



TO: Ms. Hada Flowers
General Services Administration
Regulatory Secretariat (VPR)

FROM: OMB Watch

RE: Public Comments on FAR Case 2008-027, Federal Awardee Performance and Integrity Information System

DATE: November 6, 2009

OMB Watch exists to increase government transparency and accountability; to ensure sound, equitable regulatory and budgetary processes and policies; and to protect and promote active citizen participation in our democracy. In order to allow citizens to participate in the political and policy process, they need accurate and timely information about the government. It is also important for elected officials, political appointees, and others who are operating the levers of power to have these tools to make improved decisions. It is also important for those officials to know that citizens can track and evaluate their actions and decisions, as this engenders greater effort for efficiency and effectiveness in government and creates a record of accountability.

These comments are submitted in response to Federal Acquisition Regulation (FAR) Case 2008-027, regarding development of the Federal Awardee Performance and Integrity Information System (FAPIIS).¹ OMB Watch is a strong supporter of the new contractor responsibility database, but believes that there are significant drawbacks to the current language of the proposed rules for FAPIIS. OMB Watch believes the recommendations presented below are necessary for FAPIIS to become the contractor performance database originally intended by Congress.

To make FAPIIS a worthwhile and useable database, the government must designate it as the ultimate source for contractor information and supply valuable, relevant data through the new contractor responsibility database. This entails expanding the scope of the information the database collects, and improving upon the quality and presentation of that information. Additionally, the government must provide training and support to contracting officers to utilize FAPIIS, and, finally, permit public access to the database.

Creating a One-Stop Shop for Contractor Performance Data

It is crucial that the government have a streamlined, stable, and easy-to-use contracting data system to implement and manage current reforms and eliminate repeated instances of waste, fraud, and abuse in federal contracting. This requires data be stored in distributed databases that

¹ Federal Register 74, no. 170 (2009), 45579-83, <http://edocket.access.gpo.gov/2009/pdf/E9-21174.pdf>.

are linked together, web-accessible, and fully searchable. The database must also provide information in machine-readable formats.

While the government has recently worked to streamline the performance reporting system for federal government contracting, the current proposal creates yet another separate performance database that combines some new performance information and some information already available in other databases.

The proposed rule requires contracting officers and other government officials to check the new Federal Awardee Performance and Integrity Information System (FAPIIS) database in addition to the Past Performance Information Retrieval System (PPIRS). Moreover, the current draft of the proposed rule requires important information to appear in one database (PPIRS), but not the other (FAPIIS), which further complicates the contractor database landscape and hoists additional data management burdens on an already overburdened and understaffed federal contracting corps.

A distributed databases system would simplify the process of performance data collection and oversight during the contract award process for contracting officers by reducing the dozens of data sources, interfaces, and accounts they must manage in the course of their work to just a single interface and database. This one-stop shop for contracting data would streamline many parts of the data collection process, simplify the job of contracting officials and oversight personnel, and reduce redundant data and government maintenance costs.

There is precedence for this kind of a database setup: USAspending.gov. Though the government created USAspending.gov as a source of contracting spending data for the public, the database provides a model for the creation of FAPIIS. USAspending.gov is intuitive and simple to use with many of the most popular searches and views pre-loaded into the navigation of the site (e.g., top 100 contractors for any given fiscal year). The same design applied to FAPIIS could provide a contracting officer with simplified views of multiple facets of data on any contractor and multiple ways to dig deeper for more specific information.

USAspending.gov also has an open data architecture that allows for sharing and disseminating information in different formats, including Hyper Text Markup Language (HTML), American Standard Code for Information Interchange (ASCII), and Extensible Markup Language (XML), which allows for the development of new data analytic tools, like the IT Dashboard. Similar tools could exponentially increase the usability of FAPIIS, as it would provide contracting officials with multiple ways to dissect and analyze contractor performance information.

Data Quality

While the technology exists to support the creation of this type of distributed contractor performance database, there would still need to be considerable effort to streamline the contractor performance reporting systems. Simply funneling performance data from multiple, disparate systems that use different metrics to evaluate contractor quality to a single location do not solve all the problems with contractor performance systems. Even if a better platform is developed to report and display performance information, the data itself will need extensive revision and standardization before it becomes more useful. A standardized and more robust

contractor performance data collection system needs to be developed.

In 2005, the Office of Federal Procurement Policy lead an interagency group tasked with generating pertinent and timely performance information. The recommendations of this group included standardizing the different contracting ratings used by various agencies; requiring more meaningful past performance information, including terminations for default; developing a centralized questionnaire system for sharing government-wide; and possibly eliminating multiple systems that feed performance information into PPIRS.

Unfortunately, the recommendations of the OFPP interagency group have been adopted slowly, if at all, by the wider procurement community. We strongly urge that the OFPP interagency group recommendations are implemented as quickly as possible, particularly the proposal to create a centralized questionnaire for use across all of the federal government. This will help ensure more relevant and useable data is collected and also a greater use of that data by contracting officials.

A related and perhaps even larger problem will be to establish a reliable, publicly available unique identifier that can allow data from disparate databases to be easily combined and compared. The federal government currently contracts out the work of creating, assigning, and updating unique organizational identifiers to a private company called Dun and Bradstreet (D&B), which originally created the DUNS number system. The main service D&B provides is updating what they call "corporate family trees," or the relationships between parent companies and their subsidiaries. Because of acquisitions, mergers, and the sale of companies, these relationships are always in a state of flux.

Unfortunately, D&B restricts access to their corporate family tree information by redacting the parent company DUNS identifier currently used by the government, most prominently in USAspending.gov. Without open access to this identifier, it will be very difficult for a contracting official to combine information across separate contracting performance databases and match data about the same companies correctly on a continual basis.

As the government progresses to adopt new and emerging information technologies, including working to link disparate data systems together – particularly in contracting databases – there must be reliable, publicly available identifiers. It is essential to properly combining and interpreting contractor performance data from separate data systems in one place.

Scope of Database

Another problem with the proposed rule creating FAPIIS is the ambiguity of the scope of contractors included in the database. The language in the authorizing legislation states the database should include any entity receiving a government contract, but because Congress wrote the provision creating the new performance database into a defense authorization bill, the proposed rule changes imply that the database would only cover contractors that receive a contract from the Department of Defense (DOD).

The proposed rule should clarify this point and in doing so, expand the scope of agencies covered by the FAPIIS to include all federal agencies. While the Defense Department is the largest contracting agency in the federal government, other large contracting agencies include the

Departments of Homeland Security and Energy, and the National Aeronautics and Space Administration. It is reasonable to believe that contracting officials within those other agencies would benefit from access to a database of information on misdeeds and poor performance by any contractor that receives a government contract. Therefore, the government needs to expand the database to require information on all contractors across the federal government.

In addition to expanding the scope of contractors, FAPIIS should be expanded to include additional data points included in the Strengthening Transparency and Accountability in Federal Spending (STAFS) Act of 2008, as introduced by then Sen. Obama and Sen. Coburn (along with Sen. Carper (D-DE) and Sen. McCain (R-AZ)). The language establishing FAPIIS requires many of the same types of performance data to be collected, including information about the quality of work performed over the past five years, data on federal audit disputes and resolutions, award terminations, and suspensions and debarments, and information about tax compliance.

However, the language of the law also makes one small change compared to the STAFS legislation, which requires contractors to report information on civil, criminal, and administrative actions only if they are settled with an admission of fault on the part of the contractor. This loophole allows for a host of pertinent information on contractor performance and behavior to slip past the very people who need to have access to it, simply by having a contractor resolve a case without acknowledgement of fault. This should be changed to ensure all civil, criminal, and administrative proceedings entered into at any level of government appear in the database. Additional information about the status of those proceedings would help contracting officers see the complete picture of contractor performance.

Support & Training of Procurement Personnel

In order to ensure effective use of FAPIIS, the proposed rule must create a system for contracting officers to receive guidance on how to interpret a contractor's record of responsibility.

Although FAPIIS is supposed to represent a new tool in determining contractor responsibility, the regulations provide no guidance on how to evaluate whether a contractor demonstrates "a satisfactory record of integrity and business ethics." It is unrealistic to assume that contracting officers will have the time or ability to sift through millions of compliance records and develop their own system for making decisions about whether past violations are enough to find a contractor not responsible.

What's more, it is likely there will be no consistent standard for these determinations across the government and perhaps even within different contracts being handled by the same contracting officer. Because of these obstacles, the information in the new performance database may be ignored or only receive cursory consultation by contracting officers, instead of forming the basis of rigorous responsibility reviews.

Rather than simply offering a new source of raw compliance data, the draft rule should provide contracting officers meaningful analyses of contractors' responsibility records. It should do so by creating a centralized body that would provide analysis on prospective contractors' records of compliance and the severity of any non-compliance to contracting officers or other officials for use in making responsibility determinations and evaluating past performance.

This type of proposal has been advanced at the state level in California and Massachusetts, both of which have implemented quantified scoring of contractors' responsibility records. A standardized system for making responsibility determinations will create a data system that is actually utilized by treating all contractors fairly and by protecting government personnel from being exposed by accusations of bias against particular contractors.

Public Accessibility

Public access to accurate and timely data about the federal contracting process is essential to efficient and effective implementation and oversight of federal contracting. The government needs to amend the FAR to allow publishing of contractor performance information pursuant to applicable laws so that information about how contractors make use of federal resources is open to the public.

There is no reason to withhold, wholesale, information about how federal contractors are performing from the public. In FY 2008 federal contractors received more than half of all discretionary spending and the public, as well as Congress, has a right to know which contractors are performing well and which are not.

OMB Watch believes disclosure of contractor performance information – with pertinent safeguards to protect sensitive business information and within the scope of applicable laws – would foster better and more extensive competition because both contractors and contracting officers would become more responsive to increased public scrutiny of contracting decisions and processes. This would not only help develop better performance and behavior from contractors, but also help to foster better decisions and behavior from federal contracting officers.

More exposure of these decisions will further ensure the relationship between contractors and their lobbyists and federal employees does not violate federal ethics and conflict of interest regulations. Additionally, opening the procurement process in this way is likely to encourage other contractors to submit more bids if they feel the merits of a bid and past contractor performance, and not personal relationships or influence with contracting officials, determine the winner of a contract. Disclosure of this information will help to level the playing field in contract competitions by helping to ensure more contracts are competed and more contractors submit bids for those competitions.

This is particularly important for much of the new data required for FAPIIS, which will be self-reported by contractors. Given the excessive burdens on federal contracting personnel, there will be no ability for them to check to ensure contractor's reports are comprehensive and complete. By opening the database to public scrutiny, contractors will have greater incentives to completely disclose all performance data and the public will have the ability to help oversee compliance with contractor reporting requirements in those instances when information is not fully disclosed.

Thank you for your consideration of these comments.