

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS
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August 4, 2014

Defense Acquisition Regulations System
Office of the Undersecretary of Defense (AT&L) DPAP/DARS
3060 Defense Pentagon, Room 3B855
Washington, DC 20301-3060

Attn: Ms. Janetta Brewer

Ref: DFARS Case 2012-D051: Service Contract Reporting

Via Email: osd.dfars@mail.mil

Dear Ms. Brewer:

On behalf of the Council of Defense and Space Industry Associations (CODSIA)¹ we are pleased to submit the following comments on the proposed rule titled "Service Contract Reporting", published in the Federal Register on June 5, 2014. We appreciate the 60 day comment period. While the undersigned CODSIA members recognize the merits of transparency in government matters, we also recognize the benefits of avoiding duplicative data collection efforts and duplicated electronic systems for data acquisition. Unfortunately, the proposed rule to implement Section 807 of the Fiscal Year 2008 (FY 2008) National Defense Authorization Act (NDAA) (Public Law 110-181) would involve both types of duplication. This is because contractors currently report service contract data in the normal course of business, and the proposed rule would require contractors to report the same data a second time in another system at the end of the Government's fiscal year or the end of contract performance, whichever comes first. The rule will apply to all contracts above the simplified acquisition threshold, including those under FAR Part 12.

For the reasons given below, CODSIA associations oppose this proposed duplicative data collection and its corresponding substantial added reporting burden for contractors. Importantly, the government has systems in place for acquiring, aggregating, analyzing, and reviewing the data that is the subject of the proposed rule. Thus, the proposed requirement for contractors to populate another electronic system

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 seven associations – the Aerospace Industries Association (AIA), the American Council of Engineering Companies (ACEC), the Information Technology Alliance for the Public Sector (ITAPS), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), TechAmerica, and the Chamber of Commerce of the United States. 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.

with data which are already provided by contractors in another system in the normal course of business, is wasteful to the taxpayer and burdensome to contractors.

Government has systems in place for acquiring the subject data

DFARS 2012-D051 proposes to require contractors to report service contract direct labor and corresponding dollar value data for prime contractors and subcontractors in the Enterprise-wide Contractor Manpower Reporting Application (ECMRA) database annually or at the end of contract performance, whichever comes first. Data collected via the ECMRA database is duplicative of data that DOD already uses to identify and track the services provided by contractors. DOD is already complying with Section 807 of the FY 2008 NDAA via its existing records and systems currently populated by contractor-reported data in the normal course of business. The rule proposes to further burden DOD contractors by amending DFARS parts 212, 237, and 252 to require duplicative contractor reporting that is not necessary for Section 807 compliance.

DoD has worked to improve its ability to collect the information required by Section 807 for a number of years. The Office of the Secretary of Defense set forth a plan to implement Section 807 requirements and required the U.S. Army to develop the prototype inventory. The Army did so and accomplished the goal by pulling data from existing systems, including the Contractor Manpower Reporting Application the Federal Procurement Data System – Next Generation, and the Army Contracting Business Intelligence System. See <http://www.asamra.army.mil/insourcing>. Similar systems exist for the other DOD agencies and they are currently being used to acquire, aggregate, analyze and review the data that is the subject of the proposed rule. The data has been internally developed by DOD since 2008, reported to Congress since 2008 and published by DOD within 30 days after the inventory is submitted to Congress, pursuant to Section 807. , DPAP publishes inventories and they can be found at the DPAP website.²

The proposed Rule Exceeds Statutory Coverage

Importantly, Section 807 of the FY 2008 NDAA does not require contractor action. Rather, it requires the Secretary of Defense to annually provide Congress with an inventory of activities performed during the previous fiscal year under DOD service contracts. This requirement went into effect in 2008 and DOD has been providing these inventories to Congress every year as described in detail above.

The Department has not provided any justification for implementing this specific proposed rule. The above description of DOD implementation of Section 807 shows that the rule is not need and is counterproductive to DOD and contractor efficiency. The need identified in Section 07 is being satisfied. In reviewing the above DOD activities to date in implementing the rule, the opposite showing is evident, namely, DOD is already using its internal records, data sources and systems to achieve the statutory objective as intended by Congress. Further, Congress did not express intent to burden the Defense Industrial Base (DIB) with a requirement to take any action under the statute. To the contrary, both DOD leadership and Congress have encouraged DOD to streamline its activities. Thus, the added

² http://www.acq.osd.mil/dpap/cpic/cp/congressional_reports.html.

reporting burden on contractors is contrary to overriding government policy to enhance efficiency in a budget constrained environment.

In another aspect, the 807 statutory provision applies to “contracts for services”. Yet, the proposed rule applies to all solicitations, contracts, and task and delivery orders, including those using FAR part 12 procedures for acquisition of commercial items if the acquisition is for (1) services with a total estimated value exceeding the simplified acquisition threshold or (2) contracts for supplies that contain separate line items for services with a total estimated value exceeding the simplified acquisition threshold. Thus, even if the service is integrally related to the supplies, or if services are a relatively small dollar value in relation to the supplies, the requirement still applies.

The proposed rule conflicts with Paperwork Reduction Act Constraints on Rulemaking

Further, the rulemaking does not appear to conform to the requirements of the Paperwork Reduction Act which constrain rulemaking. The following criteria are required to be met and the Federal Register notice does not appear to address them, namely that the rule:

- (A) is necessary for the proper performance of the functions of the agency;
- (B) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;
- (C) reduces, to the extent practicable and appropriate, the burden on persons who shall provide information to or for the agency.

Finally, the burden estimate of 1.4 hours per responsive data entry is far too low, given the billions of dollars of services contracts annually and the corresponding volume of data required to be entered. In addition, the contractor must enter the data via a government electronic system that is complex and less intuitive to the non-government DIB user base. The burden is disproportionately high for small businesses that are less likely to have the necessary internal infrastructure to meet duplicative reporting requirements.

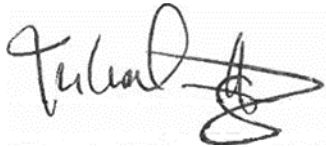
Conclusion

CODSIA opposes this proposed duplicative data collection and its corresponding substantial added reporting burden for contractors because the government already has systems in place for acquiring, aggregating, analyzing, and reviewing the data that is the subject of the proposed rule. Furthermore, the Department has not effectively demonstrated the need or justified the burden under existing Departmental guidance to reduce burdens that drive costs in compliance or under the requirements of the Paperwork Reduction Act. CODSIA associations believe that the proposed requirement for contractors to populate an electronic system with data, which are already provided by contractors in another system, is wasteful to the taxpayer and burdensome to contractors and this rule should be withdrawn.

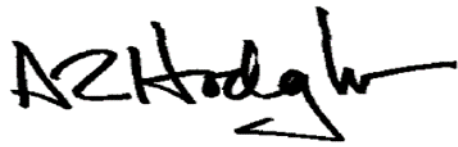
CODSIA would be willing to work with the Department to instead focus on driving greater uniformity in the existing services contracting inventory data collection requirements and to repurpose the data collected as a result of those requirements and already in the possession of the Department to satisfy the statutory requirements of Section 807.

CODSIA thanks you for the opportunity to submit these comments and would welcome the opportunity to discuss them further with the Department. If you have any questions or need additional information, please contact Mike Hettinger with TechAmerica, CODSIA's project officer, at mike.hettinger@techamerica.org or 202-682-4442 or Bettie McCarthy, CODSIA's Administrative Officer, at 703-875-8059 or codsia@pscouncil.org.

Sincerely,



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