



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



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Department of the Interior Acquisition Policy Release (DIAPR) 2010–19

Subject: Contractor Tax Delinquencies

References: Federal Acquisition Regulation (FAR) Part 4, Administrative Matters; and FAR Part 9, Contractor Qualifications

1. Purpose:

This DIAPR provides guidance on the responsibilities of Contracting Officers (COs) to handle prospective contractors who certify having a tax delinquency.

2. Effective Date: Upon signature.

3. Expiration Date: No expiration unless superseded or cancelled.

4. Background and Explanation:

President Obama issued a January 20, 2010, memorandum reminding agencies of their obligation to make informed judgments and to take appropriate action to protect taxpayers when a tax delinquent contractor is trying to win a government contract. The memorandum instructed the Director of the Office of Management and Budget (OMB) to evaluate the practices of COs and suspension and debarment officials (SDOs) regarding contractors' certifications of serious tax delinquencies. OMB's Office of Federal Procurement Policy (OFPP) recently issued a survey to gather information about how agencies handle prospective contractors who certify to having serious tax delinquencies. Although the Department's Fiscal Year (FY) 2009 total dollar obligations for contractors certifying with tax delinquencies was less than one percent (0.08%) of all FY 2009 obligations, the bureau survey responses emphasized the need to remind COs how to handle contractors who certify having a serious tax delinquency.

The Government's primary tool for determining the tax status of a prospective contractor, or offeror, is a certification the contractor must make when it submits an offer in response to an agency's solicitation. Prospective contractors must certify that, within a three-year period preceding submission of their proposal, they do not have delinquent Federal taxes in amounts that exceed \$3,000. Taxes are delinquent if the tax liability has been assessed and all judicial appeal rights have been exhausted and the taxpayer has failed to pay the tax liability when full payment was due and required.

FAR Clause 52.209-5, Certification Regarding Responsibility Matters, provides for contractor certifications for solicitations where the contract value is greater than the simplified acquisition threshold (\$100,000). Contractor certifications are not required for work performed under task and delivery order contracts or for work performed under contract modifications.

Offerors enter their certifications into the "Online Representations and Certifications Applications (ORCA)." The ORCA is a web-based system that collects representation and certification information government-wide. The offeror must go into ORCA to make the required certification if he/she is preparing a proposal that requires a tax certification. The FAR also requires contractors to update the certifications submitted to ORCA "as necessary," but at least annually, to ensure they are complete, current, and correct. Additionally, the offeror must notify the CO at any time prior to contract award if he/she learns that the certification was false when submitted or is wrong by reason of changed circumstances.

An offeror's certification to a tax delinquency may lead or contribute to a determination by the CO that the offeror is non-responsible. The existence of a serious tax delinquency (\$3,000 or more) is also a cause for debarment under 48 Code of Federal Regulations 9.4.

5. Action Required: COs are required to consider a prospective contractor's tax compliance certification as part of the assessment of whether the contractor is "responsible." Federal tax compliance is considered in determining if the contractor has a satisfactory record of integrity and business ethics, a critical element of a responsibility determination. Where an offeror certifies to a serious tax delinquency (exceeding \$3,000), the CO will provide the contractor an opportunity to demonstrate its responsibility. In the event the contractor's response does not demonstrate responsibility, the CO will, as appropriate, prepare a non-responsibility determination for the administrative record. The CO shall also refer the information for suspension and debarment review and action prior to proceeding with a contract award. In the DOI, CO's referrals should first be directed to the DOI Office of Inspector General, for subsequent decision at OIG's discretion whether it should be forwarded to the Senior Procurement Executive, the Department's Suspending and Debarring Official.

6. Additional Information:

This guidance is also available on the web at <http://www.doi.gov/pam>. Questions may be directed to Brigitte Meffert, Senior Procurement Analyst, or David Sims, Debarment Program Manager, Office of Acquisition and Property Management, at (202) 208-3348 or via e-mail at Brigitte_Meffert@ios.doi.gov; and (202)-208-6705 or David_Sims@ios.doi.gov, respectively.



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