

**Item IV—Trade Agreements Thresholds (FAR Case 2013–021)**

This final rule amends the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: December 19, 2013.

**William Clark,**

*Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.*

Federal Acquisition Circular (FAC) 2005–72 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–72 is effective December 31, 2013 except for items I and II, which are effective January 30, 2014.

Dated: December 20, 2013.

**Richard Ginman,**

*Director, Defense Procurement and Acquisition Policy.*

Dated: December 20, 2013.

**Houston Taylor,**

*Acting Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: December 18, 2013.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

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**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1, 4, 8, 17, 37, and 52**

[FAC 2005–72; FAR Case 2010–010; Item I; Docket 2010–0010, Sequence 1]

RIN 9000–AM06

**Federal Acquisition Regulation; Service Contracts Reporting Requirements**

**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 implement a section of the Consolidated Appropriations Act, 2010. This final rule amends the FAR to require service contractors for executive agencies, except where DoD has fully funded the contract or order, to submit information annually in support of agency-level inventories for service contracts.

**DATES:** *Effective:* January 30, 2014.

*Applicability:* The changes in this rule apply to solicitations issued and contracts awarded on or after January 30, 2014. Contracting officers will modify existing indefinite-delivery contracts, on a bilateral basis in accordance with FAR 1.108(d)(3), within six months of the effective date of the final rule, if the remaining period of performance extends beyond October 1, 2013, and \$2.5 million or more remains to be obligated.

**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 2005–72, FAR Case 2010–010.

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) requires executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. To allow review by the agency and any necessary correction by the contractor, Office of Federal Procurement Policy (OFPP) agreed to change the deadline for agencies to submit a service contract inventory to OMB from December 30 to January 15, even though section 743 of P.L. 111–117 establishes December. DoD is exempt from this reporting requirement because 10 U.S.C. 2462 and 10 U.S.C. 2330a(c) already require DoD to develop an annual service contract inventory.

Specifically, FAR 4.1703 establishes service contractor reporting requirements based on type of contract and dollar amount as stated below:

- Contract types (*e.g.*, cost-reimbursement, time-and-materials, and labor-hour contracts), which already require contractors to track labor hours closely in order to invoice the

Government, will have lower dollar thresholds than fixed-price contracts. Contractors will now be required to report on all cost-reimbursement, time-and-materials, and labor-hour contracts and orders above the simplified acquisition threshold (SAT).

- Contractors will be required to report on new fixed-price definite-delivery contracts at or above the following—

- \$2.5 million in Fiscal Year 2014;
- 1 million in Fiscal Year 2015; and
- \$500,000 from Fiscal Year 2016 onwards.

- For indefinite-delivery contracts including, but not limited to, indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition contracts (GWACs), and multi-agency contracts, reporting requirements will be determined based on the expected dollar amount and type of the orders issued under the contracts.

- First-tier subcontracts for services will be reported using the phase-in thresholds.

- Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as—

(i) A performance period that extends beyond October 1, 2013; and

(ii) \$2.5 million or more remaining to be obligated to the indefinite-delivery contract.

The threshold for existing indefinite-delivery contracts is consistent with the threshold for new fixed-price contracts. Agencies placing orders on these existing contracts after the effective date of this final rule will be required to report this information if the order meets the thresholds established in FAR 4.1703 (*e.g.*, above the SAT for cost-reimbursement, time-and-materials, and labor-hour contracts, and fixed-price contracts at or above \$2.5 million in Fiscal Year 2014 and phased-in thresholds thereafter).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 22070 on April 20, 2011, to implement section 743(a). The section of the preamble discussing coverage for existing contracts was included in the correction published in the **Federal Register** at 76 FR 24443 on May 2, 2011.

On June 20, 2011, the period for public comment ended. Twelve respondents submitted comments on the proposed rule.

**II. Determinations**

The Federal Acquisition Regulatory (FAR) Council has made the following

determination with respect to the rule's applicability to contracts for the acquisition of commercial items.

### Applicability to Contracts for the Acquisition of Commercial Items

Pursuant to 41 U.S.C. § 1906, the FAR is required to include a list of provisions of law that are inapplicable to acquisitions of commercial items (other than acquisitions of commercially available off-the-shelf items, which are addressed in 41 U.S.C. § 1907). Recently enacted laws that set forth policies, procedures, requirements, or restrictions for the acquisition of property or services by the Federal Government shall be included on the list, unless the law—

1. Provides for criminal or civil penalties;
2. Specifically refers to 41 U.S.C. § 1906 and states that the law applies to acquisitions of commercial items; or
3. Is applicable because the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt acquisitions of commercial items from this law.

Given the requirements of section 743(a) of Division C of the Consolidated Appropriations Act, 2010, for service contract reporting, the FAR Council has determined the rule should apply to contracts for the acquisition of commercial items, as defined at FAR 2.101, in order to fulfill the intended result of the statutory requirement for increased visibility of contracted services to determine whether the agency has the right balance of contractor and in-house resources needed to accomplish its mission.

### III. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule.

The following changes from the proposed rule were made in the final rule:

- The subpart has been renumbered from FAR 4.16 to 4.17.
- The definition of “first-tier subcontract” has been modified slightly to conform to the definition at FAR 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards. In addition, the definition of “service contract” has been deleted because the cross reference to the definition of service contract at FAR 37.101, did not include construction services, to which this rule is applicable.
- FAR 4.1702 is modified to add “as specified in 4.1705.” This is done to clarify that the clauses at FAR 52.204–14 and 52.204–15 are not applicable to actions entirely funded by DoD.
- The thresholds in FAR 4.1703(a)(2)(ii) are updated to begin in

Fiscal Year 2014. This change results from internal review and the anticipated publication date for the final rule. The only existing contracts that are covered by this rule are existing indefinite-delivery contracts if sufficient time and value remain on the base contract. The stipulation “for services” was added at FAR 4.1703(a)(1) and 4.1703(a)(3) to clarify that first-tier subcontract for services reporting is only required for subcontractors that are primarily providing services.

- FAR 4.1703(a)(3) was changed from the proposed rule to clarify that first-tier subcontract reporting thresholds are the same as the prime contract reporting thresholds in 4.1703(a)(2)(i) and 4.1703(a)(2)(ii).

- FAR 4.1703(b). The responsibility of the agency for reviewing the contractor reported data was changed as a result of internal review to provide for the respective agency to review the contractor's report for reasonableness and consistency and to advise the contractor of possible errors. The contractor is to revise the report, unless the contractor believes the report was accurate, and so advises the agency. These changes have been incorporated into the clauses that are included within this rule.

- FAR 4.1705 is modified to add “for actions entirely funded by DoD or”. This is done to clarify that the clauses at FAR 52.204–14 and 52.204–15 are not applicable to DoD funded actions.

- A definition of “first-tier subcontract” has been added to FAR 52.204–14 and 52.204–15.

- FAR 52.204–14(c) is renumbered as (d) and revised to remove “[to] the online Service Contract Reporting Portal and will be publicly available at [www.acquisition.gov](http://www.acquisition.gov)”; information will be found and reporting will be made at [www.sam.gov](http://www.sam.gov) (See section 3.10 of the SAM User Guide at [https://www.sam.gov/sam/SAM\\_Guide/SAM\\_User\\_Guide.htm](https://www.sam.gov/sam/SAM_Guide/SAM_User_Guide.htm). The reported information will be publicly available as required by section 743.

- FAR 52.204–14(d)(1)(i) is renumbered, and revised to change “Subcontractor DUNS number, or if DUNS number is unavailable, subcontractor name” to “subcontract number (including subcontractor name and DUNS number)” because contracts at this threshold already require a DUNS number.

- The stipulation “providing services” was added at FAR 52.204–14(f)(1) and 52.204–15(f)(1) to clarify that first-tier subcontract reporting is only required for subcontractors that are primarily providing services.

- FAR 52.204–14, Alternate I is changed to “52.204–15, Service Contract Reporting Requirements for Indefinite Delivery Contracts”. References in FAR subpart 4.17 were conformed. Paragraph (c) from FAR 52.204–14, now renumbered as (d), is added to the new clause at 52.204–15. FAR 52.204–14(d)(1)(i) is renumbered as (f)(1)(i), and the words “Subcontractor DUNS number, or if DUNS number is unavailable, subcontract name” are changed to “subcontract number (including subcontractor name and DUNS number)” because contracts at this threshold already require a DUNS number.

- FAR 52.212–5 is added for applicability to commercial items for contractor reporting requirements.

A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

#### A. Application to Fixed-Price Performance-Based Services

*Comments:* Three respondents commented that this requirement could cause contractors to change their internal accounting processes for firm-fixed-price contracts. Another respondent gave the example that in test scenarios, labor hours may not be easily assigned, since analysts work on batches of samples at a time, which may include samples for both Government and non-Governmental contracts. This respondent recommended clarifying whether the threshold applies to fixed unit prices on IDIQ services. Similarly, another respondent commented that the reporting does not take into account how software and maintenance fixed-price contract costs and labor can significantly fluctuate each year or how this type of labor can be comingled between government and non-government work on a contract. Lastly, another respondent stated that limiting the definition of “service contracts” to the FAR part 37 definition would exclude reporting and evaluation of billions of dollars of services that are included in supply, maintenance and repair, and construction contracts.

*Response:* Section 743(a) requires agencies to compile service contract inventories for all service contracts, regardless of contract type. Therefore, this rule requires contractors to submit the information for fixed price contracts as well as for other contract types. To alleviate the reporting burden, the case establishes higher reporting thresholds for fixed-price contracts, where the information may not be as readily available. The same thresholds apply at the contract and task order level. The

rule does not mandate how contractors track labor hours, but simply requires the reporting of aggregated number of hours for each year of contract performance. The statute specifies that reporting is required for service contracts.

*Comment:* One respondent stated that “requiring the disclosure of direct labor hours expended on the services performed is extremely concerning, particularly in a Firm Fixed Price scenario. Pricing data is exceptionally sensitive information . . . and is routinely protected under Exemption 4 under FOIA”.

*Response:* The statute requires the agency to report the number of contractor employees expressed as full-time equivalents for direct labor, compensated under the contract. To relieve burden on the contractor, the clause requires direct labor hours to be reported rather than the full-time equivalent. The statute also requires the reporting and that the agency’s service contract inventory be publicly available. The number of hours is the total for the entire fiscal year and is not broken down by type of employee.

#### *B. Type of Information Collected*

*Comments:* One respondent commented that this rule would not provide agency officials with enough information to determine whether services are excessively costly and should be insourced, so more information should be required from the contractor. Five other respondents stated that the rule places additional burden on contractors, especially considering information is already reported in contractor proposals or invoices. One of these respondents recommended deleting FAR 52.204–14(b)(2) from the clause because the information is already collected.

*Response:* This rule requires the collection of information that will supplement existing data available to the Government in order to fulfill the requirements mandated in section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). The statute requires reporting of incurred direct labor hours, not proposal information. While reporting of direct labor hours currently may be required for some payment processes, the information collected pursuant to this requirement is not required at the same level of detail for all contract types or submitted in the same format for all agencies. In other words, this rule requires contractors to report information that is not readily available to the Government.

#### *C. Small Business Impact*

*Comments:* Two respondents stated that the rule would impose additional reporting burden on small businesses, thereby increasing overhead rates and eventually passing the cost of implementation on to the Government.

*Response:* The rule attempts to minimize burden on small businesses by implementing contract value thresholds and phasing in the reporting requirement.

#### *D. Increased Cost for Contractors and the Government*

*Comment:* Two respondents questioned whether the value of this information will be worth the additional contract costs associated with collecting the information. Another respondent stated that even though DoD is exempt from section 743, it is required to compile service contract inventories, and DoD should be covered by this rule to avoid burdening contractors with separate reporting processes, definitions, and locations when they provide identical information for civilian and DoD contracts.

*Response:* This rule implements the requirements of section 743(a) of Division C of the Consolidated Appropriations Act, 2010, (Pub. L. 111–117), which specifically excludes DoD.

#### *E. Subcontractor Data*

*Comments:* Three respondents commented on subcontractor data. One respondent questioned why the data needs to be broken down to the subcontractor level, since the Government appears to be interested in the total dollars being expended for all non-Government performed work, not whether it is prime contractors or subcontractors. Another respondent stated that the exclusion of lower-tier subcontracts is an improper interpretation of the statute, which requires the reporting of all subcontractor employees, not just first-tier subcontractor employees. A third respondent recommended changing the word “subcontract” to “subcontractor” in FAR 52.204–14, Alternate I paragraph (d)(1)(i) since the work is being performed by subcontractors under the subcontract.

*Response:* Section 743(a) requires the reporting of both contractor and subcontractor labor hours, and the rule limits the reporting to first-tier subcontracts for services to alleviate the burden on contractors. The recommendation to change the text of the clauses to state ‘subcontractor name’ instead of ‘subcontract name’ has been incorporated into the final rule.

#### *F. Reporting Direct Labor Hours Versus Full-Time Equivalent (FTE)*

*Comments:* Two respondents questioned why direct labor hours are being collected instead of FTE. One of these respondents also stated that the rule should include a requirement for contractors to report the work location for each FTE. In addition, this respondent stated that the total dollar amount invoiced for services performed during the previous fiscal year may not always represent the number of direct labor hours expended on services performed during the previous fiscal years, so the Councils should consider changing the requirement to direct labor hours invoiced, instead of number of direct labor hours expended.

*Response:* The rule requires contractors to submit an aggregated number of hours for each year of contract performance. The Government will calculate FTEs based on the number of labor hours submitted, so contractors should not submit FTE information. The service contract inventories are utilizing the place of performance data currently available in the Federal Procurement Data System (FPDS), so this rule is not requiring contractors to submit that information. The rule will continue to capture direct labor hours expended, as required by section 743(a).

#### *G. Reporting Time-Frame*

*Comments:* Two respondents stated that reporting within 30-days after the end of the fiscal year is too tight a reporting timeframe.

*Response:* Section 743(a) requires agencies submit inventories to OMB by December 30 annually. In order for agencies to be able to compile inventories and provide for a review and possible correction, contractors need to submit this information by the end of October. The Councils have determined that this reporting timeframe is adequate, but have modified the rule to allow up to November 30th of each year for review by the agency and any necessary corrections by the contractor.

#### *H. Reporting Thresholds*

*Comments:* Two respondents commented on reporting thresholds. One respondent recommends implementing the same thresholds for all contract types by the end of FY 2014 and aligning the thresholds with OFPP guidance on Service Contract Inventories. Another respondent commented that unsupported reporting thresholds were included in the proposed rule, which do not exist in

section 743 and will exclude billions of dollars in service contracts annually.

*Response:* The rule minimizes the burden on contractors, especially for contract types that do not typically require this type of detailed reporting of labor hours, by implementing contract value thresholds and the phase-in of the reporting requirement. The thresholds for determining if a contract or order should include this clause have been revised to reflect the thresholds beginning as of FY 2014, since that is now when the reporting will begin.

#### *I. Generic Data Universal Numbering System (DUNS)*

*Comment:* One respondent cited to the proposed rule, which stated that contracts reported using the generic DUNS number allowed at FAR 4.605(c) will interfere with the contractor's ability to comply with this reporting requirement, because the data will not pre-populate from FPDS. The respondent recommended adding an Alternate II to FAR 52.204-14 for contractors using the generic DUNS number that identifies the additional data these contractors will have to provide manually.

*Response:* Contractors awarded a contract with a generic DUNS number will not be able to report information. Contracting officers should only use generic DUNS numbers under the very specific conditions in FAR 4.605(c).

#### *J. OFPP Guidance*

*Comments:* Two respondents raised issues that related to OFPP guidance. One respondent recommended consolidating the reporting requirements of section 743(a) and section 736 with OFPP guidance documents to simplify the reporting process for contractors and agencies. Another respondent stated that the rule does not establish whether functions performed by contractors will be determined based on Office of Personnel Management (OPM) job series codes, the GSA Product and Service Codes (PSC) Manual, or FAIR inventory function codes. The rule should adopt a services classification system that reflects the broad spectrum of occupational services recognized in the real world and that tailors that system to be compatible with the OPM classification system so that compensation standards can be compared across comparable service clusters.

*Response:* OFPP guidance supplements this rule, which implements section 743(a). This rule requires contractors to submit information that will supplement existing contract information, so it does

not create a new classification system for services.

#### *K. Failure To Report*

*Comment:* One respondent recommended adding the following language to FAR 52.204-14(d)(2): "The Contractor shall advise the subcontractor that the information reported, or the failure to report, will be made available to the public." The respondent also recommended adding the following to FAR 52.204-14(b)(4) (Alternate I): "Data reported by subcontractors under paragraph (d) of this clause, and any failure of subcontractors to submit reports as required".

*Response:* In the event that a contractor fails to comply with this reporting requirement, the contracting officer is required to document the failure in the contractor's performance evaluation (see FAR 4.1704 "Contracting officer responsibilities"). This is the most appropriate enforcement tool for dealing with noncompliance.

#### *L. Interagency Acquisitions*

*Comment:* One respondent stated that the proposed FAR language is unclear as to whether the applicability is based on which agency is issuing the contract versus which agency is funding the action, especially if a contract is supporting multiple agencies.

*Response:* Applicability is based on the funding agency. FAR 4.1705 is modified to add "for actions entirely funded by DoD or". This is done to clarify that the clauses are not applicable to DoD-funded actions.

#### *M. Definition of "Classified Contracts"*

*Comment:* One respondent questioned whether the use of the term "classified contract" in proposed FAR 4.1705 references the definition of the same from FAR part 2.

*Response:* Yes. FAR 1.108, "FAR Conventions" states that the definitions of words and terms used in part 2 apply throughout the FAR, unless specifically defined in another part, subpart, section, provision, or clause.

#### *N. Effect on Competition*

*Comment:* One respondent stated that the rule will create a significant barrier for commercial companies to participate in the Government market.

*Response:* While this rule might be one factor of a commercial contractor choosing not to participate in the Government market, the Councils have determined the rule's overall impact to be minimal, and do not consider that it

will have a significant effect on such participation.

#### *O. Public Burden*

*Comment:* One respondent questioned the methodology used to calculate the hours needed to prepare responses and considered the reporting requirement estimates in the Paperwork Reduction Act submission to be grossly underestimated.

*Response:* Two hours is the estimated time to report per contract, one hour to calculate the data and one hour to enter the data at [www.sam.gov](http://www.sam.gov). The burden estimate is based on the average burden experienced under all contract types, including cost-reimbursement, time-and-materials, and labor-hour contracts, which already require contractors to track labor hours closely in order to invoice the Government, and will therefore require less additional effort to meet this reporting requirement. This new paperwork burden is approved under OMB control number 9000-0179.

#### *P. Existing Contracts*

*Comment:* One respondent stated that the proposed rule contains no requirement to modify existing contracts or task orders to require reporting, meaning that more than 10 years could pass before these provisions are applicable to many contracts or task orders. The statute clearly states that the reporting requirements become effective at the exercise of an option year.

*Response:* The May 2, 2011, correction to the **Federal Register** at 76 FR 24443 states applicability to existing contracts in the preamble.

"Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as—

1. A performance period that extends beyond October 1, 2012; and
2. \$5 million or more remaining to be obligated to the indefinite-delivery contract."

This is repeated in the final rule, in the **DATES** section, updated to show the year as 2013 and the dollar threshold as \$2.5 million.

#### **IV. 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.

#### V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule amends the FAR to implement section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117). Section 743(a) requires agencies covered by the Federal Activities Inventory Reform (FAIR) Act, except for the Department of Defense (DoD), to submit annual agency inventories of their service contracts. DoD is exempt because DoD was already required to do annual service contract reporting under 10 U.S.C. 2462 and 10 U.S.C. 2330a(c). Section 743(a) calls for agencies to develop annually an inventory that reports, for each service contract, the following:

(1) A description of the services purchased by the executive agency and the role the services played in achieving objectives, regardless of whether such a purchase was made through a contract or task order.

(2) The organizational component of the executive agency administering the contract, and the organizational component of the agency whose requirements are being met through contractor performance of the service.

(3) The total dollar amount obligated for services under the contract and the funding source for the contract.

(4) The total dollar amount invoiced for services under the contract.

(5) The contract type and date of award.

(6) The name of the contractor and place of performance.

(7) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract.

(8) Whether the contract is a personal services contract.

(9) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

DoD, GSA, and NASA attempted to minimize the information-collection requirement for contractors by requiring agencies to obtain as much of the data as possible from existing sources, such as the FPDS. However, certain minimum data must be collected from service contractors in order for agencies to meet the annual statutory service contract inventory requirement.

Therefore, contractors will be required to report annually the following information on each service contract or order in accordance with the thresholds established, excluding actions entirely funded by DoD:

(1) Contract number and, as applicable, task order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract or order.

(3) The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) The number of first-tier subcontractor direct labor hours expended on the services performed during the previous Government fiscal year.

In order to invoice the Government, contractors track labor hours worked for cost-reimbursement, time-and-materials and labor-hour contracts. Therefore, a lower reporting threshold was established for these types of contracts. Contractors are not required to track or report labor hour information for fixed price contracts, so higher thresholds and a phased-in implementation schedule were developed to minimize the burden for contractors.

In addition, the final rule will require service contractor reporting to include first-tier subcontracts for services only. The same reporting thresholds will apply to both first-tier subcontracts and prime contracts. First-tier subcontract reporting of direct labor hours and amount invoiced will be done electronically by the prime contractor. Further lessening the reporting requirement, service contractors will not be asked to convert the number of direct labor hours into full-time equivalents.

Two comments were received stating that there would be an impact on small business, in addition to large businesses, but the two respondents did not include specific supporting data.

Each contractor will be required to report once annually on the services provided during the previous Government fiscal year. The information will be input to a Government-managed data system. There is no hard-copy reporting required, nor is there an agency certification or approval requirement.

When providing a proper invoice to the Government for cost-reimbursement, time-and-materials, and labor-hour contracts, the information on the number of direct labor hours worked is already compiled by contractors, so the information collected should be minimal for these types of contracts. Currently, the information on the number of employee hours worked must already be compiled by prime and subcontractors in order to (a) pay employees and (b) properly invoice for services provided.

There are no additional professional skills necessary in this area on the part of small businesses. If the small business has the personnel needed to account for and invoice the Government in compliance with preexisting financial data regulations and procedures, then compliance with the new reporting requirement should be transparent. In fact, the Contractors are already collecting the data. Therefore, since the data would already have been collected for paying employees and monthly invoicing, a reasonable average is that two additional hours of labor per contract per year is

required. One hour has been allotted to adding the total labor hours for twelve monthly invoices and one hour to input the data.

Since both large and small entities already prepare monthly billing and collect and pay hourly wages as a standard business practice, it is not considered to be any greater burden for small entities. In fact, the cost is estimated to be primarily an additional two hour labor burden for an employee such as a payroll clerk at a cost of approximately \$60/contract/year.

To minimize the burden on small businesses, the following alternatives were considered and included in the FAR rule:

- Minimizing the inventory data elements collected by using existing systems, such as FPDS.
- Minimizing the reporting to once a year.
- Enabling electronic reporting by the contractor.
- Requiring contractors to provide only the number of direct labor hours and developing the system to automatically generate the number of full-time equivalents.
- Limiting the reporting requirement to first-tier subcontractors for services in lieu of all subcontractors.
- Establishing a phased-in approach based on contract type and estimated total dollar amount, from 2014 to 2016.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

#### VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has cleared this information collection requirement under OMB Control Number 9000-0179, titled: Service Contractor Reporting Requirements.

#### List of Subjects in 48 CFR Parts 1, 4, 8, 17, 37, and 52

Government procurement.

Dated: December 19, 2013.

**William Clark,**

*Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 8, 17, 37, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 4, 8, and 17 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

### 1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by adding in numerical sequence, FAR segments “4.17”, “52.204–14”, and “52.204–15” and their corresponding OMB Control Number “9000–0179”.

## PART 4—ADMINISTRATIVE MATTERS

■ 3. Add subpart 4.17 to read as follows:

### Subpart 4.17—Service Contracts Inventory

Sec.

- 4.1700 Scope of subpart.
- 4.1701 Definitions.
- 4.1702 Applicability.
- 4.1703 Reporting requirements.
- 4.1704 Contracting officer responsibilities.
- 4.1705 Contract clauses.

### Subpart 4.17—Service Contracts Inventory

#### 4.1700 Scope of subpart.

This subpart implements section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), which requires agencies to report annually to the Office of Management and Budget (OMB) on activities performed by service contractors. Section 743(a) applies to executive agencies, other than the Department of Defense (DoD), covered by the Federal Activities Inventory Reform Act (Pub. L. 105–270) (FAIR Act). The information reported in the inventory will be publicly accessible.

#### 4.1701 Definitions.

As used in this subpart—

*FAIR Act agencies* means the agencies required under the FAIR Act to submit inventories annually of the activities performed by Government personnel.

*First-tier subcontract* means a subcontract awarded directly by the contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor’s general and administrative expenses or indirect costs.

#### 4.1702 Applicability.

(a) This subpart applies to—

- (1) All FAIR Act agencies, except DoD as specified in 4.1705;
- (2) Solicitations, contracts, and orders for services (including construction)

that meet or exceed the thresholds at 4.1703; and

(3) Contractors and first-tier subcontractors.

(b) Procedures for compiling and submitting agency service contract inventories are governed by section 743(a)(3) of Division C of Pub. L. 111–117 and Office of Federal Procurement Policy (OFPP) guidance. The guidance is available at the following Web site: <http://www.whitehouse.gov/omb/procurement-service-contract-inventories>.

(c) This subpart addresses requirements for obtaining information from, and reporting by, agency service contractors.

#### 4.1703 Reporting requirements.

(a) *Thresholds.* (1) Except as exempted by OFPP guidance, service contractor reporting shall be required for contracts and first-tier subcontracts for services based on type of contract and estimated total value. For indefinite-delivery contracts, reporting shall be determined based on the type and estimated total value of the orders issued under the contract. Indefinite-delivery contracts include, but are not limited to, contracts such as indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule contracts (FSSs), Governmentwide acquisition contracts (GWACs), and multi-agency contracts.

(2) Reporting is required according to the following thresholds:

(i) All cost-reimbursement, time-and-materials, and labor-hour service contracts and orders with an estimated total value above the simplified acquisition threshold.

(ii) All fixed-price service contracts awarded and orders issued according to the following thresholds:

(A) Awarded or issued in Fiscal Year 2014, with an estimated total value of \$2.5 million or greater.

(B) Awarded or issued in Fiscal Year 2015, with an estimated total value of \$1 million or greater.

(C) Awarded or issued in Fiscal Year 2016, and subsequent years, with an estimated total value of \$500,000 or greater.

(3) Reporting is required for all first-tier subcontracts for services as prescribed in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Agency reporting responsibilities.*

(1) Agencies shall ensure that contractors comply with the reporting requirements of 52.204–14, Service Contract Reporting Requirements and 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts. Agencies shall review

contractor reported information for reasonableness and consistency with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the agency shall notify the contractor no later than November 15. By November 30, the contractor shall revise the report, or document its rationale for the agency. Authorized agency officials may review the reports at [www.sam.gov](http://www.sam.gov).

(2) Agencies are required to compile annually an inventory of service contracts performed for, or on behalf of, the agency during the prior fiscal year in order to determine the extent of the agency’s reliance on service contractors. Agencies shall submit a service contract inventory to OMB by January 15 annually. Then, each agency must post the inventory on its Web site and publish a **Federal Register** Notice of Availability by February 15 annually.

(3) Most of the required information is already collected in the Federal Procurement Data System (FPDS). Information not collected in FPDS will be provided by the contractor, as specified in 52.204–14, Service Contract Reporting Requirements and 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts.

#### 4.1704 Contracting officer responsibilities.

(a) For other than indefinite-delivery contracts, the contracting officer shall ensure that 52.204–14, Service Reporting Requirement, is included in solicitations, contracts, and orders as prescribed at 4.1705. For indefinite-delivery contracts, the contracting officer who awarded the contract shall ensure that 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, is included in solicitations and contracts as prescribed at 4.1705. The contracting officer at the order level shall verify the clause’s inclusion in the contract.

(b) If the contractor fails to submit a report in a timely manner, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor’s failure to comply with the reporting requirements a part of the contractor’s performance information under subpart 42.15.

#### 4.1705 Contract clauses.

(a) The contracting officer shall insert the clause at 52.204–14, Service Contract Reporting Requirements, in solicitations and contracts for services

(including construction) that meet or exceed the thresholds at 4.1703, except for indefinite-delivery contracts. This clause is not required for actions entirely funded by DoD, contracts awarded with a generic DUNS number, or in classified solicitations, contracts, or orders.

(b) The contracting officer shall insert the clause at 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, in solicitations and indefinite-delivery contracts for services (including construction) where one or more orders issued thereunder are expected to each meet or exceed the thresholds at 4.1703. This clause is not required for actions entirely funded by DoD, contracts awarded with a generic DUNS number, or in classified solicitations, contracts, or orders.

#### **PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

■ 4. Amend section 8.404 by adding paragraph (i) to read as follows:

##### **8.404 Use of Federal Supply Schedules.**

\* \* \* \* \*

(i) Ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

#### **PART 17—SPECIAL CONTRACTING METHODS**

■ 5. Revise section 17.504 to read as follows:

##### **17.504 Reporting requirements.**

(a) The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

(b) The contracting officer for the servicing agency shall ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

#### **PART 37—SERVICE CONTRACTING**

■ 6. The authority citation for 48 CFR part 37 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 7. Amend section 37.103 by adding paragraph (e) to read as follows:

##### **37.103 Contracting officer responsibility.**

\* \* \* \* \*

(e) Ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

#### **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 8. The authority citation for 48 CFR part 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 9. Add sections 52.204–14 and 52.204–15 to read as follows:

##### **52.204–14 Service Contract Reporting Requirements.**

As prescribed in 4.1705(a), insert the following clause:

##### **Service Contract Reporting Requirements (Jan 2014)**

(a) Definition.

*First-tier subcontract* means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1–September 30).

(c) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following

detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and DUNS number); and  
(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

##### **52.204–15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts.**

As prescribed in 4.1705(b), insert the following clause:

##### **Service Contract Reporting Requirements for Indefinite-Delivery Contracts (January 30, 2014)**

(a) Definition.

*First-tier subcontract* means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed during the preceding Government fiscal year (October 1–September 30) under this contract for orders that exceed the thresholds established in 4.1703(a)(2).

(c) The Contractor shall report the following information:

(1) Contract number and order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the order.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the Contracting Officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall

revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and DUNS number), and  
 (ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

■ 10. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (b)(6) through (b)(51) as paragraphs (b)(8) through (b)(53), respectively; and

■ c. Adding new paragraphs (b)(6) and (b)(7).

The revised and added text reads 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 2014)**

\* \* \* \* \*

(b) \* \* \*

\_\_\_\_ (6) 52.204–14, Service Contract Reporting Requirements (JAN 2014) (Pub. L. 111–117, section 743 of Div. C).

\_\_\_\_ (7) 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (JAN 2014) (Pub. L. 111–117, section 743 of Div. C).

\* \* \* \* \*

[FR Doc. 2013–31148 Filed 12–30–13; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 7, 8, 9, and 52**

[FAC 2005–72; FAR Case 2009–024; Item II; Docket No. 2011–0086, Sequence No. 1]

RIN 9000–AM07

**Federal Acquisition Regulation; Prioritizing Sources of Supplies and Services for Use by the Government**

**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 and clarify the priority of sources of supplies and services for use by the Government.

**DATES:** *Effective:* January 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–72, FAR Case 2009–024.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 34634 on June 14, 2011, to amend the Federal Acquisition Regulation (FAR) to limit the section of the FAR addressing the priorities for use of Government supply sources to a discussion of the mandatory Government sources of supplies and services. Seventy-nine respondents submitted comments. Most respondents requested that an Initial Regulatory Flexibility Analysis (IRFA) be performed. Based on the comments, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) performed an IRFA after the initial publication of the proposed rule. The IRFA was published in the **Federal Register** at 77 FR 54872 on September 6, 2012. Six respondents submitted comments in response to the Notice of Correction.

**II. Discussion and Analysis**

The Councils reviewed the comments in the 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. Summary of Significant Changes*

- Language was added at FAR 7.102(a) to require consideration of existing contracts before creating new contracts.
- FAR 8.002(a)(1)(i) was revised to read “Inventories of the requiring agency” for clarification.
- FAR 8.003(d) has been revised to note that the Defense National Stockpile Center has been renamed “DLA Strategic Materials”.
- FAR 8.004 was revised to note that the sources listed in 8.004(a) are not listed in any order of priority.
- A sentence was added to FAR 8.004 reminding users that when satisfying requirements from non-mandatory sources, they should refer to FAR 7.105(b) and part 19 regarding consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including 8(a) participants), and women-owned small business concerns. Use of these sources can be counted towards an agency’s small business contracting goals.

*B. Analysis of Public Comments*

1. Federal Strategic Sourcing Initiative (FSSI) Blanket Purchase Agreement (BPA) for Office Supplies

*Comment:* Most respondents believe the rule is both unnecessary and damaging to competition from small businesses throughout their industry. The FSSI program has curtailed their Federal market business which led to reduction in employees’ hours.

*Response:* The purpose of the rule is to update and clarify the order of priority at FAR 8.002, and add a new section to encourage agencies to give consideration to using certain existing non-mandatory sources to leverage agency buying power and achieve administrative efficiencies that reduce costs and produce savings for our taxpayers. The rule does not change how agencies are purchasing supplies and/or services under Federal Supply Schedules.

No new mandatory sources are proposed for consideration, only existing sources were included for informational purposes. The existing non-mandatory sources are being listed prior to commercial sources, but agencies remain free to compete their requirements among commercial sources of supply, where it is in their