

Alerts and Updates

Interim Rule Requiring Government Contractors' Compliance Records to Be Publicly Available on Federal Government's Contractor Performance and Integrity Information Website Is Revised and Now Final

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An interim rule requiring key matters regarding government contractors' violations of federal procurement requirements to be available on a searchable public website maintained by the U.S. federal government has recently been revised and finalized. The items included on the public website are summaries of all terminations for default, terminations for cause, terminations for material failure to comply, non-responsibility determinations, recipient not qualified determinations, defective pricing determinations, administrative agreements to resolve suspension and debarment proceedings, and U.S. Defense Department determinations of contractor fault since April 15, 2011.

These matters are reported by federal government personnel to the Federal Awardee Performance and Integrity Information System (FAPIS), which previously had been available only to government personnel and contractors with respect to their own records. The publicly available information is accessible through <http://www.fapiis.gov/fapiis/index.jsp>.

The publicly available information will not include government personnel's past performance reviews of contractors, which will continue to be available only to government personnel and contractors with respect to their own records. Contractors that are debarred or suspended from government contract work due to misconduct are already listed on a publicly available website, but the information required to be made public by the rule was not previously readily available in this format.

The final rule left the interim rule largely unchanged, except that contractors are required on a semiannual basis to ensure the information contained in FAPIS is current, and contractors are given seven days to respond to new information to seek deletion of information exempt from disclosure under the Freedom of Information Act.

The new requirements reflect a continuing trend to require more information about government contractors to be made public, such as the requirements for disclosure of executive compensation for prime and first-tier subcontractors. (See 48 C.F.R. Part 4.14, added at 75 Fed. Reg. 39419 (July 10, 2010).) The information is being made public in response to the mandate of section 3010 of the Supplemental Appropriations Act, 2010, Pub. L. 111-212 (July 29, 2010), which amended the Clean Contracting Act of 2008 (41 U.S.C. § 417b(e)(1)) to add the information to a publicly available Internet

website. The final rule, amending the Federal Acquisition Regulations, was added by the U.S. Department of Defense, General Services Administration, and National Aeronautics and Space Administration at 77 Fed. Reg. 197 (January 3, 2012), amending 48 C.F.R. Parts 1, 9, 12, 42 and 52.

For Further Information

If you have any questions about this *Alert*, please contact [Andrew E. Mishkin](#), [Robert A. Prentice](#), any [member](#) of our [Construction Group](#), any [member](#) of our [Government Contracts](#) practice or the attorney in the firm with whom you are regularly in contact.

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