

# Alert! Alert! Alert!



AGAR Advisory 45 was issued on 4/29/02. It details Contractor Responsibility Determinations related specifically to orders under Indefinite-Delivery type contracts.

Over the past twelve months, GAO has heard five protests which included Contractor Responsibility issues as the basis for the protest. The overall success of those protests (whether they were sustained or denied) rested in how well the Contracting Officer (CO) documented the responsibility/non-responsibility determinations. DOCUMENT! DOCUMENT! DOCUMENT! We hear it all the time, but it sure keeps us out of hot water!

Contractor Responsibility is detailed in FAR Subpart 9.1. The CO is responsible for making a positive determination that a contractor is responsible prior to awarding them a contract. The CO does this by collecting data that supports or denies the responsibility of the prospective contractor and by:

- Verifying the contractor possesses adequate financial resources to complete the contract, or verifying the need for some type of financing;
- verifying the adequacy of the contractor's accounting system, and the suitability of that accounting system for use in administering the proposed type of contract (e.g., a contractor's accounting system may be adequate to handle a firm-fixed price contract, but may not be able to track costs in a cost-reimbursable contract);
- checking the list of excluded parties at <http://epls.arnet.gov>;
- verifying the contractor possesses the necessary experience, control, technical skills, and production, construction, technical equipment, and facilities necessary to accomplish the contract;
- verifying the contractor has adequate past performance; and
- verifying the contractor is otherwise qualified and eligible to receive an award under applicable laws and regulations (please see FAR Part 9 for a more expanded list and a couple of exceptions).

By signing the contract, the CO is certifying the contractor as responsible. The file should contain all information which supports this decision. In the event a contractor is determined to be non-responsible, a determination signed by the CO must be included in the file which adequately describes the reasoning behind the non-responsibility judgement. Remember, any determinations of non-responsibility for a small business or 8(a) concern must be addressed through the procedures outlined in FAR Part 19.

Task Objective: Don't forget to document your decisions! You will be glad you were thorough!