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**Comments on FAR Subaward Reporting FAC 2005–44, FAR case 2008–039 (75 Federal Register 130 (8 July 2010), pp. 39414 – 39420)**

September 7, 2010

To Whom It May Concern:

OMB Watch is submitting these comments on FAC 2005–44, FAR case 2008–039 (75 Federal Register 130 (8 July 2010), pp. 39414 – 39420), the interim final rule that would require subcontract award and executive compensation reporting, pursuant to the Federal Funding Accountability and Transparency Act of 2006 (FFATA). These comments will focus on the subcontract award reporting.

OMB Watch is a nonprofit research and advocacy organization whose core mission is to promote government accountability and improve citizen participation. Public access to government-held information has been an important part of our work for more than 15 years, and we have both practical and policy experience with disseminating government information. Working with Sens. Tom Coburn and Barack Obama, OMB Watch assisted in crafting the FFATA law. We also created FedSpending.org, which we licensed to the federal government to become the core computer code for USAspending.gov -- the federal spending website created by FFATA that allows users to search, aggregate, and analyze all federal spending. Additionally, OMB Watch is a recognized expert in the recipient reporting provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act), provisions which are very similar to the ones proposed in this interim final rule.

OMB Watch supports the interim final rule's proposal for collecting and reporting subcontract award information, but it is just a first step in the right direction. We are especially supportive of the proposed reporting system that will pre-populate certain data in recipient reports. Pre-population of data from outside systems will not only lessen the burden placed on award recipients but will increase the quality of the reported data.

However, we believe that the proposed rule does not go far enough, while at the same time placing an unnecessary burden on a subset of federal contractors. It does not go far enough, as the interim final rule only requires reporting by so-called "first-tier subcontractors," instead of requiring what we refer to as "multi-tier reporting," in which any non-individual recipient of federal contracting dollars in excess of \$25,000 must report. The interim final rule also places undue burdens on federal contractors and creates inefficiencies in recipient reporting, as it requires those contractors receiving Recovery Act contracts to submit their reports on two different systems.

**The FAR Council should extend subcontract reporting to full multi-tier reporting**

Although the FAR Council and the Office of Management and Budget (OMB) are moving recipient reporting toward a central data collection system, it has made only preliminary steps toward an ideal reporting system, one which features complete multi-tier reporting. The new

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reporting guidance requires only prime contractors to report on first-tier subcontractors to the central data system, FSRS.gov. This system exempts subsequent subcontractors (second-tier, third-tier, etc) from reporting, potentially cutting off significant links in the recipient chain. For instance, if a contractor receives a contract from the federal government, subcontracts the work to a general contractor, who then subcontracts the work out again, say to a more specialized contractor – a likely scenario – the federal government and the public will not know which contractor received money beyond the general contractor or what it is doing with it. Lurking beneath the current required level of reporting could be a host of ethical and accountability issues, which will be hidden from public view because of the stipulations of the interim final rule.

The creators of FFATA clearly intended subaward reporting to transcend the first tier. In the bill's accompanying report, the authors state that:

FAADS [Federal Assistance Awards Data System] is more reliable than FPDS [Federal Procurement Data System] for its data quality and timeliness, but it also has limitations, making it far from adequate for needed transparency. The following are the biggest limitations to FAADS....FAADS only reports information on the identity of the initial recipient, and not the identity of second- or third-tier recipients. This means that grants given to States are only tracked to the State level, not through to subawards.

While this statement relates to federal grants, one should conclude that this concern also applies to federal contracting.

Ideally, the FAR Council should require that every entity receiving federal funds above some *de minimus* amount, regardless of how many degrees removed from the prime contractor, report directly to a centralized website, giving the public a full picture of who is receiving federal contracting dollars. Without this complete multi-tier reporting, the public will not know the identity of a large number of federal contractors or how the money is used.

Until full multi-tier reporting is mandated, with any contractor receiving at least \$25,000 being required to report, we believe that the spirit of FFATA will not be realized. By limiting reporting to the first tier of sub-recipients, doubtless billions of federal dollars will flow into the hands of contractors beyond first-tier subcontractors and out of view of the public. We believe any additional burden on subcontractors is well worth the information gleaned from the reports.

### **Use FederalReporting.gov instead of FSRS.gov**

According to the interim final rule (as well as the subgrant guidance published by the Office of Management and Budget on Aug. 27) subaward information must be reported to FSRS.gov, a new website created for this purpose. However, a website purpose-built for accepting subaward reports already exists, thanks to the Recovery Act. To fulfill Recovery Act reporting requirements, contractors and grantees must report to FederalReporting.gov on their first-tier subcontracts and subgrants.

According to Recovery.gov, almost 200,000 Recovery Act recipients have used FederalReporting.gov to submit reports on their federally-funded activities. To now add a second, new website to accept reports, which are very similar to Recovery Act reports, is both wasteful and confusing. Having a single, well-known website for subaward reporting will save money and simplify the reporting process. Because agencies and government contractors are

already familiar with FederalReporting.gov, we recommend that OMB enhance the website's capabilities and build upon it for FFATA subaward reporting.

And because Recovery.gov has been online for over a year collecting the data required by FFATA, keeping it in place for FFATA reporting could save the federal government money, as site design and development costs would not have to be incurred once again.

### **The Central reporting system should accommodate agency-specific reporting requirements**

Some agencies require recipients of contracts to report data not specified in FFATA. For example, the Department of Housing and Urban Development (HUD) requires recipients of HUD Recovery Act awards to report data that is not collected through FederalReporting.gov, causing these recipients to submit reports to HUD through an additional reporting mechanism. We recommend that OMB build into its central reporting system functionality that allows federal agencies to create custom reporting forms that capture program-specific data elements (in addition to those required by FFATA). By allowing federal agencies to collect their own specific data, not only can reporting burdens on recipients be reduced but overall federal expenditures on data collection as well.

### **Double reporting by Recovery Act contractors is unnecessary**

As proposed by the interim final rule, contractors with Recovery Act contracts must now report on their subcontracts twice: once to satisfy Recovery Act requirements, and once to satisfy FFATA requirements. The requirements are very similar; of the thirteen fields required under the interim final rule, all thirteen are also required under the Recovery Act. Recovery Act contractors must therefore report the exact information to both FederalReporting.gov (which feeds Recovery.gov) and to FSRS.gov. Yet, per OMB guidance issued on Aug. 27 ("Open Government Directive – Federal Spending Transparency and Subaward and Compensation Data Reporting"), which cites "minimization of redundancies" and "minimizing reporting burdens" as two foci of this new reporting system, prime recipients of Recovery Act *grants* will only be required to report to FederalReporting.gov.

Because this double reporting is unnecessary, we recommend that the FAR Council amend the rule to exempt contractors already reporting under Recovery Act rules. Recovery Act reporting requirements meet and exceed FFATA requirements; contractors already reporting under the Recovery Act should not be required to report again, on the very same award, but in a less rigorous manner. Relieving prime contractors of the burden of reporting twice would lower the cost of complying with FFATA without sacrificing transparency.

### **Summary**

OMB Watch supports the FAR Council's interim final rule concerning subcontract award reporting. However, we believe that the Council should extend the reporting requirements beyond the first tier of subcontractors. Extending the reporting requirements would fully realize FFATA's requirements, and bring meaningful transparency to federal contracting. Without multi-tier reporting, the public is left without the complete picture of how the federal government is using its contracting funds. At the same time, the Council should streamline the reporting

process by eliminating unnecessary duplication, both in reporting websites and in the reporting requirements.

We appreciate your consideration of our comments on this issue. Please do not hesitate to contact us at (202) 234-8494 if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'Craig Jennings', with a stylized flourish at the end.

Craig Jennings  
Director, Federal Fiscal Policy Program  
OMB Watch