

Government Contractor's/Subcontractor's Information and Compensation Go On Internet In Transparency Rule -- Be Aware

By Holly Emrick Svetz

You're the owner and Chief Executive Officer of a privately held, small, commercial item company that only does government contracts as a subcontractor, but over 80 percent of your business is with the federal government. You feel pretty insulated from government intrusion, right? Wrong.

As of July 9, 2010, as part of a transparency move, the total compensation of you and the other top five company executives will be posted on the Internet, with few exceptions. The public will also be able to see the first-tier subcontracts your company has been awarded and their value.

The only exceptions to reporting:

- classified contracts
- subcontracts to individuals
- subcontractors in previous tax year having gross income from all sources under \$300,000

There is no exception for small businesses or privately-held companies or commercial item or commercial-off-the-shelf contracts.

This is new for prime contractors, too, except those working on contracts funded by the Recovery Act and those covered by an earlier pilot program.

The information to be provided about each first-tier subcontractor is:

- DUNS number for subcontractor and any parent company
- Name of subcontractor
- Amount of subcontract award
- Date of subcontract award
- Description of products or services being provided
- Subcontract number (assigned by prime contractor)
- Subcontractor's physical address, including nine digit zip and Congressional district
- Subcontractor's primary performance location, including nine digit zip and Congressional district
- Prime contract number and order number, if applicable
- Awarding federal agency
- Funding federal agency
- Government contracting office

- Treasury account symbol
- North American Industry Classification System (NAICS) code

The compensation must be reported for prime and first-tier subcontractors who in the preceding fiscal year received:

- 80% or more of its annual gross revenues from Federal contracts and subcontracts, loans, grants and subgrants, and cooperative agreements AND
- \$25 million or more in annual gross revenues from Federal contracts and subcontracts, loans, grants and subgrants, and cooperative agreements AND
- The public does not have access to information of the executives through periodic reports filed with the Securities and Exchange Commission or the Internal Revenue Service

Rather than issuing a proposed rule, receiving comments, and then issuing a final rule, the change was issued as an interim rule. It is effective as of July 9, 2010, although comments may be submitted before September 7, 2010. The rule modifies the Federal Acquisition Regulation ("FAR") that governs the government contracts of all federal agencies, but does not govern grants and cooperative agreements.

There has been a build-up to this major transparency initiative.

A pilot program, which ended on January 1, 2009, required similar reporting, but applied only to prime contracts valued over \$500 million and required reporting of subcontract awards over \$1 million and exempted commercial item and classified contracts.

Since March 31, 2009, the FAR has required reporting of information about prime contracts and first-tier subcontracts and compensation of the top five executives when using Recovery Act funding.

This new rule is implemented in a new clause FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards, and in FAR 52.212-5 and 52.213-4 for commercial item and simplified acquisitions, respectively. The appropriate clause is required to be included in all solicitations issued on or after July 9, 2010 and the resulting contracts. In addition, procuring agency contracting officers are required to modify all ongoing contracts under which purchase orders or task orders are issued to include the clause for orders issued after July 9, 2010.

There is a phase-in period for first-tier subcontract reporting:

- July 9, 2010-September 30, 2010 -- prime contracts valued \$20 million or more
- October 1, 2010-February 28, 2011 -- prime contracts valued \$550,000 or more
- March 1, 2011 -- prime contracts valued \$25,000 or more

Reporting of the information for the prime and subcontractor must be made by the end of the month following the month in which the contract is awarded. Additionally, each prime contractor must report annually the names and total compensation of each of the five most highly

compensated executives at the end of the prime contractor's and first-tier subcontractor's respective fiscal year.

The information must be reported by the prime contractor through <http://www.fsr.gov>. The public may view prime contractor and first-tier subcontractor data at <http://usaspending.gov>

Contact Information

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