.1 shows a number of trends that have developed since the introduction of the requirement to use past performance information in the Federal Acquisition process. The first major trend shows that while the number of merit protests has been declining over the last four years, the number of past performance related protests has been increasing. In 1997, past performance protests constituted only 8 percent of all merit protests, and as of June 2000 that percentage has grown to 29 percent. Additionally, in 1997, sustained past performance protests accounted for only 10 percent of the overall sustained protests. By June 2000 that percentage had risen to 30 percent.

GAO's Bid Protest Statistics				
	Fiscal Years			
	1997	1998	1999	2000 (Oct-Jun)
Merit Protests (Sustained & Denied)	501	406	347	161
Protests Sustained	61	63	74	44
Sustainment Rate (%)	12%	16%	21%	27%
Past Performance Statistics				
	Fiscal Years			
	1997	1998	1999	2000 (Oct-Jun)
Past Performance Protests (Sustained & Denied)	40	43	62	46
Protests Sustained	6	13	15	13
Sustainment Rate (%)	15%	30%	24%	28%
Comparison of GAO Statistics & Past Performance Statistics				
	Fiscal Years			
	1997	1998	1999	2000 (Oct-Jun)
Past Performance Protests as a Percentage of Merit Protests	8%	11%	18%	29%
Past Performance Protests as a Percentage of Sustained Protests	10%	21%	20%	30%

Table 2.1 Past Performance Protests. (From: Walkner, Mark F., "A Model for the Effective Integration of Past Performance Information Into Organizational Acquisition and Contracting Processes," Master's Thesis, Naval Postgraduate School, December 2000, pp. 36)

E. SUMMARY

This chapter started by defining past performance. It described how past performance progressed from solely a responsibility determination to an evaluation factor in a source selection. Additionally, policies, statutes and regulations were reviewed to show the rules that Government contracting officers have to follow when using past performance in the acquisition system.

The chapter continued by showing why there is a need for past performance and how past performance helps the contracting official in the acquisition process. For a

contracting officer to receive the best value for a product or a service, information is required about an offerer's past performance. This information is first gathered from a performance evaluation and then later used in the source selection process when the contractor is bidding on another Government contract.

The chapter concluded by showing why people believe that past performance is not working. Two articles and a thesis were reviewed that clearly identifies that there are problems with the way past performance is working in the Government. The first article showed that past performance is not being collected the way it is suppose to be, the second article illuminated the fact that debarred and suspended contractors are still being awarded Government contracts, and the thesis showed an upward trend in past performance related protests being submitted and sustained.

The next chapter, Chapter III, will provide a review of two Department of the Navy activities. The chapter will show how each of these two buying activities conducts performance evaluations on a contractor at the end of a completed contract and then how that past performance information is used in a source selection process. The chapter will conclude with a review of past performance similarities between the two commands.

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III. A VIEW OF TWO DEPARTMENT OF THE NAVY COMMANDS

A. INTRODUCTION

Chapter III will focus on two Department of the Navy (DoN) buying commands, a Major Systems Command (MSC) and a Field Activity (FA). The chapter will provide a brief overview of each of the two activities as well as discuss how each of these organizations collects and uses past performance information as part of their pre- and post-award activities. The chapter will conclude with a summary of the similarities between the two commands.

B. A REVIEW OF A DEPARTMENT OF THE NAVY MAJOR SYSTEMS COMMAND

1. Command Overview

This MSC is one of four major systems, acquisition commands within the Department of the Navy. MSC focuses on the procurement of major weapons systems, high dollar research and development (R&D) and services.

In fiscal year 2001, MSC awarded over \$700 million in R&D and service contracts. The majority of their contracts are Delivery Order Contracts in which they use the Indefinite Delivery, Indefinite Quantity (IDIQ) contract. An IDIQ contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period.[Ref. 30] In other words, there may be several if not a multitude of task orders associated within one contract. MSC's service contracts range from \$15 million to \$50 million each, and their R&D contracts range from \$5 million to \$10 million each.

MSC has a qualified and knowledgeable contracting workforce. The contracting officers and contract specialists that work for MSC ensure that customers receive what they want at the best dollar value possible. One important method that MSC uses to make this possible is with the use of past performance information. Past performance plays a large role in the acquisition process at MSC.

2. Past Performance Information – Pre-Award Activities

Four areas related to MSC's pre-award activities include: 1) dollar threshold and relevancy of the information, 2) sources of past performance information, 3) use of the debarred list, and 4) protests.

First, MSC uses past performance as a source selection criteria for all contracts that are above a \$100,000 threshold. When a contract is being written and offerors have submitted their proposals, past performance information is used as one of several indicators to determine an offeror's ability to perform the contract successfully. During the source selection process, the currency and relevance of the information, source of the information, and general trends in the contractor's performance are considered. This comparative assessment of past performance information of an offeror is separate from the responsibility determination that is required under FAR Part 9.1. The FAR states that a contractor is determined responsible if he has "a satisfactory performance record" and "a satisfactory record of integrity and business ethics." [Ref. 31]

Second, MSC receives past performance information on each offeror from a variety of sources. In the solicitation of a contract, MSC requests that offerors submit references from previous contracts they have worked on. References are then contacted and queried about the contractor's performance. References are asked to identify any problems that may have surfaced with the contractor and whether the job was completed in accordance with the terms of the contract. Additionally, MSC receives past performance information on an offeror from prior past performance evaluations that either MSC or another command has written.

MSC acquires the majority of its past performance information from the contractor. While this may be a convenient and effective method for obtaining past performance information, the contracting official must still verify the information. The method is convenient because the contractor supplies the information to the contracting official, saving the official time in gathering information. However, this information needs to be verified, which takes time. The information must be verified because contractors will submit positive references concerning themselves and past work they

have performed instead of any negative reference that would hinder the contractors' chance of contract award. A contracting officer at MSC mentioned that this method of having the contractor supply the references is not as complete as it should be and could be better. According to the contracting officer, the whole thing falls back on a timing issue. [Ref. 32] Time restraints do not allow the contracting official to validate all the references that a contractor submits in a proposal nor allows ample time to search for possible negative reports. Oftentimes a contracting official is lucky to verify two or three references at most.

In addition to the information provided by the contractor, the contracting official searches the Department of Defense Past Performance Automated Information System (DoDPPAIS). This web-based database system includes past performance evaluations from various government contracting offices. This system allows authorized DoD employees to access the database via the Internet and retrieve any past performance evaluations that have been written about a particular contractor. Naturally this database is only as useful as the information that is stored within it. If a contractor doesn't have any performance evaluations entered into the system, then the contracting official will have to rely on submitted references alone or on consumer reports for the desired information. Furthermore, "it is not easy to find the information you are looking for. You have to dig around in the database to find exactly what you want," stated the contracting officer. [Ref. 33]

Third, after verifying the references provided by the contractor and searching the DoDPPAIS database, the MSC contracting officials check the debarred list. Debarment is an action taken by a debarring official under FAR Part 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period due to either illegal or irresponsible behavior by a contractor.[Ref. 34]

This task is completed after the source selection process and an offeror has been chosen. Prior to the award, the contracting official checks the debarred list to see if the potential awardee is on the list. If not, then the award will be made. If the offeror is on the debarred list, then the offeror next in line for possible award is checked. This goes on until a potential awardee is not found on the debarred list.

The fourth area to review is the possibility of protests. While the contracting official has to be careful not to award a contract to a contractor on the debarred list, the contracting official must also be cautious not to award a contract due to erroneous past performance information. Strict guidance is established in the source selection plan describing how past performance will be rated in the selection process. If the guidance is not adhered to, then a possible protest from an offeror can occur.

MSC has had very few past performance protests, but none of them ever were sustained. MSC will not exclude an offeror from the competition because they have had a bad mark before on past performance. [Ref. 35] The Deputy of Supply and Contracts commented, “I have seen too many protests sustained because a selection official has excluded a contractor from the competition because of poor past performance marks.”[Ref. 36]

Furthermore, MSC’s contracts rarely have past performance as a high-valued criterion in the source selection phase. Typically past performance is rated about five to ten percent in the selection phase. This is due in part because MSC works primarily with the same contractors. Being familiar with the contractors enables MSC to know how the contractor has operated in the past.

3. Past Performance Information – Post-Award Activities

In addition to the pre-award activities, MSC’s past performance information is also used in post-award activities. Four areas related to this process include: 1) the automated system used to evaluate a contractor, 2) threshold requirements needed for evaluations to be conducted, 3) evaluator’s responsibilities, and 4) importance of documentation.

First, after a contract is completed, the contracting official evaluates a contractor’s performance through the use of an automated system, Contractor Performance Assessment Reporting System (CPARS).[Ref. 37] The DoN developed the requirement for a standardized CPARS in response to a DoD (A&T) directive dated 20 November 1997. CPARS defines the format for the collection of past performance information and is restricted to those individuals with an official need to use the system.

CPARS allows an evaluator to input a contractor's performance information and rate the contractor on how well the contractor performed. Mandatory performance ratings and their definitions are included on the CPARS form to allow evaluators to follow the same format and standardize the evaluation process. The CPARS evaluation ratings are:

- **Exceptional:** performance meets contractual requirements and exceeds many to the Government's benefit
- **Very Good:** performance meets contractual requirements and exceeds some to the Government's benefit
- **Satisfactory:** performance meets contractual requirements
- **Marginal:** performance does not meet some contractual requirements
- **Unsatisfactory:** performance did not meet most contractual requirements and recovery is not likely in a timely manner

Second, as stated in FAR Part 42, all contracts valued over \$100,000 must have a performance evaluation conducted. If a contract exceeds 12 months, an interim evaluation is conducted. Currently, MSC only performs performance evaluations on those contracts that meet the CPARS threshold. The CPARS reporting requirements are:

<u>Business Sector</u>	<u>Dollar Threshold</u>
Systems	\$5,000,000
Services	\$1,000,000
Information Technology	\$1,000,000
Operations Support	\$5,000,000

MSC has no other formal performance evaluation system except for CPARS. Since CPARS only allows evaluations to be completed on contracts that are above the threshold, any contract that does not reach the threshold does not get evaluated.

Because most of the contracts at MSC use an IDIQ contract vehicle, a multitude of task orders are written against a single contract. Therefore, a performance evaluation is not performed at the end of each task order, but only at the end of the entire contract. This procedure reduces the amount of time spent conducting evaluations. Additionally, many of the task orders don't surpass the threshold, however, the contract itself will usually surpass it.

Third, the contracting officer's representative (COR) or technical representative (COTR) conducts the performance evaluation on the contractor. The COR is the individual who works most closely with the contractor. The contracting officer, however, is still ultimately responsible for the completion of the evaluation.

The COR is prompted by CPARS to complete an evaluation form when the contract surpasses the required dollar threshold. The contracting officer will then verify that the COR conducted the performance evaluation and kept within the guidelines of CPARS. For the most part, the COR completes this evaluation within a week of contract completion. If an interim performance evaluation is required because the contract exceeds 12 months, then the COR is also responsible for conducting this action.

CPARS determines if an evaluation is required (by means of its dollar threshold) and will send a message to the contracting officer that a performance evaluation needs to be conducted. FAR regulations does not stipulate a time frame when this report should be completed except for that the report needs to be performed at the end of contract performance. According to a Procuring Contract Specialist, the CORs are completing the evaluations usually within a week after contract completion. A CPARS report is not difficult, but it can be time consuming if the evaluator does not document the contractor's performance throughout the life of the contract.[Ref. 38]

The fourth area looks at the importance of written documentation. One of the hardest problems with the performance evaluation system at MSC is that many of the CORs do not document facts (i.e., late delivery, poor quality, exceptional work) during the contract performance period. Some of the contracts are in place for several years, and the COR cannot expect to remember everything that went on with the contract without

historical documentation. Unless properly documented and/or conducted in a timely and correct manner, then the performance evaluation can end up not reflecting accurately the contractor's performance and the evaluation will end up not reporting the facts.

When the time comes for the COR to complete the performance evaluation, it could possibly take the COR longer to complete the evaluation if historical documentation was not produced. The COR now has to spend additional time to recollect the events of the contract and then be objective in writing the report. When the CPARS form is completed, the contracting officer will verify that the evaluation has been conducted properly, that the evaluation is objective in nature, and that the evaluation follows the CPARS guidelines.

C. A REVIEW OF A DEPARTMENT OF THE NAVY FIELD ACTIVITY

1. Command Overview

This FA is one of six activities that are responsible for worldwide logistics for the DoN. The contracting department within this FA is responsible for planning and conducting contracting and contract management operations in accordance with current directives. The scope of operations for the contracting department includes designation as the central area contracting activity for all customer requirements in excess of their authorized purchase and contract limitations. The department performs both small purchase and large contracting functions for their area.

FA awards an average of \$250 million a year in contracts and small purchases. The majority of the contracts pertains to field contracting and can be divided up into two categories: supplies and services. Customers requiring supplies range from industrial customers all the way to the Western Pacific for supply support. DoD activities are the primary customers for the service contracts.

2. Past Performance Information – Pre-Award Activities

Four areas related to FA's pre-award activities include: 1) dollar threshold and relevancy of the information, 2) sources of past performance information, 3) use of the debarred list, and 4) protests.

First, FA, like MSC, follows the directives mandating that past performance be used in the source selection process for all negotiated contracts valued at \$100,000 or greater. A contract specialist at FA commented that all contracts use past performance information as a responsibility determination or as an evaluation factor. Past performance is being used to determine the responsibility of an offeror when in conjunction with Simplified Acquisition Procedures (SAP) and past performance is being used as an evaluation factor along with cost for large contracts.[Ref. 39]

Second, contracting officials realize the importance of past performance of a contractor and how that information alone can help determine the risk involved with a potential awardee during the selection process. Contracting officials use various means to gather past performance information about an offeror. They ask offerors in the solicitation to include references and information about similar prior contracts that the offeror has completed to allow the source selection team a chance to review the contractor's ability to perform a contract. With the contractor submitting the references, the contracting official does not have to worry about spending time searching for this information. However, a lot of time is devoted to verifying the references that the contractor has provided.

FA, like many other commands, works on a tight schedule with limited resources. Time is scarce so additional time to search for past performance information is always needed, but is rarely found. Contracting officials attempt to call each of the references that are given to them from any one offeror, but because of time constraints that rarely happens. Often, contracting officials end up talking with only two or three of the references given to them. "It's not a very effective method," stated a FA contracting official, "but it is the best that we can do under the circumstances." [Ref. 40]

Additionally, the contracting official uses the past performance database, DoDPPAIS. As mentioned before, this system is a database of performance evaluations

that have been submitted by government contracting officers. “This information is very helpful, but finding the information is the key” stated a contracting official, “the system is somewhat hard to navigate around when you are trying to find something specific.”[Ref. 41]

Many of the contracting officials use the DoDPPAIS database to gain past performance information on an offeror, however oftentimes a contractor will not show up in the database and then the contracting official will have to rely on submitted references alone or on consumer reports for the desired information. Furthermore, any supplies or services contract that is less than \$1,000,000 is not eligible to be added into the database via CPARS, hence a possible reason that a contractor may not be found in the database. In addition to the dollar limit as a barrier, CPARS is not a widely used system. Although it is a DoN system, not all commands use it. This is due in part to commands using other systems besides CPARS or because contracts do not meet the dollar threshold that is required to enter evaluations into the database.[Ref. 42]

Third, once the source selection committee decides to award a contract, the contracting official checks the debarred list to ensure that the contractor is legally capable of accepting a Government contract. A contracting official is not allowed to award a Government contract to a contractor that has been suspended or debarred. If a contractor is selected to receive a contract award, but has been suspended or debarred, then the contracting official will have to select another qualified offeror to award the contract.

The fourth area includes reviewing the possibility of a past performance protest. Contracting officials have to be cautious about the possibility of offerors submitting protests about the use of past performance information in the source selection process. “FA will not throw an offeror out of the competition because of poor past performance information” stated a contracting official, “protests would certainly be submitted on this decision.”[Ref. 43] The contracting official has seen protests raised on this issue in the past and those protests have been sustained. [Ref. 44]

Furthermore, FA legal council will not allow a contract to be awarded if the selection process viewed past performance in a manner different from what the source selection plan stated it would. A decision of an offeror to be thrown out of the

competitive range in the source selection process or be denied award of a contract solely because of a blemish on past performance is not supported by the legal council unless the source selection plan indicates that past performance is the heaviest weighted criteria and is considered the most important item in the selection process.

3. Past Performance Information – Post-Award Activities

In addition to the pre-award activities, past performance information is also used in post-award activities. Four areas related to this process include: 1) an automated system used to evaluate a contractor, 2) evaluator's responsibilities, 3) evaluator's training, and 4) importance of documentation

First, FA uses the automated system CPARS as their primary means of evaluating a contractor. Any contract that has a dollar value of \$1,000,000 or greater has a performance evaluation conducted. CPARS incorporates an automated evaluation report card that aids the evaluator to make an objective evaluation on a contractor as well as keep the report in a standard form.

Second, like MSC, the CORs at FA are the individuals who conduct the performance evaluation. The contracting officer is still ultimately responsible for ensuring that the COR completes the evaluation timely, properly and objectively. Although it is the duty of the contracting officer to ensure that the CORs complete the performance evaluations, the contract specialist stated that “the job has been delegated to her to “sheppard” them (the CORs) in doing their job.”[Ref. 45]

According to the contract specialist, however, the CORs most often complete the evaluations in a timely manner. It usually is after the CORs are trained and understand the importance of these performance evaluations that the true gain is experienced. New CORs come into the job and often do not understand the importance of the performance evaluation and what significant role it plays in the acquisition process. The untrained evaluator views the evaluation as additional paper work that should be completed, not has to be completed, which there is no time to complete because of severe time restraints. However, “once it is explained to the COR and they understand the importance of

completing a performance evaluation, there is usually no resistance,” stated the contract specialist, “it is now just a time factor on the COR’s end.”[Ref. 46]

Third, to aid the CORs in reducing the time it takes to complete the evaluation form, FA offers a non-mandatory training on CPARS. Some of them take advantage of this free training, but it is not required. The majority of the CORs simply learn how to use CPARS on the job. One problem with this action is that the CORs submit the evaluation form with more errors than they would have had if they had received the training. The training helps them better navigate through CPARS and reduces the number of errors a typical new COR makes.

The fourth area is the documentation of the evaluation process. CORs increase their efficiency by documenting a contractor’s performance throughout the contract period. The contracting officer mentioned that many of the CORs maintain historical documentation files on each of the contractors they work with. This decreases the amount of time required to complete a performance evaluation. Instead of trying to recollect everything that took place during the contract period, the CORs will review their files, identify the information needed to make an objective report, and the evaluation can generally be completed within 30 minutes.

D. COMPARISON OF THE TWO NAVY COMMANDS

MSC and FA contracting offices operate from the same federal guidelines, but each has their own style of interpreting those guidelines. Although the two commands are geographically separate from each other and have a different genre of customers, the way that each interpret the federal guidelines are quite similar. There are several characteristics, both in the pre-award and post-award phase that resembles each other. Identification of these similarities will follow.

1. Reviewing the Pre-Award Phase

First, both MSC and FA use past performance in their source selection process when the value of the contract is \$100,000 or greater. Past performance is being used in both responsibility determinations for small purchases under the SAP threshold of \$100,000 and as an evaluation factor for large contracts. The process of obtaining this

information is difficult at times, and most often very time consuming due to the verification of the information, nevertheless, it is being done.

Second, both activities receive sources of information from offerors through the automated system, DoDPPAIS, or by requesting the offeror to submit references from previous work performed. The major drawback on the latter method is the enormous amount of time that it takes to verify the references that the contractor has submitted. Both activities commented how time is a precious resource, and that they do not have enough time now to complete all the tasks that need to be done. Both commands prefer to have the contractor supply the references to them because it frees up the time that the contracting official will have to spend doing this.

The database, DoDPPAIS, is used by both commands. The drawback though is that the contracting official can only retrieve information from the system that has been placed in the system. If a contractor is not in the database, then the contracting official will have to look elsewhere such as consumer reports to find information about a contractor's past performance history.

Third, both MSC and FA check the debarred list to ensure that they do not award a contract to either a suspended or debarred contractor. The FAR states that a suspended or debarred contractor is not allowed to receive a Government contract award. Those contractors who are on the debarred list have proven themselves to be irresponsible in business practices towards the Government.

Fourth, both MSC and FA ensure they follow their source selection plan to prevent past performance protests from being filed. MSC does not have a problem with eliminating a contractor from the competitive range or even from being awarded a contract because of a blemished past performance history, however, this never occurs. A senior contracts supervisor at MSC stated, "our contracts are not geared to having past performance as the most important factor in a source selection process." [Ref. 47] With past performance rated low in a selection process, such as five to ten percent, there is little chance that a past performance error will be made that will effect a source selection decision that would warrant a protest.

FA on the other hand views eliminating a contractor for past performance blemishes in a different way. The contracting officer at FA commented that FA legal council would never allow a contract award to occur if the source selection process had eliminated an offeror from competition or award do to a blemished past performance history. “The risk of a contractor filing a protest and having the courts sustain the protest is too high.”[Ref. 48]

2. Reviewing the Post-Award Phase

First, both MSC and FA are conducting performance evaluations at the end of a contract performance period as well as conducting interim evaluations on contracts that exceed 12 months. However, each command, with their use of CPARS as their evaluation tool, follows the guidance of CPARS over the FAR and only evaluates contracts that surpass the CPARS threshold of \$1,000,000 instead of the FAR required threshold of \$100,000.

Although they do not comply with the FAR, each organization believes that the \$1,000,000 threshold makes good business sense. Due to the time constraints that each command faces, a performance evaluation conducted on every contract that they award would be unrealistic, and personnel would have to be assigned to do nothing more than document contractor performance evaluations.

Second, in regards to the evaluators, both commands are using CORs as the primary people for writing up the performance evaluations. The contracting officer at each command is still ultimately responsible for the completion of the evaluation. The CORs are reminded by CPARS if an evaluation for a contract is needed. The contracting officer will follow the progress of the COR until the performance evaluation is completed and submitted.

Third, MSC and FA are both using the automated system CPARS. CPARS has shown to be effective in reducing the time required by an evaluator to complete a performance evaluation. One way that CPARS has helped to make evaluations more effective is by having a standardized format for the evaluations. The CPARS format used

at MSC is the exact same format that FA uses. In fact the CPARS format will be identical to all other CPARS formats at any command.

An initial problem that each of the buying commands is experiencing with CPARS however, is the lack of training that the evaluators are receiving to use the database. Both MSC and FA have non-mandatory training for CPARS. The lack of training causes additional time to be spent on the evaluation form for both the evaluator and the contracting officer. The time spent training the evaluators could perhaps help increase the time efficiency issue up front had the evaluators received CPARS training.[Ref. 49]

Fourth, CORS at both commands are not consistently documenting relevant contractor performance factors during the life of a contract. Although this practice is not mandatory, it is a function that could help eliminate wasted time that a COR spends trying to recall the events of a contract and then trying to objectively complete a performance evaluation.

E. SUMMARY

The chapter reviewed two DoN buying commands, a MSC and a FA. Each command conducts large dollar value acquisitions for a multitude of goods, services and research for a broad spectrum of customers and suppliers.

Both commands were reviewed on their process of using past performance in the pre-award and post-award activities during the acquisition cycle. Various characteristics were identified and explained in each of the phases for each command. The chapter concluded with identifying similarities between the two commands.

The next chapter, Chapter IV, will review four companies from the commercial sector. Each company will be reviewed showing how each collects and uses past performance information as part of their acquisition strategy.

IV. HOW COMMERCIAL INDUSTRY USES PAST PERFORMANCE INFORMATION

A. INTRODUCTION

Chapter four will focus on four commercial firms: Celestica, Bechtel Corporation, Graniterock, and Large Government Contractor X (LGCX). [Ref. 50] Each of these four firms uses past performance information when conducting a source selection to identify the right supplier for the required task/contract. Each firm also collects past performance information when evaluating a supplier's performance at the completion of a contract.

This chapter will review each of the four firms, providing a brief overview of each and then discuss how each firm uses past performance in pre-award and post-award activities. The chapter will then conclude by identifying similarities amongst the four firms.

B. A REVIEW OF FOUR COMMERCIAL FIRMS

This section will discuss how each of the four commercial firms uses or collects past performance information. Each section will begin with a brief overview of the company, how the company uses past performance information in a source selection procedure, and how the company conducts a performance evaluation.

1. Celestica

Celestica is the third largest electronics manufacturing services (EMS) company in the world. They are a world leader in the delivery of innovative EMS to industry-leading computer and communications original equipment manufacturers (OEM). With year 2001 revenues in excess of US \$10 billion, Celestica is a global operator of a highly sophisticated manufacturing network, providing a broad range of services to leading OEMs in the information technology and communications industries. Celestica has more than 40,000 employees in over 40 locations in the Americas, Europe, and Asia.

a. Past Performance Information – Pre-Award Activities

First, Celestica uses past performance information when reviewing award candidates for a particular purchase. When a customer is in need of a piece of equipment, that customer will identify what they want and in some cases whom they want the parts to come from. Celestica uses a commodity manager, an individual who oversees the purchasing and issuing of a number of specific items, as a buyer for specific purchases. The commodity manager reviews a customer's request and begins the selection process for a supplier.

Second, Celestica uses a suppliers list when choosing a supplier instead of using a formal source selection method. The commodity manager will review a list of suppliers and identify those who can deliver the item requested. Usually several suppliers can deliver a particular part. The commodity manager will then choose a supplier that has been regularly complying with Celestica's performance measurements.

If a supplier has been providing a quality product, on time, at a reasonable cost, and has satisfactory past performance, then that supplier is considered a positive match for the request. In most cases several suppliers meet this criteria, however, only two or three suppliers will be placed on the list. Celestica prefers to keep the suppliers list short with only the best suppliers on it. The commodity manager will then choose one of the suppliers and place the order.

Third, the criterion that a commodity manager will use to help choose one supplier over another are: the supplier's responsiveness at the time of order, and their serviceability towards the required delivery date. If a supplier has the required item in stock, can deliver it quickly and guarantee its function, than that supplier could be awarded the purchase order.

A commodity manager, however, will not usually go through this lengthy process each time. Usually the commodity manger will have the supplier list tailored so that only two or three of the top suppliers who meet Celestica's performance measurements are on the list. If a supplier does not meet all of the performance measurements and maintain a satisfactory performance rating with the firm, then that supplier could be bumped off the list and be replaced by another supplier that does meet

Celestica's performance measurements. Suppliers who fall off the list usually find it hard to get back on the list again. The market for these electronic items that Celestica purchases is vast and there are many suppliers who could fill the order and meet the performance measurements, they only need to be given the chance.

Fourth, the selection of a supplier may not occur at the same place that the order originates. Celestica is a global company spanning three regions with 40 different sites. At each of these sites, at least one commodity manager is responsible for the purchase of several parts or family of parts. When a request arises for a particular part that a commodity manager is not responsible for or has, the commodity manager will identify which region is responsible for it and then request that that commodity manager purchase the item, or remove it from stock, and send it to the requiring office. Having regions headed by a commodity manager allows the company to consolidate its purchases and buy several similar items at the same time.[Ref. 51]

There is no other formal system that Celestica has for selecting their suppliers. Their supplier list is updated periodically to ensure that those suppliers that are on the list are indeed the top performers that are available for the commodity manager to purchase from.

b. Past Performance Information – Post-Award Activities

First, Celestica conducts performance evaluations at the end of a performance period, however, they do not perform an evaluation on every purchase order. A performance evaluation is conducted only on those purchase orders that has a supplier who is ranked in the firms top 100 suppliers. Celestica has a multitude of suppliers and has thousands of purchase orders completed each year. If Celestica's evaluators were to complete a performance evaluation for every purchase order, they wouldn't have any time to do anything else.[Ref. 52]

Additionally, The majority of information that is recorded concerns negative aspects about the supplier's performance. Areas such as poor quality or late delivery of requested items are recorded in the evaluation. Positive evaluations, on the other hand, are given, but in an oral manner to the supplier. The supplier receives these

oral evaluations in the manner of “pats on the back” and “great job” and by remaining on Celestica’s supplier list.

Second, Celestica uses an automated system to collect and store the data. This system enables the commodity manager to have easy access to this information when needed to select a supplier for a request. This system is still evolving within the firm and has not yet reached its potential as of yet, however, the data as long as it is entered into the system correctly will provide the necessary information that the commodity manager needs. The commodity manager at Celestica’s San Jose office said, “the automated system in place is effective and efficient once the data is refined.”[Ref. 53]

Third, the performance evaluations format that is used within Celestica for the most part is standard, however, each region is responsible for the tailoring of the evaluation form. Because the regions are broken into global continents (i.e., Americas, Europe, Asia), it makes sense for the evaluation to be customized to each region. Each region has its own culture, customs, standards, and diversity.

Fourth, as Celestica does not perform an evaluation at the end of every purchase order, the firm likewise does not insist on supplier feedback for every purchase order. Some purchase orders are very simple in nature and the time and effort to conduct an evaluation and give feedback to the supplier is not feasible. The feedback that they do give to suppliers is usually conducted verbally. Ideally Celestica wants to give their suppliers verbal feedback on their performance at least quarterly, at what is called a quarterly review. Due to time constraints and other limitations, this feedback realistically gets performed about twice a year.[Ref. 54]

Fifth, Celestica receives very few performance evaluation rebuttals. Due to limited feedback and issuance of performance evaluations, there are a very few number of rebuttals received each year from suppliers. If Celestica starts to receive performance evaluation rebuttals, then the firm will review the process and try to identify any shortfalls or inaccuracies in the collection of the data.

2. Bechtel Corporation

Bechtel is a global engineering-construction organization, providing premier technical, management, and directly related services to develop, manage, engineer, build, and operate installations for customers worldwide. In 2001, Bechtel had 50,000 employees working on 950 projects in 67 countries, booked \$9.3 billion in new business and worked off \$13.4 billion in revenue. Some of the vast range of projects that Bechtel is working on include the world's largest copper mine in Chile, the AT&T wireless network expansion across the United States, and the high-speed Channel Tunnel Rail in England.

a. Past Performance Information – Pre-Award Activities

First, Bechtel uses a bidders list to award a particular job to a supplier. For a supplier to be added to the bidders list, the supplier must be offering a product or service that Bechtel requires, and they must have an acceptable past performance history with the work in question. In actuality, Bechtel relies on a supplier's past performance information as the major criteria for selection to the bidders list. Past performance information is only used at this point in the firm's source selection process. After the bidders list is put together, the purchasing manager in charge of the award will review the bids for cost and technical capability, but past performance will not be regarded in the analysis.[Ref. 55]

Bechtel's use of the bidders list, to determine who will be offered a chance to bid on a particular job, takes less time than a formal source selection method. If a supplier is on the bidders list, then that supplier will be offered the opportunity to submit a bid. Bechtel's bidders list is in essence a list of qualified suppliers that has been reviewed by one of Bechtel's purchasing managers.

Second, during the review of a suppliers past performance information, should a supplier have a blemish in their performance history, but the purchasing manager believes that the supplier could perform the job, and desires to place the supplier on the bidders list, then the purchasing manager will address the issue with the supplier. The supplier's management team will at this point have the opportunity to resolve any concerns that Bechtel may have about the supplier's performance history. If the response that Bechtel receives is satisfactory, then the supplier will be added to the bidders list.

Third, Bechtel's means of gathering past performance information to decide if a supplier should be placed on the bidders list is changing. Presently past performance is gathered by a purchasing manager with a non-web based automated system. If a purchasing manager knows of a company that could do the job or it is in the manager's office database, and the purchasing manager recalls that the supplier had performed well in the past, then the supplier is added to the bidders list. This method is very subjective in nature.

Bechtel soon will be implementing a web-based, automated system that will be more specific in a supplier's past performance and will eliminate most of the subjectivity in this part of the selection process. This web-based system will allow every office, in every region to view any particular supplier and the supplier's performance history with Bechtel. This will allow Bechtel to gather performance history of any supplier that has worked with them at any time, at any place.

b. Past Performance Information – Post-Award Activities

First, the collection of past performance information is important to Bechtel because it is the primary means of selecting a supplier to be placed on Bechtel's bidders list. Under the new automated system, evaluations will be conducted on any job valued at or above \$100,000. Presently, evaluations are being performed manually using various evaluation forms and only for the top ten percent of Bechtel's suppliers. Evaluations were only being conducted on the top ten percent of suppliers because of the amount of time it took to complete some of the four different evaluation forms that Bechtel used. "These forms are somewhat lengthy and cumbersome to work with," stated one of Bechtel's Purchasing Directors.[Ref. 56]

Second, Bechtel's new web-based, database system has an automated Supplier Scorecard. This new scorecard will be used to evaluate a supplier at the end of the job performance. It will help eliminate subjectivity and standardize the entire evaluation system. There will be standardized performance ratings where as before the only thing recorded is a supplier's conformance or non-conformance. A supplier was

considered in conformance if the required work was completed satisfactorily and without any problems that were not easily rectified or caused material damage.[Ref. 57]

A supplier was considered as non-conformance if the supplier performed poorly on the job. Bechtel's definition of non-conformance implies that the supplier had a problem with his performance during the job and the performance was rated as poor.[Ref. 58] If a single supplier performed poorly on more than one job, then the purchasing manager would place a warning in the supplier's file to indicate to Bechtel personnel that there is a repeated problem with the performance with that particular supplier.

Third, under the manual performance evaluation system there wasn't any formal feedback given to the supplier. If a supplier performed well on the job, then the method of "no news is good news" was used. If a supplier performed poorly, then Bechtel would let the supplier know immediately to possibly correct the deficiency. In other words, bad news would be conveyed to the supplier immediately.

Under the new Supplier Performance Data Base evaluation system, the supplier will be given the chance to review the evaluation scorecard and make any remarks about the information that it contains. Bechtel's Director of Contracts commented, "Bechtel wants their suppliers to know where they (the suppliers) stand with the company." [Ref. 59]

Fourth, rebuttals had never been a problem with Bechtel suppliers. Because the original methodology of "no news is good news" suppliers never expected to hear from Bechtel concerning performance unless it was something negative. If a problem had surfaced, then both sides would have come together, discussed the problem and worked out a solution.

3. Graniterock

Graniterock is a family-owned and operated small business since 1900. The firm employs over 650 people in 18 locations stretching from South San Francisco to Monterey, California. Graniterock specializes in construction material production and sales, and is involved in sand, concrete, asphaltic concrete, and building materials

operations. Because the company provides high quality construction in the form of road and highway construction it became one of California's premier heavy engineering contractors. In January 2002, Graniterock was ranked 16 in FORTUNE magazine's "100 Best Places to Work in America."

a. Past Performance Information – Pre-Award Activities

First, Graniterock conducts business in a very informal manner compared to Celestica or Bechtel. The source selection process that is in place is quite simplistic in nature. Any of the equipment that is still under warranty that requires new parts must be purchased from the original manufacturer that the equipment was purchased from. If the equipment is not under warranty, then either the purchasing manager or senior buyer will review their list of quality suppliers to award a purchase order. This list of suppliers is known as a suppliers list.

Second, there are a multitude of suppliers for the various types of equipment and supplies needed by Graniterock. Many suppliers are capable of delivering multiple line items that might be required to keep the quarry operation running. To maintain the list of suppliers at a minimum, the purchasing manager allows only one or two contractors per line item to be placed on the suppliers list. Between the purchasing manager and the senior buyer, the two formulate a list of suppliers that each believes has performed well in the past with Graniterock. If the supplier has performed satisfactorily and continues to offer the best value on the parts and supplies required by the firm, then that particular supplier will be on the suppliers list.

The criteria that must be met by a contractor to get onto this list is not difficult. However, it is difficult to get on the list if not already on it because of the enormous amount of subjectivity from the purchasing manager and senior buyer. The required criteria to meet is a quality product, a quality supplier who is concerned about Graniterock's welfare, and a firm price structure.[Ref 60] Another key requirement that the purchasing manager looks for in a supplier is what the supplier has on stock, and not what the supplier can sell to Graniterock. This is important because the purchasing manager desires a short cycle time for required parts.

Third, for a supplier to be chosen from the supplier's list they need to meet and be able to fulfill the criterion that is laid out by Graniterock. Most of the parts Graniterock requires are commercial items, and they all roughly have the same unit cost. To make a source selection decision however, unit cost is seldom a primary factor. "It is everything around that unit cost," states the Purchasing Manager, "that brings a winner to the table." [Ref. 61] In other words, it is the overall best value that Graniterock can get from a supplier.

For a supplier to maintain its position on this VIP list, they must be willing to provide a quality service at a reasonable price and stay in good favor with the Graniterock. If a supplier continues to perform poorly or is not willing to provide Graniterock with what it needs, then that supplier is removed from the VIP list. There are always several new suppliers that are requesting for Graniterock to try their services or products to get their foot into the company's door.

Fourth, Graniterock will not make hasty decisions on a single poor performance. The purchasing manager stated that, "he and his senior buyer do not move fast on decisions like this." [Ref. 62] They do not want to burn any bridges with a valuable supplier if a one-time incident should occur. Most of the suppliers on the suppliers list have a firm business relationship with Graniterock, and they do not want to destroy that relationship for a minor problem that may have occurred.

When a new supplier is trying to get Graniterock's business, the purchasing manager will consider the information from the new supplier, but then let his current suppliers know there is competition. The purchasing manager will not provide current suppliers with the information that was given to him by the new supplier. This does however, allow the current supplier the opportunity to rethink their procedures or prices and provide updated information to Graniterock.

b. Past Performance Information – Post-Award Activities

First, Graniterock's performance evaluation system is relatively informal. No formal procedures or automated systems track the performance of a supplier. "A

supplier's performance history," commented the purchasing manager "is kept in my mind." [Ref. 63]

Both the purchasing manager and the senior buyer know their suppliers quite well. The relationship that they have formed with the suppliers allows them to know if there is any trouble with a required purchase. Additionally, the field hands that are the end users for the required parts are familiar with the suppliers and they inform the purchasing manager if there are any problems with a certain supplier.

Second, the only information that might be written down about the performance of a supplier would be found on the supplier's Traveling Requisition. This document shows that a request was made to a particular supplier, and indicates when the request was made and when the item is due for delivery. Any information concerning performance on this requisition is merely notes about delivery or timing. Even if valued added comments were written on this form, rarely does the purchasing manager or the senior buyer go back and review these forms. [Ref. 64] The reason that no formal evaluation is conducted is because there are no formal systems in place to store the information. "It is best to let it sit in the back of my brain," stated the purchasing manager. [Ref. 65]

Third, as Graniterock has no formal means of evaluating the performance of its suppliers, there is also no formal means to relay feedback to the suppliers of their performance. Graniterock incorporates the method, "no news is good news." The purchasing manager or the senior buyer will occasionally provide positive comments to a supplier when they are conversing with them, but there is no set time that is allotted for feedback. However, if there is a problem, then the supplier will be notified right away. "This is looked at as more of a courtesy call than a bad report," stated the purchasing manager's senior buyer, "it is another way to strengthen the relationship between the supplier and the buyer." [Ref. 66]

4. Large Government Contractor X (LGCX)

LGCX is a global technology, manufacturing, and service company, strategically focused on supplying advanced technology products, systems, and services to the

automotive, information systems, defense, and aerospace markets. LGCX employs over 90,000 people spread out in facilities located in Africa, Asia Pacific, Europe, North America and South America. Their 2001 sales reached over \$16 billion with net earnings of \$68 million. LGCX is ranked in the top fourth for revenues generated by the 2001 Fortune 500.

a. Past Performance Information – Pre-Award Activities

First, LGCX's source selection process is similar to DoD's source selection process. LGCX uses past performance information as a source selection criteria when selecting a supplier for a contract. The selection is done formally, requiring the offerors to deliver references within their proposals. The source selection team is made up of individuals from departments such as Engineering and Quality.

Second, past performance is not always considered the major criterion in each source selection process. Depending on the procurement, past performance can be seen as an important evaluation criteria or it may add little value to the selection.[Ref. 67] The determination of how important past performance will be is made at the beginning of each procurement. The procurement team decides when starting the procurement, the particular evaluation criteria and its appropriate weight before the request goes out to suppliers. The suppliers will then be able to tell how much weight LGCX is placing on past performance in their selection of a supplier. If LGCX is placing a lot of weight on past performance and a supplier has poor past performance, then the supplier may not wish to bid on the job.

Third, LGCX uses an automated system to collect and review past performance. Not all information is placed into the system due to its security classification. The database however is not frequently used to review a supplier's past performance.[Ref. 68] Information is entered into the system, but is rarely used in reference to a source selection because the buyers are not required to use the system in this capacity.

b. Past Performance Information – Post-Award Activities

First, LGCX evaluates all jobs at or greater than \$250,000. “To evaluate purchases at a dollar value less than this would require too much time,” stated a LGCX procurement specialist.[Ref. 69] Additionally, to save time, all evaluations are conducted at the end of the task. LGCX does not require any formal interim performance evaluations to be conducted. Evaluators for the job merely take notes during then life of the task and use them to help complete performance evaluations.

Second, LGCX uses engineers and quality specialists to evaluate the supplier’s performance. These individuals work closely with the supplier and have first-hand knowledge of the day-to-day workings of the job. Usually one individual is assigned to write up the report and submit it to the purchasing specialist. The report is then entered into the database. These reports are available for purchasing specialists to review during a source selection, however they rarely are used again.[Ref. 70]

Third, after a performance evaluation is completed, there is no requirement for the purchasing specialist to give feedback on the supplier’s performance. LGCX goes with the rule, “no news is good news.” If the supplier is performing outstandingly, then the purchasing manager may provide this feedback to the supplier before the end of the task. If the supplier is performing poorly, then the supplier will be notified immediately. “Most suppliers are not looking for any verbal feedback,” commented the purchasing specialist, “they are looking for their end incentive and possible work in the future.”[Ref. 71]

Since the supplier is not forwarded a copy of the evaluation report and there is no formal feedback given to the supplier, the supplier has no means of rebutting a performance evaluation. If the supplier had been performing poorly, then the supplier would have been contacted prior to the closeout of the job and any disagreements would surface at this time.

C. COMPARISON OF THE FOUR COMMERCIAL FIRMS

All four commercial firm’s, Celestica, Bechtel Corporation, Graniterock, and LGCX use past performance in various ways in the source selection process. Likewise,

each firm uses performance evaluations to evaluate their suppliers. Similarities amongst the pre-award and post-award activities will be identified and then further discussed in Chapter V.

1. Reviewing the Pre-Award Phase

First, all the commercial firms except LGCX uses past performance to create and maintain a list of suppliers. This list is then used to award a job to a supplier. This is an informal way of source selecting a supplier. LGCX uses past performance in a formal source selection process.

Celestica's suppliers list and Graniterock's buyers list operate in a similar manner. Both firms use a supplier's past performance to place them on the list. This list contains two or three of the most qualified suppliers for a variety of products, family of products, and services.

Bechtel's bidders list is similar to these other lists except that Bechtel has implemented another layer of source selection in its process. From the bidder's list, Bechtel has a smaller, more qualified group of suppliers to choose from to offer the supplier the chance to bid on a particular job.

All of the above lists are used to reduce the cycle time in the source selection process. Additionally, these commercial firms purchase mostly commercial products that are easily acquired by most suppliers. These products are also items that are purchased repeatedly by the firms. The use of the lists allows each of the firms to create a stronger relationship with its suppliers.

Second, the criteria used in the source selection in general is the same for all four firms no matter what method of source selection is being used. Past performance is a criterion found in all four-selection processes. However, past performance is not always the primary factor. In some cases it plays a major role in creating a list, but the actual choosing of a supplier is not usually based on past performance as being weighted the most significant. Cost and technical capability usually will be considered the major criteria.

Third, all but Graniterock have an automated system with the capability of retrieving past performance information about a contractor. This method of accessing a supplier's performance history is easy and can save the purchasing manager a lot of time tracking down a supplier's performance history or verifying a supplier's references.

Fourth, most of the firms are "forgiving" when it comes to past performance blemishes on a supplier's performance record. The firm's will investigate the cause of the problem and not penalize a supplier for a one-time, minor mistake. The firm's realize also the importance of a buyer-supplier relationship. This relationship is usually made up of trust and reliability and a long history of working together.

2. Reviewing the Post-Award Phase

First, all but Graniterock use a formal performance evaluation system. Each of these evaluation systems, however, has some sort of threshold that must be met for a performance evaluation to be conducted. All three firms state that the reason there is a threshold requirement is because each firm would be overwhelmed with the amount of work and time it would take to conduct an evaluation on every small purchase.

Second, all but Graniterock use an automated system to record a performance evaluation. An automated system allows the evaluator to assess the supplier in a timely manner and the information can then be stored in a database that is accessible to all authorized employees. The automated system also allows for the performance evaluation to be more standardized throughout the individual firms.

The end result of having a standardized form is to remove as much subjectivity from the evaluation process and submit an evaluation that clearly shows, objectively, a supplier's performance. The automated form is not intended to be a "one size fits all" form, but a form with mandatory elements to be reviewed and the ease of tailoring the rest of the evaluation to best fit the requirements of the job.

Third, none of the firms provide formal feedback to their suppliers about the supplier's performance. All four firms rely on the "no news is good news" method. The only exception to this will be Bechtel when their new automated system is fully

functional. Bechtel desires to send their automated scorecard to each of their suppliers when they complete a job.

As long as suppliers are not demanding feedback and are in agreement that “no news is good news” then the firms will continue to save time from not having to deliver feedback to the suppliers. Additionally, without feedback very few rebuttals are received from suppliers. With few to no rebuttals on evaluations, each firm can concentrate on the current or future purchases and not spend more time on a completed job.

D. SUMMARY

Chapter IV focused on the way four commercial firms use and collect past performance within their organization. Specific areas of pre-award activities (source selection) and post-award activities (performance evaluations) were reviewed and then shown how past performance played a part in each area. The chapter concluded with the identification of similarities between the four firms relating to past performance in the pre-award and post-award phases.

Chapter V will analyze the information presented in this chapter as well as the information contained in chapters II and III. The chapter will identify if the DoN commands are in compliance with the rules and regulations as stated in Chapter II and if past performance is working the way that the DoN intended it to work.

Additionally, chapter V will compare the four commercial firms and the two DoN commands’ use of past performance information. The chapter will attempt to identify if there are any similar practices amongst the commercial firms in regards to the use and collection of past performance that the DoN can adopt.

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V. A COMPARISON OF THE DEPARTMENT OF THE NAVY AND COMMERCIAL INDUSTRY'S PAST PERFORMANCE PRACTICES

A. INTRODUCTION

This chapter will compare the past performance practices of two Department of the Navy commands with the four commercial firms' past performance practices. The researcher will also compare the past performance practices of the two DoN commands with the guidance set forth by Government policies, statutes, and regulations. Comparisons will include both pre-award and post-award activities.

B. DEPARTMENT OF THE NAVY'S PAST PERFORMANCE PRACTICES COMPARED TO THE RULES AND REGULATIONS

FASA, OFPP and the FAR all indicate that past performance of an offeror is one of the relevant factors that a contracting official of an executive agency should consider in awarding a contract. Likewise, all three regulations state that past performance shall be collected and used in the acquisition process. The enactment of these regulations comes from a long history of the Federal Government contracting out for goods and services and trying to obtain the best value from the contractor.

Assessing a contractor's performance on a contract is considered one of the best ways to determine how that same contractor will perform on future similar contracts, and aids in the decision of awarding a future contract to the contractor. If a contractor understands that performance on a contract may reflect the possibility of obtaining another contract award from the Government, the contractor may be motivated to maintain a high quality of performance or improve on any inadequate performance before the next reporting cycle. Therefore, past performance of a contractor is considered to be important.

In 1994, the DoN incorporated the use of past performance information as an indicator to determine how a contractor may perform in the future by reviewing the contractor's previous performance history. The DoN, therefore, collects past performance information and uses this information when selecting an offeror to award a

contract. However, the FAR has some stringent rules on the collection and use of past performance information. The researcher selected five key rules of the FAR that relate to past performance: 1) past performance information shall be used as a source selection criteria in all competitively negotiated procurements exceeding \$100,000 2) evaluation of a contractor's performance shall be performed if the dollar value of the contract exceeds the \$100,000 threshold, 3) contracting officials shall check the debarred list, 4) contracting officials shall provide feedback to the contractor, and 5) contractors are permitted to submit a rebuttal statement.

Each of these rules has significant bearing on past performance and the quality of future work to merit reference in policy, statute, and regulation. Do these rules concerning past performance information, however, when followed, achieve the Government's goals of streamlining the process to reduce the amount of time necessary in the collection and use of past performance being met?

1. Past Performance Information Shall Be Used as a Source Selection Criteria In All Competitively Negotiated Procurements Exceeding \$100,000

The FA and the MSC both use past performance information as one of two mandatory criteria in awarding contracts that have a dollar value that exceeds the \$100,000 threshold. The two buying commands most often collect past performance information from the contractor. Verifying this information is cumbersome and time consuming, however.[Ref. 72] Receiving references directly from the offeror requires the contracting official to verify that the information is correct and applicable to the contract at hand. This task alone requires numerous hours. Performing this task provides the contracting official information that probably is already assumed to be correct in the first place. For example, if an offeror is submitting personal past performance information, knowing that the contracting official will verify it, the offeror will more than likely be prone to submit his/hers best performance information. The contracting official expects this to happen.

2. Evaluation of a Contractor's Performance Shall Be Performed if the Dollar Value of the Contract Exceeds the \$100,000 Threshold

Neither the FA nor the MSC conducts formal performance evaluations on contracts that are below \$1,000,000. Both commands use the automated system, CPARS, to collect and evaluate a contractor's performance when the dollar value of the contract exceeds the automated system, CPARS's, \$1,000,000 threshold. The contracts that are between the FAR mandatory \$100,000 threshold and the CPARS threshold do not receive a formal evaluation. Additionally, the number of contracts that each command awards that are between \$100,000 and \$1,000,000 are considerably more than the number of contracts that exceed \$1,000,000. The additional amount of time that it would take to collect and evaluate all the performance information between \$100,000 and \$1,000,000 would be too laborious.[Ref. 73]

3. Contracting Officials Shall Check the Debarred List

Contracting officials at both the FA and the MSC check the debarment list prior to a contract award. It is a routine action and not a difficult task to perform. However, by merely checking the debarment list, the contracting official cannot truly verify that the contractor has not been debarred or suspended from Government contracts. As Solomon and Pflieger [Ref. 74] pointed out in their article, it is quite easy for a contractor to change the name of the company and/or place the title of ownership under a relative's name. The only way for a contracting official to be able to identify that a contractor had done this would be through extensive research. Therefore, checking the debarred list is one means of going through the motions (and complying with the regulations) to check that a contractor is legally capable of receiving a contract award, but it is not a true indicator that the contractor has not been debarred.

4. Contracting Officials Shall Provide Feedback to the Contractor

The FA and the MSC both provide feedback to contractors about their performance. Both commands prepare evaluation reports for the contractors, arrange meeting times, and then meet with contractors to discuss their performance. However, at this point the contractor should know if they had done well or not. For example, if the

contractor had performed poorly, then the contracting official would have (or should have) contacted the contractor immediately to resolve the problem. There should be open communication between the contracting official and the contractor throughout the life of the contract.

5. Contractors Are Permitted to Submit a Rebuttal Statement

The FA and the MSC both allow contractors to submit comments or rebuttal statements, but seldom do they receive any. This is a direct reflection of both commands' capabilities in evaluating a contractor according to the performance evaluation criteria that is set forth in the contract and maintaining a positive relationship with their contractors. Not every situation will be the same nor can every command expect this, but it is obtainable.

Well developed performance evaluation criteria reduces the risk of rebuttal statements and a possible protest.[Ref. 75] A rebuttal statement by a contractor can be taken care of quickly if both sides can come to agreeable terms. However, if a contractor would submit a protest, the contracting officer would be hard pressed to find the time to answer the protest and continue with current duties.

In summary, concerning past performance as an indicator of the quality of future work, the regulations specify procedures for collecting and using past performance to determine the possibility of a contractor's future performance. However, the regulations are not sensitive to the fact that contracting officials are few in number and the amount of work is overbearing. Attempting to follow the regulations shows obedience to the system, but does not always lead to the best process.

C. HOW THE TWO DEPARTMENT OF THE NAVY COMMANDS' PRACTICES COMPARE TO THE COMMERCIAL FIRMS' PRACTICES

Chapter IV examined four commercial firms who are leaders in their field. Each firm collects and uses past performance. The amount of time spent selecting a supplier and evaluating a supplier (if an evaluation was warranted) was minimal. This section

compares both the FA and MSC's past performance practices against the four commercial firms' practices for the pre-award and post-award phases of a contract.

1. Reviewing The Pre-Award Phase

Four areas related to the pre-award phase include: 1) formal versus informal process, 2) use of automated systems, 3) protests of eliminated offerors, and 4) reaction to poor performance.

First, the FA and the MSC both use a very formal source selection process compared to the commercial firms informal process. Both commands must consider full and open competition when soliciting for offers on every contract unless a justified reason not to do so is documented by the contracting official. Contracting officials are required to allow all offerors to submit proposals for an impending contract award and then compete with each other in the source selection phase. In the source selection phase, contracting officials must collect and verify references concerning an offeror's past performance as one means of determining the contractor's possible success of completing the contract. To find and verify references for each of the offerors can be an enormous amount of work for the contracting official or source selection team.

The commercial side, however, is less formal in their practice. Celestica and Graniterock use a suppliers list, and Bechtel uses a bidders list to select a supplier for award. This practice does not require as much time to select a supplier, as does the Government's practice. Additionally, the commercial firms do not require full and open competition on each solicitation. The suppliers/bidders lists are made up of already qualified suppliers that have gone through an informal selection process. Once the list is created, the firm uses the suppliers whose names are on the list until a supplier proves to be anything less than qualified by the standards set by the individual firm. When a supplier is removed from the list, usually another supplier will be chosen and added.

The use of this informal process saves time for the commercial buyer. The scrutiny of having to re-evaluate each offeror each time is eliminated. A buyer has more time to deal with other procurements or issues that come forward.

Second, the FA and the MSC both use an automated database system, DoDPPAIS, to retrieve past performance information about a contractor. The database, however, is not used to its full potential. Government contracting officials are not required to input information into CPARS, therefore, the DoDPPAIS database is unreliable to gather contractors' past performance information. Additionally, there is very little formal training provided, that is required, for contracting officials to learn how to use the system.

The commercial firms who participated in this study, likewise, use an automated system for the selection process. Commercial firms train their employees to use the system and require their buyers and other purchasing officials to use the database. The commercial firms' automated systems are also on a web-based system that allow a user at any physical location to access the system and receive the information that is required.

Third, the FA and the MSC contracting officials rarely if ever eliminate an offeror from a source selection process or a contract award solely due to poor past performance.[Ref. 76] Although the intent of past performance information is to be a valid discriminator among the proposals, its weight in most proposals is so minor that it often does not make a difference in the overall contractor selection process. Contracting officials and legal councils are reluctant to throw out an offeror due to past performance in fear of the contractor submitting a protest. Protests can be lengthy and require a lot of valuable man-hours. Additionally, GAO reports have shown that past performance protests are increasing in number and more are being sustained.[Ref. 77]

Commercial firms such as Graniterock do not worry about eliminating suppliers that have poor past performance. Should Graniterock desire not to do business with a supplier, they don't.[Ref. 78] Suppliers want to stay in good terms with the commercial firms to get the firm's business, which entails more money. If a supplier is not delivering or performing to the standards set by the firm, then the firm simply does not give any more work to that particular supplier.

Fourth, it does not appear that Government regulations allow tolerance for poor past performance. Past performance is supposed to be a valued discriminator and it is one of two mandatory criteria in the source selection process. However, viewing how the

FA and the MSC both use past performance in their source selection process, it seems that tolerance for poor past performance is acceptable. With the weighting value for past performance in most source selections so low, it seems that past performance is still not as important as the other criteria such as cost and technical capability. Both buying commands give the appearance of not wanting to react too hastily towards poor past performance.

This practice of not reacting too hastily due to poor past performance is also incorporated within the commercial firms. All four firms stated that they do not automatically eliminate a supplier from their selection because of a past performance blemish. They understand that a supplier will have an occasional problem. The firms however, are more concerned with keeping a strong relationship with a valued supplier than to eliminate the supplier for an error.

2. Reviewing the Post-Award Phase

Four areas related to the post-award phase include: 1) formal versus informal process, 2) conduct performance evaluations, 3) use of an automated system, and 4) provide evaluator's feedback.

First, the FA and the MSC both use a formal performance evaluation process. The FAR mandates that all contracts above the \$100,000 threshold will have a performance evaluation conducted.[Ref. 79] Evaluators at both buying commands, however, already emulate some of the commercial firms' practices within the performance evaluation system. The FA and the MSC both follow the automated system, CPARS's, \$1,000,000 threshold requirement instead of the FAR's threshold requirement of \$100,000. Both commands are saving time by not conducting performance evaluations on contracts less than \$1,000,000, however, the results are that there are a large number of contractors that do not have any performance evaluations when the FAR states that they will.

The commercial firms on the other hand do not require a performance evaluation at the end of every supplier's performance period. Instead, a majority of the commercial firms interviewed evaluate only their suppliers that receive a top percentage of the firm's

business. Evaluating only a top percentage of a firm's suppliers instead of every supplier, reduces the amount of time an evaluator spends on any single supplier/performance period.

Second, the FA and the MSC both conduct performance evaluations at the end of a contract performance period. The information recorded reflects both positive and negative information. The recording of positive information, however, adds little value to the process. Negative performance information is more pertinent in a source selection process than is positive information. Contracting officials are more concerned with what problems arose during the performance period and if there are any trends of poor past performance occurring.

The commercial firms conduct performance evaluations, however, the majority of the information recorded is negative performance information. By recording only negative performance, and by excluding a large portion of performance evaluations, the evaluator is able to save time in the post-award phase. Commercial firms do record positive information, but in an informal manner. The information is usually something that is mentally stored instead of written down.

Third, the FA and the MSC use an automated system to aid in the process of conducting performance evaluations. There are several systems that are in use within the Federal Government, however the FA and the MSC use CPARS. CPARS incorporates a standard evaluation form for the evaluator to use, however, the system is not a required performance evaluation method. There are other means that an evaluator at either command can conduct a contractor's performance evaluation.

The Commercial firms, on the other hand, each use a web-based, automated system, but require all of their contracting officials to use this one method. This helps to eliminate confusion, reduce the cost of having multiple methods and standardizes the whole process.

Fourth, the FA and the MSC both provide feedback to a contractor at the end of every contract performance period. After the performance evaluation is completed, the contracting official will prepare a feedback report for the contractor and arrange a time when the feedback can be given to the contractor. It is not mandatory that the buying

commands provide any discussions with the feedback, but a contractor is allowed to submit a rebuttal statement should he not agree with the performance evaluation received.

The commercial industry does not do this. Three of the four commercial firms use the practice of “no news is good news.” Most of the commercial firms’ suppliers do not expect any feedback about their performance. They understand that if something goes wrong during the performance period they will be contacted. The suppliers support the “no news is good news” method because it saves them time from having to receive first-hand information.

D. SUMMARY

The FA and the MSC are both spending a large portion of time with past performance information in the pre and post-award phases due to their formal methods of collecting and evaluating the information. Both commands, whether intentionally or unintentionally, have helped reduce the amount of time in conducting performance evaluations by following the CPARS higher dollar threshold instead of the FAR’s lower dollar threshold.

Commercial industry, represented by Celestica, Bechtel, Graniterock and LGCX, on the other hand is employing practices that streamline the process of collecting and using past performance. With the practices of informal source selection and performance evaluation systems, the mandated use of automated systems, and fewer performance evaluations and feedback provided, the commercial firms have lessened the amount of time spent in the pre- and post-award phases.

Chapter VI will provide the researcher’s summary, conclusions and recommendations about collecting and using past performance information.

VI. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

A. INTRODUCTION

This chapter provides a summary of the study conducted by answering the research question presented in chapter I. This chapter will also provide conclusions and recommendations about past performance practices within the DoN and how those practices might be improved by adopting some of the commercial firms' past performance practices. The chapter will conclude with recommendations for further research.

B. SUMMARY

The findings of this research are summarized below as they pertain to the specific research questions presented in chapter I.

- **Are the mandatory requirements for the collection and use of past performance information being followed within the Department of the Navy and what are the impediments to collecting past performance information?**

Based on the data gathered, contracting officials are finding it difficult to comply with regulations related to past performance. In the pre-award phase, the practice of collecting a contractor's past performance information is formal and time consuming. While an automated system, DoDPPAIS, is available to contracting officials, it is not widely used. The purpose of using past performance in the pre-award phase is to eliminate offerors who do not have a satisfactory past performance history. Buying commands, however, are reluctant in weighting past performance adequately enough to eliminate offerors in the source selection process because of the fear of protests.

In the post-award phase, the past performance system is also formal and time consuming. The main purpose for evaluating a contractor's performance is to track the contractor's performance history so that in the source selection phase an offeror who has poor past performance can be eliminated from the award process. However, evaluations

are lengthy and time consuming. They are providing more information than is necessary to the process of eliminating offerors in the source selection phase.

- **Are there set standards or prescribed guidance for commercial industry to collect and use past performance information?**

There are no set standards or prescribed guidance that commercial industry uses amongst commercial firms to collect and use past performance information. Although many commercial firms may mirror each other on how they perform these functions, it is still an individual firm's prerogative on how the firm desires to tailor their collection and use of past performance information as they see fit.

In the pre-award phase, the commercial firms use an informal selection process to develop a preferred suppliers list. They eliminate suppliers from the list that do not have a good performance history with the firm and have fallen below the set criteria that allow a supplier to be on the list. The larger firms use automated systems to help standardize where the information comes from and be able to easily track the supplier's history.

In the post-award phase, three of the four commercial firms have an informal practice to evaluate suppliers, and they only evaluate suppliers with large contracts. Likewise, they use automated evaluation systems that aid in standardizing the evaluation, reducing the amount of time spent to collect and retrieve data.

- **How does the Department of the Navy compare with commercial industry in the arena of collecting and using past performance information?**

The DoN, as viewed through the two buying commands used in this study, differs considerably with the commercial firms in regards to past performance practices. The DoN spends a lot of time in the pre- and post-award phases where as the commercial firms do not. The commercial firms seemed to have streamlined their practices spending less time to determine the right supplier for the contract.

In the pre-award phase, the DoN is very formal in their procedures while the commercial firms have a less formal approach. Both the DoN and the commercial side use automated systems to help in the retrieving of past performance information on an

offeror, but the DoN has additional ways as well to help retrieve the information. The commercial firms strictly use the automated systems if installed. Additionally, the DoN is more hesitant to throw out an offeror due to poor past performance than the commercial side. Offerors have means to file protests with the Government whereas offerors do not have that choice working with commercial firms.

In the post-award phase, the DoN is more formal in their practices than the commercial side. The DoN is required to evaluate all contracts above \$100,000 and provide feedback to the contractors as soon as possible after contract completion. The commercial side limits their evaluation process to only a select number of suppliers. Furthermore, the commercial side does not provide feedback to the supplier unless it is negative feedback that would help to correct an error or problem.

C. CONCLUSIONS

1. The DoN and Commercial Firms are Different in Practices.

The DoN is much more formal in their practices with past performance than is the commercial side. The overarching purpose of public sector organizations is to understand and promote the public good, and to demonstrate responsiveness to public wants and needs. In contrast, private sector companies' key values are towards profitability and the creation of competitive advantage. [Ref. 80]

As part of the public sector organization, the DoN has to abide by statutory laws and regulations. The DoN has to meet certain requirements and proceed cautiously. By not following the mandatory guidelines would increase the possibility of a contractor becoming disgruntled and filing a protest. The commercial firms on the other hand do not have any set standard or uniform regulations that they have to meet or abide by. Each firm only has to meet the criteria that they establish for themselves. Additionally, commercial firms do not have to worry about their suppliers filing protests because there are no means established to do so.

2. The DoN's Past Performance System Has Been Bureaucratized

Initially, the Government modeled commercial industry's use of past performance information to improve on the acquisition process. Since 1994, however, past performance practices have become more bureaucratized with the increase of statutory laws, policies and regulations. Starting with FASA, OFPP Act and then with other acquisition reforms throughout the 1990's, past performance procedures have been impacted by new rules and guidance, making the entire process more formal and time consuming.

3. Current Past Performance System is Difficult to Implement

The DoN's practice of collecting past performance information has become formal and cumbersome. The research shows that many hours are expended in acquiring and then verifying references and past performance information either supplied by the contractor or provided by the contracting official. Although this practice is mandated by FAR regulation, the researcher has concerns that the process is too lengthy and cumbersome and the marginal benefit from doing this is not significant. There is room within the system to be streamlined so as to reduce the amount of time a contracting official needs to spend on this process.

The DoN's has two automated database systems, DoDPPAIS and CPARS that are incomplete because the systems are not required to be used service wide as a tool to collect and evaluate past performance information. Both systems lack in their ability to provide the contracting official the information necessary to retrieve proper past performance information. Likewise, the systems are unable to aid the contracting official in timely and objective performance evaluations.

Additionally, the documentation necessary is unwieldy. The Government requires that contracting officials evaluate all contracts valued over \$100,000 and provide feedback to each contractor soon after the completion of the contract. This is just more time that a contracting official has to spend on a contract that is unnecessary. The evaluation process as well as the feedback process consumes a large portion of a contracting official's time with very little value added. Contractors are more concerned

about if they did poorly on a contract then how well they did on it. Contractors want to know what areas they need to improve on so they can improve the next time.

4. Past Performance is not Discriminatory

The use of past performance information is not a valued discriminator as it was intended. The intentions of FASA, OFPP and the FAR in regards to past performance information was to eliminate offerors that had poor past performance from the selection process. Early exclusion of offerors from the selection process would allow contracting officials to scrutinize a smaller, more qualified and capable set of offerors. However, with an increase of past performance protests along with an increase of those protests being sustained, contracting officials are skeptical about weighting past performance high in the source selection process.

5. Past Performance Adds Little Value to the Source Selection Process

The current practice of evaluating a contractor's performance on all contracts over \$100,000 allows for the collection of both positive and negative information. Positive information in a source selection process is not as pertinent as is the negative information and it adds little value to the process. The use of negative information will aid in the contracting official's ability to eliminate offerors from the source selection phase without having to sift through all the other impertinent information.

D. RECOMMENDATIONS

Based on the research and the data presented in this study, the researcher recommends the following:

1. Eliminate the requirement to conduct formal performance evaluations on all contracts under \$1,000,000. This will allow contracting officials additional time to focus on the larger dollar contracts.
2. Require that performance evaluations need only be written to express negative comments in regards to a contractor's performance. Extracting the positive information will help streamline the source selection process and allow the source selection range to be reduced to those offerors who are truly qualified to compete for the contract.

3. Allow buying commands to develop suppliers/bidders lists for the source selection process to ensure those qualified contractors who have performed satisfactorily in the past with the Government receive the opportunity to submit an offer.
4. Require all DoN buying commands to use a standardized, web-based, automated database system as the main source for collecting, retrieving and evaluating past performance information for the source selection process.
5. Eliminate the requirement that contracting officials need to provide formal feedback to the contractors and incorporate the “no news is good news” method. This will help streamline the post-award phase of the system by reporting to the contractor only the information that will improve the contract.

E. RECOMMENDATIONS FOR FURTHER RESEARCH

The following is a list of areas for further research that would help streamline the past performance process. Conducting a study in any of these areas would provide a closer look into the possibility of incorporating commercial past performance practices in the DoN.

- Perform a qualitative, cost-base analysis on the savings that could be made by adopting commercial industry’s informal practices.
- Establish a war-game simulation on the effects of adopting commercial industry’s informal practices.
- Beta-test the use of commercial industry’s informal practices within the DoN.
- Assess if DoDPPAIS and CPARS are the best automated, web-based systems out of all the various automated, web-based systems that the Federal Government uses to collect and use past performance information.

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APPENDIX A. GOVERNMENT INTERVIEW QUESTIONS

1. Does your organization follow the policy under FAR 421502 (policy for contractor performance information)?
2. Is a contractor performance evaluation being done at the end of each contract? Is it being done effectively, semi-effectively, or not effectively?
3. Is an interim evaluation being done for contracts longer than a year? Is it being done effectively, semi-effectively, or not effectively?
4. Does your organization have its own “tailored” evaluation form or have you acquired an evaluation form from another organization/agency?
5. Do personnel who use it, find it time consuming and cumbersome? How many pages is it?
6. When personnel in your organization look for past performance information that you have generated, is it easy to find and readily accessible? How? Why?
7. Does your organization have any way of ensuring that your contracting officers are completing a contractor performance evaluation at the end of each contract? Who ensures it?
8. On average, how long does it take for a contracting officer to complete a contractor performance evaluation?
9. How many performance indicators (type of info) does the evaluation assess? What are they?
10. Do you think your performance indicators are too subjective? Why?
11. Do the contracting officers send out the evaluation form to other offices (i.e., program office, end user, technical office) for their input or do the contracting officers request that these offices send to him/her their input?
12. Where on your evaluation scale do you have “contractor met all requirements/standards?” Middle, low, high?
13. Are these same requirements/standards the same ones mentioned in the contract or are they different from the contract? Why?

14. Does your performance evaluation form require comments on all marks or only on those marks that are above or below the set standard?
15. Do the contracting officers stay in full contact with the contract and the contractors or do they monitor the contract/contractor when time allows or a problem occurs?
16. What percent of your contractors send in a rebuttal on the performance evaluation that was given to them? At what level do those rebuttals get reviewed? What percentage of those rebuttals is sustained?
17. Does your organization take advantage of any of the automated systems to gain past performance information on contractors? Which systems?
18. Do the contracting officers check the debarred list each time before awarding a contract to a contractor? Why?
19. What limitations does your organization recognize with the way that past performance is being collected/used?
20. How do you think your organization compares to the way that commercial industry collects and uses past performance information?
21. What changes, in regards with past performance collection/use, would you like to see?

APPENDIX B. COMMERCIAL INDUSTRY INTERVIEW QUESTIONS

1. Do you perform any work for the Department of Defense? Do you view the Department of Defense's procedures for past performance effective and efficient?
2. Does your company see a difference between the way commercial industry and the Department of Defense collects and evaluates past performance information?
3. Are there set standards or prescribed guidance for commercial industry to collect and use past performance information?
4. How does your company collect past performance on other commercial firms?
5. Does your company view past performance as a major criteria in the source selection process? What weight do you give it?
6. Do you inform potential offerors that Past Performance will be a deciding factor in the contract award process?
7. Does your company use Past Performance Information for other than Source Selection? What are they?
8. Does your company have an automated system that helps collect and review Past Performance? Is it fully utilized?
9. Does your company perform interim assessments on long performance periods? What does your company consider a long performance period? What are the intervals?
10. What areas of performance does your company assess? (i.e., Quality, Cost Control, Timeliness, etc.)
11. What are your performance ratings? (i.e., Outstanding, Satisfactory, etc.)
12. What method do you use to record your evaluation? (i.e., Color-code, Adjectival ratings, Narrative, etc.)
13. Do you rate subcontractors/joint venture partners separately or together with the prime contractor? Why?
14. Do you allow contractor response/rebuttal to your assessments on their Past Performance? What is the cut-off time? At what level are rebuttals assessed?

15. How long do you retain assessments for each contractor? When does the timeframe start?
16. Do you share your Past Performance Information with other companies or is it kept proprietary?
17. At what level/dollar value does your company require that Past Performance be evaluated?
18. How do you rate a proposal that indicates that the company has no Past Performance Information? How is this compared to other offerors with Past Performance Information?
19. Do you have different evaluation elements and ratings for different offerors and for different contracts? (i.e., is it “tailored to fit” for each acquisition or is it a “one size fits all.”)
20. Do you tend to evaluate Past Performance as a factor or a sub factor?
21. Do you assess Past Performance and Experience together or separately?
22. Is your company’s past performance procedures effective and efficient?

APPENDIX C. CONTRACTOR PERFORMANCE ASSESSMENT REPORT (CPAR)

1. Name/Address of Contractor:

Company Name:
Division Name:
Street Address:
City, State, Zip Code:
Cage Code:

2. Report Type:

Initial ___ Intermediate ___ Final Report ___ Out of Cycle ___ Addendum ___

3. Period of Performance Being Assessed: From: _____ To: _____

4a. Contract Number:

4b. DoD Business Sector & Sub-Sector:

5. Contracting Office:

6. Location of Contract Performance:

7a. Contracting Officer:

7b. Phone Number:

8. Contract Award Date:

9. Contract Completion Date:

10. N/A

11. Award Dollar Value:

12. Current Dollar Value:

13. Competitive _____ Non Competitive _____

14. Contract Type: FFP ___ FPI ___ FPR ___ CPFF ___ CPIF ___ CPAF ___ Other ___

15. Key Subcontractors:

CAGE:

CAGE:

CAGE:

16. Program Title and Phase Acquisition:

17. Contract Effort Description:

18. Evaluate the following areas:	Past Rating	Rating	Trend
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- a. Quality of Product or Service
- b. Schedule
- c. Cost Control
- d. Business Relations
- e. Management of Key Personnel
- f. Other Areas:

(1):

(2):

19. N/A

20. Program Manager / Assessing Official Narrative:

21. Name and Title of Program Manager/Assessing Official:

Name

Title:

Phone Number:

22. Contractor comments:

23. Name and Title of Contractor Representative:

24. Review by Reviewing Official

25. Name and Title of Reviewing Official:

Name:

Title:

Organization:

Phone Number:

Date:

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