

## 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

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

#### 13.1.3 General

The 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 ~~let beginning May 2001~~

***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 of 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 web application: <http://webapp01.dot.state.fl.us/ContractInformationMonitoring/SearchCriteria.aspx> is

~~mandatory on all construction projects.~~

- (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 ~~two (2)~~ 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.

### ~~13.1.8 Rating the Contractor on projects let before May 2001~~

~~The **CPPR** dated 09/96 contains two (2) sections, **Management and Administration of the Work** and **Work Performance**. Rating the Contractor's demonstrated performance may begin once the contract has been entered into the **Department's Contract Reporting System (CRS)** and may continue throughout the duration of the contract by selecting the **Contractor's Past Performance Report (CPPR)** program in **Construction Automated Reporting System (CARS)**, found in the Department's mainframe **Time Sharing Options (TSO)** application, and entering the appropriate contract number. 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.~~

~~The following steps are to be used to rate the Prime Contractor on contracts let before May 2001.~~

- ~~(1) Preliminary Past Performance Ratings~~
- ~~(2) Initial Past Performance Ratings~~
- ~~(3) Final Past Performance Ratings~~

### ~~13.1.9 Preliminary Past Performance Ratings~~

#### ~~(A) Resident Level Responsibilities~~

- ~~(1) A **Preliminary Past Performance Rating** shall be originated in the **Contractor's Past Performance System (CPPS)** program in **CARS** and printed 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 review. All correspondence, contract records, schedules and supporting data used in preparing the **Preliminary Past Performance Rating** shall be identified and filed (as a separate package) for future reference.~~

- ~~(2) The Resident Engineer shall complete the review of the **Preliminary Past Performance Rating** with the Project Administrator, and Project/Program Manager on Consultant C.E.I. contracts, no later than seven (7) calendar days after the date of final acceptance of the contract work by the Engineer. The Resident Engineer shall ensure that the rating reflects the construction performance demonstrated by the Contractor on the contract, and that sufficient documentation exists to substantiate the rating.~~

### ~~13.1.10 Initial Past Performance Ratings~~

#### ~~(A) Resident Level Responsibilities~~

- ~~(1) When the Resident Engineer is satisfied that the **Primary Past Performance Rating** is representative of the Contractor's demonstrated performance, the Resident Engineer shall advance these ratings and print the **Initial Past Performance Rating**.~~
- ~~(2) The **Initial Past Performance Rating** must be originated and forwarded to the Contractor no later than ten (10) calendar days after the date of final acceptance of the contract work by the Engineer.~~

~~**Special Note:** Once the Resident Engineer originates the **Initial Past Performance Rating**, the Project Administrator will no longer be able to access this rating or initiate another **Preliminary Past Performance Rating** on this contract.~~

- ~~(3) The Project and Resident Engineer shall sign the **Initial Past Performance Rating** and send the original 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 after the date of final acceptance of the contract work by the Engineer. The Resident Engineer shall include a cover letter with the **Initial Past Performance Rating** that explains the following options available to the Contractor and the Department's subsequent actions:~~
- ~~(A) The Resident Engineer shall inform the Contractor that if a meeting is desired to appeal the results of the **Initial Past Performance Rating** with the Project Administrator, Resident Engineer and Project/Program Manager (when applicable). The meeting must be requested in writing to the Resident~~

Engineer within ten (10) days from the Contractor's receipt of the ***Initial Past Performance Rating***.

- (C) ~~— 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 ***Initial Past Performance Rating***, or failure to attend a requested scheduled meeting, will result in the ratings indicated in the ***Initial Past Performance Rating*** becoming final and being used to originate the ***Final Past Performance Rating*** and to calculate ***Final Rating Score***.~~

### ~~13.1.11~~ **Final Past Performance Ratings**

#### ~~(A)~~ **Resident Level Responsibilities**

- (1) ~~— The ***Final Past Performance Rating*** must be originated no later than forty five (45) calendar days after the date of final acceptance of the work by the Engineer.~~
- (2) ~~— If the Contractor does not request a meeting within ten (10) calendar days from receipt of the ***Initial Past Performance Rating*** or does not attend a requested scheduled meeting, the individual ratings entered into the ***Initial Past Performance Rating*** shall become final. The Resident Engineer shall advance these ratings and print the ***Final Past Performance Rating***.~~

**Special Note:** Once the Resident Engineer originates the ***Final Past Performance Rating***, the system will lock all individual ratings and data so that no further changes can be made by the Project or Resident Engineer.

- (3) ~~— The Resident Engineer shall, upon receipt of the Contractor's written request for a meeting set the date, time and place of the meeting and notify the Contractor of the same in writing. For Consultant C.E.I. inspected contracts, the Project/Program Manager as well as the Resident Engineer shall attend this meeting. This meeting shall be held no later than thirty five (35) days after the date of final acceptance of the contract by the Engineer.~~
- (A) ~~— If no changes from the ***Initial Past Performance Rating*** are required after the above meeting with the Contractor, then the individual ratings entered into the ***Initial Past Performance Rating*** shall become final. The Resident Engineer shall advance these ratings and print the ***Final Past Performance***~~

***Rating.***

- ~~(B) If changes from the **Initial Past Performance Rating** are required after the above meeting with the Contractor, any changes from the ratings assigned in the **Initial Past Performance Rating** shall be made by the Resident Engineer. Once all individual ratings are finalized, the Resident Engineer shall advance these ratings and print the **Final Past Performance Rating**.~~
- ~~(C) When the Contractor, in the above meeting, is in total disagreement over the rating(s) received, the Resident and Project Administrator shall consider all facts and reasoning presented by the Contractor for changing the rating(s) and make every effort to equitably resolve the rating(s) in dispute.~~
- ~~(D) In the event that the rating(s) cannot be resolved, the Resident Engineer shall inform the Contractor that they may request the District Construction Engineer (DCE) review the rating(s) and make a determination on those issues in dispute. The Resident Engineer shall inform the Contractor that any information or data relevant to the dispute rating(s) that the Contractor wants the DCE to consider must be provided to the Resident Engineer, no later than ten (10) days after the above meeting for inclusion in the submittal of information to the DCE. The Resident Engineer shall inform the Contractor that the determination(s) of the DCE will be the final Department action regarding the rating(s).~~
- ~~(E) If the Contractor does request that the DCE review the rating(s), the Resident Engineer shall inform the DCE in writing including all Department information supporting the rating(s) and all information provided by the Contractor. The Resident Engineer shall not originate a **Final Past Performance Rating** until written instruction is received from the DCE.~~
- ~~(F) The Resident Engineer shall enter the changes to the rating(s) as instructed by the DCE, advance these ratings and print the **Final Past Performance Rating**.~~
- ~~(G) All **Final Past Performance Ratings** shall be signed by the Project Administrator, Resident Engineer and Contractor's representative (when applicable). The Contractor's signature space is provided to verify attendance at the meeting and does not necessarily indicate concurrence with the rating. If the Contractor elects not to sign or if the Contractor does~~

~~not request a meeting or attend a requested meeting, then it should be noted in the Contractor's signature space provided. The original signed Final Past Performance Rating (with a copy of the DCE's determination, when applicable) shall be sent to the DCE on the same day it is originated.~~

- ~~(H) The Resident Engineer shall enter the changes to the rating(s) as instructed by the DCE, advance these ratings and print the **Final Past Performance Rating**.~~

~~(B) District Level Responsibilities~~

- ~~(1) The DCE shall, within ten (10) calendar days from receipt of written notification of the Contractor's request for a review of the rating(s) from the Resident Engineer, examine and evaluate all data furnished by the Resident Office and the Contractor. The DCE shall determine if the rating(s) given appropriately represent the Contractor's demonstrated performance or determine whether an additional meeting is necessary. The DCE shall instruct the Resident Engineer in writing as to the DCE's determination.~~
- ~~i. If the DCE determines that the rating(s) as proposed in the **Initial Past Performance Rating** are representative of the Contractor's performance, the DCE shall instruct the Resident Engineer in writing that the rating(s) as submitted in the **Initial Past Performance Rating** is correct and to originate the **Final Past Performance Rating**. The DCE shall provide the Contractor a copy of this decision. The Resident Engineer shall originate and print the **Final Past Performance Rating**.~~
  - ~~ii. Should the DCE determine that a meeting with the Contractor is necessary to resolve the disputed rating(s), then a meeting shall be scheduled by the DCE and the Contractor shall be informed in writing of the date, time and place. The DCE shall request that the Contractor provide the name of a representative from a firm that did not actively participate in the construction of the contract work to attend the meeting with the DCE. Only those areas of performance that could not be resolved in the previous meeting shall be open for discussion and resolution.~~
  - ~~iii. The DCE and the Contractor's representative shall examine and~~

~~consider all information provided and facts involved and determine an appropriate rating for the requested item(s) of performance. The conclusions and results of this meeting shall be forwarded by the DCE, in writing, to the affected Contractor and the Resident Engineer.~~

### ~~13.1.12~~ **Final Rating Score**

#### ~~(A)~~ **District Level Responsibilities**

- ~~(1)~~ Whenever the ***Final Past Performance Rating*** is originated the ***CPPR*** program will automatically initiate the operation to calculate the ***Final Rating Score***. The ***Final Rating Score*** will be calculated and the results sent electronically to the originating Resident Office, State Construction Office and Contracts Administration Office.
- ~~(2)~~ The Resident Engineer shall print the ***Final Rating Score Report*** and forward it to the Contractor no later than seven (7) calendar days after the origination of the ***Final Past Performance Rating***.

**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