



MAR 31 2004

MEMORANDUM FOR RONALD POUSSARD  
DIRECTOR  
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR  
REGULATORY AND FEDERAL ASSISTANCE  
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2002-024, Electronic Representations and  
Certifications

Attached are comments received on the subject FAR case published at 69 FR 4012;  
January 27, 2004; The comment closing date was March 29, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2002-024-1	01/29/04	01/29/04	Gary Boyd
2002-024-2	01/30/04	01/30/04	Vivian Scheithauer
2002-024-3	02/18/04	02/10/04	MCC Construction Corporation
2002-024-4	02/12/04	02/12/04	Paul H. Porter
2002-024-5	02/18/04	02/18/04	Peter Tuttle
2002-024-6	02/26/04	02/26/04	Jeritta A. Parnell
2002-024-7	02/02/04	02/02/04	Mary Sessin
2002-024-8	03/01/04	03/01/04	Cathy S. Stewart
2002-024-9	03/03/04	03/03/04	Jennifer Brouillard

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2002-024-10	03/05/04	03/05/04	Dan Cronin
2002-024-11	03/26/04	03/26/04	George Leininger
2002-024-12	03/26/04	03/26/04	Holly M. Blyand
2002-024-13	03/26/04	03/26/04	Richard E. Strowd
2002-024-14	03/29/04	03/29/04	Barry Meltz
Attchments			

2002-024-1



"Boyd, Gary (LTA)"  
<Gary.Boyd@hqda.army.mil>

To: "farcase.2002-024@gsa.gov" <farcase.2002-024@gsa.gov>  
cc:  
Subject: FAR Electronic Reps & Certs

01/29/2004 02:42 PM

Please reconsider granting any exemptions from the requirement to submit reps. & certs. electronically.

From the point of view of a Government contracting professional, paper reps. & certs are easy. Every interested offeror submits them in response to a solicitation, and failure to submit them has consistent and predictable consequences. Similarly, universal electronic reps. & certs. would be easy, after a short period of adjustment. Every interested offeror would be responsible for building an electronic record, and failure to do so would have consistent and predictable consequences.

But departing from universality eliminates the consistency and predictability of the consequences. Should a contracting officer check for paper reps. and certs. and, failing to find them, check for electronic ones? Or, should he only check for electronic ones if the offeror falls within a particular class of small business? Without reps. and certs., how would a Contracting Officer know what class of small business an offeror is?

The possibility of parallel paper and electronic systems offers myriad chances for error. What if paper and electronic versions differ? What if an offeror from the class of small businesses not required to build an electronic record chooses to build an electronic record? What if someone required to build an electronic record, submits paper reps. and certs. instead?

Converting to electronic reps. and certs is a great idea, but its utility is directly related to its universality. Exemptions from the requirement mean reductions in usefulness.

Gary Boyd

2002-024-2



"Vivian Q Scheithauer"  
<vscheithauer@csc.com>  
m>

To: "farcase.2002-024@gsa.gov" <farcase.2002-024@gsa.gov>  
cc: "Stacey Link" <slink@csc.com>  
Subject: farcase.2002-024--Electronic Reps and Certs

01/30/2004 09:08 AM

Since contractors are currently using the CCR database, the EEO database, Pro-Net and EPLS (consolidated under "BPN.com"), will there be a future consideration for contractor's to have access and use the contractor's reps and certs rather than have the contractor continuing to request a new reps and certs package for the same sources that on are in the "BPN" reps and certs database.

I hope that this is a consideration.

I wish to thank the government staff for the continuing changes that simplify the acquisition process(es).

Vivian L. Scheithauer  
Director, Systems Compliance

11710 Plaza America Drive  
Reston, Virginia 20190-6000

Telephone Number: 703/261-5318  
Facsimile Number: 703/261-5088

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10 February 2004



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General Services Administration  
Ms. Laurie Duarte  
FAR Secretariat (MVA)  
1800 F Street, NW  
Room 4035  
Washington, DC 20405

2002-024-3

Re: FAR Case 2002-024

Dear Ms. Duarte:

In reference to the "Electronic Certs and Reps Proposed" article in the February 2, 2004 issue of the *Regulatory Affairs Bulletin*, MCC Construction Corporation would like to go on record with our support of this initiative. Submitting an annual electronic Representations & Certifications via the Internet is an excellent idea, and one whose time has come.

An annual, electronic submittal of this document saves the contractors time in repeatedly preparing the same document for each solicitation, saves paper in repeatedly printing the multi-page document for each solicitation, and saves the Government time in reviewing the document each time. Congratulations – this would be a welcome change!

Regards,

Tam Bentley  
MCC Construction Corporation  
Proposals & Communications Manager

alced  
2/18/04 @



2002-024-4



"Porter Paul H Capt  
ESC/PKO"  
<Paul.Porter@hansco  
m.af.mil>

To: "farcase.2002-024@gsa.gov" <farcase.2002-024@gsa.gov>  
cc:  
Subject: Electronic Representations and Certifications

02/12/2004 12:42 PM

Sir/Ma'am,

An additional clarification at FAR 12.301 is needed for oral solicitations. FAR 13.106-1(c) states the contracting officer shall solicit quotations orally to the maximum extent practicable. FAR 5.101(a)(2)(ii) exempts contracting officers from posting \$10K-\$25K requirements if oral solicitations are used. Otherwise, the requirements has to be posted for 10 days--a millennium in the customer's eyes.

In contrast, FAR 12.301(a)(2) says we have to used 52.212-3, Offeror Reps and Certs, in all commercial solicitations.

Recommend verbiage be added to stating, "...other than oral..." just before the first "solicitation" in FAR 12.301(b). It would then read, "To implement this Act, the contracting officer shall insert the following provisions in other than oral solicitations for..." If this isn't the best place for it, then I would recommend similar verbiage in 12.301(b)(2) to clear up this ambiguity.

Please let me know your questions or concerns.

Very Respectfully  
Capt Paul Porter

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PAUL H. PORTER, Capt, USAF  
Acting Chief, Operational Contracting Division  
ESC/PKO, Hanscom AFB, MA  
Comm: (781) 377-2584 DSN:478  
e-mail: paul.porter@hanscom.af.mil

2002-024-5



"Tuttle, Peter"  
<PeterT@distributedinc.com>

To: farcase.2002-024@gsa.gov  
cc: "Falcone, Ron" <RonF@distributedinc.com>  
Subject: FAR Case 2002-024; Electronic Representations and Certifications

02/18/2004 09:54 AM

1. Issue:

The requirement for a physical affirmation (check box) that the representations and certifications posted to BPN are current appears unnecessary:

Para's affected -FAR 14.213(c)(1), 52.212-3(j), 52.214-30, 52.215-7

2. Discussion and Rationale:

- a. Proposed language in FAR 14.213(a) already states that vendors "shall" update representations and certifications as necessary, but at least annually make sure they are current, accurate and complete.
- b. Since FAR 52.219-5 (specifically FAR 52.209-5(b through d)) "Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters" is included in the listing contained in 14.213(b), there appears no need for an additional verification on the part of the vendor.
- c. The responsibility for providing correct certifications is placed squarely upon the vendor in 52.209-5(b) "The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances". Furthermore, the penalty for presenting erroneous certifications is provided in 52.209(e) "The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default".
- d. It appears that real intent of the proposed language is to verify if there are any changes to the vendor representations and certifications that are required for a particular solicitation. If this is true, perhaps the prescription and clauses affected should be revised to indicate so.

3. Recommendation:

Revise to reflect the intent of the language. An example of a Part 52 clause follows:

52.215-7 Amended Annual Representations and Certifications - Negotiations

The Offeror has completed the annual representations and certifications electronically via the Business Partner Network (BPN) Web Site at <http://www.bpn.gov>, however, submits the following changes pertaining to this specific solicitation as identified below (insert changes, identifying change by clause number, title and date). These amended representation(s) and/or certifications are also incorporated in this offer and are current, accurate and complete as of the date of this proposal.

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FAR Clause No.	Title	Date	Change
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Any changes provided by the offeror do not automatically update the representations and certifications

024-5

posted on the BPN.

4. Advantages to accepting the recommendation:

- a. Addresses the true intent of the proposed language
- b. Eliminates additional physical check boxes
- c. Reinforces the fact that the vendor is being held responsible for the currency of their on-line reps and certs information

Questions can be directed to the undersigned or Ron Falcone at Distributed Solutions, Inc., (703) 471-7530.

Thanks for the opportunity to comment.

Regards,

Peter Tuttle, CPCM  
Distributed Solutions, Inc.



2002-024-6



**Jeritta A. Parnell**

02/26/2004 01:11 PM

To: farcase.2002-024@gsa.gov  
cc: Laura G. Smith-Auletta/MVP/CO/GSA/GOV@GSA  
Subject: Electronic Reps and Certs

Re: Federal Register: January 27, 2004 (Vol. 69, No 17) FAR; Electronic Representations and Certifications, Proposed Rule

The following question is submitted in regard to subject FAR case:

Should 52.222-38, Compliance with Veteran's Employment Reporting Requirements, be included in FAR 14.213(b)?

Jeritta A. Parnell  
Procurement Analyst  
General Services Administration  
Office of Acquisition Policy  
202-501-4082

2002-024-7



"Mary Sessin"  
<mary.sessin@wy.usda.gov>

To: farcase.2002-024@gsa.gov  
cc: "S/O - Admin. - PT - Dianna McCartney"  
<dianna.mccartney@wy.usda.gov>  
Subject: FAR Case 2002-024

02/02/2004 03:52 PM

My comments on the requirement for electronic representations and certifications - Can it be incorporated with the Central Contractor Registration (CCR) file? We have already caused a burden on the contractors that they must register in the CCR and the in the CCR they already state what their business size is and etc. I do not want to tell them they have yet another on-line task to complete in order to reply to our solicitations. Our contracts are for low dollar amounts and I cannot see the contractors doing all this preliminary work just for our small amount of business for them. All of this may work for higher dollar business. Can there be a dollar value attached?

Mary Sessin  
USDA Rural Development  
Wyoming  
307-261-6304

2002-024-8



"Cathy S Stewart"  
<cstewart1@bop.gov>

To: farcase.2002-024@gsa.gov  
cc:  
Subject: FAR Case 2002-024, Electronic Representations and Certifications

03/01/2004 07:21 AM

The Federal Bureau of Prisons offers the following comments regarding FAR Case 2002-024, Electronic Representations and Certifications.

1. If the On-line Representations and Certifications (ORCA) will use information that vendors provide in the Central Contractor Registration (CCR) database, why can't all of the information be input through CCR? Why should vendors have to access a totally separate system? This does not seem to eliminate the administrative burden on contractors for providing the same information.

2. If vendors already access CCR, why is ORCA available only through the Business Partner Network? It seems it would be easier to include the necessary fields for ORCA into CCR so that vendors would not have to access two systems.

Thank you for the opportunity to comment on this proposed rule. If you need further information, please contact Matthew D. Nace, Chief, Acquisitions Management Section, at (202) 307-0985.

2002-024-9



"Jennifer L. Brouillard"  
<jbrouillard@bop.gov>

To: farcase.2002-024@gsa.gov  
cc:  
Subject: FAR CAsE 2002-024

03/03/2004 12:20 PM

As a 15 year Contracting Officer, I've never submitted my opinion. This is my first time.

I support the rule in regard to a contractor to make one annual submission by completing "On-line Representations and Certifications". Reps & Certs can be cumbersome, as they are many pages long. For agencies and facilities such as mine who do many solicitation packages, this would be a cost savings. One would hope that it would also inspire a contractor to get educated on Government requirements in regard to Small Business, and be honest when completing the document.

Jennifer Brouillard, Contracting Officer  
Devens Federal Medical Center  
PH: 978/796-1141  
E-mail: jbrouillard@bop.gov

2002-024-10



"Cronin, Dan"  
<Dan.Cronin@ssa.gov  
>

To: "farcase.2002-024@gsa.gov" <farcase.2002-024@gsa.gov>  
cc:  
Subject: Electronic Representations and Certifications

03/05/2004 02:47 PM

I have attached the Social Security Administration's comments on the subject case. Thank you for considering our input.

<<SSAReponse2002-024.doc>>

*Dan Cronin, Director  
Division of Policy and Information Management  
Office of Acquisition and Grants  
410-965-9540  
dan.cronin@ssa.gov*



SSAReponse2002-024.dc

024-10

## SOCIAL SECURITY ADMINISTRATION COMMENTS

### Electronic Representations and Certifications (Annual Reps and Certs)

#### Federal Acquisition Regulation (FAR) Case 2002-024)

SSA's Office of Acquisition and Grants contracting staff comments:

#### I. GENERAL COMMENTS/OBSERVATIONS:

The proposed rule is unclear on exactly when an offeror submits or enters its reps and certs online.

- Does a contractor first submit online reps and certs when he/she receives a solicitation and decides to submit an offer? or,
- Are the CCR database administrators going to notify its registrants and instruct them to go to the “Online Representations and Certifications Application (ORCA)” at [bpn.gov](http://bpn.gov) and enter in the reps and certs?

Informational language under B. Regulatory Flexibility Act states, “Small businesses that are exempted from registering in the CCR database are also exempted from submitting representations and certifications electronically.” This statement is confusing. We are not aware of any business class exceptions to CCR registration. The exception to CCR registration at FAR 4.1102 does not apply to the entity doing business with the Government insomuch as it applies to the type of acquisition or contract being awarded at the time. Even if a contractor was awarded a contract that happened to be exempt from the CCR requirement, the exception does not then apply for subsequent or new awards, if the new award does not meet one of the exceptions.

It is also noted elsewhere in the proposed rule; the “Annual Reps and Certs” clauses may only be used in solicitations that also include the CCR clause. Therefore, a particular acquisition that may be exempt from using the CCR clause would have to include all of the reps and certs normally included in a solicitation. Yet, as previously discussed, it is possible that a contractor has submitted annual reps and certs if it previously held a contract that required CCR registration and annual reps and certs. We think that contractors may become frustrated or confused if, after completing reps and certs on line, they are then required to fill out reps and certs in another contract, just because that particular contract is exempt from the CCR requirements. Perhaps there should be direction to the CO to check ORCA before deciding which reps and certs clause to include in a solicitation for an award that may be exempted from CCR. If the contractor has already completed the annual reps and certs, then the annual reps and certs clause(s) could be used in the solicitation. If not, then the CO would include all applicable reps and certs required for the solicitation.

However, since reps and certs are required for every award (except for micropurchases), there should be no exceptions for annual reps and certs. All solicitations should include the annual reps and certs clause. We believe that even contractors who may have had a contract exempted from CCR will eventually have to be registered in the CCR and therefore will be able to submit annual reps and certs.

Perhaps the requirement for annual reps and certs should be moved from Parts 12, 14, and 15 and moved to FAR Part 4, in a new subpart, 4.12 (after 4.11, Central Contractor Registration.) Alternatively, revise 4.11 to be a subpart titled Business Partner Network, with two sections. The scope of the subpart would prescribe policies and procedures for requiring contractor registration in the CCR database, and submission of annual representations and certifications. A sample of how we think this proposed rule should be implemented in the FAR is attached.

Note: We also have a concern about the submission process of the “Online Representations and Certifications Application (ORCA).” In reading the ORCA procedures, we noted that contractors would be required to have a Marketing Personal Identification Number (MPIN) in order to enter information into ORCA. This is a number created by the vendor during the registration process in the CCR. We have a concern about this requirement. The MPIN is not a mandatory field in the CCR and it is likely that quite a few contractors did not create an MPIN at the time of CCR registration. It is possible that a lot of contractors will now have to go back to CCR and create a MPIN. We suggest allowing that the Trading Partner Identification Number (TPIN) issued by CCR be used instead, or change the MPIN field in CCR to a mandatory one. While this may be outside the scope of this case this is something that should be looked into.

**II. Assuming** that the proposed rule will be issued basically as published (and not as shown in our attached revised proposed rule), we also have the following comments related to the proposed FAR changes. (Numbers correspond to the Federal Register numbered changes.)

-- We question why there is no reference to annual representations and certifications in FAR Part 13 for use with non-commercial item acquisitions. We assume that either 52.214-30 or 52.215-7 would be used. We recommend adding language similar to that at the proposed 15.209(g) to FAR Part 13.302-5(d).

-- We also recommend adding language similar to that at the proposed 15.209(g) to FAR Part 14.201-9(e).

5. 14.213(b) (13) -- 52.222-18, *Certification Regarding Knowledge of Child Labor for Listed End Products*. This particular certification, which is listed as a certification that is not to be included in a solicitation that includes the annual reps and certs clause, doesn't seem appropriate as annual certifications because it contains contract specific fill-ins for the CO. This clause is only used for acquisition of certain products, which the CO must identify in the solicitation. How can this be an “annual certification?” While the provisions of the annual reps and certs clauses direct the offeror to indicate that a particular certification is different (from online reps and certs) for the particular solicitation, in this case the offeror wouldn't know, because the CO hasn't listed anything because the clause isn't being used. We recommend removing this certification from the list at 14.213(b).

5. 14.213(b) (21) -- Delete the words “North American” from the clause title and add and “s” to “Agreements.” This was changed in FAC 2001-19.

9. 10, and 11-- We think the language in the “Annual Reps and Certs” clauses should be revised to make it clear to offerors that any reps and certs posted on the BPN that do not apply or are different because of a particular solicitation must be identified. We are especially concerned that offerors understand that while they may be certified as a small business under one NAIC code, they may not be small under another one. We suggest revising the clauses beginning at the phrase: “After reviewing” (new or added text underlined).

“After reviewing the BPN database information, the offeror certifies that the representations and certifications, currently posted electronically (*check the appropriate block*):

[ ] (a) Are current, accurate, complete, and applicable to this solicitation, (including the business size standard applicable to the NAIC code referenced for this solicitation), as of the date of this offer, and are incorporated in this proposal by reference. (*see FAR 14.213(b)*).

[ ] (b) Are current, accurate, complete, and applicable to this solicitation, as of the date of this offer, except for the changes identified below [*insert changes, identifying change by clause number, title, and 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 offer.

FAR clause no.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on the BPN.”

11. There is a typo at 52.215-7(b). Change FAR 14.2113(b) to read, FAR 14.213(b).

Thank-you for taking the time to consider our comments.



**PART 4 -- ADMINISTRATIVE MATTERS**

1. Add a new subpart as follows:

**Subpart 4.12 - Annual Representations and Certifications****4.1200 Scope.**

This subpart prescribes policies and procedures for requiring individuals, organizations, and businesses who want to receive contracts and agreements from the Federal Government to submit Annual Representations and Certifications via the Business Partner Network (BPN) to--

- (a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices.
- (b) Provides a single source for this information to procurement offices across the Federal Government.

**4.1201 Policy.**

- (a) Prospective contractors shall submit electronic annual representations and certifications via the BPN at <http://www.bpn.gov> in conjunction with registration in the Central Contractor Registration Database and/or in response to a solicitation.

Contractors shall update the representations and certifications on an annual basis and within 1 business day of any change as necessary to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from dated of submission or update.

**4.1202 Solicitation provision and contract clauses.**

- (a) For non-commercial item solicitations issued under FAR Parts 13, 14, and 15 insert the provision at 52.204-XX, Annual Representations and Certifications, Non-Commercial Items. Do not include the following representations and certifications in a solicitation containing this clause.

- (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.

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(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.

(b) For commercial item solicitations issued under FAR Parts 13, 14, and 15 insert the provision at 52.212-3 Offeror Representations and Certifications, Commercial Items.

(c) Offerors that have submitted annual representations and certifications shall complete the appropriate section of the provision at 52.204-XX, Annual Representations and Certifications, Non-Commercial Items, and at 52.212-3, Offeror Representations and Certifications 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 one solicitation.

## **PART 52 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

2. Amend Part 52 by adding a new section to read as follows:

### **52.204-XX Annual Representations and Certifications, Non-Commercial Items**

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]:

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(a) Are current, accurate, complete and applicable to this solicitation, (including the business size standard applicable to the NAIC code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1202(a)).

(b) Are current, accurate, complete, and applicable to this solicitation, as of the date of this offer 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 offer and are current, accurate, and complete as of the date of this offer.

FAR clause no.	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on the BPN.

(End of provision)

3. Amend section 52.212-1 by revising the date of the provision and paragraph (b) (8) 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);

\* \* \* \* \*

4. Amend section 52.212-3 by revising the date of the provision; adding an introductory paragraph; and revision 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.

024-10

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(j) *Annual Representations and Certifications* 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 certifies 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, complete and applicable to this solicitation. This includes the business size standard applicable to the NAIC code referenced for this solicitation 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)

5. Remove and reserve section 52.214-30.

6. Remove and reserve section 52.215-7.

2002-024-11



**George.Leininger@do.treas.gov**

03/26/2004 03:18 PM

To: farcase.2002-024@gsa.gov  
cc: Eileen.McGlenn@do.treas.gov, Jean.Carter@do.treas.gov  
Subject: Treasury Department Comment

Thank you for the opportunity to review and comment on FAR Case 2002-024, Electronic Representations and Certifications. The Department of the Treasury offers the following comment:

It is not clear from the FAR Case how contractors should handle the Small Business Program representation (FAR 52.219-1) when posting their annual Representations and Certifications. This representation as currently written is driven by the NAICS of the instant acquisition. When using ORCA, will contractors indicate their business size for the NAICS that they most commonly do business under and then be required to update the listing and business size when additional NAICS are used for particular situations? Or will they just indicate how many employees/dollars and then have the Government make assessments based on the particular NAICS that pertains to each solicitation? Please clarify.

Please do not hesitate to contact me if you have any questions, or would like to discuss.

**George Leininger**  
Procurement Analyst  
Department of the Treasury, Office of the Procurement Executive  
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2002-024-12



"Byland, Holly M. CIV"  
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03/26/2004 02:12 PM

To: farcase.2002-024@gsa.gov  
cc: "Byland, Holly M. CIV" <bylandh@eucom.mil>, LegatoSG@nga.mil,  
OlsonL@nga.mil  
Subject: FAR Case 2002-024, Electronic Representations and Certifications

Attn: Laurie Duarte

RE: FAR Case 2002-024, Electronic Representations and Certifications

FROM: National Geospatial Intelligence Agency (NGA), Acquisition Contracts  
(AC)

POC Major Susan Legatowicz, Phone: 314-263-4211, x-119/DSN693-4211, x-119;  
or

Ms. Holly Byland, Phone: 011-49-680-5809/DSN 314-430-5809

COMMENTS:

1. Vendors may be reluctant to publish tax identification numbers  
(TIN). Concern that TIN would be accessible to other parties.

2. Concern regarding Buy American certification due to the response  
to this certification would depend on the type of product being  
provided by the vendor.

3 The Small Business Representation will have to be flexible  
enough to contend with vendors who may represent more than one NAIC.

4. The proposed FAR 52.214-30 and 52.215-7 clauses are nearly  
identical  
(one referring to sealed bids and the other referring to negotiation and  
offerors). Consider combining the two proposed clauses into a single  
clause.

5. Will the BPN Web site for the representations and certifications  
also accommodate agency-specific representations and certifications, such as  
DFARS 252.247-7022 ("Representation of Extent of Transportation by Sea")?

HOLLY M. BYLAND

Procurement Analyst

NGA(ACP)/DSN 314-430-5809

2002-024-13



"Strowd, Richard E."  
<swog@rti.org>

03/26/2004 01:47 PM

To: "farcase.2002-024@gsa.gov" <farcase.2002-024@gsa.gov>  
cc: "Strowd, Richard E." <swog@rti.org>  
Subject: Comments - FAR case 2002-024

Reference: Proposed Rule for Electronic Representations and Certifications

Please find the comments of Research Triangle Institute, a NC, Non-profit research corporation, below. We wish you well in this important endeavor, and we hope our comments will help guide the development of the final rule for implementing annual, electronically filed Reqs and Certs.

Comments:

1. First of all, the concept of Government-wide, once-a-year, electronic Reqs and Certs is a great idea.
2. A significant issue is the degree to which the electronic Reqs and Certs would be truly all-encompassing. A number of Federal agencies use distinctly different Reqs and Certs. For the Government-wide Reqs and Certs to be an effective concept, a full slate Reqs and Certs would have to be completed and posted for every contractor.
3. Alternatively, the Government-wide Reqs and Certs could be comprised of a base set of Reqs and Certs and then each agency could have a few additional, agency-specific Reqs and Certs with each RFP.
4. Alternatively, each agency could publish their own set of agency-specific Reqs and Certs, which any contractor could fill out, and which could be posted on the CCR, on an agency by agency basis. (This may be the only way this can realistically work.)
5. It would appear that Certificates of Current Cost and Pricing Data (when required - i.e. non-competitive RFPs) would need to be included within RFPs, outside of their place within the Reqs and Certs.
6. Similarly, a Reqs and Certs that covers "exceptions" taken with regard to a particular RFP would have to be replaced by directions for the contractor to take exceptions in alternative locations.
7. Similarly, Reqs and Certs concerning Limited Rights Data/Restricted Software would have to remain an RFP-specific requirement, to be called out by a contractor in some other portion of their proposal.
8. Similarly, information pertaining to "Place of Performance" would have to be RFP-specific and identified by contractors in another portion of their proposal.
9. Similarly, identification of "authorized negotiators" often included within Reqs and Certs, is RFP-specific information for most contractors, and would have to be identified elsewhere in a contractor's proposal.
10. There are a number of issues regarding the handling of subcontractor Reqs and Certs:
  - a. Prime contractors could be given controlled access to the CCR database, to determine whether and what Reqs and Certs have been completed by a subcontractor.
  - b. Prime contractors could rely on a written affirmation/certification from subcontractors that they have completed the all-encompassing Reqs and Certs.
  - c. Giving prime contractors access to the CCR database is probably the best solution, otherwise, there is a large amount of information that prime contractors would still have to get from subcontractors: business size, DUNS #, taxpayer ID #, whether they are debarred, or whether they are subject to the Cost Accounting Standards, for several examples.
11. Finally, for Government-wide Reqs and Certs to work, they need to be carefully examined and culled down to truly important topics; and issues that sometimes are addressed within Reqs and Certs should be dropped from

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the Reqs and Certs and dealt with still, on an RFP by RFP basis.

Thank you for considering our comments.

Sincerely,  
Richard E. Strowd, JD  
Senior Contracting Officer  
RTI  
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2002-024-14



"Koppel, Dean Robert"  
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v>

To: "farcase.2002-024@gsa.gov" <farcase.2002-024@gsa.gov>  
cc:  
Subject: FAR 2002-024 ORCA Comments.doc

03/29/2004 04:16 PM

Ms. Duarte

The SBA is taking this opportunity to submit comments on FAR Case 2002-024.



Thank you for this opportunity. FAR 2002-024 ORCA Comments.

2002-024-14

Ms. Laurie Duarte  
General Services Administration,  
FAR Secretariat (MVA)  
Room 4035  
1800 F Street, NW  
Washington, DC 20405

RE: FAR Case 2002-024

Dear Ms. Duarte:

The Small Business Administration would like to take this opportunity to comment in response to proposed FAR Case 2002-024 to amend the Federal Acquisition Regulation (FAR) to require offerors to submit representations and certifications (reps and certs) electronically to the Business Partner Network (BPN). This is being proposed so that concerns would not have to submit certain reps and certs with each offer for a government contract ( 69 FR 4012). The proposed rule requires offerors to update their BPN reps and certs "as necessary, but at least annually to ensure they are kept current, accurate, and complete."

One of the reps and certs that will not be required on a contract-by-contract basis under the propose rule is FAR clause 52.219-1, Small Business Program Representations. Generally, size is determined as of the date a concern submits a written representation of size (FAR 52.219-1) along with its initial offer including price (13 CFR.121.404). Size for purposes of a particular government procurement is a function of the nature of the work to be performed, i.e., the size standard that corresponds to the North American Industrial Classification System (NAICS) code assigned to the solicitation (13 CFR 121.402). The size standard for a particular NAICS code is expressed in terms of either annual revenue or number of employees (13 CFR 121.201). Thus, a concern's size for purposes of a particular contract is measured at the time of its offer for the contract based on either (1) the firm's average annual receipts for the last 3 completed fiscal years, or (2) the average number of employees for the preceding completed 12 calendar months (13 CFR 121.402(b)). Consequently, for an employee-based size standard, a concern's size may change from month to month. Moreover, for an annual revenue-based size standard, a concern's size may change when it completes a fiscal year. In our view, contractors *must* be required to update their BPN annual revenue size certifications whenever they complete a fiscal year, and *must* be required to update their BPN number of employees size certifications on a monthly basis in order for such certifications to be current, accurate, and complete. Otherwise, the BPN reps and certs will be most likely be out-of-date, inaccurate, and incomplete, resulting in increased costs for both the procuring agency (increased number of size protests and related GAO protests) and offerors (costs associated with preparing offer for procurement where concern is ultimately found to be ineligible for award).

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FAR 52.219-1 also contains reps and certs with respect to offers from HUBZone joint ventures, which are contract-specific reps and certs that cannot be submitted through the BPN (FAR 52.219-1(b)(6)(ii)). If the rule is adopted as proposed, the HUBZone joint venture reps and certs *must* be added to another FAR clause so that affected entities can make the required joint venture reps and certs with respect to particular contracts.

Under the proposed rule, firms will not have to submit FAR 52.219-2, Equal Low Bids, on a contract-by-contract basis. However, under FAR 52.219-2, a concern must identify the labor surplus area (LSA) "in which the costs to be incurred on account of manufacturing or production (by the bidder or first-tier subcontractors) amount to more than 50 percent of the contract price." Such a representation can only be made on a contract-by-contract basis. FAR clause 52.219-2 must be included in each particular contract. We recommend that proposed FAR 14.213(b)(9) be deleted.

Under the proposed rule, firms will not have to submit FAR 52.219-22, Small Disadvantaged Business Status, on a contract-by-contract basis. However, this clause allows a firm that has not been certified as small disadvantaged business (SDB) to claim entitlement to SDB preferences while an application for SDB certification is pending (FAR 52.219-22(b)(1)(ii)). Procedures are currently in place for expediting SBA's review of an SDB application when an applicant is the apparent successful offeror (FAR 19.304(c)(2), 19.304(d); 13 CFR.124.1001(c)(2) and 124.1010). It is unclear if concerns can only represent themselves as SDBs in BPN if they have in fact already been certified as SDBs by SBA. If that is the case, then the provisions of FAR clause 52.219-22(b)(1)(ii) *must* be included in all solicitations so that firms can take advantage of the regulatory provisions which allow concerns to claim entitlement to SDB preferences while an SDB application is pending.

Thank you for the opportunity to comment on this proposed rule.

Barry Meltz  
Acting Associate Administrator  
for Government Contracting  
U.S. Small Business Administration