

May 24, 2011

FAS INSTRUCTIONAL LETTER 2011-06

MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

FROM: HOUSTON W. TAYLOR
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT: Implementation of the Requirement for Federal Awardee Performance and Integrity Information System (FAPIIS)

- Purpose: The purpose of this Instructional Letter (IL) is to provide guidance on the applicability of the Federal Awardee Performance and Integrity Information System (FAPIIS) in FAS contractual actions. The requirement for FAPIIS was set forth in Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (see Final Rule in <http://federalregister.gov/a/2010-6329>) as well as Section 3010 of the Supplemental Appropriations Act of 2010 (see Interim Rule in <http://federalregister.gov/a/2011-1323>); the latter statute specifically addressed the public access aspect of FAPIIS.
- Background: FAPIIS is intended to significantly enhance the scope of information available to Contracting Officers as they evaluate the integrity and performance of prospective awardees competing for Federal contracts and grants, and to protect taxpayers from doing business with entities that are not responsible sources. The launch of the FAPIIS data system is part of an ongoing initiative by the Administration to increase consideration of awardee integrity and the quality of an awardee's performance under Federal contracts and grants. FAPIIS information is available for viewing to contracting officials by accessing the Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov>. Contracting officials input applicable information in the FAPIIS module of the Contractor Performance Assessment Review System (CPARS), available at www.cpars.csd.disa.mil.
- Effective Date: Date of signature.
- Termination Date: This IL expires one year from the effective date unless cancelled, extended, or incorporated into a handbook.
- Applicability: This IL applies to all types of acquisitions awarded and administered by GSA/FAS acquisition activities. The IL also applies to Department of Veterans Affairs (VA) acquisition activities awarding and administering Federal Supply Schedule contracts.
- Reference to Regulations: FAR Parts 2, 9, 12, 42 and 52 are revised; clause 52.209-8, Updates of Information Regarding Responsibility Matters is removed; one new provision,

52.209-7, Information Regarding Responsibility Matters, and one new clause, 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters, is prescribed; and provision 52.209-5 Certification Regarding Responsibility Matter is updated.

7. Instructions and Procedures:

- I. All GSA Contracting Officers must get access to the Past Performance Information Retrieval System (PPIRS). Instructions on gaining access to PPIRS can be found on the FAS Insite page at <http://insite.gsa.gov/fasppirs>. VA Contracting Officers should look to their agency-specific guidance for procedures on getting access to PPIRS.
- II. All GSA Contracting Officers must get access to Contractor Performance Assessment Reporting System (CPARS). Instructions on gaining access to CPARS can be found on the FAS Insite page at <http://insite.gsa.gov/fascpars>. VA Contracting Officers should look to their agency-specific guidance for procedures on getting access to CPARS.

III. Federal Supply Schedules

A. Solicitation Refresh: A refresh must be completed for all Schedule solicitations by April 15, 2011 to:

- i. Insert FAR provision 52.209-5 Certification Regarding Responsibility Matter (APR 2010).
- ii. Insert FAR provision 52.209-7, Information Regarding Responsibility Matters (JAN 2011).
- iii. Insert FAR clause 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2011) Alternate I (JAN 2011).

The Solicitation Writing System (SWS) will mark these provisions and clause as required for all Schedule solicitations.

B. In-House Offers:

- i. Paper offers – For paper Schedule offers received prior to the solicitation refresh, the Contracting Officer shall issue a solicitation amendment (i.e. SF 30) to incorporate the two provisions and the new clause and delete clause 52.209-8, Updates of Information Regarding Responsibility Matters (APRIL 2010) (DEVIATED I - OCT 2010). When incorporating the new clause, Contracting Officers shall include the following language in the amendment: Clause 52.209-9 is only applicable to those offerors that have current active Federal contracts and grants with a total value greater than \$10M. When deciding to accept the amendment, each offeror will have the opportunity to withdraw its offer.
- ii. eOffers – For eOffers submitted prior to the solicitation refresh, the Contracting Officer shall direct the offeror to go back into the eOffer system and "accept" the latest refresh. Offerors will also have the opportunity to withdraw its offer.

C. Contract Modification

- i. All Schedule contracts shall be modified to incorporate the new clause. This shall

be accomplished through a typical mass modification that is issued from SWS following a solicitation refresh. There is no need for a separate modification. The effective date for existing Schedule contracts will be the date that the modification is executed.

- ii. The Contracting Officer shall obtain approval at least one level above the Contracting Officer to negotiate an alternate resolution in the event that the contractor takes exception to the incorporation of clause 52.209-9 to the contract and the Contracting Officer's discussion with the contractor does not result in agreement of clause inclusion.

D. Pre-award:

- i. The Contracting Officer shall review FAPIIS prior to awarding any Schedule contract, for the purpose of making a responsibility determination. FAPIIS can be accessed at www.ppirs.gov.
 - a. In making a responsibility determination, the Contracting Officer shall consider all the information in FAPIIS, including information that is linked to FAPIIS from such sources as the Central Contracting Registration (CCR), Excluded Parties List System (EPLS) and the Past Performance Information Retrieval System (PPIRS). Contracting Officers shall exercise sound judgment in determining the weight and relevancy of the information contained in FAPIIS to a present acquisition. At a minimum, Contracting Officers shall consider whether the information found pertains to contracts or grants; whether the information was for an acquisition of similar scope and complexity to the present acquisition; and, the timeliness of the information found.
 - ii. The Contracting Officer shall document the contract file to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. The responsibility determination shall be explained in the Pre-Negotiation Memo and placed in the contract file.
 - iii. If the Contracting Officer obtains relevant information from FAPIIS which might result in a non-responsibility determination:
 - a. Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the Contracting Officer; and,
 - b. Prior to proceeding with award, notify the agency Suspension and Debarment Official within the Office of Acquisition Policy, if the information identified in FAPIIS appears appropriate for that official's consideration.
 - iv. The Contracting Officer shall also document a determination of non-responsibility in FAPIIS, via CPARS (available at www.cpars.csd.disa.mil).

E. Post-award:

- i. If the contract is terminated **for cause or default**, the Contracting Officer shall

note in FAPIIS the reason for the termination via CPARS (available at www.cpars.csd.disa.mil).

- IV. Other FAS contracts and agreements (i.e. Government-wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), Indefinite Delivery/Indefinite Quantity (IDIQs), FAR Part 13 Blanket Purchase Agreements (BPAs), Basic Agreements, Basic Ordering Agreements, other open market contracts such as non-IDIQs, under FAR Parts 12, 13, 14, and 15)
- A. Insert FAR provision 52.209-5 Certification Regarding Responsibility Matter (APR 2010) in solicitations where the contract/agreement value is expected to exceed the simplified acquisition threshold.
 - B. Insert FAR provision 52.209-7, Information Regarding Responsibility Matters (APR 2010) in solicitations where the contract/agreement value is expected to exceed \$500,000.
 - C. Insert FAR clause 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2011) in all solicitations for awards expected to exceed \$500,000 and in contracts where the offeror checked “has” in paragraph (b) of the provision 52.209-7.
 - D. For all existing contracts, the Contracting Officer will modify the contract by April 15, 2011 to:
 - i. Insert clause 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2011) Alternate I (JAN 2011), with the language “This clause is applicable to those contractors that have current active Federal contracts and grants with a total value greater than \$10M.” If the contractor takes exception to the incorporation of clause 52.209-9 to the contract and the Contracting Officer’s discussion with the contractor does not result in agreement of clause inclusion, the Contracting Officer shall obtain approval at least one level above them to negotiate an alternate resolution.
 - ii. Delete clause 52.209-8, Updates of Information Regarding Responsibility Matters (APRIL 2010) (DEVIATED I - OCT 2010). The deletion is necessary only if the existing contract includes the clause.
 - E. Preaward:
 - i. The Contracting Officer shall review FAPIIS prior to awarding a contract, for the purpose of making a responsibility determination. FAPIIS can be accessed at www.ppirs.gov.
 - a. In making a responsibility determination, the Contracting Officer shall consider all the information in FAPIIS, including information that is linked to FAPIIS from such sources as the Central Contracting Registration (CCR), Excluded Parties List System (EPLS) and the Past Performance Information Retrieval System (PPIRS). Contracting Officers shall exercise sound judgment in determining the weight and relevancy of the information contained in FAPIIS to a present acquisition. At a minimum, Contracting Officers shall consider whether the information found pertains

to contracts or grants; whether the information was for an acquisition of similar scope and complexity to the present acquisition; and, the timeliness of the information found.

- ii. The Contracting Officer shall document the contract file to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. The responsibility determination shall be explained in the Pre-Negotiation Memo (or similar document) and placed in the contract file.
- iii. If the Contracting Officer obtains relevant information from FAPIIS which might result in a non-responsibility determination:
 - a. Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the Contracting Officer; and,
 - b. Prior to proceeding with award, notify the agency Suspension and Debarment Official within the Office of Acquisition Policy, if the information identified in FAPIIS appears appropriate for that official's consideration.
- iv. The Contracting Officer shall also document the determination of non-responsibility in FAPIIS, via CPARS (available at www.cpars.csd.disa.mil).

F. Post-award:

- i. If the contract is terminated **for cause or default**, the Contracting Officer shall note in FAPIIS the reason for the termination, via CPARS (available at www.cpars.csd.disa.mil).

V. Task and Delivery orders (i.e. orders against MAS, GWACs, MACs, IDIQs, Schedule BPAs, FAR 13 BPAs, Basic Agreements, and Basic Ordering Agreements)

A. Preaward:

- i. The Contracting Officer shall review FAPIIS for the purposes of complying with the EPLS requirement.
- ii. The Contracting Officer shall document the order file to indicate how the information in FAPIIS was considered as well as the action that was taken as a result of the information.

B. Post-award:

- i. If the order is terminated **for cause or default**, the Contracting Officer shall note in FAPIIS the reason for the termination, via CPARS (available at www.cpars.csd.disa.mil).

8. Questions & Answers

Q1. HOW IS THE CERTIFICATE OF COMPETENCY (COC) PROCESS AFFECTED BY THE FAPIIS REQUIREMENT?

A1. The regulation requires that determinations of nonresponsibility be documented in FAPIIS (through CPARS). For small business concerns, a nonresponsibility determination should only be documented if the SBA does not issue a COC.

Q2. DO CANCELLATIONS OF CONTRACTS ALSO HAVE TO BE REPORTED TO FAPIIS?

A2. FAR Subpart 42.1503 (e) only requires that terminations - for cause and default – be reported to FAPIIS, along with the reason for the termination. Contract cancellations are not required to be reported to FAPIIS.

Q3. WHERE CAN YOU GET ASSISTANCE WITH ACCESS TO CPARS?

A3. The FAS Office of Acquisition Management, Supplier Management Division (QV0C) functions as the FAS Past Performance Coordinator. The FAS Past Performance Coordinator oversees the FAS Portfolios' CPARS Focal Points. The FAS Portfolio CPARS Focal Points will grant access to CPARS for employees in their respective Portfolios. The CPARS Focal Point responsible for your office may be found at <http://insite.gsa.gov/fascpars>.

Q4. WHAT IS THIS "ALTERNATE RESOLUTION" THAT IS MENTIONED IN SECTIONS 7.III.C.ii AND 7.IV.D.i. ?

A4. In simple terms, alternate resolution is what a contracting officer does when a contractor is trying to take exception to clause 52.209-9. In the event a contractor takes exception to inclusion of this clause, the contracting officer should contact the contractor and discuss why they took an exception to the clause. If, after this discussion, the contractor still refuses to include this clause in their contract, the contracting officer has to get approval from someone at least one level above them before taking next steps. Oftentimes, the "alternate resolution" is cancellation of the contract. However, specifics of the alternate resolution will be left up to the facts and circumstances of that contract action.

Author: Mahrubia Uddowla