Proskauer

FAR Council Proposes Rule Requiring Contractors to Identify Subcontractors and Report Subcontractors' Executive Compensation Information

Government Contractor Compliance & Regulatory Update on **August 13, 2024**

On May 24, 2024, the Federal Acquisition Regulation ("FAR") Council published a Notice and request for comments for 9000-0177, Reporting Executive Compensation and First-tier Subcontract Awards.

If approved, the new FAR will require contractors to: (1) publicly report certain information on their first tier subcontractors; and (2) report compensation information for their top executives. The proposal is a "reinstatement" of requirements which were previously proposed and received OMB approval but expired in December 2010, without being implemented.

Key Components of the Proposed FAR

First, under the proposed FAR, prime contractors would be required to report the following information after awarding a first-tier subcontract valued at or above $30,000:

1. The "[u]nique entity identifier for the subcontractor receiving the award and for the subcontractor's parent company," if applicable.
2. The name of the subcontractor, amount of subcontract award, and date of subcontract award.
3. A "description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract."
4. The prime contract number, subcontract number assigned by the contractor, and order number, if applicable.
5. The Subcontractor's physical address and primary performance location.
6. The awarding and funding agency name and code.

7. The Government contracting office code.
8. The Treasury account symbol as reported in FPDS.
9. The applicable North American Industry Classification System code.

This information will be reported at *http://www.fsrs.gov* "by the end of the month following the month of award of a first-tier subcontract valued at or above $30,000."

Second, contractors would be required to report the names and total compensation of their first-tier subcontractors' five most highly compensated executives if, in the preceding fiscal year, the subcontractor meets the eligibility threshold of:

1. Having 80 percent or more of their annual gross income in the prior fiscal year derive from "federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance;" and
2. $25 million or more of their annual gross revenues derive from the same sources.

Prime contractors would not be required to submit compensation reports for subcontractors for whom the public already has access to information about the compensation of their executives through their submission of periodic Securities Exchange Act §§ 13(a) or 15(d) reports. This information will be reported at *http://www.fsrs.gov*. The FAR does not explain what obligations a contractor has to determine whether the subcontractor meets the triggers for submitting this information.

Conclusion

If the proposed FAR is enacted, contractors will be responsible for collecting and reporting to the Federal Subaward Reporting System a range of additional information regarding certain of their first-tier subcontractors and subcontractors' executives' compensation. We will continue to monitor and report on this proposed FAR.

View original.

Related Professionals

- **Guy Brenner**
  Partner