

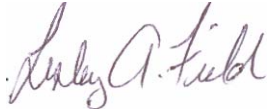


EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 30, 2009

OFFICE OF FEDERAL
PROCUREMENT POLICY

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM: Lesley A. Field 
Deputy Administrator

SUBJECT: Interim Guidance on Reviewing Contractor Reports on the Use of
Recovery Act Funds in Accordance with FAR Clause 52.204-11

The Federal Acquisition Regulatory Council issued interim rules on March 31, 2009, to implement the American Recovery and Reinvestment Act of 2009 (“Recovery Act”). Federal Acquisition Regulation (FAR) case 2009-009 implemented the public reporting requirements for federal contractors under Section 1512 of the Recovery Act. This rule required contracting officers to include FAR clause 52.204-11 in all solicitations and contracts, funded in whole or in part by the Recovery Act, including orders and modifications to existing contracts or orders. As communicated August 25, 2009, in the *Federal Register* (74 FR 42877), this interim FAR rule will remain in effect.

This clause requires federal contractors to report cumulatively each calendar quarter on their use of Recovery Act funds using an online tool at FederalReporting.gov. This online reporting tool will be available on October 1, 2009, with the first cumulative report due no later than October 10, 2009. The purpose of this memorandum is to describe the requirements for certain agency personnel to register in the system, review reports, and take appropriate action as necessary.

Since the FAR case was issued, the role of contracting officers or other agency reviewers in ensuring federal contractor compliance with the reporting requirements of FAR clause 52.204-11 has evolved. Attachment A to this memorandum describes the reporting process and the requirements for agencies to review reports for: 1) consistency with award information, 2) significant errors, and 3) material omissions. *Please review carefully the reporting and reviewing timeframes.* The user guide has now been posted to FederalReporting.gov for further reference.

Until further notice, agencies shall follow the guidance provided in Attachment A. As additional guidance is necessary, these Frequently Asked Questions will be updated and a notice will be provided through the Chief Acquisition Officers Council and Senior Procurement Executive listservs.

Agencies should have an oversight process in place to assure that appropriate agency personnel are reviewing reports submitted by federal contractors. To assist you in this process, the Federal Procurement Data System (FPDS) posts a daily report on Recovery Act awards at <https://www.fpds.gov> that allows filtering by contracting and funding agency and contracting office.

Please distribute this memorandum to all members of your acquisition community. Questions about this memorandum should be directed to Laura Auletta at (202) 395-3256 or lauletta@omb.eop.gov.

Thank you for your attention to this important matter.

Frequently Asked Questions (FAQs)
Requirements for Agency Review of Contractor Reports - FederalReporting.gov

This document provides agencies with information necessary to fulfill their responsibilities for ensuring federal contractor compliance with FAR clause 52.204-11. Additional information on using the reporting system is available in a user guide which is now posted on FederalReporting.gov.

1. Do agencies have to review contractor reports? If so, what is the scope of the review?

Yes. First, agencies must ensure the information provided in reports is consistent with the award (e.g., accurate award date, obligation amount, awarding and funding agency, NAICS code, progress, cumulative amount invoiced, etc). Further, the agency review is intended to identify “significant errors” or “material omissions” in these reports. Agency reviewers are not expected to validate data for which they would not normally have supporting information, such as the compensation information required of contractors and first-tier subcontractors. However, an obvious or significant error or material omission (see FAQ 5 on this subject below) is something agency reviewers should identify to the contractor.

2. What are the reporting and reviewing timelines?

The key activities and timeframes are provided below in terms of days after the end of the calendar quarter (e.g., Day 10 is the 10th day following the end of the calendar quarter). All due dates are midnight Pacific time.

Prior to day 1 – While registration will be available during days 1-10, all recipients, including federal contractors as well as agency reviewers are encouraged to register early.

Day 1-10 – Federal contractors will prepare their report for submission. The report must be submitted on or before October 10, 2009 in order to comply with FAR clause 52.204-11 and the requirements of Section 1512 of the Recovery Act. Each subsequent report is due by the 10th day following the end of the calendar quarter (i.e., January 10th, April 10th, July 10th, October 10th). Details on saving drafts and the submission process are available to contractors in the user guide posted at FederalReporting.gov.

Day 11-21 – Data from submitted reports may be publicly posted anytime after the 10th day, so contractor reports should be complete and accurate. However, during days 11-21, contractors may make corrections to any data in their report but these

changes will be tracked through version control. During days 11-21, agencies may view the contractor's report but the system will not provide agency reviewers comment capability until day 22. All contractor corrections, if any, must be completed by the end of day 21.

Day 22-26 – The agency reviewer comments, if necessary, on contractor reports. Reports will not be editable by federal contractors during this time unless the agency reviewer comments on the report. FederalReporting.gov will provide the agency reviewer with instructions on how to notify a contractor of comments, if any. This notification will unlock the report for editing by the contractor. All contractor corrections/revisions must be completed by day 29, therefore, agency reviewers are asked to submit their comments to contractors by day 26 even though the system allows you to comment through day 29. Because of the tight timeframes for review/comment, agency reviewers should coordinate early and maintain an open dialogue with the contractor to avoid last minute misunderstandings. Remember, agencies will be able to review reports on day 11. The system does not require the contractor to make corrections based on agency reviewer comments or otherwise require agency approval of the report before the system finalizes it. A notional status of your review will be tracked by the system and may be made public, as follows:

- Reviewed with No Comments;
- Reviewed with Comments, or;
- Not Reviewed

The system will default to status “Not Reviewed” if the agency reviewer does not select one of the other two choices. Other choices may be made available as the FederalReporting.gov system evolves.

Day 27-29 – If the contractor received a notification of agency comments, the contractor may make corrections to the report. All corrections must be completed by the end of day 29.

Day 30 – The system posts all reports as final. Information is made available to the public at www.Recovery.gov.

3. Can someone other than the Contracting Officer be the agency reviewer?

Yes. Agencies have discretion in how best to meet their reviewing responsibilities.

4. Can a contractor change a report after Day 29?

No, but because reports are cumulative, a contractor may update or revise information in the next quarterly report.

5. What is a *significant error* or *material omission*?

A *significant error* is defined as data that is not reported accurately and where such erroneous reporting results in significant risk that the public will be misled or confused by the contractor's report. Examples of significant errors include, **but are not limited to:**

- The cumulative invoiced amount reported is in excess of the obligation;
- The contractor incorrectly selects *fully complete*, to describe an incomplete project; or;
- The contract award/obligation amount was for a relatively small dollar amount, such as \$100,000, and the contractor reports the number of jobs created and retained cumulatively as 100,000.

A *material omission* is defined as data that is not responsive to a specific data element. When reviewing for material omissions, the agency reviewer should do so with the goals of transparency in mind. For instance, where the contractor is required to provide a narrative description, it must be sufficiently clear to facilitate understanding by the general public.

6. If a Recovery Act funded modification to an existing contract or order was awarded, on what should the contractor report? Full contract or order amount or just the amount funded by the Recovery Act?

Just the amount funded by the Recovery Act, in this case, the modification.

7. How does an agency reviewer comment on a contractor's report?

The system will provide the agency reviewer a means to comment on a contractor's report but you must first register at FederalReporting.gov (see FAQ 12 below on registration). Reviewers should provide any comments they have on a contractor's report in accordance with the timelines provided in FAQ 2 above. The user guide can provide further instructions on using the system to comment on reports. FederalReporting.gov is not a substitute or replacement for normal contract oversight or communication. Agencies should address a contractor's failure to comply with timely or accurate reporting as they would any other contract performance issue.

8. Will the agency reviewer's comments be part of the public posting of the report?

FederalReporting.gov will provide the entire report, including comments, responses, and report revisions to the Recovery Accountability and Transparency Board who will determine how report information will be publicly displayed.

9. Do agency reviewers have to approve contractor reports before the contractor can submit the report?

No. FederalReporting.gov does not *require* the agency reviewer's approval of a report; a report may be finalized without a contractor addressing the government's comments. The system was not designed to take the place of government oversight but to ensure reports are publicly available within the timeframes provided in Section 1512 of the Recovery Act. Therefore, agencies should treat failure to address the agency reviewer's comments as they would any other performance issue. For instance, if a contracting officer determines that a problem is becoming chronic or systemic (e.g., late reports), they should use already available and appropriate contractual remedies to bring the contractor into compliance with FAR clause 52.204-11. The contractual remedy must be determined on a case-by-case basis depending on the severity and frequency of non-compliance.

10. Have contractors been provided information about FederalReporting.gov since the publication of the interim FAR rule?

Yes. The FAR Council has published two Federal Register notices in addition to the interim FAR rule that was published on March 31, 2009. The first was published August 25, 2009 to advise contractors to register at FederalReporting.gov (74 FR 42877). The second was published on September 25, 2009 (74 FR 48971) to, once again, encourage early registration and provide additional information to contractors regarding FederalReporting.gov, including directing them to a series of Frequently Asked Questions (FAQs) designed to assist them with understanding the reporting process. Until posted at FederalReporting.gov, these FAQs can be found at http://www.whitehouse.gov/omb/recovery_default.

11. Why are the terms "federal contractor" and "federally awarded contract" used in the FAQs for contractors and documents at FederalReporting.gov?

These terms are used simply to distinguish federal contracts (i.e., FAR-based) from those that may be awarded by tribal, state or local governments, or other entities under Recovery Act funded grants, cooperative agreements, or other forms of assistance.

12. Do agency reviewers need to register at FederalReporting.gov? If so, when and how?

Yes. If you are an agency reviewer, you should register at FederalReporting.gov *immediately*. Registration is quick and easy and *must* be completed prior to reviewing contractor reports. Go to FederalReporting.gov and click on the 'Register Now' button on the left side of the screen. You will enter your name, valid government e-mail address, and phone number. After answering several security questions, you will select the "Federal Agency" option when asked what type of organization you represent. Choose your agency from the drop down list and select "Register Now." A temporary password will be sent to you via e-mail. More detailed information on user registration is available under the "Downloads" tab at FederalReporting.gov.

13. What technology is needed to access FederalReporting.gov?

FederalReporting.gov users need Microsoft® Internet Explorer® 6.0 or higher or Mozilla Firefox® 2 or higher. JavaScript® must be enabled.

FederalReporting.gov is not designed to be accessible on devices such as hand held computers, cell phones, and personal digital assistants.

14. What assistance is available for registration?

If you have questions or problems, contact the FederalReporting.gov Service Desk. The Service Desk can be reached by email (Support@FederalReporting.gov), toll-free phone (877-508-7386), or online chat within the system. Click "Help" on FederalReporting.gov to access the Service Desk and see hours of operation.

15. Are contractors registered?

Recovery Act contractors were notified through CCR on August 17, 2009 that registration was open in FederalReporting.gov. Two Federal Register notices were also issued – see FAQ 10 above. However, agencies should take additional steps to notify their contractors who are required to report by FAR clause 52.204-11 that they must register now and be ready to report. Registration is a two-step process for contractors that will require them to obtain authorization and a Federal Reporting PIN from their Government Business and/or Electronic Business Points of Contact listed in the Central Contractor Registration (CCR). There are detailed registration guides available for users under the "Downloads" tab at FederalReporting.gov.

16. The guides and other information posted at FederalReporting.gov use the terms “Prime Recipient” and “Sub Recipient.” What do these terms mean?

Prime Recipients are non-federal entities that receive Recovery Act funding through federal awards. The terms “prime recipient” and “recipient” are interchangeable. For federal contracts subject to reporting under FAR clause 52.204-11, these terms translate to “federal contractor” (i.e., prime contractor).

Sub Recipients are non-federal entities that are awarded Recovery funding through a legal instrument from a Prime Recipient. For federal contracts subject to reporting under FAR clause 52.204-11, the term translates to “first-tier subcontractor.”

17. What do users need to know about the guides, documents, and other instructions available at FederalReporting.gov?

These materials were prepared to accommodate two different reporting models - one for grants, loans and other forms of assistance; and one for federal contracts. Therefore, keep in mind key differences between these models as you read the materials:

- First-tier subcontractors under a federal contract must have a DUNS number but do not have to register in CCR. However, sub recipients of grants, loans, and other forms of financial assistance must be registered in CCR. Therefore, you should assume that any language that refers to a requirement for sub recipients to register in CCR does not apply to subcontractors under a federal contract.
- Federal contractors may not delegate FederalReporting.gov reporting responsibility per FAR clause 52.204-11 to their subcontractors. Recipients of grants, loans and other forms of assistance may delegate to sub recipients the responsibility for direct reporting of sub recipient information into FederalReporting.gov. Therefore, you should assume that any language that refers to sub-recipient reporting using FederalReporting.gov does not apply to subcontractors under a federal contract.
- The model for grants, loans, and other forms of assistance separately defines *sub recipients* and *vendors* and applies different data elements and reporting on each. This same distinction does not apply under the federal contract model. FAR clause 52.204-11 defines subcontract and the data elements required to be reported by the federal contractor regarding these subcontracts. Therefore, you should assume that the term “vendor” when used at FederalReporting.gov, does not apply to federal contractors under a federally awarded contract.

18. What is the “Recipient Reporting Data Model” and how is it used?

The Recipient Reporting Data Model is a document created for Recovery Act data standardization. It includes all of the data elements recipients, including federal contractors, will be required to report. Use of standards and templates makes reporting more accurate. Use of data standards helps users understand what data is required in each data field and other useful information, such as when information will be inferred from another field. The Recipient Reporting Data Model can be downloaded from the "Downloads" tab of FederalReporting.gov and is also accessible via Recovery.gov.

19. Why does the “Recipient Reporting Data Model” indicate a number of administrative data elements not in FAR clause 52.204-11, and where will contractors find the information necessary for reporting on these data elements?

This initial roll-out of FederalReporting.gov is focusing on core functionality with limited pre-population. Some basic data elements such as the award date, obligation amount, and NAICS for the Federal contract, Federal contractor’s DUNS number, legal and Doing Business As names and addresses will not be pre-populated at this time. But these data elements are readily available to Federal contractors as they are generally required in the course of their normal business operations.

A few data elements may not be immediately available to the Federal contractor. These include information on Awarding Agency, Contracting Office, Program Source (also called the Treasury Account Symbol (TAS)), and Congressional district. FederalReporting.gov may provide information on how to look up Congressional districts. The Congressional district for the federal contractor is also available on the Federal Procurement Data System report on Recovery Act contract actions at <https://www.fpds.gov>. Instructions on finding this data in FPDS has been provided to Federal contractors in a Frequently Asked Question reprinted below. If they cannot locate their award in the FPDS report, they have been instructed to contact their contracting officer for the information.

Contractors have been provided the following instructions in an FAQ at http://www.whitehouse.gov/omb/recovery_default.

- A. Go to <https://www.fpds.gov> and open the “American Recovery and Reinvestment Act Report” under the Top Requests heading.
- B. Using the filters provided or the “find” tool in Excel, locate your award. You can use any of the fields available in the spreadsheet, such as Vendor Name or DUNS Number to narrow the search for your award, but ensure that the PIID, Reference IDV PIID, and Modification Number fields match your contract action award number as there may be multiple awards for a given vendor name or DUNS number or multiple modifications to a given contract.
- C. Once you locate your award,

1. The Treasury Account Symbol, or TAS, is the combination of the following fields:
 - TAS Agency (2 digits), and
 - TAS Major Program (4 digits), and
 - TAS Sub Program, when applicable (3 digits). The TAS Sub Program code is not used by all agencies. If the field is blank in FPDS, then the TAS is comprised only of the TAS Agency (2 digits) and the TAS Major Program (4 digits).
2. The Awarding Agency name and code are found under the columns “Contracting Agency Name” and “Contracting Agency ID.”
3. The Funding Agency name and code are found under the columns “Funding Agency Name” and “Funding Agency Code.” If there is nothing listed for Funding Agency name and code, you should assume that the Funding Agency name and code are the same as the Awarding Agency (Contracting Agency) name and code (see 2 above).
4. The Government Contracting Office name and code are found under the columns “Contracting Office Name” and “Contracting Office ID.”
5. The Federal contractor’s congressional district code (i.e., “Recipient Congressional District” in FederalReporting.gov) is found under the column “Vendor Congressional District.” The “Primary Place of Performance – Congressional District” code required for Federal contractors in FederalReporting.gov is found under the column “Congressional District – Place of Performance.”
6. Other data elements required for reporting are also available in the report. Review the column headings in the report.

D. If you are unable to locate your award in FPDS, call your contracting officer.

20. What methods are available to federal contractors for submitting reports into FederalReporting.gov?

FederalReporting.gov will allow three basic methods for submitting report:

1. Method 1 - Online data entry in a Web browser: The website provides a straightforward data entry form, available via the user’s Web browser, for report data entry.
2. Method 2 - Excel spreadsheet: The website provides a Microsoft Excel spreadsheet for contractors which can be uploaded to FederalReporting.gov for report submission. The spreadsheet cannot be modified.
3. Method 3 - Custom software system extract in XML: Organizations with sufficient technical experience may choose to submit a properly formatted Extensible Markup Language (XML) file for their report submission.

FederalReporting.gov provides a service to validate the structure of XML extracts prior to the submission period to ensure extracts are properly formatted.