

ALERT

FAR Council Issues Proposed Rule Shortening Deadline for Commenting on Past Performance Evaluations to 14 Days

August 7, 2013

In our August 1, 2013 client alert on the Federal Acquisition Regulatory (FAR) Council's final rule on documenting contractor past performance, we noted that the FAR Council had an open FAR case for a proposed rule to shorten the period of time for contractors to comment on their past performance evaluations, a proposed rule intended to implement Section 853 of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-39. On August 7, 2013, the FAR Council published its proposed rule to revise the period of time for contractors to respond to or comment on their past performance evaluations from a minimum of 30 to a maximum of 14 days. 78 Fed. Reg. 48123 (Aug. 7, 2013).

According to the FAR Council, "[t]he statutes are clear." Accordingly, the proposed rule provides that contractors will have a maximum of 14 days to provide comments before a Contractor Performance Assessment Report (CPAR) is posted to the Past Performance Information Retrieval System (PPIRS) for use in source selections. The FAR Council noted that the law requires making past performance evaluations available to source selection officials no later than 14 days after the evaluation was provided to the contractor—which is accomplished through automatic notification to the contractor from the CPARS system that an evaluation has been submitted to the system and is available for comment—regardless of whether contractor comments have been received. According to the FAR Council, the posting of CPARs to PPIRS within 14 days will serve as "an impetus to contractors to meet the 14 calendar day's deadline for comments." The FAR Council also posited that making performance

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evaluations, with contractor comments, available to source selection officials within 14 days “will be to the advantage of most contractors” because “timely evaluations will allow contractors who are meeting their contractual obligations to be more competitive for future awards.”

If a contractor is unable to meet the 14-day comment deadline, it is not foreclosed from submitting comments later. The FAR Council stated that proposed changes to CPARS and PPIRS will permit contractor comments to be added to the past performance evaluation even after the evaluation has been moved into PPIRS. The planned system changes also will allow the Government to revise a past performance evaluation in PPIRS if the Government determines, after the 14-day period has expired, that corrections should be made.

Comments on the proposed rule are due by October 7, 2013. In accordance with the Council’s retrospective plan which encourages public outreach, the FAR Council specifically seeks comments on “how the expedient posting of these reports in the system may impact your business; and ways to limit any extra burden, if any, this requirement is having on your business.”

Contractors should begin preparing now for this shortened comment period by implementing processes to monitor notifications from CPARS and respond promptly to posted past performance evaluations. Even if comments can be added after 14 days, because CPARS will be made available to source selection officials after 14 days, it behooves contractors to provide any comments and rebuttal as quickly as possible.