

Contractor Responsibility Determinations



Guiding Principles

Contracting Officers are responsible for ensuring that contract awards are made only to responsible prospective contractors. This requirement applies to both competitive and non-competitive awards.

Contracting Officers must ensure that contractor past performance evaluations in CPARS are completed in a timely manner to allow for appropriate contractor responsibility determinations.

References

FAR 9.1, Responsible Prospective Contractors
FAR 9.4, Debarment, Suspension, and Ineligibility
FAR 42.15, Contractor Performance Information
FAR 52.209-5, Certification Regarding Responsibility Matters
DEAR 909.1, Responsible Prospective Contractors
DEAR 909.4, Debarment, Suspension, and Ineligibility
DOE Acquisition Guide Chapter 42.15, Contractor Performance Information

Overview

The purpose of this Chapter is to provide a general overview of Contracting Officer responsibilities for making responsibility determinations of prospective contractors before awarding a contract. Applicable Federal Acquisition Regulation (FAR) coverage is found in Subpart 9.1, which prescribes the policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

Affirmative responsibility determinations are an important part of safeguarding agency interests by ensuring awards are made to contractors capable of performing the requirements and taxpayer dollars are used effectively. Awarding a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that

Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

What does FAR require?

In accordance with FAR 9.103(b), no contract award shall be made unless the Contracting Officer makes an affirmative determination of the prospective contractor's responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the Contracting Officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the Contracting Officer shall comply with FAR Subpart 19.6, Certificates of Competency and Determinations of Responsibility. If Section 8(a) of the Small Business Act applies, see FAR Subpart 19.8.

What Makes a Contractor Responsible?

The standards of contractor responsibility and the requirement for the Contracting Officer to make and document a responsibility determination are set forth in FAR 9.104 and 9.105. To be determined responsible, a prospective contractor must -

- Have adequate financial resources to perform the contract, or the ability to obtain them.
- Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- Have a satisfactory performance record. A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in FAR 9.104-2.
- Have a satisfactory record of integrity and business ethics.
- Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors).
- Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

- Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

What About Reviewing Past Performance Information?

Before awarding a contract in excess of the simplified acquisition threshold, the Contracting Officer must review information included in the Federal Awardee Performance and Integrity Information System (FAPIS), which is available at www.ppis.gov.

The Contracting Officer must consider all of the information in FAPIS, and any other past performance information, when making the responsibility determination. Contracting Officers shall use sound judgment in determining the weight and relevance of the information contained in FAPIS and how it relates to the present acquisition. Since FAPIS may contain information on any of the offeror's previous contracts, and information covering a five-year period, some of that information may not be relevant to a determination of present responsibility, *e.g.*, a prior administrative action such as debarment or suspension that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.

If the Contracting Officer obtains relevant information from FAPIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of nonresponsibility because the contractor does not have a satisfactory performance record, or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the Contracting Officer shall, unless the contractor has already been debarred or suspended -

- Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the Contracting Officer, and -
- Notify, prior to proceeding with the award, the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

The Contracting Officer must document the contract file for each contract in excess of the simplified acquisition threshold to indicate how the information in FAPIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. A Contracting Officer who makes a nonresponsibility determination is required to document that information in FAPIS.

What Other Information Must Contracting Officers Obtain?

Before making a determination of responsibility, the Contracting Officer is required to obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in FAR 9.104 (listed above).

- Generally, the Contracting Officer must obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see FAR 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracts, especially when research and development is involved, the Contracting Officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning either the low bidder or those offerors within the range for award.
- FAR 9.106 provides direction on when Contracting Officers should conduct preaward surveys. A preaward survey is normally required only when the information on hand or readily available to the Contracting Officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. Additionally, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items, the Contracting Officer should not request a preaward survey unless circumstances justify its cost.
- Information on financial resources and performance capability should be obtained or updated on as current a basis as is feasible up to the date of award.
- As discussed above, in making the determination of responsibility, the Contracting Officer must consider information in FAPIIS, including information that is linked to FAPIIS, such as data from the Excluded Parties List System (EPLS) and the Past Performance Information Retrieval System (PPIRS), and any other relevant past performance information. The Contracting Officer should use the following sources of information to support past performance determinations -
 - Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.
 - The prospective contractor-including bid or proposal information including self-certifications included in the proposal, questionnaire replies, financial data, information on production equipment, and personnel information.
 - Commercial sources of supplier information of a type offered to buyers in the private sector.

- Preaward survey reports.
- Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.
- Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

How Should Contracting Officer Determinations be Documented?

Per FAR 9.105-2(a)(1), the Contracting Officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the Contracting Officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

If the Contracting Officer determines that a responsive small business lacks certain elements of responsibility, the Contracting Officer shall comply with the procedures in FAR Subpart 19.6. When a Certificate of Competency is issued for a small business concern, the Contracting Officer shall accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the small business concern.

Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, the use of FAPIIS information, and any applicable Certificate of Competency, must be included in the contract file.

What Applies to Subcontractors?

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see FAR 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

When it is in the Government's interest to do so, the Contracting Officer may directly determine a prospective subcontractor's responsibility (*e.g.*, when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

What Past Performance Evaluations are Required?

The Contractor Performance Assessment Reporting System (CPARS) is the mandatory DOE system used to report contractor performance into PPIRS, which is the official Government source to retrieve contractor performance information.

The primary purpose of past performance evaluations is to ensure the contractor is held accountable for its performance, and that accurate data on contractor performance is current and available for use in source selections. Performance evaluations are used as a resource in awarding best value contracts and orders to contractors that consistently provide quality, on-time products and services that conform to contractual requirements. Evaluations can be used to effectively communicate a contractor's strengths and weaknesses to source selection officials.

DOE Acquisition Guide Chapter 42.15, Contractor Performance Information, provides detailed guidance for completing and submitting CPARS evaluations in a timely manner.

What are the Required FAR Solicitation Provisions and Contract Clauses?

- The Contracting Officer must use the provision at FAR 52.209-5, Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.
- The Contracting Officer must use the provision at FAR 52.209-7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed \$500,000.
- The Contracting Officer must use the clause at FAR 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters in –
 - Solicitations where the resultant contract value is expected to exceed \$500,000; and
 - Contracts in which the offeror checked “has” in paragraph (b) of the provision at FAR 52-209-7.