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Part III

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

**48 CFR Parts 12, 14, 15, and 52
Federal Acquisition Regulation; Electronic
Representations and Certifications;
Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 12, 14, 15, and 52

[FAR Case 2002-024]

RIN 9000-AJ80

**Federal Acquisition Regulation;
Electronic Representations and
Certifications**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to require offerors to submit representations and certifications electronically via the Business Partner Network (BPN), unless certain exceptions apply. The BPN is a grouping of systems that follow vendor data. Online Representations and Certifications Application (ORCA) is one application on the BPN to replace the paper based Representations and Certifications (Reps and Certs) process.

DATES: Interested parties should submit comments in writing on or before March 29, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.2002-024@gsa.gov.

Please submit comments only and cite FAR case 2002-024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501-4082. Please cite FAR case 2002-024.

SUPPLEMENTARY INFORMATION:**A. Background**

Under current FAR regulations, offerors are required, for each solicitation issued, to complete certain provisions that require representations and certifications. One of the e-Government Integrated Acquisition

Environment's (IAE) initiatives is to eliminate the administrative burden on offerors who must submit the same information to various contracting offices. Representations and certifications that are completed on-line can then be accessed by procurement offices across the Federal government. As part of this process, the software will use certain information that a contractor has already provided in the Central Contractor Registration (CCR) database. Therefore, this requirement only applies to offerors that also are required to register in the CCR database. FAC 16 published in the *Federal Register* at 68 FR 56668, October 1, 2003, mandates FAR Case 2002-018, Central Contractor Registration, as a requirement to contractors doing business with executive agencies. Implementation of the CCR rule should be accomplished by December 2003.

This proposed rule amends FAR parts 12, 14, 15, and 52 to require offerors to—

- (1) Provide representations and certifications electronically via the BPN Web site at www.bpn.gov;
- (2) Update the representations and certifications as necessary, but at least annually to ensure they are kept current, accurate, and complete; and
- (3) Make changes that affect only one solicitation by completing the appropriate section of certain solicitation provisions.

This is not a significant regulatory action and, therefore, was not 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 changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR requires small businesses to provide representations and certifications for individual solicitations. However, FAR 15.209(g) and FAR 14.213 do permit annual submissions if authorized by individual agencies. This rule will establish a requirement for annual submissions by electronic means.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The FAR requires small businesses to provide representations and certifications for individual solicitations. However, FAR

15.209(g) and FAR 14.213 do permit annual submissions if authorized by individual agencies. This rule will establish a requirement for annual submissions by electronic means.

In an effort to broaden use and reliance upon e-business applications, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. The objective of this rule is to eliminate the need for offerors to submit the same information (*i.e.*, representations and certifications) to different Government contracting offices. By the offerors providing this information to a centralized location, it is anticipated that this rule will have a significant positive impact on small businesses by reducing their overall administrative burden.

The rule will apply to small business offerors that also are required to register in the Central Contractor Registration (CCR) database. The reason for the link with CCR is that, as part of the on-line representations and certifications process, the software will use information that an offeror has already provided into the CCR database. The offeror will provide the additional information needed. Therefore, small businesses that are exempted from registering in the CCR database are also exempted from submitting representations and certifications electronically.

Based on Governmentwide data, approximately 20,825 small businesses were awarded contracts of \$25,000 or more in fiscal year 2002. It is estimated that a majority of them will be subject to the rule. Many of these businesses are already among the over 240,000 registrants in CCR.

Administrative or financial personnel that have general knowledge of the contractor's business are able to register by providing the pertinent information into the BPN Web site.

The proposed rule when finalized will not duplicate, overlap, or conflict with any other Federal rules.

There are no significant practical alternatives that will accomplish the objective of this rule. Continued reliance on a paper-based system would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-in of CCR by the Department of Defense demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 12, 14, 15, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002-024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the proposed rule contains information collection requirements. The rule requires offerors to—

(1) Provide representations and certifications electronically via the BPN Web site;

(2) Update the representations and certifications as necessary, but at least annually to ensure they are kept current, accurate, and complete; and

(3) Make changes that affect only one solicitation by completing the appropriate section of certain solicitations.

The requirement to submit certain representations and certifications on line—

(a) Eliminates the administrative burden for the offeror of submitting the same information to various contracting offices; and

(b) Allows access by procurement offices across the Federal Government. Individual FAR clearances are assigned to the majority of the representations and certifications listed in the rule. Four of the representations and certifications are managed under other agencies' clearances. The FAR clearances impacted by this rule are 9000-0018, 9000-0097, 9000-0094, 9000-0047, 9000-0150, 9000-0155, 9000-0134, 9000-0139, 9000-0024, 9000-0130, 9000-0025, and 9000-0090. The clearance associated with another agency is 1215-0072. It is a DoL clearance.

The above FAR clearances have been revised to reflect a "percentage of responses submitted electronically" of 75%, which in turn decreases the total annual hours associated with each burden. In accordance with (b)(1)(iv) of section 1320.3, Definitions, of 5 CFR 1320.3(b)(1)(iv), the definition of Burden includes "* * * developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information * * *". As a result, the subject FAR clearances have been revised to show a total decrease of 35% in burden hours associated with the proposed rule's requirements. The "total annual hours" of the subject FAR clearances have been revised as shown:

CMB clearance	Previous "total annual hours"	Revised "total annual hours"	Previous "% of responses collected electronically"	Actual % of burden reduced (total of 35%)	Revised "% of responses collected electronically"
9000-0018	12850	8352	0	35	75
9000-0097	300000	195000	0	35	75
9000-0094	91667	59584	0	35	75
9000-0047	77810	50577	0	35	75
9000-0150	383007	268102	5	30	75
9000-0155	250	162	0	35	75
9000-0134	32175	20914	0	35	75
9000-0139	83744	58621	5	30	75
9000-0024	9785	6361	0	35	75
9000-0130	952	666	5	30	75
9000-0025	1904	1238	0	35	75
9000-0090	29970	19480	0	35	75

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than March 29, 2004, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Numbers 9000-0018, 9000-0097, 9000-0094, 9000-0047, 9000-0150, 9000-0155, 9000-0134, 9000-0139, 9000-0024, 9000-0130, 9000-0025, and 9000-0090, Electronic Representations and Certifications.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in

which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the information collection package(s) from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control Numbers 9000-0018, 9000-0097, 9000-0094, 9000-0047, 9000-0150, 9000-0155, 9000-0134, 9000-0139, 9000-0024, 9000-0130, 9000-0025, and 9000-0090, Electronic Representations and Certifications, in all correspondence.

List of Subjects in 48 CFR Parts 12, 14, 15, and 52

Government procurement.

Dated: January 20, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 12, 14, 15, and 52 as set forth below:

1. The authority citation for 48 CFR parts 12, 14, 15, and 52 are revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

2. Amend section 12.301 by adding a sentence after the second sentence in paragraph (b)(1) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * * Use the provision with its Alternate I in solicitations when an exception to Central Contractor Registration at FAR 4.1102(a) applies.

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PART 14—SEALED BIDDING

3. Amend section 14.201-5 by revising paragraph (a) to read as follows:

14.201-5 Part IV—Representations and Instructions.

(a) Section K, Representations, certifications, and other statements of bidders. (1) Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by bidders.

(2) FAR clause 52.214-30, Annual Representations and Certifications—Sealed Bidding, shall be included in the solicitation to permit electronic submission of certain representations and certification under the circumstances prescribed at 14.201-6(u).

4. Amend section 14.201-6 by revising paragraph (u) to read as follows:

14.201-6 Solicitation provisions.

(u) Insert the provision at 52.214-30, Annual Representations and Certifications—Sealed Bidding, in invitations for bids that contain the clause at 52.204-7, Central Contractor Registration (see 14.213).

5. Revise section 14.213 to read as follows:

14.213 Annual submission of representations and certification.

(a) Offerors shall submit electronic annual representations and certifications via the Business Partner Network (BPN) at http://www.bpn.gov in conjunction with registration in the Central Contractor Registration database unless an exception listed at FAR 4.1102(a) applies.

Offerors shall update the representations and certifications as necessary, but at least annually to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from date of submission or update.

(b) If FAR clause 52.214-30 is included in the solicitation, do not include the following representations and certifications in the solicitation:

- (1) 52.203-2, Certificate of Independent Price Determination.
(2) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Transactions.
(3) 52.204-3, Taxpayer Identification.
(4) 52.204-5, Women-Owned Business (Other Than Small Business).
(5) 52.209-5, Certification Regarding Debarment, Suspension Proposed Debarment, and Other Responsibility Matters.

(6) 52.214-14, Place of Performance Sealed Bidding.

- (7) 52.215-6, Place of Performance.
(8) 52.219-1, Small Business Program Representations (Basic & Alternate I).
(9) 52.219-2, Equal Low Bids.
(10) 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
(11) 52.219-21, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.
(12) 52.219-22, Small Disadvantaged Business Status (Basic & Alternate I).
(13) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.
(14) 52.222-22, Previous Contracts and Compliance Reports.
(15) 52.222-25, Affirmative Action Compliance.

(16) 52.222-48, Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment Contractor Certification.

(17) 52.223-4, Recovered Material Certification.
(18) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(19) 52.223-13, Certification of Toxic Chemical Release Reporting.

(20) 52.225-2, Buy American Act Certificate.

(21) 52.225-4, Buy American Act, North American Free Trade Agreement—Israeli Trade Act Certificate (Basic, Alternate I & II).

(22) 52.225-6, Trade Agreements Certificate.

(23) 52.226-2, Historically Black College or University and Minority Institution Representation.

(24) 52.227-6, Royalty Information (Basic & Alternate I).

(25) 52.227-15—Representation of Limited Rights Data and Restricted Computer Software.

(c) Offerors that have submitted annual representations and certifications shall complete the appropriate section of the provision at 52.214-30, Annual Representations and Certifications Sealed Bidding to— (1) Affirm in their bids that the representations and certifications they have posted to the BPN are current for the purposes of the solicitation; or (2) Make changes that affect only or solicitation

PART 15—CONTRACTING BY NEGOTIATION

6. Amend section 15.204-5 by revising paragraph (a) to read as follows:

15.204-5 Part IV—Representations and Instructions:

(a) Section K, Representations, certifications, and other statements of offerors. (1) Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) FAR clause 52.215-7, Annual Representations and Certifications—Negotiation, shall be included in the solicitation to permit electronic submission of certain representations and certifications via the BPN at http://www.bpn.gov in conjunction with registration in the Central Contractor Registration database under the circumstances prescribed at 15.209(g)(1).

7. In section 15.209 revise paragraph (g) to read as follows:

15.209 Solicitation provisions and contract clauses.

(g)(1) Insert the provision at 52.215-7, Annual Representations and Certifications—Negotiation, in solicitations that contain the clause at FAR 52.204-7, Central Contractor Registration (see 14.213).

(2) If the provision at 52.215-7 is included in the solicitation, do not include the representations and certifications at 14.213(b) in the solicitation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend section 52.212-1 by revising the date of the provision and paragraph (b)(8); and adding Alternate I to read as follows:

52.212-1 Instructions to Offerors Commercial Items.

Instructions to Offerors—Commercial Items (Date)

(b) Submission of offers. (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(j)) for those representations and certifications that the offeror shall complete electronically;

(End of provision) Alternate I (Date). As prescribed in 12.301(b)(1), substitute the following paragraph (b)(8) for paragraph (b)(8) of the basic provision:

(8) A completed written copy of the representations and certifications at FAR 52.212-3 excluding paragraph (j).

9. Amend section 52.212-3 by revising the date of the provision; adding an introductory paragraph; and revising paragraph (j) to read as follows:

52.212-3 Offeror Representations and Certifications.

Commercial Items.

* * *

Offeror Representations and Certifications—Commercial Items (Date)

An offeror shall complete only paragraph (j) of this provision if the offeror has completed the annual representations and certifications electronically via the Business Partner Network (BPN) (but see paragraph (j)(2)). If an offeror has not completed the annual representations and certifications electronically via the BPN, the offeror shall complete only paragraphs (b) through (i) of this provision.

* * * * *

(j) *Annual Representations and Certifications* [Do not complete if solicitation includes 52.212-1, Alternate . . . Any changes provided by the offeror in (j)(2) of this provision do not automatically change the representations and certifications posted on the BPN]. The offeror has completed the annual representations and certifications electronically via the BPN Web site at <http://www.bpn.gov>. After reviewing the BPN database information, the offeror verifies that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items [check the appropriate block]:

[] (1) Are current, accurate, and complete as of the date of this offer and are incorporated in this offer by reference.

[] (2) Are current, accurate, and complete as of the date of this offer and are incorporated in this offer by reference, except for paragraphs . . .

[Identify the applicable paragraphs at (b) through (i) of this provision that the offeror

has completed for the purposes of this solicitation only.]

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

(End of provision)

* * *

10. Revise section 52.214-30 to read as follows:

52.214-30 Annual Representations and Certification—Sealed Bidding.

As prescribed in 14.201-6(u), insert the following provision:

Annual Representations and Certifications—Sealed Bidding (Date)

The bidder has completed the annual representations and certifications electronically via the Business Partner Network (BPN) Web site at <http://www.bpn.gov>. After reviewing the BPN database information, the bidder verifies that the representations and certifications currently posted electronically [check the appropriate block]:

[] (a) Are current, accurate, and complete as of the date of this offer and are incorporated in this bid by reference (see FAR 14.213(b)).

[] (b) Are current, accurate and complete as of the date of this bid and are incorporated in this bid by reference, except for the changes identified below [insert changes, identifying change by clause number, title, date].

These amended representation(s) and/or certification(s) are also incorporated in this bid and are current, accurate, and complete as of the date of this bid.

Far clause no.	Title	Date	Change

Any changes provided by the bidder do not automatically update the representations and certifications posted on the BPN.

(End of provision)

11. Revise section 52.215-7 to read as follows:

52.215-7 Annual Representations and Certifications Negotiation.

As prescribed in 15.209(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Date)

The offeror has completed the annual representations and certifications electronically via the Business Partner Network (BPN) Web site at <http://www.bpn.gov>. After reviewing the BPN database information, the offeror verifies that the representations and certifications currently posted electronically [check the appropriate block]:

[] (a) Are current, accurate, and complete as of the date of this offer and are incorporated in this offer by reference (see FAR 14.2113(b)).

[] (b) Are current, accurate, and complete as of the date of this proposal and are incorporated in this offer by reference, except for the changes identified below [insert changes, identifying change by clause number, title, date].

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this proposal.

Far clause No.	Title	Date	Change

Any changes provided by the offeror do not automatically update the representations and certifications posted on the BPN.

(End of provision)

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