

UNIT 44: RESPONSIBILITY

October 2003

Duty	Determine and document the responsibility or non-responsibility of a prospective contractor.
Conditions	Given acquisition planning, the solicitation (if any), offer(s) or quotation(s), technical analysis, cost/price analysis, and the List of Parties Excluded From Procurement Programs.
Overall Standard	Award contracts only to those firms that are reasonably certain of being capable of effective performance in compliance with all terms and conditions of the contract.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
3.103-2		Evaluating the Certificate of Independent Price Determination.
3.4		Contingent fees.
9.1		Responsible prospective contractors.
9.4		Debarment, suspension, and ineligibility.
9.6		Contractor team arrangements.
9.7		Defense production pools and research and development pools.
13.101(a)		Certificates of Competency for simplified acquisitions.
14.404-2		Rejection of individual bids.
19.301		Representation of the offeror on eligibility for set-asides.
19.6		Certificates of Competency and determinations of responsibility.
22.8		Equal employment opportunity.
22.1025		Ineligibility of violators under the Service Contract Act.
23.5		Drug-free workplace requirements for eligibility.
32.107		Need for contract financing not a deterrent.
35.008(c)		Certificates of Competency for research and development.
37.108		Small business Certificate of Competency.
52.203-2		Certificate of Independent Price Determination.
52.203-5		Covenant against contingent fees.
52.204-3		Taxpayer identification.
52.212-3(b)		Taxpayer identification number.
52.209-5		Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
52.214-10		Contract award – sealed bidding.
52.215-1(f)		Contract award.
52.219-14		Limitations on subcontracting.
52.222-24		Pre-award on-site equal opportunity compliance evaluation.
52.223-6		Drug-free workplace.
52.247-6		Financial statement.

Other KSAs

1. Knowledge of environmental and labor laws, with respect to eligibility for award; knowledge of fraud with respect to applying the general standard on integrity.

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2. Knowledge of types of financial assets; creation and transfer of financial assets; financial institutions; markets and securities; interest rates; and financing methods, in terms of applying the general standard for financial responsibility.
3. Knowledge of techniques for analyzing financial statements (e.g., ratio analysis, firm standards vs. industry-wide averages, interrelationship of ratios and trends, funds flow analysis, analysis of additional information in annual reports, such as auditor opinions, notes, full disclosure, comparative statements, and SEC reports), in terms of applying the general standard for financial responsibility.
4. Knowledge of financial forecasts and plans (e.g., forecasting techniques; applicable data from income, cash flow, and balance sheets; financial plans and budgets; working capital management; and raising intermediate and long-term funds), in terms of applying the general standard for financial responsibility.
5. Knowledge of accounting records and systems, responsibility centers, accounting information in management control (e.g., controllable costs; engineered, discretionary, and committed costs), programming and budgeting, and analyzing and reporting performance (e.g., production cost variances, other variances, analysis of variances, control steps, and steps in the control process), in terms of applying the general standard on organizational responsibility.
6. Knowledge of control, advanced control techniques, control of overall performance, and control of management quality, in terms of applying the general standard on organizational responsibility.
7. Knowledge of production and operations planning (e.g., demand forecasting, capacity planning, inventory replenishment, production scheduling and leveling, network planning, critical path, probabilistic network methods, and deployment of resources), in terms of applying the general standards on delivery, organizational and technical capabilities.
8. Knowledge of organization for production (e.g., process and job design, facility layout, and work measurement) and logistics (e.g., elements, storage, transportation, and distribution), in terms of applying the general standards on organizational and technical responsibility.
9. Skill at communicating and exercising leadership in working personnel involved in performing a preaward survey and with the Small Business Administration.
10. Ability to read and understand reports related to a firm's responsibility.
11. Ability to make the arithmetic calculations required in financial analysis.
12. Ability to analyze information related to various responsibility factors and reach an accurate conclusion.

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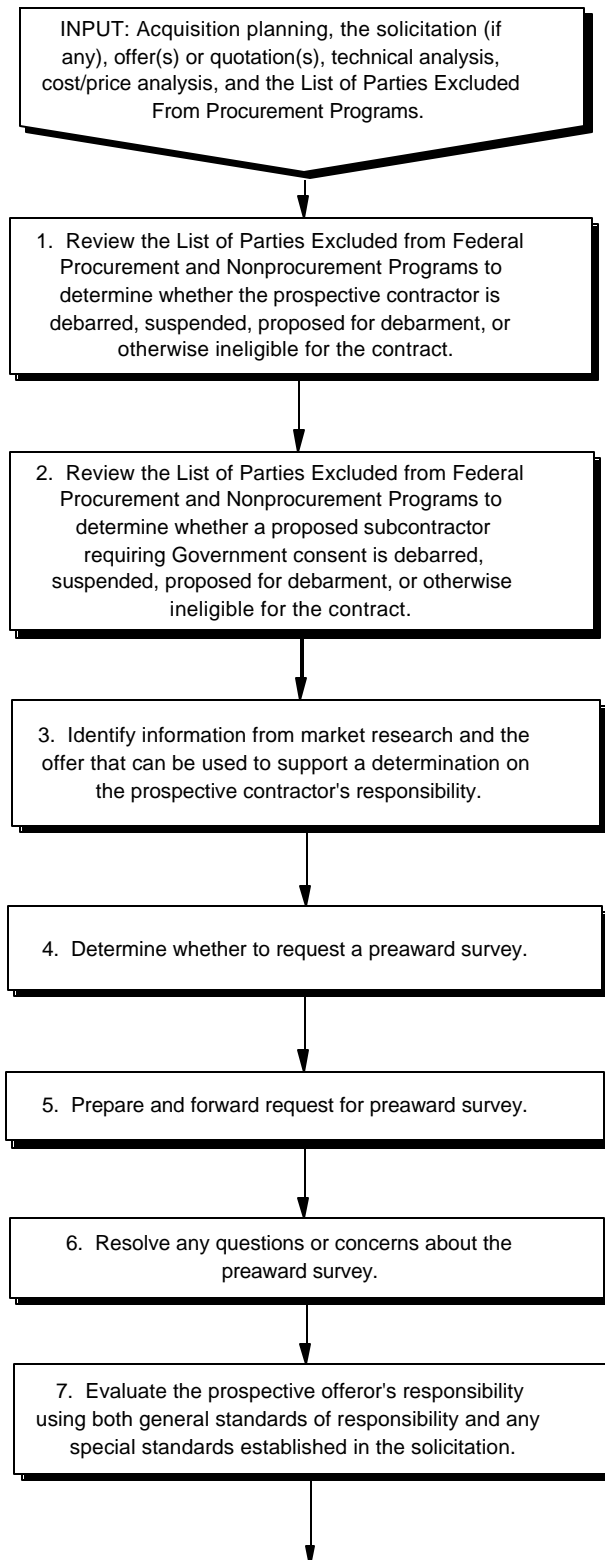
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13. Ability to thoroughly analyze the details relating the various factors affecting responsibility.
 14. Ability to make a sound, well-informed business decision about a seller's responsibility.
 15. Ability to maintain the honesty and integrity of the acquisition process.
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Other Policies and References (Annotate As Necessary):

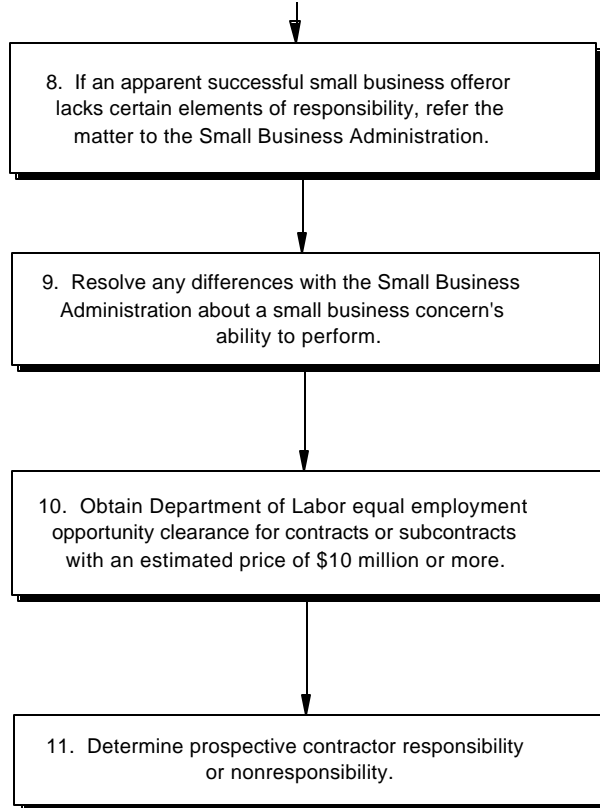
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Related Standards

<p>1. Review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to determine whether the prospective contractor is debarred, suspended, proposed for debarment, or otherwise ineligible for the contract.</p>	<p>After the opening of bids or receipt of proposals, review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.</p> <ul style="list-style-type: none">• Enter bids received from any listed contractor in response to an invitation for bids on the abstract of bids, and reject them unless the agency head or a designee determines in writing that there is a compelling reason to consider the bid.• Proposals, quotations, or offers received from any listed contractor:<ul style="list-style-type: none">- Must not be evaluated for award or included in the competitive range, and discussions must not be conducted with a listed offeror during a period of ineligibility, unless the agency head or a designee determines, in writing, that there is a compelling reason to do so.- May, if the period of ineligibility expires or is terminated prior to award, may be considered, but the Contracting Officer is not required to so.
<p>2. Review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to determine whether a proposed subcontractor requiring Government consent is debarred, suspended, proposed for debarment, or otherwise ineligible for the contract.</p>	<p>Never consent to a proposed subcontract with a seller on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs unless the agency head or a designee states in writing the compelling reasons for the consent action.</p>

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<p>3. Identify information from market research and the offer that can be used to support a determination on the prospective contractor's responsibility.</p>	<p>Identify information available from any source (including on-line resources) that provides insight into whether the prospective contractor:</p> <ul style="list-style-type: none"> • Has adequate financial resources to perform the contract, or the ability to obtain them; • Will be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments; • Has a satisfactory performance record; • Has a satisfactory record of integrity and business ethics; • Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; • Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and • Is otherwise qualified and eligible to receive an award under applicable laws and regulations.
<p>4. Determine whether to request a preaward survey.</p>	<p>Only request a preaward survey when the information on hand or readily available, including information from commercial sources, is not sufficient to make a determination regarding responsibility.</p> <p>Unless circumstances justify the cost, do not request a preaward survey when the proposed contract will:</p> <ul style="list-style-type: none"> • Have a fixed-price at or below the simplified acquisition threshold, or • Involve the acquisition of commercial items.

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<p>5. Prepare and forward request for preaward survey.</p>	<p>The request for preaward survey must:</p> <ul style="list-style-type: none">• Identify additional factors about which information is needed.• Include the complete solicitation package (unless it has previously been furnished) and any information indicating prior unsatisfactory performance by the prospective contractor.• State whether the contracting office will participate in the survey.• Specify the date by which the report is required. This date should be consistent with the scope of the survey requested. Normally, allow at least seven working days to conduct the survey.• When appropriate, limit the scope of the survey.
<p>6. Resolve any questions or concerns about the preaward survey.</p>	<p>Identify any apparent preaward survey omissions, conflicts with other available information, or other concerns.</p> <p>Resolve any concern using the most practical method available.</p> <ul style="list-style-type: none">• Most concerns can usually be resolved using a telephone call or e-mail.• More complex issues may require more formal resolution. <p>In particular, be sure to resolve any questions about actions taken by the prospective contractor to correct past performance problems disclosed by the preaward survey.</p>

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<p>7. Evaluate the prospective offeror's responsibility using both general standards of responsibility and any special standards established in the solicitation.</p>	<p>Generally, evaluate a prospective contractor separately from affiliated concerns. However, consider an affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.</p> <p>General Standards. To be determined responsible, a prospective contractor must:</p> <ul style="list-style-type: none">• Have adequate financial resources to perform the contract, or the ability to obtain them;• Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;• Have a satisfactory performance record;• Have a satisfactory record of integrity and business ethics;• Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;• Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and• Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including:<ul style="list-style-type: none">- A small business concern's ability to comply with limitations on subcontracting; and- When the contract exceeds the simplified acquisition threshold, whether the prospective contractor has agreed to provide a drug-free workplace. <p>Special Standards. Special standards of responsibility must be set forth in the solicitation (and so identified) and must apply to all offerors. For example, solicitations for subsistence must require that the prospective contractor be approved in accordance with agency sanitation standards and procedures.</p>
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<p>8. If an apparent successful small business offeror lacks certain elements of responsibility, refer the matter to the Small Business Administration.</p>	<p>Upon documenting that an apparent successful small business offeror lacks certain elements of responsibility:</p> <ul style="list-style-type: none">• Withhold contract award; and• Refer the matter to the cognizant Small Business Administration (SBA) Government Contracting Area Office (Area Office) serving the area in which the offeror's headquarters is located, except that referral is not necessary if the small business concern:<ul style="list-style-type: none">- Is determined to be unqualified and ineligible because it does not have the required equipment and facilities and the determination is approved by the chief of the contracting office; or- Is suspended or debarred. <p>The referral must include:</p> <ul style="list-style-type: none">• A notice that a small business concern has been determined to be nonresponsible, specifying the elements of responsibility found lacking; and• If applicable, a copy of the following:<ul style="list-style-type: none">- Solicitation;- Final offer submitted by the concern whose responsibility is at issue;- Abstract of bids or the price negotiation memorandum;- Preaward survey;- Technical data package; and- Any other justification and documentation used to arrive at the non-responsibility determination. <p>Only one small business concern may be referred at a time.</p> <p>Withhold contract award for a period of 15 business days (or longer if agreed to by the SBA and the contracting officer) following receipt by the appropriate SBA Area Office of a referral that includes all required documentation.</p>
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<p>9. Resolve any differences with the Small Business Administration about a small business concern's ability to perform.</p>	<p>Resolve differences following the procedures in FAR 19.602-2 and 19.602-3.</p> <p>Contact with the SBA to resolve differences and share information is encouraged throughout the process.</p> <ul style="list-style-type: none">• There is no Contracting Officer appeal when the SBA Area Office proposes to issue a COC of \$100,000 or less.• Follow the specific procedures identified for the resolution of differences involving proposed contracts with a value:<ul style="list-style-type: none">- Greater than \$100,000 but not greater than \$25 million; or- Greater than \$25 million.
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<p>10. Obtain Department of Labor equal employment opportunity clearance for contracts or subcontracts with an estimated price of \$10 million or more.</p>	<p>Except as provided in paragraphs below, request clearance from the appropriate Office of Federal Contract Compliance Programs (OFCCP) regional office before contract award.</p> <p>Do not request a separate preaward clearance if:</p> <ul style="list-style-type: none">• The specific proposed contractor is listed in OFCCP's National Preaward Registry via the Internet;• The projected award date is within 24 months of the proposed contractor's Notice of Compliance completion date in the Registry; and• Registry review is documented in the contract file. <p>If following the procedures specified for preaward clearance would delay award of an urgent and critical contract beyond the time necessary to make award or beyond the time specified in the offer or extension thereof:</p> <ul style="list-style-type: none">• Immediately inform the OFCCP regional office of the expiration date of the offer or the required date of award and request clearance before that date.• If the OFCCP regional office advises that a preaward evaluation cannot be completed by the required date, submit written justification for the award to the head of the contracting activity, who, after informing the OFCCP regional office, may then approve the award without the preaward clearance.• If an award is made under this authority, immediately request a post-award evaluation from the OFCCP regional office.
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<p>11. Determine prospective contractor responsibility or non-responsibility.</p>	<p>The Contracting Officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract.</p> <p>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 must make, sign, and place in the contract file a determination of non-responsibility, which states the basis for the determination.</p> <p>When a Certificate of Competency is issued for a small business concern, the Contracting Officer may accept the factors covered by the certificate without further inquiry.</p> <p>Include any documents and reports supporting a determination of responsibility or non-responsibility in the contract file, including any preaward survey reports and any applicable Certificate of Competency.</p>
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