Subpart 9.1 - Responsible Prospective Contractors

Parent topic: Part 9 - Contractor Qualifications

9.100 Scope of subpart.

This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

9.101 Definitions.

Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and state level but only in connections with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or *inspection* of deliverables.

Surveying activity, as used in this subpart, means the cognizant *contract administration office* or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located-

(1) In the *United States* or its *outlying areas*; or

(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with-

(1) Foreign, State, or local governments;

(2) Other U.S. Government agencies or their instrumentalities; or

(3) Agencies for people who are blind or severely disabled (see subpart 8.7).

9.103 Policy.

(a) Purchases *shall* be made from, and contracts *shall* be awarded to, *responsible prospective contractors* only.

(b) No purchase or award *shall* be made unless the *contracting officer* makes an affirmative determination of 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 subpart 19.6, Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see subpart 19.8.)

(c) The award of 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.

9.104 Standards.

9.104-1 General standards.

To be determined responsible, a prospective contractor *must*-

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(a));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see 9.104-3 (b) and subpart 42.15). 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 9.104-2;

(d) Have a satisfactory record of integrity and business ethics (for example, see subpart 42.15);

(e) 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). (See 9.104-3(a).)

(f) Have the necessary production, *construction*, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(a)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations (see also inverted domestic corporation prohibition at 9.108).

9.104-2 Special standards.

(a) When it is necessary for a particular *acquisition* or class of *acquisitions*, the *contracting officer shall* develop, with the assistance of appropriate specialists, special standards of responsibility.

Special standards *may* be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards *shall* be set forth in the *solicitation* (and so identified) and *shall* apply to all *offerors*.

(b) *Contracting officers shall* award contracts for subsistence only to those prospective contractors that meet the general standards in 9.104-1 and are approved in accordance with agency sanitation standards and procedures.

9.104-3 Application of standards.

(a) *Ability to obtain resources*. Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the *contracting officer shall* require acceptable evidence of the prospective contractor's ability to obtain required resources (see 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting *shall* take into account the time period covered by the contract base period or quantities plus *option* periods or quantities, if such *options* are considered when evaluating *offers* for award.

(b) *Satisfactory performance record*. A prospective contractor that is or recently has been seriously deficient in contract performance *shall* be presumed to be nonresponsible, unless the *contracting officer* determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The *contracting officer shall* consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to subpart 19.7, The Small Business Subcontracting Program, the *contracting officer shall* also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(c)

(1) *Affiliated concerns*. Affiliated concerns (see "Concern" in 19.001 and "Small business concern" in 2.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the *contracting officer shall* consider the affiliate's *past performance* and integrity when they *may* adversely affect the prospective contractor's responsibility.

(2) *Joint ventures.* For a prospective contractor that is a joint venture, the *contracting officer shall* consider the *past performance* of the joint venture. If the joint venture does not demonstrate past performance for award, the *contracting officer shall* consider the *past performance* of each party to the joint venture.

(d)

(1) *Small business concerns*. Upon making a determination of nonresponsibility with regard to a small business concern, the *contracting officer shall* refer the matter to the Small Business

Administration, which will decide whether to issue a Certificate of Competency (see subpart 19.6).

(2) *Limitations on subcontracting*. A small business that is unable to comply with the limitations on subcontracting *may* be considered nonresponsible (see 52.219-3, Notice of *HUBZone* Set-Aside or Sole Source Award; 52.219-4, Notice of Price Evaluation Preference for *HUBZone* Small Business Concerns; 52.219-14, Limitations on Subcontracting; 52.219-27,Notice of Set-Aside for, or Sole-Source Award to, Service-Disabled Veteran-Owned Small Business (SDVOSB) Concerns Eligible Under the SDVOSB Program; 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged *Women-Owned Small Business Concerns*; and 52.219-30, Notice of Set-Aside for, or Sole Source Award to, *Women-Owned Small Business Concerns* Eligible Under the Women-Owned Small Business Program). A small business that has not agreed to comply with the limitations on subcontracting *may* be considered nonresponsive.

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 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.

(b) 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.

9.104-5 Representation and certifications regarding responsibility matters.

(a) When an *offeror* provides an affirmative response in paragraph (a)(1) of the provision at 52.209-5, Certification Regarding Responsibility Matters, or paragraph (h) of provision 52.212-3, the *contracting officer shall*-

(1) Promptly, upon receipt of *offers*, request such additional information from the *offeror* as the *offeror* deems necessary in order to demonstrate the *offeror*’s responsibility to the *contracting officer* (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating *debarment* or *suspension* action, where an *offeror* indicates the existence of an indictment, charge, *conviction*, or civil judgment, or Federal tax delinquency in an amount that exceeds $15,000.

(b) The provision at 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony *Conviction* under any Federal Law, implements sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) (and similar provisions in subsequent appropriations acts). When an *offeror* provides an affirmative response in paragraph (b)(1) or (2) of the provision at 52.209-11 or paragraph (q)(2)(i) or (ii) of provision 52.212-3, the *contracting officer shall*–

(1) Promptly, upon receipt of *offers*, request such additional information from the *offeror* as the *offeror* deems necessary in order to demonstrate the *offeror*'s responsibility to the *contracting officer* (but see 9.405);

(2) Notify, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating *debarment* or *suspension* action; and

(3) Not award to the corporation unless an agency *suspending and debarring official* has considered *suspension* or *debarment* of the corporation and made a determination that *suspension* or *debarment* is not necessary to protect the interests of the Government.

(c) If the provision at 52.209-12, Certification Regarding Tax Matters, is applicable (see 9.104-7(e)), then the *contracting officer shall* not award any contract in an amount greater than $7 million, unless the *offeror* affirmatively certified in its *offer*, as required by paragraph (b)(1), (2), and (3) of the provision.

(d) *Offerors* who do not furnish the representation or certifications or such information as *may* be requested by the *contracting officer shall* be given an opportunity to remedy the deficiency. Failure to furnish the representation or certifications or such information *may* render the *offeror* nonresponsible.

9.104-6 Federal Awardee Performance and Integrity Information System.

(a)

(1) Before awarding a contract in excess of the *simplified acquisition threshold*, the *contracting officer shall* review the performance and integrity information available in the Federal Awardee Performance and Integrity Information System (FAPIIS), (available at https://www.cpars.gov), including FAPIIS information from the *System for Award Management (SAM*) Exclusions and the Contractor Performance Assessment Reporting System (CPARS).

(2) In accordance with 41 U.S.C. 2313(d)(3), FAPIIS also identifies–

(i) An affiliate that is an immediate owner or subsidiary of the *offeror*, if any (see 52.204-17, Ownership or Control of *Offeror*); and

(ii) All predecessors of the *offeror* that held a Federal contract or grant within the last three years (see 52.204-20, Predecessor of *Offeror*).

(b)

(1) When making a responsibility determination, the *contracting officer shall* consider all the information available through FAPIIS with regard to the *offeror* and any immediate owner, predecessor, or subsidiary identified for that *offeror* in FAPIIS, as well as other *past performance* information on the *offeror* (see subpart 42.15).

(2) For evaluation of information available through FAPIIS relating to an affiliate of the *offeror*, see 9.104-3(c).

(3) For source selection evaluations of *past performance*, see 15.305(a)(2). *Contracting officers shall*

use sound judgment in determining the weight and relevance of the information contained in FAPIIS and how it relates to the present *acquisition*.

(4) Since FAPIIS *may* contain information on any of the *offeror*'s previous contracts and information covering a 5-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*, *suspension*, voluntary exclusion, or administrative agreement, that has expired or otherwise been resolved, or information relating to contracts for completely different *products* or services.

(5) Because FAPIIS is a database that provides information about prime contractors, the *contracting officer* posts information required to be posted about a subcontractor, such as trafficking in persons violations, to the record of the prime contractor (see 42.1503(h)(1)(v)). The prime contractor has the opportunity to post in FAPIIS any mitigating factors. The *contracting officer shall* consider any mitigating factors posted in FAPIIS by the prime contractor, such as degree of compliance by the prime contractor with the terms of FAR clause 52.222-50.

(c) If the *contracting officer* obtains relevant information from FAPIIS 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, suspended, or has agreed to a voluntary exclusion-

(1) 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* (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating *debarment* or *suspension* action, if the information appears appropriate for the official's consideration.

(d) The *contracting officer shall* document the contract file for each contract in excess of the *simplified acquisition threshold* to indicate how the information in FAPIIS 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 FAPIIS in accordance with 9.105-2(b)(2).

9.104-7 Solicitation provisions and contract clauses.

(a) The *contracting officer shall* insert the provision at 52.209-5, Certification Regarding Responsibility Matters, in *solicitations* where the contract value is expected to exceed the *simplified acquisition threshold*.

(b) The *contracting officer shall* insert the provision at 52.209-7, Information Regarding Responsibility Matters, in *solicitations* where the resultant contract value is expected to exceed $750,000.

(c) The *contracting officer shall* insert the clause at 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters-

(1) In *solicitations* where the resultant contract value is expected to exceed $750,000; and

(2) In contracts in which the *offeror* checked "has" in paragraph (b) of the provision at 52.209-7.

(d) The *contracting officer shall* insert the provision 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony *Conviction* under any Federal Law, in all *solicitations*.

(e) For agencies receiving funds subject to section 523 of Division B of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar provisions in subsequent appropriations acts, the *contracting officer shall* insert the provision 52.209-12, Certification Regarding Tax Matters, in *solicitations* for which the resultant contract (including *options*) *may* have a value greater than $7 million. Division B of the Consolidated and Continuing Further Appropriations Act, 2015 appropriates funds for the following agencies: the Department of Commerce, the Department of Justice, the National Aeronautics and Space Administration, the Office of Science and Technology Policy, the National Science Foundation, the Commission on Civil Rights, the Equal Employment Opportunity Commission, the U.S. International Trade Commission, the Legal Services Corporation, the Marine Mammal Commission, the Office of the *United States* Trade Representative, and the State Justice Institute.

9.105 Procedures.

9.105-1 Obtaining information.

(a) Before making a determination of responsibility, the *contracting officer shall* possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)

(1) Generally, the *contracting officer shall* obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of *offers*. However, in negotiated *contracting*, 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-

(i) The low bidder; or

(ii) Those *offerors* in range for award.

(2) Preaward surveys *shall* be managed and conducted by the *surveying activity*.

(i) If the *surveying activity* is a *contract administration office*-

(A) That office *shall* advise the *contracting officer* on prospective contractors' financial competence and credit needs; and

(B) The administrative *contracting officer shall* obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the *surveying activity* is not a *contract administration office*, the *contracting officer shall* obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability *shall* be obtained or updated on as current a basis as is feasible up to the date of award.

(c) In making the determination of responsibility, the *contracting officer shall* consider information available through FAPIIS (see 9.104-6) with regard to the *offeror* and any immediate owner, predecessor, or subsidiary identified for that *offeror* in FAPIIS, including information that is linked to FAPIIS such as from SAM, and CPARS, as well as any other relevant *past performance* information on the *offeror* (see 9.104-1(c) and subpart 42.15). In addition, the *contracting officer should* use the following sources of information to support such determinations:

(1) Records and experience data, including verifiable knowledge of personnel within the *contracting office*, audit offices, *contract administration offices*, and other *contracting offices*.

(2) The prospective contractor-including bid or proposal information (including the certification at 52.209-5 or 52.212-3(h) (see 9.104-5)), questionnaire replies, financial data, information on production equipment, and personnel information.

(3) Commercial sources of supplier information of a type offered to buyers in the private sector.

(4) *Preaward survey* reports (see 9.106).

(5) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(d) *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.

9.105-2 Determinations and documentation.

(a) Determinations.

(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.

(2) If the *contracting officer* determines that a responsive small business lacks certain elements of responsibility, the *contracting officer shall* comply with the procedures in subpart 19.6. When a Certificate of Competency is issued for a small business concern (see subpart 19.6), the *contracting officer shall* accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the concern.

(b) *Support documentation*.

(1) Documents and reports supporting a determination of responsibility or nonresponsibility, including any *preaward survey* reports, the use of FAPIIS information (see 9.104-6), and any applicable Certificate of Competency, *must* be included in the contract file.

(2)

(i) The *contracting officer shall* document the determination of nonresponsibility in FAPIIS (available at https://www.cpars.gov) if-

(A) The contract is valued at more than the *simplified acquisition threshold*;

(B) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics; and

(C) The Small Business Administration does not issue a Certificate of Competency.

(ii) The *contracting officer* is responsible for the timely submission, within 3 working days, and sufficiency, and accuracy of the documentation regarding the nonresponsibility determination.

(iii) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except *past performance* reviews, will be publicly available. FAPIIS consists of two *segments*-

(A) The non-public *segment*, into which Government officials and contractors post information, which can only be viewed by-

(1) Government personnel and authorized users performing business on behalf of the Government; or

(2) An *offeror* or contractor, when viewing data on itself; and

(B) The publicly-available *segment*, to which all data in the non-public *segment* of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for-

(1) *Past performance* reviews required by subpart 42.15;

(2) Information that was entered prior to April 15,2011; or

(3) Information that is withdrawn during the 14-calendar-*day* waiting period by the Government official who posted it in accordance with paragraph (b)(2)(iv) of this section.

(iv) The *contracting officer*, or any other Government official, *shall* not post any information in the non-public *segment* of FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act. If the contractor asserts within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public *segment* of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information *must* within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information Act procedures, prior to reposting the releasable information.

9.105-3 Disclosure of preaward information.

(a) Except as provided in subpart 24.2, Freedom of Information Act, information (including the *preaward survey* report) accumulated for purposes of determining the responsibility of a prospective contractor *shall* not be released or disclosed outside the Government.

(b) The *contracting officer may* discuss *preaward survey* information with the prospective contractor before determining responsibility. After award, the *contracting officer* or, if it is appropriate, the head of the *surveying activity* or a designee *may* discuss the findings of the *preaward survey* with the company surveyed.

(c) *Preaward survey* information *may* contain proprietary or *source selection information* and *should* be marked with the appropriate legend and protected accordingly (see 3.104-4).

9.106 Preaward surveys.

9.106-1 Conditions for preaward surveys.

(a) 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. In addition, if the contemplated contract will have a fixed price at or below the *simplified acquisition threshold* or will involve the *acquisition* of *commercial products* or *commercial services* (see part 12), the *contracting officer should* not request a *preaward survey* unless circumstances justify its cost.

(b) When a cognizant *contract administration office* becomes aware of a prospective award to a contractor about which unfavorable information exists and no *preaward survey* has been requested, it *shall* promptly obtain and transmit details to the *contracting officer*.

(c) Before beginning a *preaward survey*, the *surveying activity shall* ascertain whether the prospective contractor is debarred, suspended, or *ineligible* (see subpart 9.4). If the prospective contractor is debarred, suspended, or *ineligible*, the *surveying activity shall* advise the *contracting officer* promptly and not proceed with the *preaward survey* unless specifically requested to do so by the *contracting officer*.

9.106-2 Requests for preaward surveys.

The *contracting officer*'s request to the *surveying activity* (*Preaward Survey* of Prospective Contractor (General),SF 1403) *shall*-

(a) Identify additional factors about which information is needed;

(b) Include the complete *solicitation* package (unless it has previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(c) State whether the *contracting office* will participate in the survey;

(d) Specify the date by which the report is required. This date *should* be consistent with the scope of

the survey requested and normally *shall* allow at least 7 working days to conduct the survey; and

(e) When appropriate, limit the scope of the survey.

9.106-3 Interagency preaward surveys.

When the *contracting office* and the *surveying activity* are in different agencies, the procedures of this section 9.106 and subpart 42.1 *shall* be followed along with the regulations of the agency in which the *surveying activity* is located, except that reasonable special requests by the *contracting office shall* be accommodated (also see subpart 17.5).

9.106-4 Reports.

(a) The *surveying activity shall* complete the applicable parts of SF 1403, *Preaward Survey* of Prospective Contractor (General); SF 1404, *Preaward Survey* of Prospective Contractor-Technical; SF 1405, *Preaward Survey* of Prospective Contractor-Production; SF 1406, *Preaward Survey* of Prospective Contractor-Quality Assurance; SF 1407, *Preaward Survey* of Prospective Contractor-Financial Capability; and SF 1408, *Preaward Survey* of Prospective Contractor-Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

(b) When the contractor surveyed is a small business that has received preferential treatment on an ongoing contract under Section 8(a) of the Small Business Act (15 U.S.C. 637) or has received a Certificate of Competency during the last 12 months, the *surveying activity shall* consult the appropriate Small Business Administration field office before making an affirmative recommendation regarding the contractor’s responsibility or nonresponsibility.

(c) When a *preaward survey* discloses previous unsatisfactory performance, the *surveying activity shall* specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor’s fault does not necessarily indicate satisfactory performance. The narrative *shall* report any persistent pattern of need for costly and burdensome Government assistance (*e.g.,* engineering, *inspection*, or testing) provided in the Government’s interest but not contractually required.

(d) When the *surveying activity* possesses information that supports a recommendation of complete award without an on-site survey and no special areas for investigation have been requested, the *surveying activity may* provide a short-form *preaward survey* report. The short-form report *shall* consist solely of the *Preaward Survey* of Prospective Contractor (General), SF 1403. Sections III and IV of this form *shall* be completed and block21 *shall* be checked to show that the report is a short-form preaward report.

9.107 Surveys of nonprofit agencies participating in the AbilityOne Program.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. chapter 85, determines what *supplies* and services *Federal agencies* are required to purchase from AbilityOne participating nonprofit agencies serving people who are blind

or have other severe disabilities (see subpart 8.7). The Committee is required to find an AbilityOne participating nonprofit agency capable of furnishing the *supplies* or services before the nonprofit agency can be designated as a mandatory source under the AbilityOne Program. The Committee *may* request a *contracting office* to assist in assessing the capabilities of a nonprofit agency.

(b) The *contracting office*, upon request from the Committee, *shall* request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the AbilityOne participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable *preaward survey* elements to furnish specific *supplies* or services being considered for addition to the *Procurement* List.

(c) The *contracting office shall* use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The *contracting office shall* furnish a copy of the completed survey, or notice that the AbilityOne participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

9.108 Prohibition on contracting with inverted domestic corporations.

9.108-1 Definitions.

As used in this section-

Inverted domestic corporation means a foreign incorporated entity that meets the definition of an *inverted domestic corporation* under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

Subsidiary means an entity in which more than 50 percent of the entity is owned-

(1) Directly by a parent corporation; or

(2) Through another *subsidiary* of a parent corporation.

9.108-2 Prohibition.

(a) Section 745 of Division D of the Consolidated Appropriations Act, 2008 (Pub. L. 110-161) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) prohibit, on a Governmentwide basis, the use of appropriated (or otherwise made available) funds for contracts with either an *inverted domestic corporation*, or a *subsidiary* of such a corporation, except as provided in paragraph (b) of this section and in 9.108-4 Waiver.

(b)

(1) Section 745 and its successor provisions include the following exception: This section *shall* not

apply to any Federal Government contract entered into before the date of the enactment of this Act, or to any *task order* issued pursuant to such contract.

(2) To ensure appropriate application of the prohibition and this exception, *contracting officers should* consult with legal counsel if, during the performance of a contract, a contractor becomes an *inverted domestic corporation* or a *subsidiary* of one.

9.108-3 Representation by the offeror.

(a) In order to be eligible for contract award, an *offeror must* represent that it is neither an *inverted domestic corporation*, nor a *subsidiary* of an *inverted domestic corporation*. Any *offeror* that cannot so represent is *ineligible* for award of a contract, unless waived in accordance with the procedures at 9.108-4.

(b) The *contracting officer may* rely on an *offeror*'s representation that it is not an *inverted domestic corporation* unless the *contracting officer* has reason to question the representation.

9.108-4 Waiver.

Any *agency head may* waive the prohibition in subsection 9.108-2 and the requirement of subsection 9.108-3 for a specific contract if the *agency head* determines *in writing* that the waiver is required in the interest of national security, documents the determination, and reports it to the Congress.

9.108-5 Solicitation provision and contract clause.

The *contracting officer shall*-

(a) Include the provision at 52.209-2, Prohibition on *Contracting* with *Inverted Domestic Corporations*-Representation, in each *solicitation* for the *acquisition* of *products* or services (including *construction*); and

(b) Include the clause at 52.209-10, Prohibition on *Contracting* with *Inverted Domestic Corporations*, in each *solicitation* and contract for the *acquisition* of *products* or services (including *construction*).

9.109 Prohibition on contracting with an entity involved in activities that violate arms control treaties or agreements with the United States.

9.109-1 Authority.

This section implements 22 U.S.C. 2593e.

9.109-2 Prohibition.

Contracting officers shall not award, renew, or extend a contract for the *procurement* of *products* or services with an entity identified as excluded in the *System for Award Management*, specifically for this subpart, on the basis of involvement in activities that violate arms control treaties or agreements with the *United States*.

9.109-3 Exception.

The prohibition in 9.109-2 does not apply to contracts for the *procurement* of *products* or services along a major route of supply to a zone of active combat or major *contingency operation*, as specified in statute or by the cognizant *Combatant Commander*, in consultation with the *Chief of Mission*. As of *May* 10, 2018, countries along the major route of supply to support operations in Afghanistan are Afghanistan, Georgia, the Kyrgyz Republic, Pakistan, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, and Turkmenistan.

9.109-4 Certification by the offeror.

(a) In order to be eligible for contract award, an *offeror* is required to—

(1)

(i) Certify that it does not engage and has not engaged in any activity that contributed to or was a significant factor in the President's or Secretary of State's determination that a foreign country is in violation of its obligations undertaken in any arms control, nonproliferation, or disarmament agreement to which the *United States* is a party, or is not adhering to its arms control, nonproliferation, or disarmament commitments in which the *United States* is a participating state. The determinations are described in the most recent unclassified annual report provided to Congress pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. 2593a). The report is available at https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-arms-control-verification-and-compliance/; and

(ii) Similarly certify with regard to any entity owned or controlled by the *offeror*; or

(2) Provide with its *offer* information that the President of the *United States* has–

(i) Waived application under 22 U.S.C. 2593e(d) or (e); or

(ii) Determined under 22 U.S.C. 2593e(g)(2) that the entity has ceased all activities for which measures were imposed under 22 U.S.C. 2593e(b).

(b) If certifying in accordance with 52.209-13(b)(1), the *Offeror* is required to submit the certification with the *offer*. It is not included in the annual representations and certifications in the *System for Award Management*.

(c) The *contracting officer may* rely on an *offeror*'s certification unless the *contracting officer* has

reason to question the certification.

(d) Upon the determination of a false certification under 52.209-13, an *offeror* will be subject to such remedies as *suspension* or *debarment* under subpart 9.4 *shall* be for a period of not less than 2 years, inclusive of any *suspension* period, if *suspension* precedes a *debarment* (see 9.406-4(a)(1)(iii) and (a)(2)).

9.109-5 Solicitation provision.

Unless the exception at 9.109-3 applies, the *contracting officer shall* include the provision at 52.209-13, Violation of Arms Control Treaties or Agreements-Certification, in each *solicitation* for the *acquisition* of *products* or services (including *construction*) that exceeds the *simplified acquisition threshold*, other than *solicitations* for the *acquisition* of *commercial products* or *commercial services*.

9.110 Reserve Officer Training Corps and military recruiting on campus.

9.110-1 Definitions.

As used in this section—

Covered agency means–

(1)The Department of Defense;

(2)Any department or agency for which regular appropriations are made in a Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act;

(3)The Department of Homeland Security;

(4)The National Nuclear Security Administration of the Department of Energy;

(5)The Department of Transportation; or

(6)The Central Intelligence Agency.

Institution of higher education means an institution that meets the requirements of 20 U.S.C. 1001 and includes all sub-elements of such an institution.

9.110-2 Authority

This section implements 10 U.S.C. 983.

9.110-3 Policy.

(a) Except as provided in paragraph (b) of this section, 10 U.S.C. 983 prohibits the *covered agency* from providing funds by contract to an *institution of higher* education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another *institution of higher* education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(4) Military recruiters from accessing certain information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name, address, and telephone listings.

(ii) Date and place of birth, educational level, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(b) The prohibition in paragraph (a) of this section does not apply to an *institution of higher* education if the Secretary of Defense determines that—

(1) The institution has ceased the policy or practice described in paragraph (a) of this section; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

9.110-4 Procedures.

If the Secretary of Defense determines, pursuant to the procedures at 32 CFR part 216, that an *institution of higher* education is *ineligible* to receive funds from a *covered agency* because of a policy or practice described in 9.110-3—

(a)The Secretary of Defense will create an active exclusion record for the institution in the *System for Award Management;* and

(b)A *covered agency shall* not solicit *offers* from, award contracts to, or *consent to subcontracts* with the institution. The prohibition in this paragraph (b) does not apply to *acquisitions* at or below the *simplified acquisition threshold* or to *acquisitions* of *commercial products* and *commercial services*, including commercially available off-the-shelf items.

9.110-5 Contract clause.

The *contracting officer shall* insert the clause at 52.209-14, Reserve Officer Training Corps and

Military Recruiting on Campus, in *solicitations* and contracts that are expected to exceed the *simplified acquisition threshold*, with institutions of higher education, when using funds from a *covered agency*. The clause is not prescribed for *solicitations* and contracts using part 12 for the *acquisition* of *commercial products* and *commercial services*.