

Case No.: 2010-0329Date Rec'd: 9-13-10Specialist: Christian

Related Case: _____

FOIA Resource

From: FOIA GROUP [foia@foia.com]
Sent: Sunday, September 12, 2010 8:53 PM
To: foia@ftc.gov; foia@exim.gov; foiaofficer@fca.gov; efoia@fdic.gov; jacqui_caldwell@ustr.gov; andrewt@dnfsb.gov; FOIASubmissions@cftc.gov; cpsc-foia@cpsc.gov; foia@eeoc.gov; mspb@mspb.gov; foia@ncua.gov; foia@opm.gov; FOIA Resource; foia@peacecorps.gov; info@opic.gov; foia@sba.gov; foia@tva.gov
Subject: RE: New 2010 FOIA Request for Contractor Performance Data (CPS) [Your data is held by CPS - see bottom of email]

Please note – this request is based on recent Administration guidance on transparency – (we are seeking the assistance of OGIS to mediate)*

Good morning, under the provisions of the Freedom of Information Act, I hereby request an electronic copy of the following documents identified to your agency (including all sub-level component agency(s) and contracting office locations) and the Contractor Performance System (“CPS”) (*Reference: <http://cps.od.nih.gov>*) :

- 1) All Final Contractor Performance Rating Reports (**segregated*) for the most recently available 3 year period. Please note the following:
 - a. We **SEEK** the final ratings contained in each report (See Example 1, below)
 - b. We do NOT seek the report narrative or comments
 - c. We do NOT seek any performance ratings on any classified awards (e.g. TSI, TS, ect.)
 - d. Finally, we SEEK this data in electronic database format (as allowed in accordance with the EFOIA) with all data fields excluding only the narrative comments section. *For an example of what we have been receiving from other agencies* (See Example 2, below)
 - e. For purposes of developing a complete agency FOIA administrative record for appeal and eventual litigation we ask that your agency provide thorough consideration to the fact that (1) State agencies release contractor performance reports; (2) federal agencies are releasing the data, as illustrated below, **WITHOUT** any negative consequences to the procurement process; (3) the CPS System Policy & Legal guidance noted on the web system is dated May

14, 1996, and inconsistent with OBAMA policy; (4) the CPS data we seek is part of a final agency decision; (5) President Obama's initiative toward transparency dictates full disclosure of the date we seek;

- f. Also, we are currently surveying members of Congress for their position on the disclosure of contractor performance ratings, and will provide to you upon request.
- g. Copies of our request and supporting documentation are being forwarded to the Office of Secretary and General Counsel.

Please respond, or direct any questions to me by email (jstachewicz@foia.com). I agree to pay reasonable processing fees, however, please contact me for authorization if these fees exceed \$55.00. Thanks, Jeff Stachewicz, Counsel c/o FOIA Group, Inc., P.O. Box 368, Depew, New York, 14043 Tel: (716) 608-0800, ext 502, Fax: (716) 608-7608.

Example 1

Ratings

Summarize contractor performance and check the number which corresponds to the rating for each rating category (See attached Rating Guidelines).

Quality of Product or Service

<u>_0=Unsatisfactory</u>	<u>_1=Poor</u>	<u>_2=Fair</u>	<u>_3=Good</u>	<u>_4=Excellent</u>	<u>_5=Outstanding</u>
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Government Comments for Quality of Product or Service (2000 characters maximum):

Cost Control (Rating and Comments for Cost Control are not required if contract type is Fixed-Price)

<u>_0=Unsatisfactory</u>	<u>_1=Poor</u>	<u>_2=Fair</u>	<u>_3=Good</u>	<u>_4=Excellent</u>	<u>_5=Outstanding</u>
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Government Comments for Cost Control (2000 characters maximum):

Timeliness of Performance

<u>_0=Unsatisfactory</u>	<u>_1=Poor</u>	<u>_2=Fair</u>	<u>_3=Good</u>	<u>_4=Excellent</u>	<u>_5=Outstanding</u>
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Government Comments for Timeliness of Performance (2000 characters maximum):

Business Relations

<u>_0=Unsatisfactory</u>	<u>_1=Poor</u>	<u>_2=Fair</u>	<u>_3=Good</u>	<u>_4=Excellent</u>	<u>_5=Outstanding</u>
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Government Comments for Business Relations (2000 characters maximum):

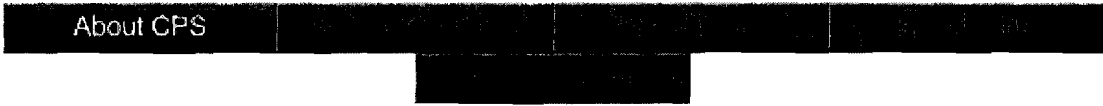
Example 2

SAMPLE - AGENCIES RESPONDING WITH THE FOLLOWING PAST PERFORMANCE SUMMARY

Center	Contract Number	Evaluation Type	Period Start	Period End	Contractor	Dollars	Contract Type	Quality Rating	Timeliness Rating
HQ	NNH04CC35D	Final	2/1/2008	1/31/2009	ERNST AND YOUNG LLP	17,775,467	Fixed Price	4	4
HQ	NNH04CC37D	Final	3/6/2007	3/21/2009	TECOLOTE RESEARCH, INC	2,000,000	Firm Fixed Price	5	5

Contractor Performance System

Points of Contact:
 Paulette Smith
 E-mail:
 David Redd
 E-mail:
 CPS help desk E-Mail:
 PHONE: (301)451-2771



About CPS

[CPS Frequently Asked Questions - \(FAQ\) -](#)

In production since December 1996.

Multiple Agency, Shared File System: all authorized users have access to completed evaluations of all subscribing agencies.

Designed, developed, and implemented by the NIH Center for Information Technology (CIT) under the guidance and sponsorship of the Office of Acquisition and Logistics Management (OALM), Office of the Director, NIH.

Supports acquisition activities in all fifty states and over 100 foreign countries. Contains evaluations from the following Federal Departments/Agencies:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Department of Health and Human Services • Department of Agriculture • Department of Treasury • Department of Commerce • Department of Justice • Department of Energy • Department of Interior • Department of Labor • Department of Veterans Affairs | <ul style="list-style-type: none"> • Agency for International Development • Environmental Protection Agency • Federal Emergency Management Agency • General Services Administration • Department of Transportation • Department of State • Export-Import Bank and the |
|--|--|

- Social Security Administration

- Architect of the Capital
- Federal Trade Commission
- National Labor Relations Board
- U.S. Government Printing Office

Supports evaluations on Research and Development, ADP, A&E, Construction, and Service and Supply contracts. NIH CPS Construction Form approved by CAAC for use by CPS subscribers in lieu of the SF 1420.

System Structure:

- Web Browser: Microsoft Internet Explorer 4.5 (minimum)
- Web based application accessed via the Internet

Security - 3 Levels plus an Internal Audit Table:

- Secure Socket Layer (SSL) encryption
- Database level
- Application level

Application Structure and Help:

- Standard, Construction and A&E Modules
- Project Officer/COTR Module
- Contractor Module (Online Registration, Electronic storage of contractors rebuttal/comments and Electronic, encrypted, transmittal of evaluations to and from contractor)
- Management Tools
- Maintenance Tables
- On-line Help and telephone help lines, User Guides, Listserv
- Search Engine
- CPS Info Page
- System Generated Emails
- Multi-Agency User Group

Data Collected - Numerical Ratings and Supporting Narrative on:

- Quality of Product or Services
- Cost control
- Timeliness of Performance
- Business Relations
- Comments on Subcontracts/Socioeconomic Goals
- Comments on Key Personnel
- Customer Satisfaction

Rating Scale:

- 0 Unsatisfactory
- 1 Poor
- 2 Fair
- 3 Good
- 4 Excellent
- 5 Outstanding

Subscribing agency's logo appears on all printed evaluations

Training:

- No Cost to User
- At agency site within DC/Baltimore area
- Train the trainer
- Agency pays travel costs at agency site outside DC/Baltimore area

Future Enhancements:

- A & E Evaluation Admendment

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