



ALERTS

Gift Of Time – Comment Deadline Extended For Proposed Disclosure Of Climate Information By Federal Contractors

December 29, 2022

Highlights

The deadline for comments on the proposed Federal Acquisition Regulation on Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk by Federal Contractors has been extended from Jan. 13, 2023, to Feb. 13, 2023

The new rule would require certain federal contractors to disclose greenhouse gas emissions and climate-related financial risk

The disclosure requirements are substantial and will have a wide-ranging impact on federal contractors

On Nov. 14, 2022, the U.S. Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration jointly published a proposed rule to amend the Federal Acquisition Regulations (FAR) to [require federal contractors to publicly disclose](#) their greenhouse gas (GHG) emissions and climate-related financial risks, and to set science-based emissions reduction goals.

The original rule notice provided that comments were due Jan. 13, 2023 (60 days after publication in the Federal Register). However, in the spirit

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Bruce White

Partner
Chicago

P 312-214-4584
F 312-759-5646
bruce.white@btlaw.com

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of holiday giving, the agencies [recently extended the comment period](#) an additional month to Feb. 13, 2023, to allow more time for interested parties to submit comments on the rule.

The proposed rule implements [Executive Order 14030](#) issued by President Biden in May 2021, which directed the FAR Regulatory Council and others to consider amendments requiring public disclosure of this information by major federal suppliers.

While there are some exemptions and provisions for waivers, significant or major federal contractors must make certain disclosures in order to qualify for a responsibility determination and be eligible to receive a contract award:

“An offeror is considered a “significant contractor” if the offeror received \$7.5 million or more, but not exceeding \$50 million, in Federal contract obligations in the prior Federal fiscal year. An offeror is considered a “major contractor” if the offeror received more than \$50 million in Federal contract obligations in the prior Federal fiscal year.”

The proposed rule further provides that the contracting officer shall presume that a prospective significant or major contractor is “nonresponsible” if it has not complied with the climate disclosure requirements.

In the background section of the proposed rule, the agencies acknowledge that the proposed disclosure requirements go beyond those set forth in the [climate rule proposed by the Securities and Exchange Commission \(SEC\)](#) in April 2022, “The Enhancement and Standardization of Climate-Related Disclosures for Investors”:

“While the SEC proposed rule did not include a requirement for SEC registrants to set science-based targets, it did propose that SEC registrants disclose targets if they have adopted one. While there are some similarities between the content of the disclosures in the SEC and FAR proposed rules, this proposed FAR rule specifically requires the Federal contractors with significant Federal contracts to provide their disclosures using the CDP Climate Change Questionnaire to maximize the consistency, comparability, and accessibility of disclosure data for use in managing Federal procurements and supply chains. In addition, per this proposed FAR rule, major contractors will also be required to set science-based targets to reduce their GHG emissions”

The proposed rule requires covered contractors to use the following four standards in making their disclosures, which overall require more in depth reporting than the SEC’s proposed climate disclosure rule: 1) GHG Protocol Corporate Accounting and Reporting Standards and Guidance, 2) the 2017 Recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), 3) the CDP Climate Change Questionnaire and 4) the SBTi criteria.

Thousands Potentially Subject to New Requirements

The agencies estimate that there will be approximately 4,400 significant federal contractors and 1,400 major contractors subject to the disclosure requirements. Another 490,000 entities registered in the System for Award Management (SAM) as being interested in pursuing government contracts will be required to complete the first representation in SAM

annually to confirm they do not meet the definition of a significant or major contractor.

Given the wide-ranging impact of the registration, representation, and disclosure requirements of the proposed rules, the cost of compliance, and the grave consequences for significant or major contractors determined to be nonresponsible, federal contractors should consider raising any concerns they may have by the Feb. 13, 2023, comment deadline.

For more information, please contact the Barnes & Thornburg attorney with whom you work or please contact the Barnes & Thornburg attorney with whom you work or Bruce White at 312-214-4584 or bwhite@btlaw.com.

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