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September 7, 2010

Ms. Hada Flowers
General Services Administration
Regulatory Secretariat (MVCB)
1800 F Street, NW, Room 4041
Washington, DC 20405

Re: FAR Case 2008-039
Interim Rule, "Reporting Executive Compensation and First-Tier Subcontract Awards" CODSIA Case 12-10

Dear Ms. Flowers:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA)[1] appreciate the opportunity to comment on the interim rule, "Reporting Executive Compensation and First-Tier Subcontract Awards" that was published in the *Federal Register* on July 8, 2010 (75 FR 39414). While we recognize that this interim rule seeks to implement a provision of law, for reasons addressed below, we recommend that it be substantially revised. Furthermore, as the interim rule is predicated on what we believe to be excessively burdensome requirements adopted in the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended by section 6202 of the Government Funding Transparency Act of 2008, we recommend that the FAR Councils urge the Executive Agencies represented on the Councils to seek appropriate legislative relief from Congress to the FFATA requirements.

Initial Comments

The interim rule amends the Federal Acquisition Regulation to require that prime contractors report to a public database covered subcontract award data and the total compensation of the five most highly compensated executives of the contractor. In addition, prime contractors are also required to obtain information regarding the total compensation of the five most highly compensated executives from each covered subcontractor and submit that

[1] CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues, at the suggestion of the Department of Defense. CODSIA consists of eight associations – the Aerospace Industries Association (AIA), the American Shipbuilding Association (ASA), the Associated General Contractors of America (AGC), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), the American Council of Engineering Companies (ACEC), TechAmerica, and the U.S. Chamber of Commerce. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

subcontractor information to the public database. The rule revises the FAR clause at 52.204-10 to replace the pilot program with full implementation of section 2 of the Federal Funding Accountability and Transparency Act of 2008.

CODSIA members have serious reservations regarding the interim rule and the underlying statute. While we support the goals of increasing transparency in government and providing taxpayers with greater insight as to how their tax dollars are spent, we believe the interim rule and underlying statute are overly broad and fail to address serious national security and competitiveness issues associated with this mandate. Additionally, the burdens of accumulating and reporting the required data are significant and will result in increased costs to the Government. We believe the interim rule is excessively burdensome to contractors and subcontractors and extraordinarily difficult to implement. We recognize that some of the deficiencies with the rule, but not all of them, are due to requirements imposed by the statute.

The Federal Government, and particularly DoD, has for some time sought ways to encourage the participation of "non-traditional" contractors in government procurements to expand the potential supply base and obtain access to new ideas and leading edge technologies to meet its requirements. It should be obvious to the Federal Government that rules such as this interim rule will speak volumes to "non-traditional" contractors about the burden, costs, and risks associated with doing business with the Federal Government.

Our major concerns with the interim rule are presented below. We also have specific concerns that are presented in the Attachment to this letter. All of these concerns underscore why we believe the interim rule should be substantially rewritten.

National Security

Implementing the interim rule will disclose U.S. national defense capabilities, with pinpoint accuracy, for those wanting to cause harm to the United States. Merely exempting classified contracts from this interim rule is, by itself, inadequate protection of our nation's security interests and needs. In many cases, contractors are engaged in both non-classified and classified contracts, using the same or similar technologies and the same subcontractors for that work. While it is not unusual for DoD procurements for weapon system development and production contracts to include classified information and, therefore, qualify for the exemption for "classified" contracts, follow-on spares and support contracts may not include classified information and would expose at the subsystem or component level that information which is protected from release in development or production level contracts. A system that offers complete disclosure of non-classified contract data will facilitate the exploitation of that data anywhere in the world and create added risks to not only prime and first-tier subcontractors, but also the multitude of missions being carried out by contractors and first-tier subcontractors on behalf of the U.S. Government.

The reporting requirement created by FFATA is also an obvious conflict with the significant and on-going efforts throughout the Government to protect "sensitive but unclassified information." The Councils are currently considering cases on this subject (FAR case 2009-030,

Safeguarding Unclassified information; DFARS case 2008-D028, Safeguarding Unclassified Information). While the Government struggles to define the scope of "sensitive but unclassified information," the extent of necessary protection, and how that protection could be implemented, especially from cyber intrusion, this FFATA rule seeks to make public on the worldwide web information on first-tier subcontractors that could very well be considered "sensitive but unclassified." For example, from an internet connection anywhere in the world, an individual could assemble information on key suppliers for a major weapon system or identify a single supplier that represents the only source for a particular technology or material. This information is not necessarily "classified," but is certainly "sensitive" with respect to the interests of the United States. Given the significant and well-recognized threat this represents, it is difficult to understand why the Government would work tirelessly on one hand to protect this data, and on the other hand, work tirelessly to publish that same data under FFATA.

It also follows that the FFATA and the interim rule will effectively require contractors to provide a public "bill of material" for products and services supplied to the U.S. Government, including sensitive technology and capabilities. There is a great deal of technology which is not classified but which is nonetheless sensitive and critical to national security. While some of the information covered by the FFATA is already public, there is no single place where such a broad spectrum of information about subcontractors is readily and publicly available. Under the interim rule, this information conceivably will be available to agents of state-sponsored espionage and international and domestic terrorist groups. The release of certain prime contract awards information is already required by FAR 5.303 entitled "Announcement of Contract Awards;" release of first-tier subcontractor data is, however, much more problematic. Indeed, the interim rule requires prime contractors to identify the names, addresses, NAICS codes, and principal places of performance of all awarded first-tier subcontracts with a value greater than $25,000—including items with sensitive technology. On this issue alone, CODSIA member associations question the breadth of the interim rule. At a minimum we recommend that FFATA data reporting should exclude any contract that has restrictions on the disclosure of information to foreign nationals.

Applicability to Commercial Items and COTS

As noted in the Supplemental Information accompanying the interim rule, the FFATA and transparency statutes do not specifically cite Sections 34 or 35 of the OFPP Act (41 U.S.C. §§430 and 431), nor do they state that notwithstanding Sections 34 or 35, the Acts shall be applicable to contracts for the procurement of commercial items and contracts for commercially available off the shelf (COTS) items. Because the Congress had the opportunity to make the Acts applicable to commercial items and COTS items but chose not to do so, we believe it is clear that Congress saw no reason to apply The Acts' requirements to commercial item or COTS item acquisitions.

Even more compelling is the impracticality of imposing this Act on commercial and COTS items. Underlying the reporting requirement of this Act and the implementing interim FAR rule is the premise that subcontracts are always awarded directly in response to a Federal Government award; however, for commercial items and COTS items, this is clearly not the case.

When the Federal Government procures a commercial or COTS item, it is just one of many customers for that item. . When a prime contractor procures a commercial or COTS item at the subcontract level, that contractor is one of many customers. In fact, all of the good reasons that exist to exempt commercial item and COTS items procured by the Government apply to a prime contractor's procurements from their first tier supplier base as well. Companies selling commercial or COTS items have established supply chains that respond to forecasted business demand and market conditions and not individual contract awards. Companies selling commercial and COTS items often enter into long term supplier agreements based on forecasted demands over time and not the demand generated by any one contract award. Components are often already in inventory to support on-going production. As the very term itself implies, in the case of "commercial off-the-shelf" items, the Federal Government's order may be fulfilled directly from contractor inventory making the identification of "first-tier subcontracts" impossible.

The Federal Register section B. Determinations, states in paragraphs 2 and 3 that the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to commercial items and COTS items to "…reduce 'wasteful and unnecessary spending'" by disclosing detailed information on a public web site regarding first-tier subcontracts. We are particularly unclear on how this would apply to commercial and COTS items. When the Federal Government satisfies its requirement with a commercial item or a COTS item, it is choosing to procure an item that has already proven its value in the commercial market place. The commercial marketplace already has sufficient information about a company's subcontractors, or more likely, has concluded that there is no need for such information. When the Federal Government (or a prime contractor) chooses to satisfy its requirement with a product or service destined for the commercial market, it is choosing to invest in innovation that the government can ill-afford to discourage.

Federal Register section E, Request for Comments Regarding Paperwork Burden, asks "whether this collection of information is necessary for the proper performance of functions of the FAR and will have practical utility." Certainly for commercial and COTS items, the answer must be an unequivocal "no." There is no apparent value to the Federal Government's collection and publication of such data when the commercial market does not require it, nor is it clear how publication of a commercial contractor's first-tier subcontractors will "reduce 'wasteful and unnecessary spending'" by the Government. The only likely result of this publication requirement will be first-tier contractors selling commercial and COTS items to the Government to question the importance of their often limited government sales in light of this significant burden and intrusion into the contractor's commercial supply chain.

CODSIA strongly recommends that the inclusion of FFATA on the list of laws not applicable to commercial items (FAR 12.503(a)(6)) be retained for both prime contractors selling commercial items and first-tier subcontractors selling commercial items, as well as for COTS.

Improper Disclosure

This interim rule could cause a breach of contract between a prime contractor and its subcontractors where these subcontracts include nondisclosure agreements and release of information to the public clauses. Such agreements and clauses are typical in commercial business relationships where the parties choose to protect their relationship from competitors or protect company proprietary information -- particularly when such agreements protect against disclosure of subcontractor pricing. The Government should not insert itself into these relationships, even where the purpose of the subcontract is to perform work that may ultimately be delivered to the U.S. Government. If this element of the interim rule is retained, we strongly recommend that it only be applied to new solicitations first issued at least sixty days after the effective date of any subsequently issued new rule so that companies will be able to structure their business transactions with full knowledge of this disclosure requirement.

Competitive Harm

Many businesses that sell to the U.S. Government have integrated business processes that serve both their commercial and government customers. These common processes typically include a common supply chain. Leveraging this common infrastructure provides technological advantages as well as economies of scale not achievable with government business alone. Government-unique rules, however, such as this interim rule, infringe on important commercial business practices making it difficult to continue such a beneficial relationship.

For example, information regarding a company's relationships with its suppliers, including the public identification of its supply chain for individual or categories of components, is often considered by our member companies to be proprietary and competition sensitive. Companies generally do not disclose these relationships to the public, and in particular to their competitors. Thus, companies have implemented policies and procedures to protect the identity of and relationships with their subcontractors, suppliers and vendors. The interim rule requires disclosure of this proprietary and sensitive information in commercial business relationships and will, as a consequence, cause severe harm to any company's competitive interest. For companies having a supply chain that is common to both government and commercial products and services, the requirement in the interim rule (and statute) to disclose first-tier subcontractor information relative to government work will yield protected information directly disclosing a contractor's commercial supply chain, or data that can easily be extrapolated to establish a competitor's commercial supply chain, resulting in severe competitive vulnerabilities.

Moreover, most of our companies are unable and unwilling to disclose their full lists of first-tier subcontractors. Key first-tier subcontractors lists, particularly those that include companies that possess specialized capabilities, are often developed by contractors over long periods of time based on business strategy and experience. It is a common commercial business practice to not release first-tier subcontractor base information to the public. Indeed, they diligently protect such information.

Furthermore, even if the requirement of the interim rule were narrowed to disclosure of only those first-tier subcontractors that are working in direct support of U.S. Government contracts, we believe this data would still raise the concerns we have highlighted. Given this environment, contractors and first-tier subcontractors may be reluctant to bid on government contracts if their competitive position in the often more significant commercial market were to be threatened or compromised. The interim rule presents a tremendous disincentive for companies to do business with the Government.

Finally, many of our companies also protect executive compensation information for competitive reasons (see below "Executive Compensation Reporting for Public Companies").

Administrative Burdens

The interim rule will add significant and excessive administrative burdens on contractors to develop, implement, and maintain a system that can be used to populate the U.S. Government's reporting website. The Federal Register includes an estimate of the burden on the rule on small business, but acknowledges that the estimated burden on small business only addresses the input of the data into the CCR and FSRS systems. The Federal Register notice does not address the significant amount of time required for prime contractors (large and small businesses) to collect all 14 data elements for each first-tier subcontract. Furthermore, the estimated paperwork burden is assessed to be a one-time event only, but does not recognize the very significant burden created by the requirement to maintain the first-tier subcontractor data over the life of all reported first-tier subcontracts and update any data element that changes (presumably including a one dollar change to the "Amount of the subcontractor award"). It is not unusual for contracts to have a significant number of first-tier subcontracts and for those contracts to continue for 5-10 years. The burden of reporting and maintaining over the life of the contract the first-tier subcontractor data should be obvious, but has not been considered in development of this interim rule.

We also question the basis for the estimated cost to the public of over $21 million to accomplish the subcontract reporting requirements. This figure is based on a reporting burden of one response per respondent per year. One member company estimates that a single segment of their business would be required to report approximately 6000 subcontract awards per year, including changes thereto. If the estimated cost to the public based on one response per respondent per year is over $21 million, thousands of responses from each contractor may easily cost billions of dollars – costs that are allowable and recoverable under government contracts. Such a result does not meet Congressional intent for a <u>free</u> public website since the taxpayer will ultimately bear the enormous expense of implementing this statutory requirement.

Equally important, the implementation of the rule and the statutory requirements at the required $25,000 contract amount in the supply chain will place a significant burden on first-tier subcontractors, many of which are small businesses, unaccustomed to such requirements and lacking the necessary infrastructure to comply. In this regard, we question the conclusion stated in the Regulatory Flexibility Act analysis that asserts: "the rule minimizes the burden on small entities by phasing-in reporting requirements." The phase-in of the implementation has little or

no impact on the burden, but only delays insignificantly the burden of reporting. The Councils should consider raising the reporting threshold, at a minimum, to the Simplified Acquisition Threshold. We recommend that the Government conduct another pilot program to assess the true costs to report all contracts at $25,000 and above to assess the true extent to which reporting of such low dollar value subcontracts is useful to the public in reducing wasteful and unnecessary spending.

Prime contractors, and particularly those selling commercial and COTS items, do not routinely collect all of the information required to be reported by the interim rule. For example, while prime contractors would certainly identify a business address of each supplier, this may not be the principal place of performance where the work under the contract will be performed. Requiring contractors to supply this type of information may necessitate manual preparation of reports that are expensive and time-consuming. Collection of accurate information on executive compensation could for some member companies be equally burdensome.

Finally, if uploading contractor collected data to the website is a manual process whereby an individual is required to type responses to each element, this further adds to the administrative burden on contractors.

Executive Compensation Reporting

The interim rule calls for reporting the names and total compensation for each of the five most highly compensated executives for the contractor's and first-tier subcontractor's preceding completed fiscal year. Publicly traded companies are exempt from these reporting requirements if the public already has access to executive compensation information through reports filed with the SEC or IRS.

The interim rule and recently-issued CCR guidance, when read literally, have introduced significant confusion, and could be interpreted to greatly expand the numbers and levels of company employees potentially subject to the public reporting requirement. Language in the interim rule and accompanying CCR User's Guide implies that the compensation information should apply at the level of the specific CCR record (DUNS number) for each covered contract. It is common for large companies to have many affiliates, business operating units, and separate site locations, each of which may be awarded U.S. Government contracts. A single large company may have hundreds of CCR registrations, each with at least one, and in some cases multiple, DUNS numbers. Thus, the interim rule and CCR Guidance might be interpreted to require public disclosure of compensation at the individual affiliate, business operating unit, or site level and, thus, at a level far below the most highly-compensated executives of the combined company. Moreover, the rule could fail to achieve Congress' fundamental intent by resulting in disclosure of mid- to lower-level employees' compensation but not that of the most highly-compensated executives in the corporate headquarters. We have proposed in the attachment specific changes to the language of the interim rule and to the CCR User's Guide to remove any ambiguity that the disclosure applies to the highest paid executives of the combined company. We note that P.L. 110-252 section 6202 requires that "the names and total compensation of the five most highly compensated **officers"** be reported.

Comments and Questions for Clarification

Attachment A to this letter addresses additional significant areas of concern and highlights areas requiring necessary clarifications to the interim rule that must also be addressed in any final rule. We request the Councils address these comments and questions, in addition to our other comments, prior to issuance of any final rule.

Conclusion

For the reasons set forth above, the CODSIA member associations ask that the interim FAR rule be significantly revised since it is excessively burdensome to contractors and functionally unworkable. We recognize that some of the deficiencies with the rule are due in some part to the excessive and burdensome requirements imposed by the FFATA. We therefore recommend that the Executive Agencies represented on the FAR Councils seek appropriate amendments to the FFATA from the Congress.

Thank you for the opportunity to provide these comments. We would welcome any additional opportunity to discuss them further with you. If you have any questions, please contact Susan Tonner of AIA, who serves as our project officer for these comments, at 703-358-1087, or susan.tonner@aia-aerospace.org, or Bettie McCarthy, the CODSIA Administrative Officer, at 703-875-8059, or codsia@pscouncil.org.

Sincerely,

Richard Sylvester
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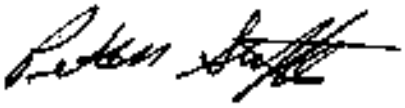

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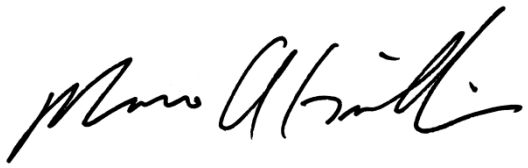

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Attachment A

Questions/Comments for Clarification of the Interim Rule:

- **FAR 4.1401 and 4.1403, Definition of "classified contract."** CODSIA understands the exemption for "classified contracts" to mean those contracts that meet the definition of "classified contract" in FAR 2.101. However, it has been the experience of our members companies in the short time since this interim rule has been implemented that some contracting officers are interpreting the term "classified contract" to mean only those contracts where the document itself is classified. While we understand this position is directly contrary to the FAR 2.101 definition, it is nonetheless occurring. To ensure proper implementation of the exemption, CODSIA recommends the final rule include a reference to the FAR 2.101 definition as follows:

  4.1401 Applicability. "(a) This subpart applies to all contracts with a value of $25,000 or more, except classified contracts (see definition of classified contract at 2.101) and contracts with individuals."

  4.1403 Contract clause. (b) The clause is not required in - (1) Classified solicitations and contracts (see 2.101); or…"

- **FAR 52.204-10(a), "First-tier Subcontract" definition:** As noted earlier in this response, many contractors, especially commercial companies and those with integrated commercial – Government supply chains, are continually making awards to subcontractors for materials and services without regard to the award of any particular prime contract by any customer, including a U.S. Government customer. This is particularly true for commercial/COTS items where subcontracts are awarded often without knowledge of any future Federal Government procurement decisions. For this reason, asking contractors to tie contract and subcontract awards together will be extremely difficult, creating significant administrative burdens and risks, and creating potential competitive harm as described in our earlier comments.

  In addition, the definition of "first-tier subcontract" contained in the interim rule differs from the definition of "subcontract" included in the September 2007 clause. The September 2007 rule defined "subcontract" as "any contract entered into by the Contractor to furnish supplies or services **for performance of this contract"** (emphasis added)**.** Further, the September 2007 clause states that the definition of subcontract "does not include contracts that provide supplies or services benefiting two or more contracts." Taking this approach would be consistent with the "subcontract" definition in FAR 44.101, which ties to performance of "a" prime contract (singular, not plural), and the prior definition of FAR 52.204-10 (Sep 2007).

  We recommend revising the definition of "First-tier subcontract" in subparagraph (a) of the clause at FAR 52.204-10 as follows:

> "*First-tier subcontract*" means a subcontract awarded by a contractor solely and directly to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements that benefit two or more contracts."

- **FAR 52.204-10, Reporting of Information:** Many elements of the reporting requirements (for example, paragraphs (c)(1)(v), and (xi)) conflict with the requirements of DFARS 252.204-7000, Disclosure of Information**,** and other similar non-disclosure requirements appearing in other Agency contracts. Most agencies require prior written approval of the contracting officer before disclosing to the public information such as the funding agency, program purpose, status, and other information regarding the contract or program that is not already disclosed by the agency under FAR 5.303. It has been our member company experience with ARRA-funded projects that DoD contracting officers have enforced this requirement for preapproval of information to be posted to the Federalreporting.gov website. The FAR rule must clarify if such preapproval requirement applies to the information made publicly available under this rule, and if it does, provide additional time to obtain such clearance prior to reporting, or provide that any limitation is over-ridden and no longer applicable.

- **FAR 52.204-10(c) (2) and (3), Executive Compensation for Prime Contractors and First-Tier Subcontractors:** Publicly-traded companies operate under strict SEC disclosure rules, including public reporting of their most senior executives' compensation. These SEC reports already include compensation information for the company, including the parent and wholly owned subsidiaries and affiliates. As such, businesses covered by this SEC reporting qualify for the public company exemption expressly outlined in the interim rule. However, the interim rule and recently-issued CCR User's Guide, when read literally, have introduced significant confusion and could be interpreted to greatly expand the numbers and levels of company employees potentially subject to the public reporting requirement as noted in our letter above.

  To remedy this ambiguity, the interim rule at FAR 52.204-10(c)(2) should be amended to include the following bracketed and double-underlined language:

  > "the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year at http://www.ccr.gov, if
  >
  > * * * * *
  >
  > (ii) The public does not have access to information about the compensation of the [five most highly compensated] executives [of the contractor, including all affiliates] through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78 m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986."

  A similar language change should be made to the subcontractor portion of executive compensation reporting requirement at FAR 52.204-10(c)(3) as noted below.

To further simplify executive compensation reporting requirements of first-tier subcontractors, we urge the Councils to impose the duty of reporting executive compensation on the subcontractor itself, rather than the contractor. This could be implemented by requiring first-tier subcontractors to register in CCR as a prerequisite for award of a first-tier subcontract. This approach is similar to the one being taken for ARRA-funded grants. The information is within the control of the subcontractor, and the reporting obligation should rest there. Registration in CCR will facilitate the pre-population of FSRS and simplify subcontractor reporting. Significant numbers of private subcontractors, including foreign subcontractors, may refuse to provide their required executive compensation to prime contractors, thereby precluding contractors and the Government from using their services and products. Contractors may have to seek and qualify alternate sources of these products and services, which will result in additional costs to contractors and the Government.

If the interim rule stands as written, the Government should require the first-tier subcontractor, rather than the prime contractor, be responsible for reporting at www.fsrs.gov or in CCR the executive compensation of its five most highly compensated executives. Prime contractors should be able to rely in good faith on the subcontractor's direct reporting of their executive compensation.

Our suggested language changes for subcontractor executive compensation reporting are again bracketed and double-underlined, while proposed deletions are stricken:

> "the ~~Contractor~~ [first-tier subcontractors identified by the contractor] shall report the names and total compensation of each of the five most highly compensated executives ~~for each first-tier subcontractor~~ for the [first-tier] subcontractor's preceding completed fiscal year at http://www.fsrs.gov, if
>
> * * * * *
>
> (ii) The public does not have access to information about the compensation of the [five most highly compensated] executives [of the first-tier subcontractor, including all affiliates] through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78 m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986."

We believe this recommended change to the Rule has the benefit of providing a simple solution and focuses on Congress' intent to exempt the highest paid executives of public companies from additional disclosure requirements beyond those already imposed by the SEC and IRS.

We also note that the interim rule inappropriately deviates from the statute by expanding the group of contractor personnel whose compensation may be reported. The statute is limited to "officers," while the interim rule covers "officers, managing partners or any other employees in management positions." The interim rule should be revised to be consistent with the statute and limit the disclosure to the five most highly compensated officers of the company.

CCR guidance should likewise be reissued to define the contractor whose executive compensation data is being sought to include "parent organization, all branches, and all affiliates worldwide."

Data Required for First-tier Subcontract Reporting: It is CODSIA members' understanding that the FSRS system will be pre-populated with data on the prime contract from the FPDS system. The purpose of pre-populating the data is to reduce the reporting burden on prime contractors. It has been the experience of CODSIA companies that the FPDS data is not always accurate. The final rule should make clear that correction of the FPDS data that is pre-populated into FSRS is the responsibility of the contracting officer and not the prime contractor.

In addition, as noted in the following paragraphs, the subcontract reporting requires data that may not be readily available to the prime contractor. To facilitate prime contractor reporting, contracting officers must be required to provide this data in the contract document.

- **FAR 52.204-10 (c) (ix), (x), (xi), (xii), (xiii):** These reporting requirements are the responsibility of the Contracting Officer to complete in FDPS as identified in the "FPDS User's Manual" (https://www.fpds.gov/fpdsng_cms/index.php/training). Per FAR 4.604, it is the responsibility of contracting officers to submit complete and accurate data on contract actions to FPDS. Therefore, the burden should not be on the contractor to report this data.

- **FAR 52.204-10 (c)(xiii):** The Treasury account symbol (TAS) should be populated in FPDS in accordance with established procedures. It is recommended that the FAR make this a mandatory field in the FPDS contract action report to be completed by the contracting officer. Reference the Director, Defense Procurement and Acquisition Policy memorandum, "Deployment of Subcontract Reporting Requirements for the Federal Funding Accountability and Transparency Act," dated July 15, 2010.

- **FAR 52.204-10 (c) (xiv):** The requirement for the contractor to enter the applicable North American Industry Classification System code (NAICS) is inconsistent with both the "FPDS User's Manual and Data Dictionary" (https://www.fpds.gov/fpdsng_cms/index.php/training). and Director, Defense Procurement and Acquisition Policy memorandum "Correctly Identifying Size Standard of Contractors" dated July 21, 2010. Therefore, the requirement for reporting of the NAICS Code should be removed from the contractor's responsibility.

- **FAR 4.604, "Responsibilities":** This paragraph should be modified to include a statement that it is the responsibility of the contracting officer to complete the required fields in FPDS in order to be compliant with the Federal Funding Accountability and Transparency Act.

- **The Rule Should Be Split Into Two Clauses**: The FAR Councils should split the single proposed clause into two clauses. The subcontractor reporting and executive compensation reporting have little in common beyond the fact they both require reporting. Consequently, the clauses should be split into two separate clauses for ease of implementation and contract administration.

- **Modification of Contracts to Incorporate Final Rule:** The final FAR rule should allow contracts awarded with the interim rule to be modified, without consideration, to incorporate the final rule. The burden of reporting will be significant. Having two separate reporting schemes, one for contracts awarded under the interim rule and another for contracts awarded under the final rule, would be even more burdensome.

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