

## Representations and Certifications of Tax Delinquency

On May 25, 2007, The Office of Advocacy sent a comment letter to the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils), in response to their notice of proposed rulemaking entitled, Representations and Certifications - Tax Delinquency (72 Fed. Reg. 15093 March 30, 2007). Advocacy has advised the Councils to publish an initial regulatory flexibility analysis (IRFA) as required by Section 603 of the Regulatory Flexibility Act. A copy of Advocacy's letter to the Councils can be accessed at <http://www.sba.gov/advo/laws/comments>.

- In order to increase the level of corporate tax accountability for federal contractors, the Councils have proposed to require offerors to certify whether or not they have, within a three-year period preceding the offer of a potential contract award, been convicted of or had a civil judgment rendered against them for violating any tax law or failing to pay any tax, or been notified of any delinquent taxes for which the liability remains unsatisfied.
- The Councils have also proposed to require offerors to certify whether or not they have received a notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.
- If a contractor certifies that any of these conditions exist, the contracting officer may evaluate the ability of the contractor to perform on the contract.
- According to the Central Contractor Registration system, there are more than 300,000 small businesses registered to perform work for the federal government. The proposed regulation did not discuss the economic impact of these new mandatory certifications on small entities.
- Advocacy explained the importance of preparing an Initial Regulatory Flexibility Analysis (IRFA) to consider the potential economic impact on small entities. The rule is likely to increase the cost of doing business with the government, and due to a lack of clarity in the regulation, those increased costs could be significant for a substantial number of small businesses. Under these circumstances, the Councils should provide a complete IRFA.