

Proposed FAR Rule Provides Standardized Past Performance Evaluations

On September 6, 2012, the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) published a proposed rule that amends the Federal Acquisition Regulation (FAR) to provide standardized past performance evaluation factors and ratings. Interested parties may submit comments by November 5, 2012. The proposed rule can be found [here](#).

The proposed rule requires past performance information to be entered into the Contractor Performance Assessment Reporting System (CPARS). The proposed rule also requires government agencies to include a clear, non-technical description of the principal purpose of the contract in a past performance report. Government agencies also will be required to evaluate, at a minimum, the following factors: (i) Technical (quality of product or service); (ii) Cost control (not applicable for firm-fixed-price or fixed-price with economic price adjustments); (iii) Schedule/Timeliness; (iv) Management or Business Relations; (v) Small Business Subcontracting (when a small business subcontracting plan is required); and, as applicable, (vi) Other events, such as late or nonpayment to subcontractors, trafficking violations, tax delinquency, failure to report in accordance with contract terms and conditions, defective cost and pricing data, terminations, suspensions and debarments, etc.

In addition to identifying required performance evaluation factors, the proposed rule also specifies standard ratings to be used for each of the factors. Specifically, the proposed rule adds two tables to FAR — one to be used to rate the small business subcontracting evaluation factor when a subcontracting plan is required under FAR 52.219-9, and the other to be used to rate the other performance evaluation factors. Both tables set forth five possible evaluation ratings - Exceptional, Very Good, Satisfactory, Marginal, and Unsatisfactory - along with definitions and corresponding explanatory notes for each of the ratings. The rating definitions are based on guidance provided in the Department of Defense's Contractor Performance Assessment Reporting System Policy Guide. The table used to rate the small business subcontracting evaluation factor also incorporates recommendations by the U.S. Small Business Administration (SBA).

The proposed rule does not change the Architect-Engineer Contract Administrative Support System (ACASS) or the Construction Contractor Appraisal Support System (CCASS), although the preamble to the proposed rule acknowledges that an effort is underway to merge all systems into CPARS, under which all evaluation rating scales would be the same.

Proposed FAR Rule On Safeguarding Information Systems

Earlier, on August 24, 2012, the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA), proposed a rule, found [here](#), that establishes requirements for basic safeguarding of contractor information systems that contain non-public information provided by or for government agencies. Interested parties can submit comments by October 23, 2012.

The proposed rule adds a new subpart to the Federal Acquisition Regulation (FAR) at 4.17, titled "Basic Safeguarding of Contractor Information Systems," that applies to all solicitations and contracts (including orders and those for commercial items and commercially available off-the-shelf items). Under the proposed rule, a clause must be included in all solicitations and contracts above the simplified acquisition threshold whenever a contractor or a subcontractor has or will have non-public information that resides on, or is transmitted through, its information systems and that is provided by or generated for the government. The clause may also be inserted in contracts below the simplified acquisition threshold when the contracting officer determines that inclusion of the clause is appropriate.

The specific content of the clause to be inserted in contracts and solicitations is set forth in a new FAR section — 52.204-XX, Basic Safeguarding of Contractor Information Systems. Generally, the clause states that a contractor will apply basic safeguards to protect non-public information provided by or for the government that resides on, or is transmitted through, the contractor's information systems, including by:

- Protecting the information from being processed on public computers (e.g., kiosks, hotel business centers), or Web sites and Web pages that do not have access control;
- Transmitting the information electronically (e.g., e-mail, texts, blogs) using technology and processes that provide the best level of security and privacy available;
- Transmitting the information by voice and fax only when the sender has reasonable assurance that access is limited to authorized recipients;
- Protecting the information by at least one physical and one electronic barrier (e.g., locked container room, login and password) when the information is not under direct individual control;
- Sanitizing or clearing media that has been used to process the information before the media is released or disposed;
- Providing protections against computer intrusion and data compromise through the use of current and regularly updated malware protective services (e.g., anti-virus and anti-spyware) and through prompt application of security-relevant software upgrades (e.g., patches, service packs, and hot fixes); and
- Limiting the transfer of the information only to subcontractors that both require the information for contractual performance and provide at least the same level of security as required by the proposed rule.

The proposed rule also requires prime contractors to flow the requirements down by including the clause in all subcontracts with subcontractors who may or will have non-public information provided by or for the government that resides on, or is or transmitted through, the subcontractor's information systems.

For more information on any of the proposed FAR rules, please feel free to contact Mark A. Amadeo.

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