

Written by Administrator

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We previously [discussed](#) recent OMB guidance that directed Federal agencies to get serious about reporting contractor past performance information into the Past Performance Information System (PPIRS). On September 2, 2009 the FAR Council published in the Federal Register a proposed FAR revision that would provide guidance to Contracting Officers regarding how and when to report contractors that have been terminated for default or have been determined (by the Contracting Officer) to have submitted defective cost or pricing data. There is not much more to be said regarding the proposed rule changes, except that they affect several parts of the FAR, including Parts 8, 12, 15, 42, and 49. The central language change is at 42.1503(f), which would read "Within 10 days after a contracting officer determines that a contractor has submitted defective cost or pricing data, or a termination for cause or default notice has been issued or any subsequent conversions or withdrawals have been issued, agencies shall ensure information related to these issues are provided for inclusion in PPIRS."

As a general matter, we applaud the Government's newfound focus on recording contractor past performance information and then subsequently using that information to evaluate future offers. That said, it is a poorly kept secret that certain large contractors cannot be kept from winning contract awards in the name of "national security". Previous suspensions from contract awards have proven to be paper tigers; and the Government has all be but admitted that Boeing, Lockheed Martin, and others are too big to be debarred. For example, were Northrop Grumman Newport News Shipbuilders to be debarred, who would build the nation's nuclear aircraft carriers? There's only one place in America that has the capability to build such ships, and thus it is a practical impossibility to debar the shipyard (though of course the Department of Justice can make their lives miserable and the cost of doing business expensive). So it won't be the top-tier contractors who are affected by this rulemaking exercise; instead, it will be the smaller and mid-tier contractors.

See the proposed rule [here](#) .

Comment on the proposed rule [here](#) .