PART 2409 - CONTRACTOR QUALIFICATIONS

Authority: 40 U.S.C. 121(c); 42 U.S.C. 3535(d).

Source: 49 FR 7701, Mar. 1, 1984, unless otherwise noted.

Subpart 2409.1 - Responsible Prospective Contractors

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Parent topic: SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING

Subpart 2409.1 - Responsible Prospective Contractors

2409.105 Procedures.

(a) The Contracting Officer shall perform a financial review when the Contracting Officer does not otherwise have sufficient information to make a positive determination of financial responsibility. In addition, the Contracting Officer shall consider performing a financial review -

(1) Prior to award of a contract, when -

(i) The contractor is on a list requiring pre-award clearance or other special clearance before award;

(ii) The contractor is listed on the Consolidated List of Contractors Indebted to the Government, or is otherwise known to be indebted to the Government;

(iii) The contractor may receive Government assets such as contract financing payments or Government property;

(iv) The contractor is experiencing performance difficulties on other work; or

(v) The contractor is a new company or a new supplier of the item.

(2) At periodic intervals after award of a contract, when -

(i) Any of the conditions in paragraphs (a)(1)(ii) through (v) of this section are applicable; or

(ii) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

(b) The Contracting Officer shall obtain the type and depth of financial and other information that is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the Contracting Officer should not request information that is not necessary for protection of the Government's interests, the Contracting Officer must insist upon obtaining the information that is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and to use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(c) The Contracting Officer shall obtain the following information to the extent required to protect the Government's interest. In addition, if the Contracting Officer concludes that information not listed herein is required to determine financial responsibility, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, the Contracting Officer shall obtain the required information for each individual/joint venturer/partner:

(1) Balance sheet and income statement -

(i) For the current fiscal year (interim);

(ii) For the most recent fiscal year and, preferably, for the 2 preceding fiscal years. These should be certified by an independent public accountant or by an appropriate officer of the firm; and

(iii) Forecasted for each fiscal year for the remainder of the period of contract performance.

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies - corporate or personal, and describing its products or services.

(3) Statement of all affiliations disclosing -

(i) Material financial interests of the contractor;

(ii) Material financial interests in the contractor;

(iii) Material affiliations of owners, officers, members, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation.

(4) Statement of all forms of compensation to each officer, manager, partner, joint venturer, or proprietor, as appropriate -

(i) Planned for the current year;

(ii) Paid during the past 2 years; and

(iii) Deferred to future periods.

(5) Business base and forecast that -

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract.

(7) Financing arrangement information that discloses -

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, *e.g.,* environmental superfund.

(9) Description and explanation of the financial effect of issues such as -

(i) Leases, deferred purchase arrangements, or patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

(10) Significant ratios such as -

(i) Inventory to annual sales;

(ii) Inventory to current assets;

(iii) Liquid assets to current assets;

(iv) Liquid assets to current liabilities;

(v) Current assets to current liabilities; and

(vi) Net worth to net debt.

Subpart 2409.4 - Debarment, Suspension, and Ineligibility

Source: 77 FR 73526, Dec. 10, 2012, unless otherwise noted.

2409.405 Effect of listing.

(3) The Senior Procurement Executive is the agency head's designee under FAR 9.405(d)(3).

2409.407-1 General.

(d) The Senior Procurement Executive is the agency head's designee under FAR 9.407-1(d).

§ 2409.470 HUD regulations on debarment, suspension, and ineligibility.

HUD's policies and procedures concerning debarment and suspension are contained in 2 CFR part 2424, and, notwithstanding any language to the contrary, apply to procurement contracts.

Subpart 2409.5 - Organizational and Consultant Conflicts of Interest

2409.503 Waiver.

The Senior Procurement executive is the agency head's designee under FAR 9.503.

2409.507 Solicitation provisions and contract clause.

2409.507-1 Solicitation provisions.

The Contracting Officer shall insert a provision substantially the same as the provision at 48 CFR 2452.209-70, Potential Organizational Conflicts of Interest, in all solicitations over the simplified acquisition limitation when the Contracting Officer has reason to believe that a potential organizational conflict of interest exists. The Contracting Officer shall describe the nature of the potential conflict in the provision.

2409.507-2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 2452.209-71, Limitation on Future Contracts, in solicitations and contracts for services above the simplified acquisition threshold whenever the Contracting Officer has reason to believe that the nature of the proposed contract requirements may present an organizational conflict of interest as defined at FAR subpart 9.5. The Contracting Officer shall describe in the clause the nature of the potential conflict and the negotiated terms and duration of the limitation. The Contracting Officer shall insert the clause at 2452.209-72, Organizational Conflicts of Interest, in all solicitations and contracts.