GSA

GSA Office of the Chief Acquisition Officer

MAR 7 2006

MEMORANDUM FOR DAVID CAPITANO
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RALPH J. DESTEFANO
DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE DIVISION

SUBJECT: FAR Case 2005-015, Common Identification Standard for Contractors

Attached are comments received on the subject FAR case published at 71 FR 208; January 3, 2006. The comment closing date was March 6, 2006.

Response Number	Date Received	Comment Date	Commenter
2005-015-1	01/30/06	01/30/06	GSA (4A1)
2005-015-2	02/27/06	02/27/06	Susan Lee
2005-015-3	02/22/06	02/22/06	David L. Hope
2005-015-4	03/06/06	03/06/06	ITAA
2005-015-5	03/06/06	03/06/06	DOE

AttachmentS

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2005-015-1

Elias G. Pena/4PM/R04/GSA/GOV
01/30/2006 02:21 PM

To farcase.2005-015@gsa.gov
cc
bcc
Subject Re: News You Can Use - HSPD-12 Applies to Contractors

My concern is this, presently our local policies require us to conduct security clearances on all of our contractors, which we perform. However, the issue is the requirement to insure "subcontractors" are also properly cleared. Contractors generally have one, two or three subcontractors, if not more, performing the work. Maintaining control of these subcontractors becomes a real challenge. Particularly if this is their one and only job. Can you clarify/elaborate (i.e. who initiates the clearance, will a local NCIC check suffice, etc.) a little more on the requirements to have subcontractors properly cleared? Thanks.

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Property Manager
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Gary M. Mote/4AE/R04/GSA/GOV

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01/30/2006 12:47 PM

To
cc
Subject News You Can Use - HSPD-12 Applies to Contractors

NEWS YOU CAN USE

Excerpt from the Government Computer News

01/03/06

Contractors to Face Same HSPD-12 Scrutiny as Feds

By Jason Miller, Staff Writer

The Federal Acquisition Regulation Council today issued an interim rule directing agencies to require contractors to submit to the same background investigations federal employees go through under Homeland Security Presidential Directive-12.

The interim rule is backdated to Oct. 27, 2005, so all solicitations issued and all contracts awarded on or after that date must include new language requiring contractors to adopt the same procedures feds installed Oct. 26.

2005-015-1

The **General Services Administration** expected the FAR Council to release the rule in late October, but it had been delayed. Judy Spencer, chairwoman of the Federal Identity Credentialing Committee (FICC), said last month that this was a "security hole that needs to be plugged."

The interim rule applies to all contractors and subcontractors that have access to federal facilities or federal information systems.

Agencies will have to authenticate the identities, through the National Agency Check or other Office of Personnel Management or National Security investigations, of all current contractors who have not already been cleared. All contractors must be cleared by Oct. 27, 2007, the rule said. Agencies must also complete FBI National Criminal History Checks prior to credential issuance, and modify all acquisition plans to address these new requirements.

Comments are due by March 6 to farcase.2005-015@gsa.gov.

****

Gary M. Mote
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CREATING A SUCCESSFUL FUTURE AT GSA
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2005-015-2

GSA

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Subject FAC 2005-07, FAR Case 2005-015

The following overlap is presented for the council's consideration. DoDI 3020.41 (October 3, 2005) paragraph 6.2.7.3 provides that "contingency contractor personnel shall be issued a standard Geneva Convention Card… U.S. citizens and selected other CDF will be issued a DoD Uniformed Services Identification and Privilege Card, a Common Access Card with Geneva Convention identifier, or other appropriate DoD identity credential…" FAC 2005-07 requires that agencies must adopt and accredit a registration process consistent with the identity proofing, registrations and accreditation requirements in section 2.2 of FIPS Pub 201 and associated guidance issued by the National Institute Standards and Technology. Will the requirement in DoDI 3020.41 satisfy the requirements of FAC 2005-07 as far as providing a personal identity card for (at least some contingency) contractors? Does FAC 2005-07 duplicate or supplement the contractor identification requirement in DoDI 3020.41 or does it depend on the contingency status of the contractor?

2005-015-3

GSA

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02/22/2006 03:20 PM

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Subject In reference to U.S. Code Title 5 § 610 Periodic Review of Rules (c) (FAC 2005-07) FAR case 2005-015

In reference to U.S. Code Title 5 § 610 Periodic Review of Rules (c)

Common Identification Standards for Contractors

(FAC 2005-07)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council published the proposed FAR rule, "Common Identification Standards for Contractors," on January 3, 2006. This rule requires that the Federal Acquisition Regulatory Council amend the Federal Acquisition Regulation (FAR) so that it will be compliant with the two implementation and guidance publications, the Federal Information Processing Standards Publication: Personal Identity Verification (PIV) of Federal Employees and Contractors (FIPS PUB 201—77 pages) and its corresponding OMB Guidance M-05-24 (13 pages). Both of these publications provide guidance on the implementation of the Homeland Security Presidential Directive (HSPD-12) "Policy for a Common Identification Standard for Federal Employees and Contractors" (2 pages) that became effective on August 27, 2004. Even though this personal identify verification pertains to federal employees, as well as contractor personnel who have physical access to a federally-controlled facility or access to a Federal Information System, this proposed rule addresses the FAR changes only.

Agencies must phase in this two-part standard, and the first phase deadline implementation date of October 27, 2005 has already passed. Furthermore, Agencies need to implement Part 2 of this standard by the deadline date of October 27, 2006.
All three of these documents that FAC 2005-07 addresses are rather lengthy. Therefore, FAC 2005-07 covers these areas by amending the FAR to include the following: 1) Definitions of Federal Information System and Federally controlled facilities in FAR Subpart 2.101 Definitions; 2) FAR Subpart 4.13—Personal Identity Verification of Contractor Personnel; 3) FAR Subpart 7.105 (b) (17) Security Considerations; and 4) FAR Clause 52.204-9 Personal Identity Verification of Contractor Personnel. All of these additions to the FAR incorporate these three documents by reference only. The linchpin of these additions is FAR Subpart

2006-015-3

4.13—Personal Identify Verification of Contractor Personnel that incorporates the implementation and guidance publications by reference and the clause 52.204-9 that incorporates HSPD-12 by reference.

In addition to these necessary additions to the FAR, FAC 2005-07 also recognizes the hardship that the application of these requirements place on small businesses that might have employees who need assistance in completing the required forms. This may cost the small business dollars to pay for the extra administrative assistance that some of their employees may need.

In reference to U.S. Code Title 5 § 610 Periodic Review of Rules (c), what FAC 2005-07 does not address is the fact that since the FAR incorporates these lengthy documents by reference, some small 8a businesses may not have the capability to download these documents. In such instances, the SBA will need to assist these businesses in order to make them more competent, and/or provide training in this arena.

Another area that FAC 2005-07 does not address is the added administrative time that was required for the implementation of this schedule. Even though the first deadline of October 27, 2005 has already passed, contracts with option years will be affected, since Part 2 of the standard needs to be complied with by October 27, 2006. Again, this will require extra administrative time for both businesses and Federal agencies in order to incorporate the required modifications to their contracts that address these mandates and to take the necessary actions to remain compliant. Again, the SBA will probably need to offer assistance to numerous small businesses in order to make them compliant within this time frame.

One solution to the ramifications of the FAR's incorporation by reference of HSPD-12 and its supporting implementation and guidance documents is to have the clause 52.204-9 Personal Identity Verification of Contractor Personnel at least outline the standards required by Part 1 and Part 2 of M-05-04 and the referenced implementation and guidance for HSPD-12. This would allow agencies to include a copy of the entire clause in their solicitations and modifications so that the small businesses that need assistance from the SBA will at least become aware of their need for assistance. Then, after a period of time, Federal agencies could incorporate by reference clause 52.204-9. As a result, this would create a win-win situation for both Federal agencies and the business community at large (and small).

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ITAA
Information Technology Association of America

2005-015-4

March 6, 2006

General Services Administration
Regulatory Secretariat (VIR)
ATTN: Laurieann Duarte
1800 F Street, NW
Room 4035
Washington, DC 20405

RE: FAC 2005-7, FAR Case 2005-015 **VIA EMAIL**

Dear Sir or Madam:

The Information Technology Association of America (ITAA)[1] is pleased to submit these comments in response to the interim rule amending the FAR to address the contractor personal identification requirements in Homeland Security Presidential Directive - 12 (HSPD-12) and Federal Information Processing Standard – 201 (FIPS-201). While the ITAA supports the objectives of HSPD-12 and FIPS-201 to establish a process to enhance security, reduce identity fraud, and protect personal privacy through the establishment of a mandatory, Governmentwide standard for secure and reliable forms of identification, we must reject the conclusion of the Councils that this interim rule is not a significant regulatory action and suggest that the budgetary and administrative impact is so significant that it should be deemed a "major rule" that is subject to Congressional review pursuant to 5 U.S.C. § 801 et seq. and to the regulatory planning and review process under Executive Order 12866.

As the background for the rule references, HSPD-12 required agencies to implement, no later than October 27, 2005, an identity proofing requirement for all contractors and subcontractors who will need access to "federally-controlled facilities" and/or "federal information system." It further directed agencies to begin the required identity proofing requirements for all current contractors and

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ITAA provides global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA consists of over 330 corporate members throughout the U.S. and a global network of 67 countries' IT associations. The Association plays the leading role in issues of IT industry concern, including information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, workforce and education, immigration, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. ITAA members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content, systems integration, telecommunications, and enterprise solution fields. For more information visit www.itaa.org.

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subcontractors that do not have "a successfully adjudicated investigation (i.e., completed National Agency Check with Written Inquiries (NACI) or other Office of Personnel Management (OPM) or National Security community investigation) on record" and that identity proofing and verification for all current contractors and subcontractors must be completed no later than October 27, 2007. This direction establishes that all employees of any contractor or subcontractor that needs access to "federal information systems" or "federally-controlled facilities" must have a successful background investigation provided by OPM, the current provider of over 90% of the Government's needs for background investigative services.[2] Currently, the vast majority of the demands for these investigative services are as part of the security clearance granting process.

As the background to the rule further notes, HSPD-12 requires that agencies must "complete and receive notification of results of the FBI National Criminal History Check prior to credential issuance." Both of these requirements will significantly increase the demands placed on these Government investigative services, far beyond their current budgetary and manpower capabilities.

The Intelligence Reform and Terrorism Prevention Act of 2004 (the Act) reiterated Congressional displeasure with the status of the clearance granting process – and in particular the inordinately long period of time between application submission and final adjudication. The Act established new requirements for the clearance granting agencies that were intended to address this and other problems and bring timeliness and efficiency to the process. At that time, none of the agencies responsible for granting clearances were able to determine with any certainty how many applications and periodic reviews were backlogged, a condition which persists even today, nor could any agency state with any certainty how much time would be required to make an adjudication.[3] It has not been uncommon in industry to find that many, if not most, applications have lingered for months, and in some cases, even years, in the system awaiting final adjudication. It is only now that the changes required in the Act are being put into place and there has not been sufficient time to determine if these changes will improve the timeliness of investigations and adjudications or if more effort or resources will be needed.

The Office of Management and Budget (OMB), as the primary responsible agent for improving the security clearance granting process designated in Executive

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[2] Testimony of Clay Johnson, Deputy Director, OMB, before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia of the Committee on Homeland Security and Government Affairs of the U.S. Senate, November 9, 2005.

[3] Testimony of Derek Stewart, Director of Defense Capabilities and Management at the Government Accountability Office before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, November 9, 2005.

Order 13381, has overseen the dedication of resources, including personnel and funding, to establish sufficient capabilities for the timely application, investigation and adjudication of persons needing security clearances. OMB, OPM and many of the major clearance granting agencies and Departments defined this effort in the Plan for Improving the Personnel Security Clearance Process (the Plan). A component of the Plan would acknowledge the combination of almost all of the Federal Government's investigative requirements, including those of the Departments of Defense, Homeland Security, Energy, Justice, Transportation, Commerce and State, as well as the National Archives and Records Administration and the Director of National Intelligence, under operations managed by OPM and to which this rule references as noted above.

According to Linda Springer, Director of OPM, in her testimony to the Senate Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia of the Committee on Homeland Security and Governmental Affairs of the U.S. Senate on November 9, 2005, OPM annually processes "approximately 1.4 million Federal employees and contractors [for] suitability and/or security requirements so that they can serve in the Federal Government." This number does not reflect the backlog of security clearance applications and periodic reviews mentioned above, estimated to number in the hundreds of thousands, the investigations required by HSPD-12 for government personnel or the investigations required by this interim rule for contractors and subcontractors.

A much larger number would be captured in the Councils interim rule, affecting every employee of every contractor and subcontractor doing business with every agency of the Government and needing to access all "federal information systems" and/or "federally-controlled facilities." In practice, contractors and the agencies submitting applications for investigations will include more personnel, rather than less, simply to ensure that personnel that may become critical to the performance of a contract are not excluded only because they do not have a government-issued I.D. This interim rule will add hundreds of thousands, if not millions, of new investigations to a process that is only now getting increased attention and resources in an effort to comply with the Act and establish the ability to handle the security clearance demands of the U.S. Government. Historically speaking, the Government has been unable to handle any volume of investigations without developing a backlog. How then, can it possibly handle this influx of contractor personnel? Any progress made under the direction of the Act and through the hard work of OMB, OPM and the clearance granting agencies will be eliminated once the full volume of investigations for government access and identification cards is felt.

Perhaps an even more alarming concern for industry is the potential impact of this rule on the performance of contracts by contractors and subcontractors. The

rule is completely silent on guidance for agencies that have complied with HSPD-12 and made application for Government investigative services, but those services have not been able to respond in a timely fashion. At question is whether or not an agency is allowed beyond October 27, 2005 to continue to provide access to "federally-controlled facilities" and/or "federal information systems" for contractors and subcontractors who are not yet adjudicated. There is the strong possibility that a contractor or subcontractor would be barred from performing on a contract – not because of any deficiency on the part of the contractor, but because the Government is unable to provide a final identity verification and successful criminal background check for some or all of their employees.

Another question unanswered by the interim rule is the course of action for contractors and subcontractors, including small and disadvantaged businesses, wishing to enter the Government contracting arena and needing to obtain identity verification for their employees. It would appear, based on the rule, HSPD-12 and FIPS-201 that the contracting agency will be responsible for insuring that all contractor and subcontractor employees are able to successfully complete the process for verifying personal identity. But such a sequence of events would indicate that verification would occur after award and employers who do not currently have adjudicated personnel would be required to delay performance on the contract until such time as a sufficient number of personnel can be adjudicated.

In practice, the situation could be even more tenuous for subcontractors not having verified personnel on staff. For any prime contractor, there would be an immediate disincentive to consider proposals from subcontractors with insufficient verified personnel, because if the contract requires access to "federal information systems" or "federally-controlled facilities," the subcontractor would be unable to perform immediately. Such a condition would quickly become untenable for the Government, since the work to be performed under a contract could not be done in a timely fashion by any contractor without verified personnel, placing them at a competitive disadvantage to bidders already having verified employees on hand.

Historically speaking, the delays in the Government investigative services have been months and even years, and such a delay would be unacceptable both for the contractor and the Government. The prospect of such impediments will only serve to drive more businesses that can offer the Government successful commercial solutions from the marketplace. The potential inability of a contractor or subcontractor to provide sufficient verified personnel because of the delays in the investigative process would mean that Government would either have to accept a disadvantage for those offering services but not having verified personnel on staff, or it would have to begin to expect delay in the initiation,

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performance and completion of contracts currently in force or to be solicited and awarded in the future. The only immediate remedy would be to provide access to the Government investigative services for contractors and subcontractors for purposes of successfully verifying the identity of employees prior to being awarded a contract in order to be able to perform at the time of award or task order. Such a remedy, however, only serves to exacerbate the problems of workload delays that already plague the Government investigative services.

While ITAA understands and supports the need for secure and reliable forms of identification, it is not clear that the agencies proposing this interim rule have sufficiently anticipated the full scale of the impact this requirement could have on Government investigative services. They also do not appear to have anticipated the impact the current and historical delays in that process would have on the ability of the Government to verify the personnel for every contractor and subcontractor requiring access to "federal information systems" and/or "federally-controlled facilities." Finally, there does not appear to be any attention paid to the potential impact on contractors and subcontractors and Government contracting as a whole.

At a minimum, the Councils must require as part of the rule that agencies submit information to the Government investigative services. If required to use the information collection mechanisms spelled out as part of the Plan, it will at least provide the basis for adequate, reasonable and accurate annual estimates of the personnel and costs demands they will place upon the process.[4] This information collection should begin immediately upon promulgation of the rule by the Councils, and before the contract modification deadlines of October 27, 2005 for new solicitations and awards and October 27, 2007 for existing contracts. The President cannot request, and the Congress cannot provide, sufficient funding and personnel resources for the investigative service unless such information is captured and made available ahead of the budget development process.

ITAA appreciates the opportunity to provide input to the Councils regarding this issue. Should you have any questions or need additional information, please contact Trey Hodgkins or our staff at thodgkins@itaa.org or 703-284-5310.

Sincerely,

Olga Grkavac

Olga Grkavac
Executive Vice President

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[4] Testimony of Linda Springer, November 9, 2005.

2005-015-5

GSA

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03/06/2006 11:19 AM

To farcase.2005-015@gsa.gov
cc "Catoe, Frederick" <Frederick.Catoe@hq.doe.gov>
bcc
Subject HSPD-12 FAR Interim Rule Response

Attached is The Department of Energy Response.

<<FAR Interium Rule 3. 2.06.doc>>

Thank You...

Paul Aaron, PMP

Paul R. Aaron, PMP

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2005-015-5

COMMENTS ON FEDERAL ACQUISITION REGULATION INTERIM RULE: COMMON IDENTIFICATION FOR CONTRACTORS

40 CFR Parts 2, 4, and 52
Interim Rule from DoD, GSA, and NASA
(Federal Register: January 3, 2006, Volume 71, Number 1, pages 208-211)

Summary: OMB has set the guidelines for how HSPD-12 applies to contractors. DOE has implemented policy within OMB guidance. The FAR Interim Rule sets a mechanism for requiring contractors to comply that differs from OMB guidance. Because DOE fulfilled its PIV-I obligations (before 10/27/05 in the form of identity proofing, privacy, and acquisition policy)), DOE already has the appropriate mechanism in place to assure that contractors comply with HSPD-12. Implementation of the current FAR Interim Rule will cause hardship to the Department.

Observation: The explanation of requirements discussed in the Federal Acquisition Regulation (FAR) is not consistent with the recently amended Federal Information Processing Standards (FIPS) Publication 201 and the Office of Management and Budget (OMB) guidance memorandum M-05-24, "Implementation of Homeland Security Presidential Directive (HSPD)-12, " Policy for a Common Identification Standard for Federal Employees and Contractors." In particular, promulgation of the Final Rule as written could result in substantial confusion among the Federal agency employees and contractors who are assigned to implement HSPD-12 at large Federal agencies such as the Department of Energy (DOE).

Recommendation: The FAR Interim Rule should be modified for consistency with established HSPD-12 guidance.

Rational: The 'PIV' changes to the FAR should be read in light of the FIPS 201 Standard and implementation guidance of OMB 05-24. The Interim Rule indicates the purpose of the changes is to require contractors to comply with

agency policies that implement HSPD-12, FIPS 201, and OMB 05-24. The application of HSPD-12 is carried out through Department policy, following OMB guidance.

HSPD-12 designates OMB as the Federal entity responsible for issuing policies and guidance which "ensure(s) compliance" with FIPS 201. In OMB 05-24, OMB has stated that the PIV process should apply to those contractors "requiring routine access...to whom you would issue Federal agency identity credentials, consistent with your existing security policies." At DOE, the established PIV policy applies to all cleared contractors and gives the program offices the discretion to determine which, if any, of their uncleared contractors require a Federal agency identity credential.

The policy set forth by the FAR requires Agencies to follow HSPD-12 and its associated guidance. The FAR Interim Rule creates a new section 4.1300 to cover the policy behind the FAR changes. The policy states "agencies must follow [FIPS 201 and OMB guidance] for personal identity verification for *all affected contractor and subcontractor personnel*..." This policy language indicates that the FAR Interim Rule is intended to further the requirements of FIPS 201 and OMB guidance. The OMB guidance allows agencies to determine how HSPD 12 is implemented regarding contractors. DOE policy implementing HSPD-12 follows this guidance in establishing which contractors are affected by the PIV requirements.

For these affected contractors, section 4.1301 of the FAR Interim Rule directs contracting officers to include the "Personal Identity Verification of Contractor Personnel" clause "when contract performance requires contractors to have physical access to a federally-controlled facility or access to a Federal information system." This language clearly implies, while not actually stated, that for contractors which are not affected by HSPD-12, contracting officers do not have to include this clause. Contracting officers do not have to include the clause

if the contractor is outside the scope of HSPD-12 because there is no requirement for physical or logical access and such a clause would have no applicability.

The executing FAR clause directs contractors to follow agency policy that implements HSPD-12. The FAR Interim Rule directs the inclusion of 52.204-9, "Personal Identity Verification of Contractor Personnel." This clause requires contractors to comply with agency policies and procedures that implement HSPD-12, FIPS 201, and OMB 05-24. The FAR Interim Rule does not specify any details of what a contractor must do to comply. Therefore this requirement leaves it to the discretion of each agency to identify the specific "personal identity verification procedures...in the contract that implement [HSPD-12, FIPS 201, and OMB 05-24]" that apply to contractors. Consequently, it is Agency policy and procedures, in keeping with established guidance, that implements HSPD-12 and dictates the applicability of the PIV process to contractors.

Further, the FAR, (Page 209, Section A. Background, Sub paragraph (b)) states: "Begin the required identity proofing requirements for all current contractors that do not have a successfully adjudicated investigation (i.e., completed National Agency Check with Written Inquiries (NACI) or other Personnel Management or National Security community investigation) on record. (By October 27, 2007, identity proofing should be verified and completed for all current contractors)." Also, Sub-paragraph (c) of the FAR states: "Complete and receive notification of results of the FBI National Criminal History Check prior to credential issuance." We are concerned that this language in the FAR will confuse the DOE employees and contractors in their efforts to comply with HSPD-12 because this language lacks the procedural specificity of similar language included in the recent amendments to FIPS Publication 201, Section 2.2 on PIV Identity Proofing and Registration Requirements. The amendments to FIPS Publication 201 added the following text: "If the agency does not receive the results of the

National Agency Check (NAC) within five days, the identity credential can be based on the FBI National Criminal History Check (fingerprint check)."

Also, the language of the FAR could confuse the DOE employees' and contractors' implementation of HSPD-12 because the related language in OMB Memorandum M-05-24 is equally as specific as that of the recent amendments to FIPS Publication 201. The text of the OMB memo (at Page 5, Answer to Question 3, Bullet 2, Sub-paragraph B) states: "If you do not receive the results in 5 days, the identity credential can be issued based on the FBI National Criminal History Check (fingerprint check)." In addition, the text of the OMB guidance memo includes a footnote (at Page 5, footnote 6) that says: "Section 2.2 of the Standard has been revised to clarify for the initial credential issuance, only the fingerprint check must be completed."

There are other differences between the FAR Interim Rule and OMB guidance. The largest of these revolves around specific scoping language in the FAR. Although, it seems clear that the FAR changes only apply to "affected contractors", there is an alternative reading of the FAR language that would mandate that **ANY** contractor who requires access to physical or logical systems for **ANY** length of time must undergo the PIV process. Such a reading is only possible if the FAR takes precedence over the established OMB guidance and if the implementation of HSPD-12 is dictated by the FAR, rather than by the Department/Agency in accordance with OMB guidance.

The FAR Interim Rule makes additional changes to the scope of HSPD-12 as stated by OMB. The FAR:

1. Changes the definition of Federally controlled facilities from the definition given by OMB.
2. Defines "Federal Information System" instead of the "Federally Controlled Information System that is defined by OMB.

3. Deletes "facilities under a management and operating contract" and states an exception for "education institutions", neither of which conforms to explicit OMB guidance.
4. Expands definition of "Federally owned buildings and leased space" to include property interests controlled by any department or agency, in contrast to the OMB guidance that only applies to definition to "department(s) or agenc(ies) covered by this Directive."

These discrepancies could create unnecessary conflict and frustrate efforts to achieve the stated goal of the FAR rule, ". . . to ensure that Federal agencies consistently apply the requirements of HSPD-12 to Federal contracts."

The FAR Interim Rule creates a procurement mechanism for requiring contractors (and subcontractors) to comply with the implementation of HSPD-12. Current DOE policy establishes the applicability of HSPD-12 in accordance with OMB guidance and the Department's acquisition policy has been modified to direct contracting officers to include PIV procedures in contracts that require contractors to have a Federal agency identity credential. DOE has implemented Department policy and acquisition policy to comply with HSPD 12, FIPS 201, and OMB 05-24 that meets the October 2005 deadline. Revising these policies several months later will cause substantial hardship to the Department. Assuming a revision is necessary, the FAR Interim rule is not consistent with HSPD-12 guidance. The FAR Interim Rule should be modified for consistency with established HSPD-12 guidance.

OMB 05-24 Guidance	DOE PIV Policy	FIPS 201	FAR Interim Rule
PIV process should apply to contractors requiring routine access…to whom you would issue Federal agency identify credentials	Applies to all cleared contractors and gives the program offices the discretion determine which, if any, of their uncleared contractors require a PIV badge	• The organization shall adopt and use an approved identity proofing and registration process • The process shall begin with initiation of a NACI or other OPM or National Security community investigation required for Federal employment. This requirement may also be satisfied by locating and referencing a completed and successfully adjudicated NACI. At a minimum, the NAC shall be completed before credential issuance. • The applicant must appear in-person at least once before the issuance of a PIV credential • During identify proofing, the applicant shall be required to provide two forms of identity source in original form. The identity source documents must come from the list of acceptable documents included in Form I-9, OMB No. 1115-0136, Employment Eligibility Verification. At least one document shall be a valid State or Federal government-issued picture identification (ID).	Does not specific any details of what a contractor must do to comply
Provides for non - receipt of background check by stating, "If you do not receive the			Creates a new section 4.1300 to cover the policy behind the FAR changes and states

2005-015-5

OMB 05-24 Guidance	DOE PIV Policy	FIPS 201	FAR Interim Rule
results in 5 days, the identity credential can be issued based on the FBI National Criminal History Check (fingerprint check)."			"agencies must follow FIPS 201 and OMB guidance for personal identity verification for al affected contractor and subcontractor personnel
			Section 4.1301 - Applied to contractors to physical access to a federally-controlled facility or access to a Federal information system
			Directs the inclusion of 52.204-9 requiring contractors to comply with agency policies and procedures that implement HSPD-12, FIPS 201 and OMB 05-24
			Requires identity proofing requirements for all current contractors that do not have a successfully adjudicated investigation
			Complete and receive notification of results of the FBI National Criminal History Check prior to credential issuance
Defines Federally Controlled Facilities			Changes the definition of Federally controlled facilities
Defines Federally Controlled Information Systems			Defines "Federal Information System" instead of "Federally Controlled Information System
			Deleted "facilities under a management and operating contract
			Expands definition of "Federally owned buildings and leased

2005-015-5

OMB 05-24 Guidance	DOE PIV Policy	FIPS 201	FAR Interim Rule
			space" to include property interests controlled by any department or agency