

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 12, and 52**

[FAR Case 2006–029; Docket No. 2007–0001; Sequence 5]

RIN 9000–AK72

**Federal Acquisition Regulation; FAR
Case 2006–029, Federal Funding
Accountability and Transparency Act
(FFATA)—Reporting Requirement of
Subcontractor Award Data**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require that contractors report specific subcontract awards to a public database. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282) requires the existence and operation of a searchable website that provides public access to information about Federal expenditures. The FFATA specifically requires that a pilot program be established to test the collection and accession of subcontract award data. As a result, subcontracts awarded and funded with Federal appropriated funds will be disclosed to the public in a single searchable website.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before May 21, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–029 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting “Federal Acquisition Regulation” as the agency of choice. At the “Keyword” prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the “Submit” button. Please include any personal and/or business information inside the document. You may also search for any document by clicking on the “Advanced search/document search” tab at the top of the

screen, selecting from the agency field “Federal Acquisition Regulation”, and typing the FAR case number in the keyword field. Select the “Submit” button.

- Fax: 202–501–4067.
- Mail: General Services

Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–029 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–029.

SUPPLEMENTARY INFORMATION:**A. Background**

The FFATA requires the existence and operation of a searchable website that provides public access to information about Federal expenditures. Section 2(d) of the FFATA requires that a pilot program be established to test the collection and accession of subcontract award data.

In order to implement Section 2(d) of the FFATA, the Councils propose to add a new subpart to FAR Part 4, with an associated clause in FAR Part 52, which addresses reporting subcontract awards. The pilot program will begin no later than July 1, 2007 and will terminate no later than January 1, 2009.

This rule applies to contracts with values equal to or greater than \$500,000,000 awarded and performed in the United States, and requires the awardees to report all first tier subcontract awards exceeding \$1,000,000 to the FFATA database at www.federalspending.gov. The Councils chose these thresholds to ensure that a sufficient number of subcontract award reports will be entered in the database to permit assessment of its effectiveness without imposing a significant burden on contractors during the pilot program. The Government does not guarantee the reliability of the data reported. The Government has no mechanism to verify the data submitted. Before completion of the pilot program, the Councils will initiate a separate rulemaking process to establish the requirements for the final subcontract reporting database pursuant to the statute. The Councils anticipate

that the final reporting requirement will apply to contracts with values equal to or greater than the simplified acquisition threshold and will require the reporting of subcontracts with values greater than \$25,000, regardless of the award or performance locations of the prime contract or subcontracts. This rule does not apply to classified contracts or commercial item contracts issued under FAR Part 12. FFATA did not explicitly apply its provisions to commercial items, and the statute will be added to the list of laws inapplicable to commercial contracts at 12.503(a), under 41 U.S.C. 430.

The Councils specifically invite comments on the following—

- (a) The pilot program—
 - (1) The burden imposed;
 - (2) Whether making this information publicly available will affect the contractor’s competitiveness; and
 - (3) Whether availability of this information on a public website raises industrial, national or other security concerns.

(b) Possible final reporting requirements—

- (1) Whether the final reporting requirements (after the pilot program) should apply to contracts and subcontracts;
 - (i) Awarded or performed outside the United States;
 - (ii) With values greater than \$25,000; and
 - (iii) Awards below the first tier.
- (2) Whether the reporting period should be 30 days after award of a subcontract as expressed in the statute or a longer period; and
- (3) Whether the unique subcontractor identifier should be the DUNS number, the Taxpayer Identification Number (TIN) some other number, or a non-numerical unique identifier.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the contract dollar threshold chosen for application of the pilot program (\$500,000,000) ensures that any small businesses receiving such large prime contract awards are estimated to be minuscule to none. An Initial Regulatory Flexibility Analysis has,

therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 4, 12, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006–029), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat will submit a request for approval of a new information collection requirement concerning OMB Control Number 9000–00XX, FFATA—Reporting Requirement of Subcontractor Award Data to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden:

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 143
Responses per respondent: 28
Total annual responses: 4,004
Preparation hours per response: 1
Total response burden hours: 4,004.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than May 21, 2007 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of

appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FFATA—Reporting Requirement of Subcontractor Award Data, in all correspondence.

List of Subjects in 48 CFR Parts 4, 12, and 52

Government procurement.

Dated: March 13, 2007.

Al Matera

Acting Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 4, 12, and 52 as set forth below:

1. The authority citation for 48 CFR parts 4, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

2. Add Subpart 4.14 to read as follows:

Subpart 4.14—Reporting Subcontract Awards

4.1400 Scope of subpart.

This subpart implements Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) by establishing a pilot program for a single searchable website, available to the public at no charge, that includes information on Federal subcontracts. This pilot program will expire not later than January 1, 2009.

4.1401 Contract clause.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.204–10, Reporting Subcontract Awards, in all solicitations and contracts with values of \$500,000,000 or more when the contract will be awarded and performed in the United States.

(b) The clause is not required in—
 (1) Solicitations and contracts for commercial items issued under FAR Part 12; or

(2) Classified solicitations and contracts.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.503 by adding paragraph (a)(7) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial services.

(a) * * *

(7) 31 U.S.C. 6101 Note, P. L. 109–282 Federal Funding Accountability and Transparency Act of 2006, requirement to report subcontract data.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 52.204–10 to read as follows:

52.204–10 Reporting Subcontract Awards.

As prescribed in 4.1401(a), insert the following clause:

REPORTING SUBCONTRACT AWARDS (DATE)

(a) *Definition.* *Subcontract*, as used in this clause, means any contract as defined in FAR Subpart 2.1 entered into by the Contractor to furnish supplies or services for performance of this contract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders, but does not include contracts that provide supplies or services benefiting two or more contracts.

(b) Section 2(d) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109–282) requires establishment of a pilot program for a single searchable website, available to the public at no charge, that includes information on Federal subcontracts.

(c) Within thirty days after the end of March, June, September, and December of each year through 2008, the Contractor shall report the following information at www.federspensing.gov for each subcontract award with a value greater than \$1,000,000 made during that quarter. The Contractor shall follow the instructions at www.federspensing.gov to report the data:

- (1) Name of the subcontractor.
- (2) Amount of the award.
- (3) Date of award.
- (4) The applicable North American Industry Classification System code.
- (5) Funding agency or agencies.
- (6) Award title descriptive of the purpose of the action.
- (7) Contract number.
- (8) Subcontractor location including address.
- (9) Subcontract primary performance location including address.
- (10) Unique identifier for the subcontractor.

(End of clause)

[FR Doc. 07–1318 Filed 3–20–07; 8:45 am]

BILLING CODE 6820–EP–S