52.209-5 Certification Regarding Responsibility Matters.

As prescribed in 9.104-7(a), insert the following provision:

Certification Regarding Responsibility Matters (Aug 2020)

(a)

(1) The *Offeror* certifies, to the best of its knowledge and belief, that—

(i) The *Offeror* and/or any of its Principals–

(A) Are □ are not □ presently debarred, suspended, proposed for *debarment*, or declared *ineligible* for the award of contracts by any *Federal agency*;

(B) Have □ have not □, within a three-year period preceding this *offer*, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of *offers*; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if *offeror* checks "have", the *offeror shall* also see 52.209-7, if included in this *solicitation*);

(C) Are □ are not □ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have □, have not □, within a three-year period preceding this *offer*, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined*. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment*. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples*.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. *Should* the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. *Should* the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The *Offeror* has □ has not □, within a three-year period preceding this *offer*, had one or more contracts terminated for default by any *Federal agency*.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business *segment*; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the *United States* and the Making of a False, Fictitious, or Fraudulent Certification *May* Render the Maker Subject to Prosecution Under Section 1001, Title 18, *United States* Code.

(b) The *Offeror shall* provide immediate written notice to the *Contracting Officer* if, at any time prior to contract award, the *Offeror* learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this *solicitation*. However, the certification will be considered in connection with a determination of the *Offeror*'s responsibility. Failure of the *Offeror* to furnish a certification or provide such additional information as requested by the *Contracting Officer may* render the *Offeror* nonresponsible.

(d) Nothing contained in the foregoing *shall* be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an *Offeror* is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the *Offeror* knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the *Contracting Officer may* terminate the contract resulting from this *solicitation* for default.

(End of provision)

Parent topic: 52.209 [Reserved]