

ALERT

OFPP Seeks Comments on Improving Access to Past Performance and Responsibility Information About Contractor Locations, Affiliates and Subsidiaries

July 18, 2012

The Federal Awardee Performance and Integrity Information System (FAPIIS) is designed to be a "one stop shop" for acquisition professionals to obtain information regarding contractor performance and responsibility matters, including non-responsibility determinations, terminations for default and administrative agreements entered into in lieu of suspension or debarment. Today, the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) issued a notice that it is requesting comments on whether changes to existing regulations and guidance might improve contracting officers' access to contractor performance and integrity information. See 77 Fed. Reg. 42339 (July 18, 2012).

In the OFPP Notice accompanying the *Federal Register* Notice, OFPP relates that there are concerns that certain practices associated with entering information into the Central Contractor Registration (CCR) database and the reporting of unique Data Universal Numbering System (DUNS) numbers are limiting contracting officer access to information that is potentially relevant. Specifically, the CCR User's Guide instructs contractors to maintain a unique DUNS number for each business location or different business address, but the Government does not associate each such DUNS number with a particular entity. Accordingly, the Notice relates that contracting officers cannot determine if there may be relevant information reported under different DUNS numbers assigned to other locations at which the contractor conducts business or under different DUNS numbers assigned to other parts of the contractor entity, such as

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affiliates or subsidiaries, that may not be named in a contract but that share the same management, infrastructure and systems as the contractor uses in doing business with the Government. As a result, OFPP states that it has received recommendations from stakeholders to modify the Government's policies and systems to enhance a contracting officer's ability to obtain information about different locations of an entity as well as its subsidiaries and affiliates.

OFPP further notes that there are other related agency inquiries underway. For example, OFPP notes that the General Services Administration (GSA) is conducting an analysis of capabilities in the commercial market to meet the Government's needs for unique contractor identifiers and has published a "Sources Sought" document on the issue. In addition, the Department of Defense (DOD) is evaluating how it can better understand the corporate structure and affiliation of contractors to support implementation of tools to require identification of contractor relationships and affiliations and held a public meeting to explore the use of Commercial and Government Entity (CAGE) codes to identify entities that might own or control a contractor offeror.

Thus, OFPP is seeking comments on a broad array of topics to explore policies and practices that might improve contracting officer access to information about contractor business integrity and, according to the Notice, allow them to make more informed responsibility determinations. Topics upon which OFPP seeks comments include whether current data collection policies and practices provide acquisition professionals with sufficient information, recommendations for improving such access to information, if necessary, the benefits or drawbacks of modifying the current data collection policies, the best method to obtain additional information, if necessary, and whether the Federal Acquisition Regulation (FAR) Councils should consider a definition of the term "corporate entity."

OFPP's initiative signals that acquisition officials are looking for ways to obtain information not only about a particular contractor offeror location, division, or entity, but about the contractor corporate organization as a whole. Given that the FAR also permits a suspension and debarment authority to extend a suspension, proposed debarment, or debarment to affiliates of a contractor, FAR 9.406-1(b) and 9.407-1(c), this increased focus on the contractor performance and integrity "as a whole" counsels contractors to take a holistic view of their organization to ensure that their entire business is operating ethically and performing in accordance with contract requirements.

Wiley Rein routinely counsels contractors on ethics and compliance matters, suspension and debarment, terminations, and past performance issues. We will continue to monitor these initiatives.