

contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

#### **Item VI—Enhanced Access for Small Business (FAR Case 2006–031)**

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) changed the ceiling under the Contract Disputes Act from \$50,000 or less to \$150,000 or less for small businesses. The ceiling remains at \$50,000 or less for other types of businesses. The change to 41 U.S.C. 608 is a ceiling change only.

#### **Item VII—Technical Amendment**

An editorial change is made at FAR 1.603–1.

Dated: April 4, 2008.

#### **Al Matera,**

*Director, Office of Acquisition Policy.*

#### **Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 2005–25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–25 is effective April 22, 2008, except for Items IV, V, and VI which are effective May 22, 2008.

Dated: April 10, 2008.

#### **Shay D. Assad,**

*Director, Defense Procurement and Acquisition Policy, and Strategic Sourcing.*

Dated: April 7, 2008.

#### **David A. Drabkin,**

*Acting Chief Acquisition Officer & Senior Procurement Executive, Office of the Chief Acquisition Officer, U.S. General Services Administration.*

Dated: April 3, 2008.

#### **William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. E8–8402 Filed 4–21–08; 8:45 am]

**BILLING CODE 6820–EP–S**

## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 1, 2, 4, 12, and 52**

[FAC 2005–25; FAR Case 2004–038; Item I; Docket 2008–0001, Sequence 6]

RIN 9000–AK94

#### **Federal Acquisition Regulation; FAR Case 2004–038, Federal Procurement Data System Reporting**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS).

**DATES:** *Effective Date:* April 22, 2008.

*Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before June 23, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005–25, FAR case 2004–038, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2004–038” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2004–038. Follow the instructions provided to complete the “Public Comment and Submission Form”.

Please include your name, company name (if any), and “FAR Case 2004–038” on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005–25, FAR case 2004–038, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any

personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–25, FAR case 2004–038. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

As of October 2003, all agencies were to begin reporting FAR-based contract actions to the modified system. During Fiscal Year 2004, members of the interagency Change Control Board, as well as departmental teams working on the migration of data from the old to new system, recognized both the opportunity to standardize reporting processes and the need to revise the FAR to provide current and clear reporting requirements.

In this interim rule, the Government is establishing its commitment for Federal Procurement Data System (FPDS) data to serve as the single authoritative source of all procurement data for a host of applications and reports, such as the Central Contractor Registration (CCR), the Electronic Subcontracting Reporting System (eSRS), the Small Business Goaling Report (SBGR), and Resource Conservation and Recovery Act (RCRA) data.

The enhanced FPDS was put into production on October 1, 2003 by implementing newer technology to report contract actions. The old system had 48 data elements; the new system has 145+ elements, including who funds the contract. The new system has the ability to receive data and provide data to other applications used in the procurement community, allowing the Government to give “credit” to the agency that funds the contract action. The system is also an enabler ensuring that metrics are consistent when comparing one department, service, or organization to another.

Small agencies that do not have the staff or resources necessary to purchase the automated contract writing application necessary for reporting contract actions as required by this interim rule are encouraged to partner with a large agency and become a subscriber on their system. For information about frequently asked questions, see <https://www.fpbs.gov>.

The rule amends the FAR by:

1. Revising FAR 1.106 to change the FAR segment 4.602 to 4.605, and 4.603 to 4.607.

2. Revising FAR 2.101 to add a definition for “Chief Acquisition Officer” and revising the definition for “Data Universal Numbering System number” to include that it is the identification number for Federal contractors.

3. Renaming FAR 4.601 “Definitions” and revising the section to add definitions for “assisted acquisition,” “contract action,” “contract action report (CAR),” “definitive contract,” “direct acquisition,” “entitlement program,” “generic DUNS number,” “indefinite-delivery vehicle (IDV),” “requesting agency,” and “servicing agency” as they pertain to FPDS.

4. Renaming FAR section 4.602 “General” and revising to describe the general characteristics of FPDS and identify data that will and will not be maintained in FPDS.

5. Renaming FAR section 4.603 “Policy” and revising the section to: describe the use of FPDS to maintain publicly available information about contract actions; require agencies to report actions subject to the FAR and using appropriated funds; require agencies performing assisted or direct acquisitions to report such actions; encourage agencies exempt from the FAR or using non-appropriated funds to report such actions; and require agencies awarding contracts using a mix of appropriated and non-appropriated funds to only report the full appropriated portion of the action.

6. Adding a new FAR section 4.604, Responsibilities. The new section: describes the responsibility of the Senior Procurement Executive (SPE) and head of the contracting activity for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS describes the responsibility of the contracting officer for the submission and accuracy of the contract action report; describes how and when the contract action report is to be submitted to FPDS when a contract writing system is or is not integrated with FPDS or when the contract action is awarded pursuant to FAR 6.302–2 or in accordance with the authorities listed at FAR Subpart 18.2; and indicates the date that the Chief Acquisition Officer of each agency reporting to FPDS must submit an annual certification of the agency’s reported actions.

7. Adding a new FAR section 4.605, Procedures. The new section describes: the Procurement Instrument Identifier; and the Data Universal Numbering System (DUNS).

8. Adding a new FAR section 4.606, Reporting Data. The new section will describe: the mandatory actions

agencies must report to FPDS; the use of FPDS “Express Reporting;” the reporting requirements for agencies participating in the Small Business Competitiveness Demonstration Program; and the responsibility of the GSA Purchase Card Management to provide purchase card data to FPDS; how agencies may report other actions not specified in the subpart; and actions not to be reported to FPDS, including imprest funds transactions below the micro-purchase threshold, orders from GSA Stock and Global Supply Programs, orders against certain indefinite-delivery vehicles, purchases made using Javits-Wagner-O’Day service stores, and purchases made using non-appropriated fund activity cards, chaplain cards, individual Government personnel training orders, and Defense Printing.

9. Renumbering the existing FAR 4.603 as 4.607.

**B. The Councils have developed the following list of questions and answers to facilitate the public’s understanding of the changes proposed in FAR Case 2004–038 for reporting contract actions under the Federal Acquisition Regulation (FAR), Subpart 4.6.**

*Question 1:* What is the Federal Procurement Data System (FPDS)?

FPDS is a comprehensive mechanism for assembling, organizing, and presenting contract procurement data for the Federal Government. The system collects, processes, and disseminates official statistical data on Federal contracting. The data is used to generate reports for the three branches of Government and the general public.

*Question 2:* Why are we changing the way the Federal Government collects procurement data?

The way the Federal Government collects procurement data is being enhanced to satisfy the Government’s compelling need to manage and understand how and where your tax dollars are spent. Collecting data about Government procurements provides a broad picture of the overall Federal acquisition process. The ability to look at all contracts across many agencies, in greater detail, is a key component in establishing transparency, trust in our Government, and credibility in the professionals who use and perform these contracts. With an enhanced view of Federal spending we can conduct analyses to structure strategic procurements and save money, improve Governmentwide management, and establish interoperability with other Governmentwide data systems.

*Question 3:* What impact will the enhancements have on errors in FPDS?

Government procurement executives realize that contracts are written for extended periods of time and that modifications are routinely made to these contracts, even if just to exercise an option. As a result of inputting data regarding these contracts into FPDS, some errors will end up in FPDS. Additionally, as long as there are data elements in a contract writing system that are released to FPDS without validation, errors will continue. Regardless of the reason it happens, if we continue to allow the data to be input in FPDS without validation, the professionalism and credibility of the acquisition community is called into question. The FPDS enhancements provide the capability to correct any information that is incorrect or outdated.

*Question 4:* What level of effort is expected of contracting personnel in eliminating errors in procurement reported to FPDS?

We anticipate minimal effort is required of the contracting officer or contracting specialist to ensure that the data reported to FPDS is current, accurate, and complete. It is incumbent on contracting officers and agencies to assure the accuracy of all information submitted. It is also certain that if care is taken to record the data correctly the first time, it will reduce the burden to make corrections. To draw attention to the criticality of this information, the Office of Federal Procurement Policy (OFPP) will require each agency, beginning in December 2007, to certify annually that all data is accurate and complete. See [http://www.whitehouse.gov/omb/procurement/memo/fpds\\_itr\\_030907.pdf](http://www.whitehouse.gov/omb/procurement/memo/fpds_itr_030907.pdf).

*Question 5:* Why is it important for procurement data to be accurate and timely?

(a) Timely and accurate procurement data ensures that the recurring and special reports to the President, Congress, the Government Accountability Office, and the general public on the expenditure of taxpayer dollars are reliable, useful, realistic, and serve as a rational basis for assessing—

- The effect of Federal contracting on our Nation’s economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and nonprofit agencies operating under the Javits-Wagner-O’Day Act are sharing in Federal contracts; and

- Measuring the impact of other Federal procurement policies and management initiatives.

(b) In addition to the above, a list of purposes for which this business information is used, includes but is not limited to the following:

- Decisions on organization structure.
- Decisions related to staffing.
- Decisions related to training.
- Assessments on the extent to which awards are made to businesses in the various socio-economic categories.
- Assessments of the impact of competition on the acquisition process.

(c) FPDS also provides the following—

- An authoritative source of information;
- Discipline in the reporting process;
- Confidence in Government acquisition practices, and reports; and
- Standardized means for collecting contract data.

*Question 6:* Does FPDS contain non-procurement data? If so, do we use these contracts in our statistics?

It is true several agencies have used FPDS to account for other types of awards that were not FAR based contracts. Once these actions are identified, the Government subtracts the dollars and actions from the total of FAR based actions prior to calculating totals or establishing goals.

*Question 7:* Why should FPDS collect non-FAR based actions?

Many agencies are already collecting other business data that is non-FAR based. In the future, FPDS will be able to accurately discern what is FAR based and non-FAR based actions. Agencies that desire internal business information and have a bona fide need for this information can request a modification to FPDS. In these cases, the business data may or may not be accessible to the public.

*Question 8:* What additional responsibilities will contracting officers have as a result of the FPDS enhancements?

Contracting officers will have the following additional responsibilities:

- a. The submission and accuracy of the individual contract action report (CAR), and validating the CAR prior to transmittal of the data.
- b. The review of their own CAR information as well as all FPDS information created by subordinates within their organization.

(1) Whenever a contract writing system is integrated with FPDS, confirming the CAR for accuracy prior to release of the contract award.

(2) Ensuring that the CAR is submitted within 3 business days after contract award whenever an automated contract writing system is not used.

(3) Ensuring that the CAR is submitted to FPDS within 30 days after

contract award for any actions done following FAR 6.302–2 or FAR Subpart 18.2.

(4) Including a code to identify the source of funds being used to procure needed supplies or services. Emphasis is not just on the contracting office awarding the contract, but also on reporting accurate funding information to include the funding office code of the customer agency for whom the contract, delivery order, or task order is issued, and submitting the correct information to FPDS.

*Question 9:* Why should the contracting officer be responsible for data reported to FPDS?

The contracting officer is ultimately responsible for the solicitation and award of a contract action and by virtue of that responsibility, the contracting officer is also responsible for all actions through close-out of the contract. The CAR is a part of the contract file documentation and as such, its accurate and timely completion rests with the contracting officer.

*Question 10:* How will contract specialists or other acquisition staff be affected by the enhancement to FPDS?

The enhancements will provide for data collection to be more automated. Where data collection is not automated, contracting officers will be required to approve or validate fewer elements. Overall, the enhancements will facilitate better accuracy.

*Question 11:* Why is there an emphasis on Indefinite Delivery Vehicles (IDV) in FPDS?

IDV's provide agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. They are emphasized because of their increased use in every agency and in interagency contracting.

*Question 12:* What needs are satisfied by making procurement data publicly accessible in FPDS?

Making procurement data publicly accessible provides the public—

- a. Important information about acquisitions awarded by the Federal Government;
- b. The ability to fully understand how tax dollars are spent;
- c. An understanding where and how competition is conducted; and
- d. Information on where and with whom business opportunities exist.

Additionally, collecting data about Government procurements provides a broad picture of the overall Federal acquisition process. Having the ability to look at Federal contracts across many agencies, in greater detail, is a key ingredient to establishing trust in our Government and credibility in the

professionals who award and administer these contracts. With a transparent view of Federal spending, analyses may be conducted to structure procurements strategically and save taxpayer dollars; improve Governmentwide management; ensure appropriate small business participation; and establish interoperation with other Governmentwide data systems. This information will enable service-wide, department-wide, or Governmentwide strategic sourcing.

*Question 13:* Which agencies must report to FPDS and why?

Executive departments and agencies are responsible for collecting and reporting procurement data to FPDS as required by Federal Acquisition Regulations (FAR).

In addition, the recent passage of The Federal Funding Accountability and Transparency Act of 2006 has established that all officials who make Federal awards of any type have a duty to report their activities to the public. Therefore, reporting procurement data applies to the entire United States Government.

As previously stated, all levels of the Government use the reported data.

*Question 14:* What is the FPDS Express Reporting Application?

FPDS's Express Reporting Application allows users to report a single record for a single vendor for multiple contract actions.

*Question 15:* Will agencies be able to see their data just like the public can see it?

Yes. FPDS will provide the official Federal reports as well as several workload reports designed specifically for first-line supervisors and contract managers.

The use of Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, and the Resource Conservation and Recovery Act (RCRA) Report just to name a few.

*Question 16:* Does FPDS contain contract data from non-FAR agencies?

Some agencies which are not subject to the FAR may be required by other authority, statute, or at the Office of Management and Budget's direction to report non-FAR based contract action data into FPDS. For example, the Federal Funding Accountability and Transparency Act of 2006 requires a searchable website that provides public access to information about Federal expenditures.

This is not a significant regulatory action and, therefore, was not subject to

review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because contract reporting is not accomplished by the vendor community, only by Government contracting entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 2, 4, 12, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, et seq. (FAC 2005-25, FAR case 2004-038), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the applicable procedures in the rule are necessary to inform Federal agencies and the public when and how Federal procurement data must be reported. The action is not expected to have any impact on the vendor community. However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 4, 12, and 52

Government procurement.

Dated: April 4, 2008.

Al Matera, Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 12, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 4, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segments "4.602" and "4.603" and adding "4.605" and "4.607" in their place, respectively.

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition "Chief Acquisition Officer"; and revising the definition "Data Universal Numbering System (DUNS) number" to read as follows:

2.101 Definitions.

Table with 5 columns and 3 rows of asterisks representing a grid for definitions.

Chief Acquisition Officer means an executive level acquisition official responsible for agency performance of acquisition activities and acquisition programs created pursuant to the Services Acquisition Reform Act of 2003, Section 1421 of Public Law 108-136.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities, which is used as the identification number for Federal contractors.

Table with 5 columns and 1 row of asterisks representing a grid for definitions.

PART 4—ADMINISTRATIVE MATTERS

4. Revise Subpart 4.6 to read as follows:

Subpart 4.6—Contract Reporting

Table with 2 columns: Sec. and description. Rows include 4.600 Scope of subpart, 4.601 Definitions, 4.602 General, 4.603 Policy, 4.604 Responsibilities, 4.605 Procedures, 4.606 Reporting Data, and 4.607 Solicitation Provisions.

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Definitions.

As used in this subpart— Assisted acquisition means a contract, delivery or task order awarded by a servicing agency on behalf of a requesting agency. The agency providing the assistance may also administer the contract action.

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

Contract action report (CAR) means contract action data required to be entered into the Federal Procurement Data System (FPDS).

Definitive contract means any contract that must be reported to FPDS other than an indefinite delivery vehicle. This definition is only for FPDS, and is not intended to apply to Part 16.

Direct acquisition means an order awarded directly by the requesting agency against the servicing agency's contract. In a direct acquisition, the servicing agency awards and administers the contract but does not participate in the placement of an order.

Entitlement program means a Federal program that guarantees a certain level of benefits to persons or other entities who meet requirements set by law, such as Social Security, farm price supports, or unemployment benefits.

Generic DUNS number means a DUNS number assigned to a category of vendors not specific to any individual or entity.

Indefinite delivery vehicle (IDV) means an indefinite delivery contract that has one or more of the following clauses:

- (1) 52.216-18, Ordering.
(2) 52.216-19, Order Limitations.
(3) 52.216-20, Definite Quantity.
(4) 52.216-21, Requirements.
(5) 52.216-22, Indefinite Quantity.
(6) Any other clause allowing ordering.

Requesting agency means the agency that has the requirement for an interagency acquisition.

Servicing agency means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

**4.602 General.**

(a) The FPDS provides a comprehensive web-based tool for agencies to report contract actions. The resulting data provides—

(1) A basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the effect of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and nonprofit agencies operating under the Javits-Wagner-O'Day Act, are sharing in Federal contracts; and

(3) A means of measuring and assessing the effect of other policy and management initiatives (e.g., performance based acquisitions and competition).

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (e.g., subcontracting data, funding data, or accounting data).

(c) The FPDS Web site, <https://www.fpds.gov>, provides instructions for submitting data. It also provides—

(1) A complete list of departments, agencies, and other entities that submit data to the FPDS;

(2) Technical and end-user guidance;

(3) A computer-based tutorial; and

(4) Information concerning reports not generated in FPDS.

**4.603 Policy.**

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible.

(b) Except as provided in 4.606(a)(2), executive agencies shall use FPDS to maintain publicly available information about all contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Funding Agency Code from the applicable agency codes maintained by the National Institute of Standards and Technology (NIST) using NIST Special Publication 800-87, "Codes for the Identification of Federal and Federally Assisted Organizations," at <http://csrc.nist.gov/publications/nistpubs/800-87/sp800-87-Final.pdf>.

(d) Agencies exempt from the FAR are encouraged to report contract actions in FPDS.

(e) Agencies awarding contract actions with a mix of appropriated and nonappropriated funding shall only report the full appropriated portion of the contract action in FPDS.

**4.604 Responsibilities.**

(a) The Senior Procurement Executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS.

(b)(1) The responsibility for the submission and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action.

(2) When a contract writing system is integrated with FPDS, the CAR must be confirmed for accuracy prior to release of the contract award.

(3) When a contract writing system is not integrated with FPDS, the CAR must be submitted to FPDS within three business days after contract award.

(4) For any action awarded in accordance with FAR 6.302-2 or pursuant to any of the authorities listed at FAR Subpart 18.2, the CAR must be submitted to FPDS within 30 days after contract award.

(5) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS-NG.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, by January 5, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

**4.605 Procedures.**

(a) *Procurement Instrument Identifier (PIID)*. Agencies must have in place a process that ensures that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. Agencies must submit their proposed identifier format to the FPDS Program Management Office, which maintains a registry of the agency unique identifiers on the FPDS website, and must validate their use in all transactions. The PIID shall consist of alpha characters in the first positions to

indicate the agency, followed by alphanumeric characters identifying bureaus, offices, or other administrative subdivisions. Other pertinent PIID instructions can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System (DUNS)*. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at 52.204-7, Central Contractor Registration. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, the clause at 52.204-7, Central Contractor Registration, or the provision at 52.212-1, Instructions to Offerors—Commercial Items.

(1) Notwithstanding the inclusion of the provision at 52.204-6 in the associated solicitation or except as provided in paragraph (b)(2) of this section, the contracting officer shall use one of the generic DUNS numbers identified in CCR to report corresponding contract actions if the contract action is—

(i) With contractors located outside the United States and its outlying areas as defined in 2.101 who do not have a DUNS number, and the contracting officer determines it is impractical to obtain a DUNS number;

(ii) With students who do not have DUNS numbers;

(iii) With dependents of veterans, Foreign Service Officers, and military members assigned overseas who do not have DUNS numbers; or

(iv) For classified or national security.

(2) In accordance with agency procedures, authorized generic DUNS numbers found at <https://www.fpds.gov> may be used to report contract actions when—

(i) Specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services; or

(ii) The agency determines it is impractical to obtain a DUNS number.

**4.606 Reporting Data.**

(a) *Actions required to be reported to FPDS*. (1) As a minimum, agencies must report the following contract actions over the micro-purchase threshold, regardless of solicitation process used, and agencies must report any modification to these contract actions

that change previously reported contract action data, regardless of dollar value:

(i) Definitive contracts, including purchase orders and imprest fund buys over the micro-purchase threshold awarded by a contracting officer.

(ii) Indefinite delivery vehicle (identified as an "IDV" in FPDS).

Examples of IDVs include the following:

(A) Task and Delivery Order Contracts (see Subpart 16.5), including—

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

(C) Blanket Purchase Agreements (see 13.303).

(D) Basic Ordering Agreements (see 16.703).

(E) Any other agreement or contract against which individual orders or purchases may be placed.

(iii) All calls and orders awarded under the indefinite delivery vehicles identified in paragraph (a)(1)(ii) of this section.

(2) Agencies participating in the Small Business Competitiveness Demonstration Program (see Subpart 19.10) shall report as a contract action each award in the designated industry groups, regardless of dollar value.

(3) The GSA Office of Charge Card Management will provide the Government purchase card data, at a minimum annually, and GSA will incorporate that data into FPDS for reports.

(4) Agencies may use the FPDS Express Reporting capability for consolidated multiple action reports for a vendor when it would be overly burdensome to report each action individually. When used, Express Reporting should be done at least monthly.

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section, and must contact the FPDS Program Office at [integrated.acquisition@gsa.gov](mailto:integrated.acquisition@gsa.gov) if they desire to submit any of the following types of activity:

(1) Transactions at or below the micro-purchase threshold, except as provided in paragraph (a)(2) of this section.

(2) Any non-appropriated fund (NAF) or NAF portion of a contract action using a mix of appropriated and nonappropriated funding.

(3) Lease and supplemental lease agreements for real property.

(4) Resale activity (*i.e.*, commissary or exchange activity).

(5) Revenue generating arrangements (*i.e.*, concessions).

(6) Training expenditures not issued as orders or contracts.

(7) Grants and entitlement actions.

(8) Interagency agreements, also known as interservice level agreements, memoranda of understanding, or memoranda of agreement.

(9) Letters of obligation used in the A-76 process.

(c) *Actions not reported.* The following types of contract actions are not to be reported to FPDS:

(1) Imprest fund transactions below the micro-purchase threshold, including those made via the Government purchase card (unless specific agency procedures prescribe reporting these actions).

(2) Orders from GSA stock and the GSA Global Supply Program.

(3) Purchases made at GSA or JWOD service stores, as these items stocked for resale have already been reported by GSA.

(4) Purchases made using non-appropriated fund activity cards, chaplain fund cards, individual Government personnel training orders, and Defense Printing orders.

(d) Agencies not subject to the FAR may be required by other authority (*e.g.*, statute or OMB) to report certain information to FPDS.

#### 4.607 Solicitation Provisions.

(a) Insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of a CAR (see 4.606(a)(1)); and

(2) Do not contain the clause at 52.204-7, Central Contractor Registration.

(b) Insert the provision at 52.204-5, Women-Owned Business (Other Than Small Business), in all solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

#### 4.805 [Amended]

■ 5. Amend section 4.805 in paragraph (b)(9) by removing "4.601" and adding "4.603" in its place.

### PART 12—ACQUISITION OF COMMERCIAL ITEMS

#### 12.301 [Amended]

■ 6. Amend section 12.301 in paragraph (b)(2) by removing the words "that are expected to exceed the threshold at 4.601(a)".

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.204-5 [Amended]

■ 7. Amend section 52.204-5 by removing from the introductory text "4.603(b)" and adding "4.607(b)" in its place.

■ 8. Amend section 52.204-6 by—

■ a. Removing from the introductory text "4.603(a)" and adding "4.607(a)" in its place;

■ b. Revising the date of the provision;

■ c. Removing from paragraph (a) the word "parent";

■ d. Revising paragraph (b)(1)(i); and

■ e. Adding a sentence to the end of paragraph (b)(1)(ii).

The revised and added text reads as follows:

#### 52.204-6 Data Universal Numbering System (DUNS) Number.

\* \* \* \* \*  
DATA UNIVERSAL NUMBERING  
SYSTEM (DUNS) NUMBER (APR 2008)

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) \* \* \* The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

\* \* \* \* \*

(End of provision)

■ 9. Amend section 52.204-7 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition "Data Universal Numbering System +4 (DUNS+4) number", by removing the word "parent";

■ c. Revising paragraph (c)(1)(i); and

■ d. Adding a sentence to the end of paragraph (c)(1)(ii).

The revised and added text reads as follows:

#### 52.204-7 Central Contractor Registration.

\* \* \* \* \*  
CENTRAL CONTRACTOR  
REGISTRATION (APR 2008)

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) \* \* \* The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

\* \* \* \* \*

(End of clause)

■ 10. Amend section 52.212-1 by—

- a. Revising the date of the provision; and
- b. In paragraph (j), by removing the word “parent”; removing “<http://www.dnb.com>” and adding “<http://fedgov.dnb.com/webform>” in its place; and adding a sentence to the end of the paragraph to read as follows:

**52.212-1 Instructions to Offerors—Commercial Items.**

\* \* \* \* \*  
INSTRUCTIONS TO OFFERORS—  
COMMERCIAL ITEMS (APR 2008)  
\* \* \* \* \*

(j) \* \* \* The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

\* \* \* \* \*

(End of provision)

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 4, 19, 52, and 53

[FAC 2005-25; FAR Case 2005-040; Item II; Docket 2008-0001, Sequence 01]

RIN 9000-AK95

#### Federal Acquisition Regulation; FAR Case 2005-040, Electronic Subcontracting Reporting System (eSRS)

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form (SF) 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report.

**DATES:** *Effective Date:* April 22, 2008.

*Comment Date:* Interested parties should submit written comments to the FAR Secretariat on or before June 23, 2008 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-25, FAR case 2005-040, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2005-040” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2005-040. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2005-040” on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAC 2005-25, FAR case 2005-040, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044 for clarification of content. Please cite FAC 2005-25, FAR case 2005-040. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

This rule implements in the FAR the use of eSRS to fulfill small business subcontracting reporting requirements. It further amends FAR 19.7 and related clauses to clarify existing small business subcontracting program requirements. The interim rule:

1. Implements the use of eSRS by—
  - Deleting references to Standard Forms 294 and 295 from Parts 1, 19, 52,

and 53 and, where appropriate, replacing them with eSRS.

- Incorporating general instructions from Standard Forms 294 and 295 into the clause at FAR 52.219-9. The language in FAR 52.219-9 differs from the SF 295 general instruction for submitting summary subcontract reports on contracts awarded by the National Aeronautics and Space Administration (NASA) in that the clause requires that the reports be submitted semiannually, rather than annually. This change reflects what NASA currently requires under its own regulations and does not impose a new burden on contractors.

- Adding a requirement that a contractor provide its prime contract number and DUNS number to its subcontractors with subcontracting plans and require that each of its subcontractors with a subcontracting plan provide the prime contract number and its own DUNS number to its subcontractors with subcontracting plans. This is necessary in order for the Government to have insight into all of the subcontracting done under a prime contract. Access to this information will enable the Government to more effectively manage the small business subcontracting program.

- Identifying what individuals/entities are responsible for acknowledging that a report has been received or rejecting the report if it has not been adequately completed.

- Revising FAR 52.219-9 to reflect use of the Year-End Supplementary Report for Small Disadvantaged Businesses in eSRS to provide the information, already required by the clause, on subcontract awards to Small Disadvantaged Businesses. Currently, the clause requires that the information be submitted along with the year-end Summary Subcontract Report. The interim rule provides for a 90-day extension beyond the date when the year-end Summary Subcontract Report is submitted.

- Revising FAR 52.219-25 to allow the report currently required by that clause to be submitted using the Small Disadvantaged Business Participation Report in eSRS, or continuing to use either the Optional Form 312 or the contractor's format.

2. Makes revisions to clarify that—
  - A contractor should have only one commercial plan in place at a time.
  - A contract may have only one subcontracting plan. When a modification is issued that would require a subcontracting plan, if the contract already has a subcontracting plan, that plan should be revised to incorporate the goals associated with the modification. A separate