Subpart 1009.70—Tax Check Requirements

Source: 82 FR 53429, Nov. 16, 2017, unless otherwise noted.

Parent topic: PART 1009—CONTRACTOR QUALIFICATIONS

1009.7000 Scope of subpart.

This subpart prescribes the IRS policies and procedures for performing a tax check on the apparent successful offeror to determine eligibility to receive an award.

1009.7001 Definition.

As used in this subpart—

Authorized representative(s) of the offeror means the person(s) identified to the Internal Revenue Service (IRS) within the consent to disclosure by the offeror as authorized to represent the offeror in disclosure matters pertaining to the offer.

Delinquent Federal tax liability means any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

Tax check means an IRS process that accesses and uses taxpayer return information to support the Government's determination of an offeror's eligibility to receive an award, including but not limited to implementation of the statutory prohibition of making an award to corporations that have a delinquent Federal tax liability (see FAR 9.104-5(b)).

1009.7003 Policy.

(a) There are various Federal laws and regulations that in aggregate prohibit the Federal Government from entering into a contract with an entity where the awarding agency is aware of an unpaid Federal tax liability (see FAR subpart 9.1) unless the agency has considered suspension or debarment and has made a determination that this further action is not necessary to protect the interests of the Government.

(b) IRS contracting officers shall include a provision in all solicitations regardless of dollar value, which contains a consent to disclosure to be signed and dated by a person authorized to act on behalf of the offeror as defined in 26 CFR 301.6103(c)-1(e)(4). The consent to disclosure will authorize officers and employees of the Department of the Treasury, including the IRS, to disclose the results of the tax check to the authorized representative(s) of the offeror. In the absence of a signed and dated consent to disclosure in an offer, taxpayer return information of the offeror may not be disclosed, which subsequently may remove the offeror from eligibility to receive an award.

1009.7004 Procedure.

IRS contracting officers shall not proceed with award, at any dollar value, until a tax check has been performed on the apparent successful offeror. See IRS Procedures, Guidance, and Information (PGI) 9.1.

(a) The contracting officer, regardless of an offeror's response in paragraph (a)

(1) of the provision 52.209-5, Certification Regarding Responsibility Matters, paragraph (b)

(1) of the provision at FAR 52.209-11, or paragraphs (h) and (q)(2)(i) of the provision at FAR 52.212-3 (see FAR 9.104-5(b)), shall request a tax check through the IRS designated point of contact. The request shall include only the information required for purposes of conducting the tax check.

(b) If the result of the tax check demonstrates the offeror as having a delinquent Federal tax liability, the contracting officer shall—

(1) Confirm the offer includes a signed and dated consent to disclosure (see 1052.209-70, Notice and Consent to Disclose and Use of Taxpayer Return Information), the absence of which may remove the offeror from eligibility to receive an award under the solicitation because taxpayer return information of the offeror may not be disclosed.

(2) If the consent to disclosure is completed in the offer, notify the authorized representative(s) of the offeror that a delinquent Federal tax liability exists and therefore the offeror is ineligible for award.

(i) If upon notification the offeror provides the contracting officer with documentation, within the timeframe specified by the contracting officer, that demonstrates the offeror's tax status as being paid-in-full or that an approved payment agreement is in place, the contracting officer will coordinate with the appropriate office within IRS to validate the tax status. If the offeror is found to be tax compliant, the contracting officer will notify the offeror of such. Assuming the offeror meets all other standards of responsibility, the offeror is eligible for award.

(3) Notify, in accordance with IRS PGI 9.1, the Department of the Treasury official responsible for suspension and debarment for purposes of requesting a determination in accordance with FAR 9.104-5(a)(2) and FAR 9.104-5(b)(3) respectively before an award to that contractor can be made.

(c) If the result of the tax check demonstrates the offeror as tax compliant then the offeror is eligible for award, assuming all other standards of responsibility have been met.

(d) The contracting officer shall include in the contract file documentation that verifies the tax check was conducted and if the results confirm a delinquent Federal tax liability existed at the time of award, confirmation that the offeror was notified of such.

1009.7005 Solicitation provision.

(a) The contracting officer shall insert the provision 1052.209-70, Notice and Consent to Disclose and Use of Taxpayer Return Information, in all IRS solicitations regardless of dollar value, including

solicitations for acquisition of commercial items (including Commercially Available Off-The-Shelf items).