

## **Federal Awardee Performance and Integrity Information System (FAPIS)**

Effective April 22, 2010, there will be a significant expansion of the certification reporting requirements under FAR Part 9 Contractor Qualifications. This new requirement is called the Federal Awardee Performance and Integrity Information System (FAPIS) and can be found in FAR 9.104-6 (once the FAR is updated).

FAPIS is intended to significantly enhance the scope of information available to contracting officers as they evaluate the integrity and performance of prospective contractors. This is a separate reporting mechanism from the Past Performance Information Retrieval System (PPIRS). Under FAR 9.104-6 the CO is required before awarding any contract that exceeds the Simplified acquisition threshold (\$100,000) to review the contractor information contained in FAPIS. How is this information obtained?

FAPIS requires a contractor with current, active contracts and grants that have a total value greater than \$10 millions to enter into the FAPIS system information related to criminal, civil, or administrative proceeding at both the Federal and State level, where the contractor was found at fault. Administrative proceeding does not include contract audits, site visits, corrective plans or inspection of deliverables. The contractor enters this information through the Central Contractor Registration database [www.ccr.gov](http://www.ccr.gov). Currently, the contractor only has to enter such information if it relates to proceeding associated with a Federal contract. Efforts are a foot to change this to any proceedings whether a Federal contract is involved or not. Once entered, the contractor must update the information every six months.

The data in the FAPIS is not limited to information provided by the contractor. The FAPIS will also include CO's non-responsibility determination (i.e., agency assessments that prospective contractors do not meet requisite responsibility standards to perform for the Government), 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, and contractor self-reporting of criminal convictions, civil liability, and adverse administrative actions. The contractor does have the right to provide additional information in FAPIS any non-responsibility determination that it feels demonstrates their responsibility as a contractor.

While access to this database is limited to Government officials and Congress, it is not exempt from FOIA request.

Where this information comes into play is when the contractor is submitting an offer on a solicitation with a value greater than \$500,000. For these solicitations, the CO must include the following two new clauses, FAR 52.209-7, Information Regarding Responsibility Matters and FAR 52.209-8, Updates of Information Regarding Responsibility Matters. Clause 52.209-7 ask the contractor whether it; “[ ] has [ ] does not have current active Federal contracts and grants with total value greater than \$10,000,000”. If the contractor indicates it “has” met the threshold, the submission of its offer, represents that the information entered into FAPIIS is “current, accurate and complete”. Since this certification carries the same legal weight as any certification under government contracting rules, it is incumbent on the contractor to ensure that the information is current, accurate and complete. Not only the information provided by the contractor but also any information from government sources.

For such solicitations the CO, under FAR 9.104-6 and 7, is required to review the information in FAPIIS, along with past performance data and any other available information, in making a “determination of responsibility” decision on a contractor. This decision will decide if a contractor’s offer will be accepted.

An important note here is that no contractor that meets the \$10 million threshold is exempt from the requirements of FAPIIS. Not small business, not commercial items and commercial off the shelf (COTS) contractors.

## **Conclusion**

There are many legal twists and turns in this new rule, not the least of which are efforts to lower the qualifying contract value from \$500,000 to \$100,000 and the expansion of criminal, civil, and administrative proceeding from those only in the context of Federal contracts to other violations of laws. What “other violations of laws” includes was not elaborated on.

Because of the many legal pitfalls associated with the FAPIIS, I highly recommend that any contractor seek outside legal support before any information is submitted to this database. If you need any recommendations of qualified government contracts lawyers, feel free to contact me at [tim.diguisepp@tdgovernmentsolutions.biz](mailto:tim.diguisepp@tdgovernmentsolutions.biz) or 814-242-2410.