

accordance with paragraph (h)(3)(iii) of this section that a fixed-price order is not suitable;

(B) Include a ceiling price in the order that the contractor exceeds at its own risk; and

(C) When the total performance period, including options, is more than three years, the D&F prepared in accordance with this paragraph shall be signed by the contracting officer and approved by the head of the contracting activity prior to the execution of the base period.

(iii) The D&F required by paragraph (h)(3)(ii)(A) of this section shall contain sufficient facts and rationale to justify that a fixed-price order is not suitable. At a minimum, the D&F shall—

(A) Include a description of the market research conducted (see 8.404(c) and 10.002(e));

(B) Establish that it is not possible at the time of placing the order to accurately estimate the extent or duration of the work or anticipate costs with any reasonable degree of confidence;

(C) Establish that the current requirement has been structured to maximize the use of fixed-price orders (e.g., by limiting the value or length of the time-and-materials/labor-hour order; or, establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements; and

(D) Describe actions to maximize the use of fixed-price orders on future acquisitions for the same requirements.

(iv) The contracting officer shall authorize any subsequent change in the order ceiling price only upon a determination, documented in the order file, that it is in the best interest of the ordering activity to change the ceiling price.

■ 3. Amend section 8.405–2 by redesignating paragraph (e) as paragraph (f); and adding a new paragraph (e) to read as follows:

**8.405–2 Ordering procedures for services requiring a statement of work.**

\* \* \* \* \*

(e) *Use of time-and-materials and labor-hour orders for services.* When placing a time-and-materials or labor-hour order for services, see 8.404(h).

\* \* \* \* \*

■ 4. Amend section 8.405–3 by revising paragraphs (b)(2)(ii) and (c)(3) to read as follows:

**8.405–3 Blanket purchase agreements (BPAs).**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) *Type-of-order preference.* The ordering activity shall specify the order type (i.e., firm-fixed price, time-and-materials, or labor-hour) for the services identified in the statement of work. The contracting officer should establish firm-fixed priced orders to the maximum extent practicable. For time-and-materials and labor-hour orders, the contracting officer shall follow the procedures at 8.404(h).

\* \* \* \* \*

(c) \* \* \*

(3) *BPAs for hourly-rate services.* If the BPA is for hourly-rate services, the ordering activity shall develop a statement of work for each order covered by the BPA. Ordering activities should place these orders on a firm-fixed price basis to the maximum extent practicable. For time-and-materials and labor-hour orders, the contracting officer shall follow the procedures at 8.404(h). All orders under the BPA shall specify a price for the performance of the tasks identified in the statement of work.

\* \* \* \* \*

**PART 12—ACQUISITION OF COMMERCIAL ITEMS**

■ 5. Amend section 12.207 by removing from paragraph (b)(2)(ii) “degree of certainty” and adding “degree of confidence” in its place; and adding paragraph (b)(4) to read as follows:

**12.207 Contract type.**

\* \* \* \* \*

(b) \* \* \*

(4) See 8.404(h) for the requirement for determination and findings when using Federal Supply Schedules.

\* \* \* \* \*

**PART 16—TYPES OF CONTRACTS**

■ 6. Revise section 16.201 to read as follows:

**16.201 General.**

(a) Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items, except as provided in 12.207(b).

(b) Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

■ 7. Add section 16.600 to read as follows:

**16.600 Scope.**

Time-and-materials contracts and labor-hour contracts are not fixed-price contracts.

[FR Doc. 2011–33418 Filed 12–30–11; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 9, 12, 42, and 52**

[FAC 2005–55; FAR Case 2010–016; Item V; Docket 2010–0016, Sequence 1]

RIN 9000–AL94

**Federal Acquisition Regulation; Public Access to the Federal Awardee Performance and Integrity Information System**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Supplemental Appropriations Act, 2010. This section requires that the information in the Federal Awardee Performance and Integrity Information System (FAPIS), excluding past performance reviews, shall be made publicly available. The interim rule notified contractors of this new statutory requirement for public access to FAPIS.

**DATES:** *Effective Date:* January 3, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–55, FAR Case 2010–016.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 76 FR 4188 on January 24, 2011, to

implement section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212).

## II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

### A. General Comments

*Comments:* Several respondents made positive comments about the rule granting public access to the FAPIIS. One respondent stated that this is a most welcome process. One respondent stated that making public the data in FAPIIS will benefit contractors with records of business integrity and performance excellence. Another respondent commented that by making this information public, construction subcontractors will soon be able to evaluate the business ethics and quality of potential contractor clients. According to this respondent, this can reduce risk and save taxpayers millions of dollars.

*Response:* Noted.

*Comments:* On the other hand, some of the respondents are concerned about possible risk associated with making FAPIIS data available to the public.

- One respondent noted that the new proposed rule is over-reaching the purpose for which FAPIIS was initiated. According to the respondent, FAPIIS was designed to do one thing and was approved with comments to the effect that Government contractor sensitive information would not be publicized. The Government is now essentially rescinding this, with the exception of not making “past performance information” available. Further, the respondent feared that it is only a matter of time before the Government also allows the public access to Government contractor “past performance information” and expands FAPIIS in other ways.

- Another respondent pointed out that contractors face a number of risks associated with release of information subject to the Freedom of Information Act (FOIA). In particular, this respondent was concerned that by making FAPIIS public, there is an increased likelihood that contractors could be subject to a False Claims Act litigation on the basis of the certification at FAR 52.209–7(c) (that the information entered into FAPIIS is current, accurate, and complete).

*Response:* This change in FAPIIS was mandated by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), enacted by Congress.

With regard to possible litigation under the False Claims Act, as with any FAR contract provision or clause, it is the responsibility of the contractor to ensure that the information being certified is current, accurate, and complete.

The Councils recognize the risk to contractors if the data is made public prior to offering the contractor a chance to review. The rule has been revised to provide to contractors a 7-calendar-day review period to identify information posted in FAPIIS that is covered by a disclosure exemption under the FOIA. The information entered into FAPIIS by the contracting officer or suspension and debarment official will be made publicly available within an additional 7-calendar-day period, unless the contractor asserts to the Government official, who posted the item, that it is protected by a disclosure exemption under FOIA. In such case, the information will be removed by the Government official and the issue resolved in accordance with agency FOIA procedures. If the Government official does not remove the item, it will be automatically released to the public site within 14 calendar days after the review period began.

### B. Make More Data Public

#### 1. Narrow definition of “past performance review”.

*Comment:* One respondent noted that Congress did not define “past performance review” and requested that the Councils define the term very narrowly, in a way that allows all “past performance information” to be made public, except that which proposes a legitimate threat to commercial proprietary or personal privacy interests.

The respondent stated that the Government releases a broad array of past performance information in bid protest decisions, and should do the same with FAPIIS, because this will strengthen efforts to exclude non-responsible contractors.

*Response:* This FAR case uses the definition of “past performance” in FAR part 2 and the discussion of contractor performance information in FAR subpart 42.15, including “past performance evaluations” and “past performance reports” that are entered into the Past Performance Information Retrieval System (PPIRS) as a result of past performance evaluations. This coverage of past performance was in the FAR when Congress passed Public Law

111–212 and section 3010 specifically excludes “past performance reviews.”

The FAR Council published a proposed rule, FAR Case 2009–042, Documenting Contractor Performance, in the **Federal Register** at 76 FR 37704 on June 28, 2011, with public comments due on September 29, 2011, that clarified “past performance information”—see <http://edocket.access.gpo.gov/2011/pdf/2011-16169.pdf>. The language in FAR Case 2009–042 has been updated to reference the part of FAR subpart 42.15 related to “past performance.”

The Councils also note that the Government Accountability Office allows a party to request redaction of “past performance information” prior to the release of a bid protest decision.

#### 2. Release data entered prior to April 15, 2011.

*Comments:* One respondent opposed the new regulation regarding information entered into FAPIIS before April 15, 2011. Specifically, FAR 52.209–9 provides that information posted in FAPIIS prior to April 15, 2011, will not be publicly disclosed, except by request submitted under FOIA. Due to the respondent’s concern about the shortcomings of the FOIA process, the respondent requested that all data posted prior to April 15, 2011, be made available to the public without requiring requests through FOIA.

*Response:* The data posted in FAPIIS prior to April 15, 2011, cannot be made publicly available because the final rule, FAR Case 2008–027, published in the **Federal Register** at 75 FR 14059, effective April 22, 2010, included a statement in paragraph (b)(3) of FAR 52.209–8, Updates of Information Regarding Responsibility Matters, that “(w)ith the exception of the Contractor, only Government personnel and authorized users performing business on behalf of the Government will be able to view the Contractor’s record in the system.” The paragraph continued with the statement that public requests for system information would be handled under the FOIA procedures. After section 3010 was enacted, the Government began to plan the transition to making the data in FAPIIS available to the public. The Councils concluded that it was not appropriate to make information publicly available that the Government contractually committed that it would only release in accordance with the procedures of FOIA.

The Councils took every feasible action to make the maximum amount of data publicly available, without violating the contractual commitments made by the Government in contracts containing FAR 52.209–8.

### C. Protection of Data That Should Not Be Released

#### 1. Include in the FAR specific prohibition against entry of inappropriate data in FAPIIS.

*Comment:* Several respondents were concerned about lack of sufficient guidance in the interim rule on the scope of information to be withheld. Several respondents recommended that the rule should explicitly prohibit the contracting officer from posting information in FAPIIS that is protected by a disclosure exemption under FOIA. According to one respondent, the rule should list the FOIA exemptions, specifically instruct contracting officers to redact information protected by FOIA, and further instruct contracting officers to consult a FOIA expert to resolve questions regarding the applicability of an exemption.

Another respondent requested that the FAR should expressly state that additional information not identified in FAR 9.104–6 cannot be posted in the publicly available iteration of FAPIIS.

*Response:* The Councils have revised the final rule, at FAR 9.105–2(b)(2)(iv) and 52.209–9(c)(1), to prohibit contracting officers from posting information in FAPIIS that is protected by a disclosure exemption under FOIA. To alleviate errors or oversights, the FAR text points to the FOIA exemptions and allows the agencies' FOIA officers to determine the applicable exemption relevant to their situation. It is not customary practice to list all the FOIA exemptions in the FAR, as they are readily available in the Department of Justice Guide to the Freedom of Information Act (2009 Edition) at [http://www.justice.gov/oip/foia\\_guide09.htm](http://www.justice.gov/oip/foia_guide09.htm) or at agencies' FOIA Office Web sites.

#### 2. Allow contractors to review before making public.

*Comment:* Several respondents recommended that the interim rule should be revised to allow contractors to review information that will be posted to FAPIIS for public review prior to its release.

Several respondents stated that privacy rights could be irreparably impaired, and proprietary information could be irreparably lost as a result of release to the public through FAPIIS, even if the data is later removed.

One respondent stated that contractors should be allowed to determine if any of the information might be protected from release under FOIA, thus allowing contractors to request redaction of properly FOIA-protected information.

Another respondent requested time to review the data both to ensure accuracy

and completeness, as well as to ensure that it does not violate the requirement to protect proprietary information. This respondent stated that publicly posting proprietary information or inaccurate or incomplete information is not quantifiable and there is no remedy that can adequately address the contractor's losses.

Another respondent noted that the Councils have recognized the importance of allowing contractors the opportunity to respond to information in FAPIIS before the Government acts on that information. FAR 9.104–6 entitles an offeror to present additional information to demonstrate responsibility after a contracting officer identified "relevant information" in FAPIIS.

Several respondents requested periods varying from 30 days to 60 days to review the information before it is made public, although the respondent that requested 60 days noted that the FAR currently allows the contractor only 30 days to respond to past performance information in PPIRS.

Another respondent believed that this approach should not require major changes to the system. The respondent suggested that when the information is first entered into FAPIIS, it could be quarantined in the "non-public" iteration of FAPIIS, similar to past performance information.

*Response:* The Councils have revised the final rule, at FAR 9.105–2(b)(2) and 52.209(c), to allow contractors 7 calendar days to review information posted to FAPIIS before that information is made available to the public. A notice is sent to the contractor whenever information is entered into the system about that contractor. If contractors assert to the Government, within 7 calendar days, that information has been posted that is covered by a disclosure exemption under FOIA, the information will be removed while the agency resolves the issue in accordance with agency FOIA procedures.

#### 3. Allow submission of two versions—redacted for public and unredacted for Government.

*Comment:* One respondent recommended that two versions of the information should be submitted—a complete version for the Government, and a redacted version for the public.

*Response:* The statute requires that all information in FAPIIS, other than information on "past performance reviews," must be made available to the public. Therefore, submission of two different versions would not meet the statutory requirement.

#### 4. Include systems protections so that past performance data is not inadvertently made public.

*Comment:* One respondent recommended that the FAR Council should coordinate with the FAPIIS Program Manager to take all the appropriate steps from a system architecture/controls standpoint to preclude the public disclosure (advertent or inadvertent) of "past performance information." According to the respondent, this should include systemic protections that make it impossible to post "past performance information" to the publicly-available iteration of FAPIIS.

*Response:* The structure of FAPIIS ensures that "past performance reviews" (as described in FAR subpart 42.15) will not be inadvertently released. Past performance information is stored in a completely separate module from the other information in FAPIIS. There is no connection between the past performance module and the public Web site for FAPIIS. This assurance was provided by the Contractor Performance Assessment Reporting System/PPIRS Program Manager and the FAPIIS Program Manager.

### D. Ensure That Data Is Timely and Accurate

#### 1. Timeliness.

*Comment:* One respondent recommended that the FAR should assign responsibility to a particular Government official to timely remove stale information from FAPIIS.

*Response:* All information in FAPIIS is marked with the date of the occurrence. In response to search requests, FAPIIS only provides access to information that is dated within five years of the date of the request.

#### 2. Accuracy.

*Comment:* One respondent stated that the FAR should require contracting officers and suspension and debarment officials (SDOs) to validate the accuracy of information before inputting into FAPIIS.

*Response:* The procedures at FAR 9.406–3(f) and 9.407–3(e) already require that the SDOs are responsible for the accuracy of the documentation entered into FAPIIS regarding an administrative agreement to resolve a debarment or suspension proceeding. The Councils have revised the rule at FAR 9.105–2(b)(2)(ii) and 42.1503(f)(1) to make the contracting officer/agency responsible for the accuracy of agency data entered into FAPIIS.

### E. Technical Recommendations

#### 1. Include FAR 52.209–9 in the list at FAR 52.212–5.

*Comment:* Two respondents suggested that FAR 52.209–9, Updates to Publicly Available Information Regarding Responsibility Matters, should be added to the list of clauses incorporated as part of FAR 52.212–5 (at paragraph (b)) for FAR part 12 commercial item acquisitions. Another respondent noted that, if the clause is not included in FAR 52.212–5, it may be inadvertently omitted.

*Response:* The change has been made in the final rule by listing FAR 52.209–9 under FAR 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

#### 2. Allow incorporation of clause by reference.

*Comment:* A respondent noted that the FAR matrix now requires that both FAR 52.209–9 and its Alternate be incorporated in full text. The respondent commented that both the clause and its alternate should be available for incorporation into contracts by reference.

*Response:* The change has been incorporated into the FAR provision and clause matrix under FAR subpart 52.3, Provision and Clause Matrix, available for review at [https://www.acquisition.gov/far/current/html/52\\_300.html#wp1077611](https://www.acquisition.gov/far/current/html/52_300.html#wp1077611).

#### 3. Designate contractor point of contact to receive notification of entry into FAPIIS.

*Comment:* One respondent stated that FAR 52.209–9(b)(1) does not specify who in the contractor's organization will be notified when new information is posted. The respondent recommended that the FAR should designate the contractor's Central Contractor Registration (CCR) point of contact as the person who will receive all notification related to the Government posting new information on the contractor's record.

*Response:* If the contractor specifies a past performance point of contact in its CCR record, then the notification goes to the specified point of contact. At the contractor's discretion, this past performance point of contact's email address can be a single individual or a common email address that multiple individuals in the company can access. If the contractor does not specify a past performance point of contact, then the notification is sent to the contractor's Government business point of contact, which is a mandatory field in CCR.

#### 4. Allow larger field in FAPIIS for contractor comments.

*Comment:* One respondent requested a larger field to enter contractor comments.

*Response:* The field currently allows 1000 characters per entry. As a result of the public comments, the FAPIIS Program Manager doubled the available characters to 2000 and this change is effective now.

### F. Requests for Further Rulemaking (Outside the Scope of This Rule)

#### 1. Make training and guidance subject to rulemaking.

*Comment:* Two respondents were concerned about the statements in the preamble to the final FAPIIS rule under FAR Case 2008–027 that policies and guidance would be developed to ensure the timely and accurate input of information into the FAPIIS database. Further, the Councils would work with the FAPIIS Program Manager, the Federal Acquisition Institute, and the Defense Acquisition University to develop guidance for contracting officials and suspension and debarment officials. The respondent was concerned that training, policies, and guidance to contracting officers and SDOs will, in effect, provide further direction regarding what constitutes proper input, accuracy, and timeliness. The respondent believed that this guidance will supplement and clarify FAPIIS data requirements. Therefore, according to the respondent, it should be published in the **Federal Register** so that all impacted parties may provide input.

Another respondent was also concerned that the clear direction to the contracting officer should be included in the FAR, rather than in subsequent training and informal guidance. This respondent stated that the final FAPIIS rule did not go far enough, and recommended additional changes to the FAR to clarify what information is relevant to responsibility determinations and past performance evaluations. The respondent also wanted the FAR to make clear that not all information in FAPIIS will be relevant to a contractor's past performance.

*Response:* The FAR includes direction to the contracting officer about the FAPIIS requirement and relevancy of that information. The FAPIIS training will not include new policies, but rather procedures on how to comply with existing FAR policies and guidance. The current FAPIIS training overview is available at <http://www.fai.gov/FAPIIS/trailer/module.htm> for the public to view. Follow-on training will also be publicly available later this year.

#### 2. Provide more regulation on contractor reporting obligations.

*Comment:* One respondent had comments that relate to clear definition of "reportable outcomes." This respondent provided a list of items that should be excluded from the database and a list of items that should be reportable.

Another respondent contended that the reporting obligations of the FAPIIS regulations are unclear, addressing the need for guidance relating to clarifying "the Offeror, and/or any of its principals," "within the last five years," "in connection with a Federal contract or grant," "administrative proceeding," and "consent or compromise."

*Response:* This FAR case was established to implement section 3010, which required information in FAPIIS, excluding "past performance reviews," to be publicly available.

Any further definition of reportable outcomes or guidance on reporting requirements would require publication of a new rulemaking for public comment.

#### 3. Get public comments before adding any new data elements to FAPIIS or change databases that feed into FAPIIS.

*Comment:* One respondent wanted to ensure that the Councils will get public comments before adding any new data elements to FAPIIS or changing databases that feed into FAPIIS.

*Response:* Addition of new data elements to FAPIIS would require further rulemaking for public comment.

#### 4. Update to FAPIIS.

*Comment:* One respondent stated that the Councils should clarify the requirement to update FAPIIS information on a semi-annual basis.

*Response:* Additional clarification is not necessary. FAR clause 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters, tells contractors that they are required to update the information in the FAPIIS on a semi-annual basis, throughout the life of the contract.

### G. Deadline

#### 1. Display pilot run before deadline.

*Comment:* One respondent requested to see a pilot run of the FAPIIS format and the program before it is officially "rolled out."

*Response:* The statute did not provide for a delay in implementation; therefore, FAPIIS is now available to the public at <https://fapiis.ppirs.gov>.

#### 2. Postpone deadline until all issues resolved.

*Comment:* Two respondents requested that the deadline of April 15, 2011, be postponed until certain issues can be resolved (see issues identified in section II.F. of this preamble). Both respondents pointed out that Congress did not

mandate that FAPIIS be made available to the public on a particular date. One respondent concluded that it is implicit that Congress intended for the Councils to take the time necessary to “get it right.”

*Response:* The statute did not provide for any delay in implementation. In the interest of transparency in Government contracting, the Councils implemented the FAR changes and system changes to provide direction to Government and contractor personnel in a timely manner to align with the statute.

### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule just notifies the contractors that the public will have access to the database. The rule does not impose any additional burdens on small entities. The interim rule made editorial changes to FAR 52.209–7 and transferred the information collection requirement from FAR 52.209–8 to a new clause at FAR 52.209–9.

In response to public comments, the final rule allows a 14-calendar-day delay before making the data available to the public. Contractors have 7 calendar days within those 14 calendar days to assert a disclosure exemption under the Freedom of Information Act. In addition, the FAPIIS system has been modified to allow more space for contractor comments. The rule does not impose any new requirements on small businesses.

Therefore, a Final Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA did not receive any comments relating to impact on small entities.

### V. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Parts 1, 9, 12, 42, and 52

Government procurement.

Dated: December 21, 2011.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

### Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR parts 1, 9, 12, 42, and 52, which was published in the **Federal Register** at 76 FR 4188 on January 24, 2011, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 1, 9, 12, 42, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### PART 9—CONTRACTOR QUALIFICATIONS

■ 2. Amend section 9.104–7 by adding paragraph (c) to read as follows:

#### 9.104–7 Solicitation provisions and contract clauses.

\* \* \* \* \*

(c) The contracting officer shall insert the clause at 52.209–9, Updates of Publicly Available Information Regarding Responsibility Matters—

(1) In solicitations where the resultant contract value is expected to exceed \$500,000; and

(2) In contracts in which the offeror checked “has” in paragraph (b) of the provision at 52.209–7.

\* \* \* \* \*

■ 3. Amend section 9.105–2 by revising paragraph (b)(2)(ii); and adding paragraphs (b)(2)(iii) and (b)(2)(iv) to read as follows:

#### 9.105–2 Determinations and documentation.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The contracting officer is responsible for the timely submission,

within 3 working days, and sufficiency, and accuracy of the documentation regarding the nonresponsibility determination.

(iii) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(A) The non-public segment, into which Government officials and contractors post information, which can only be viewed by—

(1) Government personnel and authorized users performing business on behalf of the Government; or

(2) An offeror or contractor, when viewing data on itself; and

(B) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(1) Past performance reviews required by subpart 42.15;

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (b)(2)(iv) of this section.

(iv) The contracting officer, or any other Government official, shall not post any information in the non-public segment of FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act. If the contractor asserts within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information Act procedures, prior to reposting the releasable information.

■ 4. Amend section 9.406–3 by adding paragraph (f)(3) to read as follows:

#### 9.406–3 Procedures.

\* \* \* \* \*

(f) \* \* \*

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the debarring official shall follow the procedures at 9.105–2(b)(2)(iv).

■ 5. Amend section 9.407–3 by adding paragraph (e)(3) to read as follows:

9.407-3 Procedures.

\* \* \* \* \*

(e) \* \* \*

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the suspending official shall follow the procedures at 9.105-2(b)(2)(iv).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

■ 6. Amend section 12.301 by removing paragraph (d)(4).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 7. Amend section 42.1503 by revising the introductory text of paragraph (f)(1); and adding paragraph (f)(3) to read as follows:

42.1503 Procedures.

\* \* \* \* \*

(f) \* \* \*

(1) Agencies shall ensure information is accurately reported in the FAPIIS module of PPIRS within 3 calendar days after a contracting officer—

\* \* \* \* \*

(3) With regard to information that may be covered by a disclosure exemption under the Freedom of Information Act, the contracting officer shall follow the procedures at 9.105-2(b)(2)(iv).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.209-9 by revising the date of the clause and paragraph (b); and adding paragraphs (c) and (d) to read as follows:

52.209-9 Updates of Publicly Available Information Regarding Responsibility Matters.

\* \* \* \* \*

Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012)

\* \* \* \* \*

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

■ 9. Amend section 52.212-5 by revising the date of the clause; and redesignating paragraphs (b)(7) through (b)(50) as (b)(8) through (b)(51), respectively; and adding new (b)(7) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

\* \* \* \* \*

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JAN 2012)

\* \* \* \* \*

(b) \* \* \*

(7) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JAN 2012) (41 U.S.C. 2313).

\* \* \* \* \*

[FR Doc. 2011-33420 Filed 12-30-11; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2005-55; FAR Case 2010-005; Item VI; Docket 2010-0005, Sequence 1]

RIN 9000-AM00

Federal Acquisition Regulation; Updated Financial Accounting Standards Board Accounting References

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update references to authoritative accounting standards owing to the Financial Accounting Standards Board's Accounting Standards Codification of Generally Accepted Accounting Principles.

DATES: Effective Date: February 2, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501-3221, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-55, FAR Case 2010-005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the Federal Register at 76 FR 8989 on February 16, 2011, to update the references based upon the Financial Accounting Standards Board's (FASB) Statement Number 168 which stated that the FASB Accounting Standards Codification (ASC) would become the source of authoritative U.S. Generally Accepted Accounting Principles (GAAP) recognized by the FASB to be applied to nongovernmental entities. The revisions are intended to have no effect other than to simply replace the superseded references with