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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 4, 2014

The Honorable Anne Rung
Administrator
Office of Federal Procurement Policy
White House Office of Management and Budget
1650 Pennsylvania Avenue, NW
Washington, DC 20503

Dear Ms. Rung:

The Committee on Oversight and Government Reform is conducting oversight of the federal government's acquisition of business information services and use of the privately-owned Data Universal Numbering System (DUNS). As part of this oversight, we are writing to request documents and information relating to the Federal Acquisition Regulation (FAR)¹ references to the DUNS identifier² and to urge you to remove these references as quickly as possible.

Since 1978, the federal government has licensed the use of the DUNS identifier from Dun & Bradstreet, a publicly-traded, for-profit company located in Short Hills, New Jersey.³ According to Dun & Bradstreet, "the Data Universal Numbering System or D-U-N-S® Number is D&B's copyrighted, proprietary means of identifying business entities on a location-specific basis."⁴ Since 1996, the FAR has specifically mandated use of the DUNS identifier.⁵ According to senior acquisition officials from the General

¹ The Federal Acquisition Regulation, or FAR, was established pursuant to the Office of Federal Procurement Policy (OFPP) Reorganization Act of 1974, to "codify uniform policies for acquisition of supplies and services by executive agencies." The FAR is codified at 48 CFR Chapter 1.

² FAR § 4.605(b) *Data Universal Numbering System (DUNS)* and FAR § § 4.1102; 52.204-7

³ From the Government Accountability Office Letter to The Honorable E. Benjamin Nelson. "Government Is Analyzing Alternatives for Contractor Identification Numbers." June 12, 2013. Accessed at <http://www.gao.gov/assets/600/591551.pdf>. [Hereafter "GAO Report."] ("[d]uring the late 1980s and early 1990s, the government replaced the DUNS number and established its own database of Contractor Establishment Code (CEC) numbers. The government contracted with Dun & Bradstreet to operate and maintain this database. In 1996, the government made a determination to replace the CEC numbers and use the commercially available DUNS number to fulfill its needs.")

⁴ "About Us." page on Dun & Bradstreet website accessed at <http://www.dnb.com/company.html>

⁵ FAR § 4.605(b) *Data Universal Numbering System (DUNS)* and FAR § § 4.1102; 52.204-7. Section 4.605(b) of the FAR currently reads, in part, "[t]he contracting officer must identify and report a Data Universal Numbering System (DUNS) number (Contractor Identification Number) for the successful offeror on a contract action."

Services Administration (GSA), specific mention of the DUNS identifier is likely the only such reference to a specific, proprietary product in the entire FAR.⁶ Today, all prospective federal awardees, including contractors, grantees, and other federal aid recipients, are required to obtain and submit a DUNS number in order to apply for awards.⁷

As the FAR is the legally binding set of instructions for all contracting officers procuring goods and services on behalf of the American people, the rationale for referencing a specific, proprietary product in the FAR should be compelling. Unfortunately, the federal register notice associated with this FAR amendment states only that a “determination [was] made by the Office of Federal Procurement Policy” and makes no reference to the proprietary nature of the DUNS identifier nor provides any further rationale.⁸

GSA is responsible for managing the government-wide contract with Dun & Bradstreet to license the use of the numbers. Under the contract, GSA pays to make the numbers freely available to most prospective federal awardees and for other support services.⁹ In order to better understand the terms and condition of the contract with Dun & Bradstreet, the Committee wrote GSA on August 6, 2014, to request the current contract. Signed in 2010, it is an eight-year sole-source contract, including a three year base period and five one-year options.¹⁰

FAR references to DUNS are causing specific and identifiable harm to the federal government’s ability to negotiate with Dun & Bradstreet.¹¹ In a June 2012 report, the Government Accountability Office described the specific reference to DUNS creating a “monopoly” for Dun & Bradstreet.¹² The report showed dramatic increases to the cost of the DUNS contract over time. From 2002 to 2004, the cost of the contract was \$1 million per year and the price was tied to the total number of entity registrants. In 2007, the DUNS contract price rose to \$19 million per year when GSA switched to a fixed “enterprise” price and expanded the license to allow for public display of the DUNS number and other information, as required by newly enacted budget transparency legislation.¹³ The total cost for the current eight-year contract is approximately \$154 million.¹⁴

⁶ August 18, 2014 Committee staff briefing with GSA officials

⁷ In 2003, the federal government use of the DUNS identifier expanded to include grant and cooperative agreement recipients and in 2008 to include loan and loan guarantee recipients. GAO report page 5.

⁸ 61 Fed. Reg. 67412.

⁹ GAO Report, page 3.

¹⁰ GAO report, page 2.

¹¹ GSA Evaluator’s Report On Contractor Identification Number (CIN) Response. August 7, 2009, page 9.

¹² GAO report, page 12.

¹³ GAO notes that the 2006 Federal Funding Accountability and Transparency Act required the disclosure of corporate linkage information for grant awardees, further expanding the federal government’s use of D&B information. GAO also cites the fact that as technology allows greater consolidation of award systems, the DUNS number has become an increasingly integral component in how government data systems operate. GAO report, page 5.

¹⁴ GAO report, page 2.

The DUNS contract is also hampered by unfavorable and restrictive terms. GSA licenses the use of the DUNS numbers and associated business information. Under the licensing agreement, the numbers and associated data may only be used for acquisition purposes, must be deleted from all federal databases upon termination of the contract, and Dun & Bradstreet may unilaterally terminate the contract after 30-days notice. The extent of damage a complete deletion of all Dun & Bradstreet data might have on federal operations is hard to gauge, but senior GSA acquisition officials acknowledge it would be costly.

The recent difficulties associated with the Recovery Accountability and Transparency Board's (Recovery Board) contract with Dun & Bradstreet provides some insight into the effects of these restrictive terms. The contract was a modification to the GSA's contract with Dun & Bradstreet, which allowed the Recovery Board to verify information it collected against the GSA's database and to publically display that information. On August 20, 2014, the Recovery Board posted a notice on its website indicating it will not renew "the licensing agreement that allows for the display of certain recipient-related data." The continued display of the DUNS-entangled information collected by the Recovery Board would cost taxpayers between \$1.4 million and \$900,000 for just one year.¹⁵

The Recovery Board informed Oversight and Government Reform Committee staff that under the licensing agreement recipient-related information which will be removed goes beyond DUNS identifiers or information directly obtained from Dun & Bradstreet and includes "any piece of data that was ever verified against" Dun & Bradstreet data contained with the System for Award Management or Central Contractor Registry maintained by GSA.¹⁶ In effect, the basic recipient identifier information, such as the name and address of an award recipient, which was directly reported by the recipient to the federal government, and verified against Dun & Bradstreet data only to comply with the government's requirement that all awardees have a propriety DUNS identifier, has been entangled with the proprietary information by the restrictive terms of the contract.

Due to these restrictive terms, other federal agencies cannot use data about federal contractors without entering into a contract with Dun & Bradstreet and incurring additional costs. GAO cites a case where, due to restrictions on usage of DUNS identifiers and other data, the Department of Defense was unable to comply with a 2009 Congressional directive to report on the total value of DOD contracts entered into with contractors that had been indicted for, settled charges of, or were convicted of fraud in connection with any contract with the federal government over the prior 10 years.

¹⁵ E-mail from Nancy K. DiPaolo, Chief, Congressional & Intergovernmental Affairs, Recovery & Accountability Transparency Board to House Committee on Oversight and Government Reform Staff. August 25, 2014

¹⁶ E-mail from Nancy K. DiPaolo, Chief, Congressional & Intergovernmental Affairs, Recovery & Accountability Transparency Board to House Committee on Oversight and Government Reform Staff. August 21, 2014.

GSA officials themselves have identified the FAR requirement to use DUNS as a critical weakness in the federal government's ability to negotiate better prices and terms. In preparation for a 2010 contract renegotiation, GSA conducted a market evaluation by soliciting input from potential competitors.¹⁷ According to the evaluator's report provided to the Committee as a part of its request:

D&B will never lower their costs unless they have a valid concern that they are going to lose the government business. Any sole source environment like the current one results in higher prices to the government. Therefore a competitive acquisition will undoubtedly result in lower prices to the government, whether D&B is awarded the contract or not. Market competition drives lower prices. And D&B's costs are only going to continue to go up without competition as the government's use of their services continues to expand.¹⁸

The evaluator's report found that there existed at least one viable competitor to Dun & Bradstreet. Dun & Bradstreet's monopoly, as required by the FAR, negates GSA's ability to compete the contract openly. As its own contract with Dun & Bradstreet expired in 2008, the United States Postal Service chose to pursue open competition in order to reduce costs. Ultimately, a different contractor was determined to provide a better value. USPS estimates it saved \$6.4 million annually because of this competition.¹⁹

According to the "Limited Sources Justification and Approval" document contained within the contract file and signed by the Senior Procurement Executive at GSA: "Only after the FAR language is changed can the government initiate a competitive award for a new contractor unique identifier number."²⁰

An April 27, 2010, "Comprehensive Acquisition Plan" included in the contract file reveals that the putative FAR change was essential to the acquisition strategy. The document notes that a "FAR case has been put forward to remove the specific reference to the DUNS" and notes that the delivery or performance period requirements are aligned to a FAR case which the plan's authors asserted was currently in process.²¹ The

¹⁷ GSA Evaluator's Report On Contractor Identification Number (CIN) Response. August 7, 2009. page 4.

¹⁸ GSA Evaluator's Report On Contractor Identification Number (CIN) Response. August 7, 2009. page 9.

¹⁹ E-mail from Talaya S. Simpson, Manager, Government Liaison (Acting), United States Postal Service, to House Committee on Oversight and Government Reform Staff. August 22, 2014.

²⁰ General Services Administration Justification and Approval for Other than Full and Open Competition Under the Authority of FAR 6.302-1. June 23, 2010. page 3.

²¹ Comprehensive Acquisition Plan for Plan 16011- Dun and Bradstreet, Inc. (D&B) Support Services, April 27, 2010. page 3 ("The Federal Government has initiated a process to change the language in the FAR requiring a 'DUNS' number to a contractor identification number. However, this change will take a minimum of two years. Furthermore, some of IAE's largest stakeholders, such as the Department of Defense, have stated that the impact this change will have to their business process will require a substantive amount of resources and time. They estimate a minimum of 4 years to completely change their business process. IAE provides a service to over 61 federal agencies. In order to provide this service with

Comprehensive Acquisition Plan also notes that the “acquisition strategy and project milestone anticipates the award of a new contract prior to the expiration of the current contract.”²²

A regulatory mandate to use a specific proprietary identifier owned and controlled by a for-profit company traded on the New York Stock Exchange²³ is, on its face, inappropriate. In this case, it is clear that it is having specific, identifiable harm on the federal government’s ability to obtain the best value and most favorable terms with the taxpayer’s dollar through competition. Considering the length of time FAR amendments take to process, we request that you move immediately to initiate a FAR case to remove any specific references to the DUNS as the contractor identifier number. A removal of such references does not mean the government will not use the current contractor. It simply allows the government to consider all viable solutions if offered in the future.

In addition, the Committee requests that the OFPP produce the following documents, in electronic format:

1. All documents and communications referring or relating to the “determination made by the Office of Federal Procurement Policy to use the DUNS number for FPDS reporting purposes” as referenced in the December 20, 1996, edition of the Federal Register²⁴, including any formal written determination.
2. All documents and communications referring or relating to “any FAR case put forward to remove the specific reference to the DUNS”²⁵ or otherwise alter FAR 4.605(b) *Data Universal Numbering System (DUNS)*.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on September 17, 2014. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn

minimum interruption, IAE has determined that the 5 option years allows the most flexibility. If the FAR changes ahead of the initial estimate and IAE’s largest stakeholders are able to develop project transitions with shorter implementation schedules, IAE will still have the flexibility to recomplete this requirement in a full and open environment.).

²² Comprehensive Acquisition Plan for Plan 16011- Dun and Bradstreet, Inc. (D&B) Support Services, April 27, 2010, page 3.

²³ “About Us.” page on Dun & Bradstreet website accessed at <http://www.dnb.com/company.html>.

²⁴ 61 Fed. Reg. 67412.

²⁵ Comprehensive Acquisition Plan for Plan 16011- Dun and Bradstreet, Inc. (D&B) Support Services, April 27, 2010, page 3.

The Honorable Anne Rung

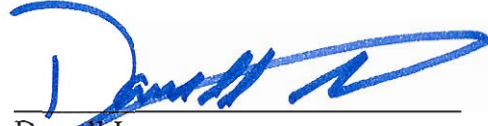
September 4, 2014

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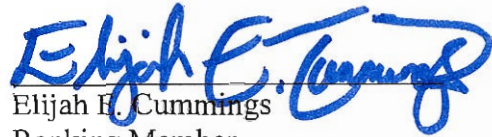
House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Ali Ahmad of the majority staff at (202) 225-5074 or Mark Stephenson of the minority staff at (202) 225-5051. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Elijah E. Cummings
Ranking Member

Enclosure

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.