



Federal Awardee Performance and Integrity Information System (FAPIIS)

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The New Responsibility Database

- The FAR Councils on March 23, 2010 issued a final rule to implement the Federal Awardee Performance and Integrity Information System (FAPIIS). See 75 FR 14059.
- Government-wide responsibility database.
- Effective April 22, 2010.
- Required by section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009.

Purpose of FAPIIS

- To improve the Government's ability to evaluate the business ethics and expected performance quality of prospective contractors and protect the Government from awarding contracts to contractors that are not responsible sources.
- Part of an ongoing initiative by the Administration to increase consideration of contractor integrity and the quality of a contractor's performance in awarding Federal contracts.

Past Performance Information Retrieval System

- Since this past summer, agencies have been required to submit electronic records of contractor performance into a single Governmentwide repository, the Past Performance Information Retrieval System (PPIRS), so that the information may be reviewed and considered by contracting officers across the Government. See 74 FR 31557, July 1, 2009.

What Information Does FAPIIS Provide to the CO?

- One-stop access to the Excluded Parties List System (EPLS)
- One-stop access to PPIRS
- Contracting officers' non-responsibility determinations
- Contract terminations for default or cause
- Agency defective pricing determinations
- Administrative agreements entered into by suspension and debarment officials to resolve a suspension or debarment
- Contractor self-reporting of criminal convictions, civil liability, and adverse administrative actions.

Sources of Information Feeding into FAPIIS

The system collects information, on an ongoing basis, from:

- Existing systems within the Government (i.e., EPLS and PPIRS)
- Contracting officers (for determinations of non-responsibility and contract terminations)
- Suspension and debarment officials (for information on administrative agreements)
- Contractors (for information related to criminal, civil, and administrative proceedings).

Note that there are still additional sources of responsibility information – notably FAR 52.209 Certification Regarding Responsibility Matters – which are not part of FAPIIS.

How the CO Uses FAPIIS

- Contracting officers are required to review the information in FAPIIS in making a responsibility determination with respect to any contract award over the simplified acquisition threshold. FAR 9.104-6(a).
- The FAR states the contracting officer “shall” consider all the information in FAPIIS, including EPLS, PPIRS and other relevant past performance information, when making a responsibility determination. FAR 9.104-6(b); 9.105-1(c).
- The FAR states the contracting officer “should” also consider other sources of information. FAR 9.105-1(c).
- Documents and reports supporting a determination of responsibility or nonresponsibility -- including the use of FAPIIS information -- must be included in the contract file. FAR 9.105-2(b).

Contractor's Rights

Contracting officers must give offerors the opportunity to provide additional information that demonstrates their responsibility before the contracting officer makes a non-responsibility determination based on information from FAPIIS – if such information regards the following:

- criminal, civil, or administrative proceedings in connection with the award of a Government contract,
- terminations for default or cause, or
- determinations of non-responsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics.

FAR 9.104-6(c)

Contractor's Reporting Obligation

- Offerors that have more than \$10 million in active contracts and grants as of the time of proposal submission, must, when submitting a proposal on a Federal contract over \$500,000, report in FAPIIS information pertaining to criminal, civil and administrative proceedings through which a requisite determination of fault was made.
- Offerors must enter this information through the Central Contractor Registration (CCR) website -- under a heading called "Proceedings."
- These actions are required by a new FAR clause contained in solicitations: FAR 52.209-7 Information Regarding Responsibility Matters (Apr 2010).

Contractor's Reporting Obligation

- (c) (1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:
 - (i) In a criminal proceeding, a conviction.
 - (ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - (iii) In an administrative proceeding, a finding of fault and liability that results in--
 - (A) The payment of a monetary fine or penalty of \$5,000 or more; or
 - (B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.
 - (iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

FAR 52.209-7 Information Regarding Responsibility Matters (Apr 2010).

Contractor's Reporting Obligation

- Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).
- Note that this is the precise same definition used in FAR 52.209 Certification Regarding Responsibility Matters.

Contractor's Reporting Obligation (per CCR)

- First question:

Proceeding

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 Missing or Invalid Data  Required Data  View-Only Data (Edits not allowed)

 Is there a Federal solicitation on which your business or organization, as represented by the DUNS number on this specific CCR record, is bidding that contains the [Federal Acquisition Regulation \(FAR\) provision 52.209-7](#), or has your business or organization, as represented by the DUNS number on this specific CCR record, been awarded a Federal contract that contains [FAR clause 52.209-8](#)?

Yes No

Contractor's Reporting Obligation (per CCR)

- Second question:

 Does your business or organization (represented by the DUNS number on this specific CCR record) have current active Federal contracts and/or grants with total value (including any exercised/unexercised options) greater than \$10,000,000?

Yes No

Contractor's Reporting Obligation (per CCR)

- Third question:

Within the last five years, has your business or organization (represented by the DUNS number on this specific CCR record) and/or any of its principals, in connection with the award to or performance by your business or organization of a Federal contract or grant, been the subject of a Federal or State (1) criminal proceeding resulting in a conviction or other acknowledgment of fault; (2) civil proceeding resulting in a finding of fault with a monetary fine, penalty, reimbursement, restitution, and/or damages greater than \$5,000, or other acknowledgment of fault; and/or (3) administrative proceeding resulting in a finding of fault with either a monetary fine or penalty greater than \$5,000 or reimbursement, restitution, or damages greater than \$100,000, or other acknowledgment of fault?

Yes No

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Knowingly providing false or misleading information may result in criminal or civil penalties as per [Title 18, Section 1001](#) of the US Criminal Code.

Contractor's Reporting Obligation (per CCR)

- If you answer “Yes,” then there are further questions under the heading “Proceeding Detail,” which asks for information about the proceeding(s) in question, such as the nature of the proceeding, its disposition, and a description (of up to 500 characters each).

The Contractor's Ongoing Rights and Obligations

- Under a resultant contract, information must be updated in FAPIIS by the contractor on a semi-annual basis, through the life of the contract. The FAPIIS system will provide contractors with notification whenever the Government posts new information to the contractor's record. The contractor will have an opportunity to post comments regarding information that has been posted by the Government, including non-responsibility determinations, and such comments will be retained as long as the associated information is retained (for a total period of six years) and remain part of the record unless the contractor revises them.

FAR 52.209-8 Updates of Information Regarding Responsibility Matters (Apr 2010)

Conclusions and Considerations

- New reporting obligation = New responsibilities, costs, risks
- Updating the CCR is more than an administrative task
- False claims (and mandatory disclosure)
- Disclosability under FOIA – Mark disclosures as proprietary
- Support contractors will have access to disclosures
- Minimizing disclosable proceedings – Settlements should not acknowledge fault
- How to report confidential settlements
- Impact on bid protests
- Don't forget FAR 52.209 Certification Regarding Responsibility Matters

Potential Changes to FAPIIS

- Collection of information from state and local governments
- Collection of information from foreign governments
- Expand scope of data collection to include other violations of law beyond the context of the Federal contract or grant, e.g., labor violations.
- Lower the threshold triggering FAPIIS reporting from \$500,000 to \$100,000
- Broader Congressional access
- Longer look-back
- Integration of various databases into a single database
- Requiring IG and GAO audits
- S. 3323 and H.R. 5726 – The Federal Contracting and Oversight Act of 2010