

## New Responsibility Database, Self-Reporting Requirements for Government Contractors

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*Beginning on April 22, 2010, new rules will require that contracting officers consult the Federal Awardee Performance and Integrity Information System (“FAPIIS”) as part of the responsibility determination process. Additionally, the rules impose new self-reporting obligations on government contractors. The new rulemaking is significant because of the consolidation of contractor responsibility data into a single system that all contracting officers will be required to consult and the imposition of new requirements design to maintain the accuracy of the information available in FAPIIS.*

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### Creation of FAPIIS

Federal acquisition policy requires that the government conduct business only with responsible contractors. Traditionally, contracting officers have determined the responsibility of prospective contractors by reviewing the contractor's certifications, consulting the Excluded Parties List System (“EPLS”)<sup>1</sup>, and requesting any additional information from contractors. New rules, effective April 22, 2010, will now require that contracting officers, as part of the responsibility determination process, also review contractor integrity and quality of performance information contained in FAPIIS. FAPIIS will be a centralized repository of information that will include, in addition to access to the EPLS and Past Performance Information Retrieval System (“PPIRS”)<sup>2</sup>, contracting officers' non-responsibility determinations, default and for cause contract terminations, defective pricing determinations, suspension and debarment administrative agreements, and contractor self-reported criminal convictions, civil liabilities, and adverse administrative actions arising from the award or performance of a government contract. FAPIIS, while mandated by Congress, can also be seen as part of an ongoing initiative by the Obama Administration to increase consideration of contractor integrity and the quality of a contractor's performance in awarding federal contracts.



<sup>1</sup> [www.epls.gov](http://www.epls.gov)

<sup>2</sup> [www.ppirs.gov](http://www.ppirs.gov)

## Contracting Officer Use of FAPIIS

Under the new rule, contracting officers will be required to use FAPIIS as the “go-to” source of information relevant to responsibility determinations. More specifically, contracting officers must: (i) review the information in FAPIIS in connection with contracts over the simplified acquisition threshold for the purpose of making a responsibility determination; (ii) document in the contract file how the information in FAPIIS was considered and used in the responsibility determination and any further actions taken as a result of the information; and (iii) notify, prior to proceeding with award, the agency official responsible for initiating debarment or suspension if information is identified in FAPIIS that appears appropriate for the official’s consideration.

As an essential safeguard, under the new rule the contracting officer also must give the offeror an opportunity to provide additional information that demonstrates the contractor’s responsibility before the contracting officer makes a non-responsibility determination if the information concerns: criminal, civil, or administrative proceedings in connection with the award or performance of a federal government contract; terminations for default or cause; or determinations of non-responsibility based on an unsatisfactory record of performance or integrity.

## Expanded Mandatory Contractor Self-Reporting Requirements

Beginning on April 22, 2010, contracting agencies must include a new provision, FAR 52.209-7, Information Regarding Responsibility Matters, in solicitations where the contract’s value is expected to exceed \$500,000. If the contractor has at least \$10 million in current active Federal contracts or grants, the contractor must represent that the information available in FAPIIS is current, accurate, and complete regarding any enumerated adverse dispositions, whether at the federal or state level, taken against the contractor

or its principals related to the award or performance of a federal contract or grant in the past five years. The enumerated adverse dispositions are:

- Criminal convictions;
- Civil determinations of fault and liability resulting in the payment of fines, damages, penalties, reimbursement, restitution, or damages of \$5,000 or more;
- Administrative determinations of fault and liability resulting in the payment of (a) fines or penalties of \$5,000 or more, or (b) reimbursement, restitution, or damages in excess of \$100,000; and
- Settlements in criminal, civil, or administrative proceedings where the contractor acknowledged fault and the proceeding could have led to a reportable disposition.

Contractors must address any adverse dispositions through the Central Contractor Registry (“CCR”)<sup>3</sup>. Reporting obligations under the new rules expand on those required by the provisions of FAR 52.209-5, Certification Regarding Responsibility Matters, because the new rules require the contractor to disclose information going back five years, rather than the current three years, and the new rules require the contractor to explain any adverse dispositions, rather than merely “checking-the-box” that an adverse disposition occurred. Additionally, under new FAR 52.209-8, Updates of Information Regarding Responsibility Matters, contractors who are subject to the initial disclosure requirements are required to update the information on a semi-annual basis.



<sup>3</sup> [www.ccr.gov](http://www.ccr.gov)

### Additional Safeguards

New FAR 52.209-8 also states that contractors will receive notice when the Government posts new information in FAPIIS. Contractors then have the opportunity to post comments on that new information. Finally, the rule states that only Government personnel and authorized users performing business on behalf of the Government will be able to view the contractor's record in the system.

In summary, the new rules are likely to expand and consolidate information that federal agencies will consider in making responsibility determinations. Contractors will have an obligation and opportunities to provide current, accurate, and complete data. Contractors will want to review their data retention, management, and reporting procedures to ensure compliance with the new requirements and the accuracy of vital responsibility information.

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If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work or any of the attorneys below.

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