



New Reporting Requirements: Executive Compensation And First-Tier Subcontract Awards

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September 20, 2010

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Webinar Agenda

- Background
- New FAR requirement
- Prime contractor executive compensation
- First-tier subcontractor executive compensation
- Reporting of first-tier subcontract awards
- Questions and discussion

Background

- Legislative history
- Federal Funding Accountability and Transparency Act of 2006 (“FFATA”)
 - “Full disclosure of entities receiving federal funding”
 - Established usaspending.gov
 - Covers contracts, subcontracts, purchase orders, task orders, grants, subgrants, and other forms of financial assistance
- Government Funding Transparency Act of 2008
 - Broadens FFATA to cover executive compensation of officers

FAR Rule (4.1400)

- Interim FAR rule issued July 8, 2010
 - Three primary components
 - ✓ Prime contractor executive compensation
 - ✓ First-tier subcontractor executive compensation
 - ✓ Reporting of first-tier subcontractor awards
 - No exemption for COTS or commercial items
 - Applicable to all contracts with value of \$25,000 or more, except classified contracts and contracts with individuals
 - Immediately effective, but requirements phased-in
- Relationship to ARRA reporting requirements
- Grant Guidance issued September 14, 2010
 - Generally mirrors FAR provision

FAR Rule (4.1402)

- Agency obligation
 - Review contractor reports to ensure consistency with contract information
 - If contractor fails to comply with reporting requirements, CO must “exercise appropriate contractual remedies” and make failure to comply a part of contractor’s performance information
 - Insert standard clause in new solicitations, and existing ID/IQ contracts (including FSS contracts and GWACs)

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - Who must report?
 - ✓ Any contractor that, in the contractor's preceding fiscal year, received:
 - 80 percent or more of the contractor's annual gross revenues from Federal contracts, subcontracts, loans, grants, subgrants, and cooperative agreements
 - \$25,000,000 or more in annual gross revenues from Federal contracts, subcontracts, loans, grants, subgrants, and cooperative agreements
 - The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - What must be reported?
 - ✓ Contractor shall report names and total compensation of each of the five most highly compensated executives for the contractor's preceding completed fiscal year

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - What does executive mean?
 - ✓“Executive” is broadly defined as officers, managing partners, and any other employees in management positions
 - What about a partner or shareholder that does not exercise management authority?
 - What about joint ventures?

FAR Rule (52.204-10)


- Prime contractor executive compensation
 - What does total compensation mean?
 - ✓ Cash and noncash dollar value earned by the executive during the contractor's past fiscal year
 - ✓ Salary and bonus
 - ✓ Awards of stock, stock options, and stock appreciation rights
 - ✓ Earning for services under non-equity incentive plans
 - ✓ Changes in pension value
 - ✓ Above-market earning on deferred compensation which is not tax-qualified
 - ✓ Other compensation, including severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property, if the aggregate value of the other compensation for the executive exceeds \$10,000

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - When must this information be reported?
 - ✓ By the end of the month following the month of a contract award, and annually thereafter
 - Who can access the information?
 - ✓ It will be publicly available

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - How is this information reported?
 - ✓ Central Contractor Registration (“CCR”)


 In your business or organization's preceding completed fiscal year, did your business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs) receive (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

Yes No

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

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - How is this information reported?
 - ✓ Central Contractor Registration (“CCR”)

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Yes No

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

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - How is this information reported?
 - ✓ Central Contractor Registration (“CCR”)

Does the public have access to information about the compensation of the executives in your business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

Yes No

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - How is this information reported?
 - ✓ Central Contractor Registration (“CCR”)

Compensation

Provide the following information for the five (5) most highly compensated executives in your business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs):

	Name	Position Title	Total Compensation Amount for the Entity's last complete fiscal year	
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="\$0"/>	<input type="text" value="\$XXX,XXX,XXX,XXX"/>
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="\$0"/>	<input type="text" value="\$XXX,XXX,XXX,XXX"/>
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="\$0"/>	<input type="text" value="\$XXX,XXX,XXX,XXX"/>
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="\$0"/>	<input type="text" value="\$XXX,XXX,XXX,XXX"/>
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="\$0"/>	<input type="text" value="\$XXX,XXX,XXX,XXX"/>

FAR Rule (52.204-10)

- Prime contractor executive compensation
 - Practical considerations and pitfalls
 - ✓ Publicly traded companies with multiple subsidiaries
 - ✓ Confidentiality agreements
 - ✓ What if executives named in SEC filings are not the same as five most highly compensated executives?
 - ✓ Use of ground rules disclosures
 - ✓ Parallel legal risks

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - What companies are considered first-tier subcontractors?
 - ✓ “A subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor’s general and administrative expenses or indirect cost.”
 - ✓ Examples

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - No exemption for COTS or commercial items
 - Applies to all businesses, regardless of size or ownership
 - Applicable to all subcontracts with value of \$25,000 or more, except classified contracts and contracts with individuals

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - What first-tier subcontractors must report this information?
 - ✓ 80 percent or more of the subcontractor's annual gross revenues from Federal contracts, subcontracts, loans, grants, subgrants, and cooperative agreements
 - ✓ \$25,000,000 or more in annual gross revenues from Federal contracts, subcontracts, loans, grants, subgrants, and cooperative agreements
 - ✓ The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - What must be reported?
 - ✓ Subcontractor shall report to the prime contractor names and total compensation of each of the five most highly compensated executives for the contractor's preceding completed fiscal year
 - ✓ Same definition of “executive” and “total compensation” as applies to prime contractor executive compensation reporting

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - When must this information be reported?
 - ✓ By the end of the month following the month of a first-tier subcontract award, and annually thereafter
 - Who can access the information?
 - ✓ It will be publicly available

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - What does prime contractor do with information?
 - ✓ Enter it using the FFATA Subaward Reporting System (“FSRS”) (www.fsrs.gov)
 - ✓ Information about prime contracts populated using information from the Federal Procurement Data System

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - FSRS

Q1. As provided to you by your subcontractor, in your subcontractor's business or organization's preceding completed fiscal year, did its business or organization (the legal entity to which the DUNS number it provided belongs) receive (1) 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?*

If "Yes" is selected, additional information will be required.

yes no

Q2. As provided to you by your subcontractor, does the public have access to information about the compensation of the executives in the subcontractor's business or organization (the legal entity to which the DUNS number it provided belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?*

If "Yes", please visit <http://www.sec.gov/edgar.shtml> for reference. If "No" is selected, additional information will be required.

yes no

FAR Rule (52.204-10)

- First-tier subcontractor executive compensation
 - Practical considerations and pitfalls
 - ✓ Can you flow down this clause?
 - ✓ Strategies for obtaining information
 - ✓ Strategies to protect your company
 - ✓ What if subcontractor refuses to provide?
 - ✓ Obligations to verify information?
 - ✓ Confidentiality
 - ✓ OFCCP overlay

FAR Rule (52.204-10)

- First-tier subcontract awards
 - What companies are considered first-tier subcontractors?
 - ✓ “A subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor’s general and administrative expenses or indirect cost.”

FAR Rule (52.204-10)

- First-tier subcontract awards
 - No exemption for COTS or commercial items
 - Applies to all businesses, regardless of size or ownership
 - Applicable to all subcontracts with value of \$25,000 or more, except classified contracts and contracts with individuals

FAR Rule (52.204-10)

- First-tier subcontract awards
 - Exceptions
 - ✓ If contractor in the previous tax year had gross income from all sources under \$300,000, then the contractor does not have to report any subcontract awards
 - ✓ If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the prime contractor does not need to report awards to that subcontractor

FAR Rule (52.204-10)

- First-tier subcontract awards
 - Phase-in
 - ✓ Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more
 - ✓ From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more
 - ✓ Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more
 - Does phase-in apply to subcontractor executive compensation information?

FAR Rule (52.204-10)

- First-tier subcontract awards
 - What must prime contractor report?
 - ✓ Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company (if any)
 - ✓ Name of the subcontractor
 - ✓ Amount of the subcontract award
 - ✓ Date of the subcontract award
 - ✓ Description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract
 - ✓ Subcontract number (the subcontract number assigned by the prime contractor)
 - ✓ Subcontractor's physical address including the street address, city, state, county, nine-digit zip code and congressional district

FAR Rule (52.204-10)

- First-tier subcontract awards
 - What must prime contractor report? (*con't*)
 - ✓ Subcontractor's primary performance location including the street address, city, state, county, nine-digit zip code and congressional district
 - ✓ Prime contract number, and order number (if any)
 - ✓ Awarding agency and code
 - ✓ Funding agency and code
 - ✓ Government contracting office code
 - ✓ Treasury account symbol (TAS) as reported in the Federal Procurement Data System
 - ✓ Applicable North American Industry Classification System (NAICS) code

FAR Rule (52.204-10)

- First-tier subcontract awards
 - When must this information be reported?
 - ✓ By the end of the month following the month of award, the contractor shall provide information about these awards via FSRS
 - Who can access the information?
 - ✓ It will be publicly available

FAR Rule (52.204-10)

- First-tier subcontract awards
 - Practical considerations and pitfalls
 - ✓FSRS requires reporting to be broken out by prime contract and, if applicable, by delivery order
 - ✓Confidentiality agreements
 - ✓How to obtain information from subcontractors?
 - ✓What if subcontractor refuses to provide?
 - ✓Are there ways to mitigate competitive harm?
 - ✓Pre-population of data in FSRS
 - ✓OFCCP
 - ✓Unintended consequences

Questions?

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Reminder: The slides will be distributed to you within the next day or two.