MEMORANDUM FOR DISTRIBUTION

SUBJECT: Termination for Default Reporting in FAR Subpart 42.1503

The attached Director of Defense Procurement and Acquisition Policy memorandum, dated October 11, 2012, provides that the Federal Awardee Performance and Integrity Information System (FAPIIS) is a module of the Past Performance Information Retrieval System (PPIRS) that contains useful information to the contacting officer when making a determination of responsibility. A comparison of the Federal Procurement Data System (FPDS) data on terminations for cause or default with the data in FAPIIS revealed that information on terminations is not being input to FAPIIS or being captured in FPDS. The attached spreadsheet compares the FY12 termination data in FPDS and FAPIIS as of August 15, 2012.

Contracting personnel consider terminations for cause and default when making a determination of responsibility prior to contract award. Likewise, contracting officers must post this information timely so a determination of responsibility can be properly assessed.

My point of contact for this matter is Ms. Molli Thacker. She can be reached at marlene.thacker@navy.mil or (703) 693-2936.

Attachment:
As stated

Distribution
See next page
SUBJECT: Termination for Default Reporting in FAR Subpart 42.1503

Distribution:
CMC I&L (LB)
MARCORSYSCOM (CT)
MSC (N10)
NAVAIRSYSCOM (2.0)
NAVFACENGCOM (ACQ)
NAVSEASYSCOM (02)
NA VSUPSYSCOM (N7)
ONR (02)
SPAWARSYSCOM (2.0)
SSP (SPN)
AGC (AI)
MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Termination for Default Reporting in FAR Subpart 42.1503

Reference: (a) DPAP Memorandum: Implementation of the new FAR Rule, Termination for Default Reporting (FAR Case 2008-016), October 12, 2010 (copy attached).

The Federal Awardee Performance and Integrity Information System (FAPIIS) is a module of the Past Performance Information Retrieval System (PPIRS) containing information useful to the contracting officer when making a responsibility determination. The FAR states that "Agencies shall ensure information is accurately reported in the FAPIIS module of PPIRS within 3 calendar days after a contracting officer...issues a final termination for cause or default notice." A recent check of Federal Procurement Data System (FPDS) data on terminations for cause or default and a comparison of that data with the data in FAPIIS shows that some information is not being input to FAPIIS or being captured in FPDS.

Contracting personnel are reminded that terminations for cause and default are one aspect for consideration when making a determination of responsibility prior to award of contracts. It is important to post this type of information in a timely manner.

The attached spreadsheet compares the FY12 termination data in FPDS and FAPIIS as of August 15, 2012.

My point of contact for this memorandum is Ms. Sandra K. Ross. She can be reached at Sandra.Ross@osd.mil, 703-695-9774 or DSN 225-9774.

[Signature]
Richard Ginman
Director, Defense/Procurement
and Acquisition Policy
## T4D or T4Cause in FPDS vs FAPIIS - August 15, 2012

<table>
<thead>
<tr>
<th></th>
<th>FPDS TOTAL</th>
<th>FAPIIS TOTAL</th>
<th>DELTA (Not in FPDS)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>T4 DEFAULT</strong></td>
<td>172</td>
<td>457</td>
<td>285</td>
</tr>
<tr>
<td>Army</td>
<td>102</td>
<td>106</td>
<td>4</td>
</tr>
<tr>
<td>Navy</td>
<td>15</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>Air Force</td>
<td>13</td>
<td>24</td>
<td>11</td>
</tr>
<tr>
<td>DLA</td>
<td>38</td>
<td>307</td>
<td>269</td>
</tr>
<tr>
<td>DECA</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>DISA</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>DMA</td>
<td>2</td>
<td>0</td>
<td>-2</td>
</tr>
<tr>
<td>DODEA</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>MDA</td>
<td>1</td>
<td>0</td>
<td>-1</td>
</tr>
<tr>
<td>TRICARE</td>
<td>1</td>
<td>0</td>
<td>-1</td>
</tr>
<tr>
<td>WHS</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

|                  | 216        | 253          | 37                   |
| Army             | 137        | 134          | -3                   |
| Navy             | 22         | 34           | 12                   |
| Air Force        | 32         | 56           | 24                   |
| DLA              | 10         | 14           | 4                    |
| DECA             | 5          | 7            | 2                    |
| DISA             | 2          | 0            | -2                   |
| DMA              | 2          | 4            | 2                    |
| DODEA            | 3          | 0            | -3                   |
| MDA              | 0          | 0            | 0                    |
| SOCOM            | 0          | 3            | 3                    |
| TRICARE          | 1          | 0            | -1                   |
| WHS              | 1          | 1            | 0                    |
MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND, (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND, (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Implementation of the new FAR Rule, Termination for Default Reporting (FAR Case 2008-016)

The Federal Acquisition Regulation (FAR) Final Rule for Termination for Default Reporting was published in the Federal Register on Wednesday, September 29, 2010, copy attached. Effective date is October 29, 2010.

All reporting shall be in accordance with the new FAR subpart 42.1503(f). Termination data must be reported in the Federal Awardee Performance and Integrity Information System (FAPIIS) module of the Past Performance Information Retrieval System (PPIRS) within three (3) working days after the contracting officer issues a final termination for cause or default notice or makes a subsequent withdrawal or a conversion of a termination for default to a termination for convenience.

Information submitted includes the following data: date of action (when termination for default or termination for cause was signed), contractor Data Universal Numbering System (DUNS) number, Commercial and Government Entity (CAGE) code (optional), contractor name, doing business as (DBA name) (optional) and full physical address, Product Service Code (PSC); North American Industrial Classification System (NAICS), contract number, reporting agency and office code, reporting official name, address, telephone number and email address plus the modification issuing the termination.

With the effective date of this final rule, the memorandum dated July 23, 2008, Subject: Termination Notification, is hereby rescinded. The termination information included in the DoD Termination List found in PPIRS-RC and PPIRS-SR will remain on the site for the next two years and may be used as another source to determine contractor responsibility.
My point of contact for this memorandum is Ms Sandra K. Ross. She can be reached at Sandra.ross@osd.mil, 703-695-9774 or DSN 225-9774.

Attachment:
As stated
Sanctioned Activities

62.225-25 Prohibition

(a) Definition.
Person—
(1) Means—
(I) A natural person;
(II) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(ii) Any successor to any entity described in paragraph (1)(I) of this definition; and
(ii) Does not include a government or governmental entity that is not operating as a business enterprise.

(b) Certification. Except as provided in paragraph (c) of this provision or if a waiver has been granted in accordance with FAR 25.703–2(d), by submission of its offer, the offeror certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran’s ability to acquire or develop certain weapons.

(c) Exception for trade agreements. The certification requirement of paragraph (b) of this provision does not apply if—

(1) This solicitation includes a trade agreements certification (e.g., 52.225–4, 52.225–11 or comparable agency provision); and
(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 42, and 49

[FAC 2005–48; FAR Case 2006–016; Item III; Docket 2009–0032, Sequence 1]

RIN 9000–AL45

Federal Acquisition Regulation; Termination for Default Reporting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to establish procedures for certifying officers to provide contractor information, such as terminations for cause or default and defective cost or pricing data, into the Past Performance Information System (PPIS) and Federal Awarded Performance and Integrity Information System (FAPIIS) module within PPISR.

This information will assist the contracting officer in making an informed source selection and award decision. Instructions on access to the FAPIIS module and how to input data into the FAPIIS module will be available at http://www.fppirs.gov/fapiis.html.

DATES: Effective Date: October 29, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–48, FAR case 2008–016.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed on a final rule amending the FAR to revise the contractor performance information process. This case sets forth requirements for contracting officers to report defective cost or pricing data and terminations for cause or default into the FAPIIS module of the PPISR.

Evaluation of past performance information, especially terminations, manages risks associated with timely, effective, and cost-efficient completion of contracts, a key objective of the President’s March 4, 2008, Memorandum on Government Contracting.

The Councils published in the Federal Register at 74 FR 45394 on September 2, 2009, a proposed rule with request for comments. Four respondents submitted fifteen comments.

B. Discussion of Public Comments

The comments received were grouped under six general topics. A summary of these topics and a discussion of the comments and the changes made to the proposed rule as a result of those comments are provided below:

1. Certification Regarding Responsibility Matters

Comment: One respondent recommended deletion of the certification on terminations found in FAR clause 52.209–5, Certification Regarding Responsibility Matters, since the information concerning terminations will be available to contracting officers in PPISR. The respondent further suggested that conforming deletions should also be made at 52.204–6(c)(1)(v) and in the Online Representations and Certifications Application (ORCA) Web site.

Response: The Councils disagree.

PPISR is the repository for
determinations made by contracting officers. PPIRS is not a repository for certifications made by contractors when certifications are required. Executive order 12869 requires the inclusion of the certification at FAR 52.209-5. FAR 8.105-1 also requires contracting officers to consider contractor certifications in making a contractor determination of responsibility.

2. Contractor Rebuttal
Comment: Two of the four respondents submitted comments requesting that the contractor be given an opportunity to rebut statements and additional information into PPIRS and this information be retained as long as the fundamental information is retained in PPIRS.
Response: When termination records are posted in the FAPIS module of PPIRS, contractors will have an opportunity to provide additional information as required by section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Pub. L. 110-417). This process should not be confused with the rebuttal process for past performance information as specified in FAR 42.1503(b).

3. Defective Pricing Information
Comment: One respondent submitted two separate comments suggesting that defective pricing information not be included in PPIRS.
Response: The Councils disagree. The Councils believe that defective cost or pricing data is relevant to other contractor performance information to be considered when evaluating contractor’s performance for award of contracts. However, the Councils did clarify in FAR 15.407-1(d) and 42.1503(f) that the contracting officer shall report only the final determination.

4. Relevance and Currency
Comment: One respondent submitted two separate comments on relevance and currency. One comment stated that the FAR does not provide any guidance with respect to relevance when determining the relevance and currency of any termination for cause or default information in PPIRS. The second comment suggested that the rule explain how the contracting officer will evaluate defective pricing information recorded in PPIRS.
Response: The Councils disagree with revising the rule. Relevancy is specific to the instant contract and based on the circumstances of contract performance. Contracting officers are responsible for making a determination of the relevancy of the information. The Councils will work with the Federal Acquisition Institute and Defense Acquisition University to develop guidance and training for contracting officials on the proper use of the reported information.

5. Removal of Detrimental Information
Comment: Two respondents submitted comments concerning removal of detrimental information from PPIRS. One comment suggested that the Government remove unfavorable information from PPIRS. The other comment suggested that the contracting officer should remove from PPIRS any reference to the termination for default. The respondent recommended changing the language at FAR 8.406-8 and 12.403.
Response: The Councils disagree that a change to the rule is necessary. The language at FAR 8.406-4(e), 12.403(c)(4), 15.407-1, and 49.402-8 states that the contracting officer shall report a subsequent withdrawal or a conversion to a termination for convenience in accordance with FAR 42.1503(f).

Comment: Another respondent suggested the Government should be held to the same high standard of record keeping as no system is infallible.
Response: Comment noted. Throughout the revised coverage, language was added that in the event a termination for cause is subsequently converted to a termination for convenience, or default is withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported in accordance with FAR 42.1503(f).

6. Timing of Posting of Detrimental Pricing Information
Five comments were received from two respondents regarding the timing and posting of defective pricing information.
Comment: The respondents believe that it is not clear that the intent of this language is to post this information before or after a defective pricing case has resolved.
Response: The Councils agree. Language was clarified at FAR 15.407-1 to add the word “final” before determination in the coverage. In addition, a requirement was added to update PPIRS.

Comment: One respondent expressed concern that posting within 10 days is not likely to happen.
Response: The Councils disagree. There were no objections to the 10-day timeframe made by the agencies during the proposed rule comment period. The 10-day timeframe was changed to 3 working days to be synonymous with the requirements of FAPIS.

Summary of Major Changes to the Proposed Rule
- New coverage at FAR 8.406-8 was moved to FAR 8.406-4(e).
- Language was clarified at FAR 15.407-1 to add “contracting officer’s final” before “termination” in the coverage. A requirement was added to update PPIRS.
- In FAR 42.1503, the 10-day timeframe was changed to 3 working days to be synonymous with the requirements of FAPIS. Language was clarified on what a “conversion” is.
- Language was added to address agency focal points.

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.

B. Regulatory Flexibility Act
The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 801, et seq., because the rule does not impose any additional requirements on small entities. The collection and reporting of past performance information is an internal process to the Government. The rule merely puts into effect the internal requirement that contracting officers report defective cost or pricing data and terminations for cause or default into PPIRS.

C. Paperwork Reduction Act
The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, et seq.

List of Subjects in 48 CFR Parts 6, 12, 15, 42, and 49
Government procurement.
Indicates conflict or withdrawal. 15.407-1

PART 6—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.406-4 by adding paragraph (e) to read as follows:

8.406-4 Termination for cause.
(a) Reporting. An ordering activity contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(f).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 12.403 by adding paragraph (e)(4) to read as follows:

12.403 Termination.

(c) The contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(f).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. Amend section 42.1502 by adding paragraph (f) to read as follows:

42.1502 Policy.

(f) Agencies shall promptly report other contractor information in accordance with 42.1503(f).

6. Amend section 42.1503 by revising paragraph (a) and adding paragraph (f) to read as follows:

42.1503 Procedures.
(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Agency procedures shall identify those responsible for preparing interim and final evaluations. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, and users of the product or service, and any other technical or business advisor, as appropriate. Interim evaluations shall be prepared as required, in accordance with agency procedures.

(i) Other contractor information. (1) Agencies shall ensure information is reported in the FAPIRS module of PPIRS within 3 working days after a contracting officer—

(i) Issues a final determination that a contractor has submitted defective cost or pricing data;
(ii) Makes a subsequent change to the final determination concerning defective cost or pricing data pursuant to 15.407-1(d);
(iii) Issues a final determination for cause or default notice; or
(iv) Makes a subsequent withdrawal or a conversion of a termination for cause or default to a termination for convenience.


PART 49—TERMINATION OF CONTRACTS

7. Add section 49.402-6 to read as follows:

49.402-6 Reporting information.

The contracting officer, in accordance with agency procedures, shall ensure that information relating to the termination for default notice and a subsequent withdrawal or a conversion to a termination for convenience is reported in accordance with 42.1503(f).

[FR Doc. 2010-24214 Filed 9-28-10; 8:45 am]