

GOVERNMENT CONTRACTS ALERT: FEBRUARY 2011

Public Access to Contractor Integrity Information: Coming April 15th

As part of the Obama administration's attempt to introduce more transparency into the federal procurement process, the U.S. General Services Administration ("GSA") will soon permit members of the public to search and review government contractor procurement integrity information- information that historically has been available only to government contracting personnel. This plan is part of an ongoing effort to improve the government's ability to evaluate the business ethics and performance of prospective contractors that compete for federal contracts.

The new, searchable features will be part of GSA's Federal Awardee Performance and Integrity Information System ("FAPIS"), the latest in a series of increasingly sophisticated databases of government contractor information. Launched in April 2010, FAPIS contains information on past performance ratings; suspensions and debarments; terminations for default/cause; nonresponsibility determinations; defective pricing; and administrative, civil, and criminal proceedings, among other actions, going back five years. FAPIS combines information from a variety of contractor past performance systems, such as PPIRS, FPDS, CCR, as well as other sources. (The U.S. Federal Acquisition Institute has put together a video directed at contracting personnel that explains the purpose and use of FAPIS, including a number of interesting "screen shots" of the new system: <http://www.fai.gov/FAPIS/trailer/module.htm>.)

The searchable component of FAPIS is currently scheduled to come online beginning on April 15, 2011. A new FAR clause, 52.209-9, provides notice to contractors that all information posted in FAPIS on or after April 15, 2011, except past performance reviews, will be publicly available. The new clause also states that requests to review the information posted in FAPIS before April 15, 2011, will be subject to the Freedom of Information Act process. Contracting officers will begin to execute bilateral modifications for most contracts that contain FAR 52.209-8 to incorporate the new, substitute 52.209-9 clause.

The Federal Register of January 24, 2011 contained the interim rules regarding this new development: <http://edocket.access.gpo.gov/2011/pdf/2011-1323.pdf>. The public has until March 25, 2011 to submit comments. Please contact me with any questions or concerns you may have.

This alert is intended to be a general summary of the law, and does not constitute legal advice.