



GSA Federal Acquisition Service

March 2, 2012

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FAS INSTRUCTIONAL LETTER 2011-06
Supplement No. 1

MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES

FROM:

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SUBJECT:

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

1. **Purpose:** The purpose of this supplement is to update guidance to reflect the January 3, 2012 [Final Rule](#) issued on the topic of Federal Awardee Performance and Integrity Information System (FAPIIS). This supplement is also meant to provide clarification on how to comply with the requirement to review Excluded Parties List System (EPLS) as it relates to FAPIIS. Instructional Letter (IL) 2011-06 provided the initial guidance on the applicability of FAPIIS in FAS contractual actions and in VA Federal Supply Schedule contractual actions.
2. **Background:** In addition to significantly enhancing the scope of information available to Contracting Officers as they evaluate the integrity and performance of prospective awardees competing for Federal contracts and grants, FAPIIS is intended to create greater transparency in government by providing public access to the information housed in FAPIIS (with the exception of past performance reviews). However, due to the risks associated with making FAPIIS data (i.e procurement-related data) public, a new rule was enacted to provide additional safeguards. The safeguards provide contractors a chance to identify information posted in FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act

(FOIA) and require that such information be removed from FAPIIS while the agency resolves the issue in accordance with FOIA procedures. The new rule will also ensure that FAPIIS data is timely by requiring Contracting Officers to report actions in FAPIIS within a certain time period.

On December 30, 2011, the Office of Governmentwide Policy (OGP) issued Acquisition Alert (AA) 2012-02 to re-emphasize GSA's obligation to only engage in business with responsible entities and to remind all GSA contracting activities of the FAR requirement to check EPLS before awarding a contract. Upon discussion with OGP, it was determined that the EPLS information displayed in FAPIIS was not always accurate and that contracting activities should not, at this time, rely on the EPLS information displayed in FAPIIS.

3. Effective Date: Date of signature.
4. Termination Date: This IL remains effective until it is cancelled.
5. 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.
6. Reference to Regulations: FAR Parts 9, 12, 42 and 52 are revised; clauses 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters, and 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items, are updated.
7. Instructions and Procedures:

- I. Federal Supply Schedules

- A. Solicitation Refresh – In the next regularly scheduled refresh window in accordance with [IL 2011-04, Federal Supply Schedule \(FSS\) Solicitation Refresh Management](#):

- i. Insert version of FAR clause 52.209-9 *Updates of Publicly Available Information Regarding Responsibility Matters Alternate I* that is current as of the refresh date.
- ii. Insert version of FAR clause 52.212-5 *Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items* that is current as of the refresh date.

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

B. In-House Offers:

- i. 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 their offers.
- ii. For paper offers received prior to the solicitation refresh (VA Schedules only), the Contracting Officer shall issue a solicitation amendment (i.e. SF 30) to incorporate the clause.

C. Contract Modification: All Schedule contracts shall be modified to incorporate the updated clauses. 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

D. Pre-award:

- i. The Contracting Officer shall review Excluded Parties List System (EPLS) at epls.gov to check for suspended and debarred contractors. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts.
- ii. The Contracting Officer shall document the contract file to indicate the EPLS has been checked **twice** through epls.gov.
- iii. The Contracting Officer shall report a determination of non-responsibility in FAPIIS within three (3) working days of such a determination.

E. Post-award:

- i. If a contractor asserts within seven (7) calendar days of a FAPIIS posting that the information is subject to a FOIA disclosure exemption, the Contracting Officer shall remove that posting from FAPIIS within seven (7) calendar days and resolve the issue in accordance with GSA’s FOIA procedures. Only information that is releasable under FOIA can be posted to FAPIIS.
- II. 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 current version of FAR clause 52.209-9 *Updates of Publicly Available Information Regarding Responsibility Matters* in all solicitations for awards expected to exceed \$500,000 and in contracts where the offeror checked “has” in paragraph (b) of the FAR provision 52.209-7.
- B. Insert current version of FAR clause 52.212-5 *Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items* in all solicitations for commercial items.
- C. For all existing contracts that already include clauses 52.209-9 and 52.212-5, the Contracting Officer shall modify the contract to include the most current version of the clauses.
- D. Pre-award:
 - i. The Contracting Officer shall review Excluded Parties List System (EPLS) at epls.gov to check for suspended and debarred contractors. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts.
 - ii. The Contracting Officer shall document the contract file to indicate the EPLS has been checked twice through epls.gov.
 - iii. The Contracting Officer shall report a determination of non-responsibility in FAPIIS within three (3) working days of such a determination.

E. Post-award:

- i. If a contractor asserts within seven (7) calendar days of a FAPIIS posting that the information is subject to a FOIA disclosure exemption, the Contracting Officer shall remove that posting from FAPIIS within seven (7) calendar days and resolve the issue in accordance with GSA’s FOIA procedures. Only information that is releasable under FOIA can be posted to FAPIIS.

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

A. Pre-award:

- i. The Contracting Officer shall review Excluded Parties List System (EPLS) at epls.gov to check for suspended and debarred contractors. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts.

- ii. The Contracting Officer shall document the contract file to indicate the EPLS has been checked twice through epls.gov.

B. Post-award:

- i. If a contractor asserts within seven (7) calendar days of a FAPIIS posting that the information is subject to a FOIA disclosure exemption, the Contracting Officer shall remove that posting from FAPIIS within seven (7) calendar days and resolve the issue in accordance with GSA's FOIA procedures. Only information that is releasable under FOIA can be posted to FAPIIS.

8. Questions & Answers

Q1. How do I know what the disclosure exemptions to FOIA are?

A1. Information on FOIA and GSA's internal standard operating procedure for handling FOIA requests can be found at: <http://insite.gsa.gov/portal/category/530218>.

Q2. How much time is there from when I report into FAPIIS and the information becomes public?

A2. There is a 14 calendar-day delay before FAPIIS information (with the exception of past performance reviews) is made available to the public.

Q3. What types of non-responsibility determinations have to be reported in FAPIIS?

A3. In accordance with FAR 9.105-2, non-responsibility determinations based on an offeror's "lack of satisfactory performance record or satisfactory record of integrity and business ethics" have to be reported in FAPIIS. This means non-responsibility determinations based on the offeror being or recently being seriously deficient in contract performance (see [FAR 9.104-3\(b\)](#) for details). Offerors who lack a satisfactory record of integrity and business ethics may be found on the Excluded Parties List System (EPLS); offerors' past performance records can also demonstrate their lack of integrity and business ethics.

Q4. How will a Contracting Officer know if a contractor is asserting that their FAPIIS record is subject to a FOIA disclosure exemption ?

A4. In accordance with FAR clause 52.209-9, contractors are required to inform the Government official who posted the information *in writing* that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under FOIA. The contractor must cite 52.209-9 in their written notice to the Government

official who posted the information and request removal within 7 calendar days of the posting to FAPIIS. This written notification is not auto-generated by the system and has to be sent by the contractor outside of FAPIIS.

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