

October 29, 2010

ACQUISITION ALERT 11-01

IMPLEMENTATION OF THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) OF 2006

1. PURPOSE: This Acquisition Alert provides guidance on implementing the Federal Funding Accountability and Transparency Act (FFATA) (PL 109-282 as amended by section 6202 of PL 110-252), which results in a new FAR requirement for contractors to report subcontract awards and executive compensation. More detailed information, including frequently asked questions and the reporting architecture, can be found in the applicable Office of Management and Budget memorandum dated August 27, 2010 located at http://www.whitehouse.gov/sites/default/files/omb/open/Executive_Compensation_Reporting_08272010.pdf

2. BACKGROUND: FAC 2005-044 was issued July 8, 2010. It implements an interim rule entitled Reporting Executive Compensation and First-Tier Subcontract awards which is a statutory requirement of FFATA. The rule is intended to provide public visibility of Federal contracting. As a result of this rule, the applicability and requirements of FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontractor Awards, are greatly expanded.

Several years ago, a pilot program was tested which required prime contractors holding contracts of \$500M or more to report subcontracts over \$1M. The pilot was implemented because the Government-wide data collection systems were not able to handle the reporting volume anticipated if FFATA was fully implemented. The systems - Electronic Subcontract Reporting System (eSRS), The FFATA Subaward Reporting System (FSRS), which is a newly created module under eSRS, and the Central Contractor Registration (CCR), are now ready, and the interim rule calls for a phased-in approach to accommodate the systems.

Although the rule is interim, it is unlikely that it will change substantively before becoming final because the FFATA requirements are explicit. Any changes to the requirements as a result of the final rule will be reflected in an update to this PIC, as necessary.

FFATA reporting is distinct from the reporting requirements under the American Recovery and Reinvestment Act (ARRA). It requires far less reporting by contractors and far less verification by Agencies. Most notably, FFATA reporting is done in the Integrated Acquisition Environment (IAE) which is composed of Government-wide, procurement data systems. Much of the effort associated with Recovery Act reporting results from the use of the stand-alone FederalReporting.gov system which is managed outside of the Federal procurement community. Contractors awarded contracts funded with ARRA funds are exempt from this reporting requirement.

3. GUIDANCE:

a. **Applicability:** The rule is applicable to solicitations issued after July 8, 2010, and resulting contracts. The rule is applicable to all solicitations and contracts with a value of \$25,000 or more (including all options) and applies to commercial item contracts, those for commercially available off-the-shelf (COTS) item contracts, and actions under the simplified acquisition threshold that meeting the \$25,000 threshold. The clause is not required in classified solicitations and contracts, and contracts with individuals.

COs shall:

- Include the clause at 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010), in all new solicitations.
- Amend solicitations issued since July 8, 2010 to include the provision.
- Only modify contracts awarded after July 8, 2010 to include the clause if the solicitation was issued prior to July 8, 2010.
- Modify existing IDIQ contracts or other ordering vehicles to cover future orders by incorporating the clause at FAR 52.204-10 into the basic contract so that it can be invoked in applicable task and delivery orders. The applicability outlined above applies to orders issued under any task or delivery order vehicle. That is, if the solicitation for a task or delivery order was issued prior to July 8, the resulting order will not be subject to the FFATA reporting requirements. Solicitations for orders, or orders without a solicitation, issued after July 8, 2010, are subject to the clause.

b. **Prime Contractor Responsibilities:** The subcontract reporting requirements and the executive compensation reporting requirements have different beginning dates, reporting schedules, and exceptions.

- **Reporting Subcontracts:** For contracts that include the clause at FAR 52.204-10, prime contractors are responsible for reporting their subcontract information, for any first-tier subcontracts of \$25,000 or more (including all options), except for classified contracts and contracts with individuals, by the end of the month following the month of award, at FSRS, in accordance with the following phase-in schedule:
 - Until September 30, 2010, any newly awarded subcontracts if the prime contract is \$20M or more.
 - From October 1, 2010, to February 28, 2011, any newly awarded subcontract if the prime contract is \$550,000 or more.
 - Beginning March 1, 2011, any newly awarded subcontract must be reported if the prime contract equals or exceeds \$25,000.

If a prime contractor, in the previous tax year, had gross income, from all sources, of under \$300,000, the contractor is exempt from the requirement to report subcontract awards. Likewise, if a subcontractor, in the previous tax year, had gross income, from all sources, of under \$300,000, the prime contractor does not need to report subcontracts awarded to that subcontractor.

- **Reporting Executive Compensation:** For contracts that include the clause 52.204-10, prime contractors are responsible for:
 - Reporting their own executive compensation (in CCR) by the end of the month following the month of award of a contract with FAR 52.204-10, and reporting annually, thereafter. Executive compensation is tied to the DUNS number of the entity to which the contract is awarded. Accordingly, contractors required to report should report the compensation of the five most highly compensated managers associated with the DUNS number on the award.
 - Reporting executive compensation for their first-tier subcontractors (in FSRS) by the end of the month following the month of award of a subcontract of \$25K or more, and reporting annually, thereafter.

- **Exceptions to Reporting:** There are several exceptions to the requirement to report executive compensation and thresholds to be met before the requirement applies. Many contractors will be exempt from reporting this information for themselves and for some of their subcontractors. Reporting is not required if:
 - the contractor or subcontractor is a publically-traded corporation, and their executive compensation is already publically available in IRS and/or FTC filings, or
 - they received less than 80 percent of their previous year's annual gross income from Federal contracts, subcontracts, loans, grants, and cooperative agreements, and they received less than \$25M from annual gross revenues from Federal contracts, subcontracts, loans, grants, and cooperative agreements.

c. **CO Responsibilities:** Agencies are responsible for quarterly verification of contractor reports in FSRS. Ultimately, this is a CO responsibility. COs may elect to delegate this responsibility to a contract specialist or others, but the COs remain responsible for accomplishment of the quarterly verification of contractor reports in FSRS to comply with the requirements of FFATA.

The verification is limited to ensuring consistency with contract information that is readily available to the CO. The review is necessary because the integrated system will cross check contractor entries against FPDS data and anomalies in contract information will require correction by either the contractor or the contracting officer. Examples of data fields that COs must verify include:

- prime contract number
- awarding Agency name and code
- funding Agency name and code
- Government contracting office code
- Treasury Account Symbol (TAS)
- Prime NAICS

The contractor's reporting requirements include many data elements that COs will not know and, therefore, are not responsible for verifying, such as:

- Whether or not a subcontract has been issued
- Whether or not reported subcontract value, place of performance, etc., is accurate.

- Whether or not a prime or subcontractor meets the thresholds or qualifies under an exemption to executive compensation reporting.

The CO shall inform the contractor of any inconsistencies found with the contract data and require that the contractor correct the report or provide a reasonable explanation as to why it believes the information is correct. The CO shall document the results of the review and verification of the report data, including any corrective action required and accomplished by the contractor, in the official contract file.

Because the FSRS is a subcomponent of eSRS, users already registered in eSRS will have access to FSRS to verify contractor reporting. Others needing access to eSRS/FSRS for purposes of FFATA reporting verification should register at the eSRS site. Registration instructions can be found at https://esrs.symlicity.com/government_registration. Contractor reports may be accessed either via the www.esrs.gov site or directly at the www.fsr.gov site.

4. POINT OF CONTACT: Questions concerning this Alert should be directed to Jerry Rorstrom-Lee at Jerry.Rorstrom-Lee@noaa.gov or by telephone at 301-713-3478 ext. 174.