



DII Best Practices Forum: New Developments

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Agenda

- Reporting executive compensation
- Reporting first-tier subcontract awards
- Federal Awardee Performance and Integrity Information System (“FAPIIS”)
- Organizational conflicts of interest
- DCAA guidance regarding contractor code of business ethics and conduct

Reporting Executive Compensation

- FAR 52.204-10
- Collection of information
 - Prime contractor reports in the Central Contractor Registration (“CCR”)
 - Prime contractors must collect from first-tier subcontractors and report in the FFATA Subaward Reporting System (“FSRS”) (www.fsrs.gov)
- Public availability of information
 - www.usaspending.gov

Reporting Executive Compensation

Central Contractor Registration

“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?”

“Does the public have access to information about the compensation of the executives in your business 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?”

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Reporting Executive Compensation

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"/>	\$0	\$XXX,XXX,XXX,XXX
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	\$0	\$XXX,XXX,XXX,XXX
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	\$0	\$XXX,XXX,XXX,XXX
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	\$0	\$XXX,XXX,XXX,XXX
<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	\$0	\$XXX,XXX,XXX,XXX

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

Reporting First-Tier Subcontract Awards

- FAR 52.204-10
- All first-tier subcontracts with value of \$25,000 or more, except classified contracts and contracts with individuals
- Prime contractors must report in the FFATA Subaward Reporting System (“FSRS”) (www.fsrs.gov) by the end of the month following the month of award to the subcontractor
- Public availability of information
 - www.usaspending.gov

Reporting First-Tier Subcontract Awards

- What information must be reported in FSRS?
 - Name of the subcontractor
 - DUNS number for the subcontractor and for the subcontractor's parent company (if any)
 - Amount of the subcontract award
 - Date of the subcontract award
 - Description of the products or services being provided
 - Subcontract number
 - Subcontractor location
 - Place of subcontractor performance
 - Prime contract number and order number
 - Awarding agency and code
 - Applicable North American Industry Classification System ("NAICS") code

Reporting First-Tier Subcontract Awards

- OFPP Memorandum, dated May 31, 2011
 - “Agencies should regularly monitor contractors’ compliance with reporting requirements such as subaward reporting required by the Federal Funding Accountability and Transparency Act”
- FAR 4.1402(c)
 - “If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor’s failure to comply . . . a part of the contractor’s performance information under Subpart 42.15”

FAPIIS

- FAR 52.209-7, *et seq.*
- “FAPIIS will provide a one-stop shop by providing a central nexus of access to the information stored in various existing systems”
- GSA Notice, dated May 16, 2011
 - Information posted by contractors after April 15, 2011 will be available to the public but any information posted before April 15, 2011 is exempt from FOIA disclosure under b(4)
- Public portal (fapiis.ppirs.gov)

Organizational Conflicts of Interest

- DFARS OCI Provision (209.571)
 - Substantive restriction #1

Contract for Systems Engineering and Technical Assistance (“SETA”) functions on Major Defense Acquisition Program (“MDAP”) or Pre-MDAP must prohibit the contractor, or any affiliate of the contractor, from participating as a contractor or major subcontractor in the development or production of a weapon system under such program
 - Exceptions

Organizational Conflicts of Interest

- DFARS OCI Provision (209.571)
 - Substantive restriction #2

DoD must ensure that it obtains advice on MDAP or Pre-MDAP from sources that are “objective and unbiased” and that such advice should come from Federally Funded Research and Development Centers or other sources “independent of the major defense acquisition program contractor”
 - Exceptions

Organizational Conflicts of Interest

- Proposed OCI Rule
 - Two philosophies
 - ✓ DoD (April 22, 2010)
 - ✓ FAR Council (April 26, 2011)
 - FAR Council “seeking specific feedback regarding which course of action, or whether some combination of the two, is preferable”
 - Comment period closes on June 27, 2011

Organizational Conflicts of Interest

- Similarities between the two approaches
 - Move OCI coverage to FAR Part 3
 - Standard OCI clauses
 - Shifting more of the burden to contractors
 - Pre-award and post-award disclosure requirements
 - Treatment of task and delivery orders

Organizational Conflicts of Interest

- Differences between the two approaches
 - Type of conflict versus type of harm
 - Government acceptance of risk
 - Recognition of corporate structural barriers and internal controls as viable mitigants
 - Treatment of affiliates
 - Unequal access to information as type of OCI

DCAA Audit Guidance

- On July 23, 2009, DCAA issued Memorandum 09-PAS-014(R) to revise its audit guidance to set out procedures for reviewing contractor compliance with FAR 52.203-13, Contractor Code of Business Ethics and Conduct
 - Revisions to DCAA Audit Manual (“DCAM”)
 - Revisions to DCAA’s audit program

DCAA Audit Guidance

- What information DCAA is seeking
 - Code of Conduct
 - Periodic acknowledgment of Code of Conduct
 - Training program
 - Mandatory disclosure policy
 - Hotline call log
 - Disciplinary actions taken
 - Results of internal investigations
 - Sample of subcontracts

DCAA Audit Guidance

- On May 31, 2011, government changed FAR 42.302, Contract Administration Functions
 - “Ensure that the contractor has implemented the requirements of 52.203-13, Contractor Code of Business Ethics and Conduct”
 - Effective June 30, 2011

Questions?

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