

Section 13.1

CONTRACTOR'S PAST PERFORMANCE RATING

13.1.1 Purpose

To set forth an internal procedure for preparing and processing a **Contractor's Past Performance Report (CPPR)** and for establishing a **Final Rating Score** for the performance demonstrated by the Prime Contractor on construction contracts including Design-Build contracts.

13.1.2 Authority

Section 337.14(1) and 337.16(2)(c), Florida Statutes (F. S.)

Rule 14-22.003, 14-22.012 and 14.0141, Florida Administrative Code (F.A.C.)

13.1.3 General

The Fla. Department of Transportation (Department) considers Contractor performance on construction contracts when qualifying or re-qualifying a firm. Specifically, the final scores established by the **Contractor's Past Performance Report** for performance demonstrated in completing Department contracts are used in the standard rule formula (**Rule 14-22, F.A.C.**) to determine a firm's **Maximum Capacity Rating** (The aggregate dollar volume of uncompleted work a firm is allowed by the Department to have under contract at one time regardless of with whom contracted) and in establishing a firm's Surety Capacity, the **Maximum Capacity Rating** attainable through the use of a **Surety Commitment Letter**.

The **Contractor's Past Performance Report** is used to evaluate the construction performance demonstrated by the Prime Contractor on construction contracts.

The **Contractor's Past Performance Report** must be originated no later than forty-five (45) calendar days after the date of final acceptance of the work by the engineer.

The **Contractor's Past Performance Report** shall be completed even if there are pending Claims or Time Extension Requests. The **Contractor's Past Performance Report** can be revised pending the outcome of the Claim/Time Extension Requests.

13.1.4 Definitions

For the purpose of this procedure all references to the Project Administrator, the Resident Engineer or the Project/Program Manager who oversees Consultant C.E.I.'s shall be either Department or Consultant personnel, whichever is applicable.

13.1.5 Preconstruction Conference

(A) Resident Level Responsibilities

The Project Administrator shall provide the Contractor a copy of the **Contractor's Past Performance Report** criteria at the Pre-construction Conference and explain that the Contractor's demonstrated performance in completing the contract work will be rated using these criteria.

13.1.6 Interim Performance Ratings

Interim Performance Ratings that reflect construction performance demonstrated by the Contractor to date at the fiscal midpoint for contracts exceeding ten (10) million dollars or annually for contracts two (2) years or greater in duration.

(A) Resident Level Responsibilities

Interim Performance Ratings shall be originated and signed by the Project Administrator. **Interim Performance Ratings** may be completed at the discretion of the Project Administrator at any time (milestones, phase change, etc.) on any project regardless of size or duration. The original copy of these reports shall be furnished to the Contractor and a copy shall be retained in the contract file.

13.1.7 Rating the Contractor on construction projects

Contractor's Past Performance Report, Form No. 700-010-25, contains the following sections:

1. Pursuit of the Work
2. Proper MOT and Minimize Impacts to Traveling Public
3. Timely and Complete Submittal of Documents
4. Timely Completion of Project

5. Coordination/Cooperation with CEI Personnel, Property Owners and Utilities Company
6. Mitigate Cost and Time Overruns
7. Environmental Compliance
8. Conformance With Contract Documents
9. DBE Utilization.

Rating the Contractor's demonstrated performance shall begin at the time the contract has been awarded to the Contractor and continue throughout the duration of the contract. The Project Administrator should use those personnel who actively participated in the inspection of the work and/or the administration of the contract to assist in rating the Contractor's performance.

13.1.7.1 Preparing the Report

(A) Resident Level Responsibilities

- (1) The Project Administrator shall provide a copy of the **Contractor's Past Performance Report** at the Pre-construction Conference and explain the criteria for which the performance of the Contractor will be evaluated on. The following are some of the criteria that need to be discussed at the Pre-construction Conference.

(A) Where percentages are used, the standard rules of rounding are to apply to calculate the nearest whole number.

(B) Documentation (or document) unless otherwise noted is defined as **Daily Report of Construction, Form No. 700-010-13**, Stop Work Orders, Speed memos, or other such notes or communication in the project files or to the Contractor from the Project Administrator/Project Manager or other Department staff or representatives. Proper documentation on a daily basis is essential in providing an accurate, well-established grade. For contracts let before September 29, 2010, use the State Construction Office CPPR Excel spreadsheet for tracking Contractor's Past Performance, available for download at <http://www.dot.state.fl.us/construction/download/downloadPage.shtm>. For contracts let after September 29, 2010, use of the Department's Contract Information & Monitoring (CIM) application is mandatory on all construction projects and is found at <http://webapp01.dot.state.fl.us/ContractInformationMonitoring/SearchCriteria.aspx>

- (C) Communication will be the key for both the Contractor and the Project Administrator/Project Manager. This will require both sides to deal with the issues of the contract. The performance of the work can be discussed with the Contractor on a periodic basis or at a minimum, on a monthly basis; this can be done by reviewing the Department's **Daily Report of Construction** (daily diaries) as well as discussing Contractor performance at the weekly progress meetings.
 - (D) The Prime Contractor is responsible for the performance of all subcontractor's and suppliers, which includes the quality of the workmanship, material and timeliness completion of the work.
 - (E) For Performance categories # 4, 7 and 9 bonus points are available for the Contractor. For category #4, there are four (4) bonus points available for the Contractor if he/she finished the project within the original contract time (no adjustments for weather). Category #7 has two (2) bonus points available, these points are only available on projects with 300 or more days of allowable contract time, the 2 points will be given if the Contractor did not receive any deficiency letters in this category. Category #9 has for contracts let before May 15, 2006, has two (2) bonus points available and for contracts let beginning May 15, 2006, four (4) bonus points are available if the Contractor has achieved or exceeded the DBE availability percentage shown in the bid proposal. If no DBE availability percentage is shown in the bid proposal, the Contractor will receive the bonus points for achieving 8% or more DBE utilization. In order for the Contractor to get the credit for DBE utilization, the Contractor must put this information in the Department's Equal Opportunity Reporting tracking system.
- (2) **Warning Deficiency Letter (WDL):** The Project Administrator will issue the **WDL** letter (Refer to the **Guidance Documents** for this section), under normal circumstances, to notify the Contractor of shortcomings/non-compliances with the contract. Prior to issuing a **WDL**, the Project Administrator should discuss the performance concerns with the Resident Engineer. A single **WDL** can be used to address concerns in more than one performance category. However, blatant violations or non-compliances may result in a **Deficiency Letter** being issued without a warning. The **WDL** may be sent certified mail or delivered to the Project Superintendent with the Project Superintendent signing to acknowledge receiving the **WDL**.

- (3) **Deficiency Letter (DL):** The Resident Engineer will issue a **DL** to the Contractor for the sole purpose of addressing continual performance concerns and issues that were previously documented by a **WDL** or blatant violations or non-compliances. A single **DL** can be used to address concerns in more than one performance category. The **DL** shall be sent **via certified mail, return receipt requested** (or using other similar services) or delivered to the Project Superintendent with the Project Superintendent signing to acknowledge receiving the **DL**, giving the Contractor ten (10) days from the date receipt of this letter to appeal. This appeal shall be in writing to the Resident Engineer requesting a meeting with the DCE, if no meeting has been requested or the Contractor fails to attend a requested scheduled meeting, then the **DL(s)** shall become final.
- (4) For contracts that are over 365 days, a **Deficiency Letter** factor will apply to categories that have the **Deficiency Letter** as part of the performance. For an example on how to calculate the **Deficiency Letter** Factor, see Page 2 of 9 of the **Contractor's Past Performance Rating**.
- (5) If the Contractor has requested a meeting to appeal the issuance of a **Deficiency Letter** at the DCE level, then the Resident Engineer shall inform the Contractor in writing of the date, time and location of the meeting. If the Contractor appeal is successful, then the DCE will issue a letter to the Resident Engineer, (copy the Contractor) rescinding the particular **Deficiency Letter**.
- (6) For those performance categories (categories 1, 4 & 8) that do not include the use of **Deficiency Letters**, the Contractor will use the appeals process. The Resident Engineer shall inform the Contractor on a monthly basis, giving the Contractor ten (10) days from the date of receipt of this letter to appeal. This appeal shall be in writing to the Resident Engineer requesting a meeting with the DCE, if no meeting has been requested or the Contractor fail to attend a requested scheduled meeting, then this letter(s) shall become final.
- (7) The Report shall be originated and signed by the Project Administrator upon final acceptance of the contract work by the Engineer. The original of this report shall be provided to the Resident Engineer for his or her review. All correspondence, **Performance Deficiency Letters, Contract Records**, Schedules and supporting data used in preparing the **Report** shall be identified and filed (as a separate package) for future reference.
- (8) The Resident Engineer shall sign the report after the report has been reviewed and

forward it to the Contractor, via **Certified Mail, Next Day Delivery, Return Receipt Requested** (or using other similar services) or hand delivered to the Contractor with the Contractor signing to acknowledge receiving, no later than ten (10) calendar days of final acceptance of the contract work by the Engineer. The Resident Engineer shall include a cover letter with the **Report** that explains the following options available to the Contractor and the Department's subsequent actions:

- (A) The Resident Engineer shall inform the Contractor if a meeting is desired to appeal the results of the **Contractor's Past Performance Report** with the DCE. The meeting request shall be in writing to the Resident Engineer within ten (10) days from the Contractor's receipt of the **Contractor's Past Performance Report**.
 - (B) The Resident Engineer shall inform the Contractor that failure to request a meeting within ten (10) calendar days from the Contractor's receipt of the **Contractor's Past Performance Report**, or failure to attend a requested scheduled meeting, will result in the rating indicated in the **Contractor's Past Performance Report** becoming final.
- (9) Once the appeal process has been completed the **Contractor's Past Performance Report** shall become final. The **Final CPPR Report** and spreadsheet shall be scanned into the Department's **Electronic Document Management System (EDMS)** and the results sent electronically to the District Construction Engineer, State Construction Office, and a copy sent to the Contractor. For project(s) that are in Site Manager, the Resident Engineer shall put the final grade into the Department's Site Manager Computer System.

(B) District Level Responsibilities

- 1) In the event that the Contractor has requested a meeting to appeal the issuance of a **Deficiency Letter** and the Contractor's appeal is successful, then the DCE will issue a letter to the Resident Engineer with a copy to the Contractor rescinding the particular **Deficiency Letter**. The DCE's letter should include the reason for rescinding the particular **Deficiency Letter**.
- 2) If the Contractor requested a meeting with the DCE to appeal the results of the **Contractor's Past Performance Report** and the Contractor's appeal is successful, then the DCE will issue a letter to the Resident Engineer with a copy to the Contractor directing the Resident Engineer to make the necessary changes to the

Contractor's Past Performance. The DCE's letter should include the reason for making such changes.

**GUIDANCE DOCUMENT 13-1-A
(SAMPLE LETTER)**

(Date)

Contractor Superintendent
Name and Address

Financial Project ID: 123456-1-52-01
FAP No.: 1234-000-C
Contract No.: 12345
County: Leon

RE: Performance Deficiency Warning Letter

This is to advise you that a performance deficiency warning is hereby issued on the above referenced project on:

Performance Category Number 2, Proper MOT and Minimize Impacts to Traveling Public, of the Contractor's Past Performance Rating.

The performance deficiency warning hereby issued is as follows:

The project superintendent (**NAME**) has been advised on several occasions (see Daily Report of Construction dated (**DATE**), (**DATE**), (**DATE**) of MOT warning devices (barricades) that have been repeatedly moved out of the way of the paving operations and are not placed back to the proper location to protect the traveling public and workers.

This performance deficiency warning is to let you know that your company is out of compliance on the above Performance Category(s). If your company continues to work out of compliance, a Performance Deficiency Letter will be issued and your Contractor's Past Performance Rating will be adversely impacted. Your company needs to make all necessary corrections to ensure that all work is being performed in accordance with the contract.

Sincerely,

Project Administrator Name
Engineer Title

Received by:
Refused Date:

Date:

cc: Resident Engineer
District Construction Engineer
Corporate Office

**GUIDANCE DOCUMENT 13-1-B
(SAMPLE LETTER)**

(Date)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Contractor Superintendent
Name and Address

Financial Project ID: 123456-1-52-01
FAP No.: 1234-000-C
Contract No.: 12345
County: Leon

RE: Performance Deficiency Letter

This is to advise you that a performance deficiency is hereby issued on the above referenced project on:

Performance Category Number 2, Proper MOT and Minimize Impacts to Traveling Public, of the Contractor's Past Performance Rating criteria.

The deficiency that has been issued is as follows:

The project superintendent (**NAME**) has been advised on several occasions (see Daily Report of Construction dated (**DATE**), (**DATE**) and (**DATE**) and you were issued a Deficiency Warning Letter on (**DATE**). Additional MOT performance concerns have been documented on (**DATE**), which have warranted this deficiency letter.

This is to advise you that this Performance Deficiency has impacted your final grade on your Contractor's Past Performance Rating. If you wish to contest the Department's action in issuing this Performance Deficiency, you may request a meeting with me within ten (10) days of receipt of this Performance Deficiency Letter. Additional performance problems may result in additional deficiency letter as well.

Sincerely,

Resident Engineer (Name)
Engineer Title

cc: Project Administrator
District Construction Engineer
Corporate Office