



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 25, 2010

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES

FROM:

Daniel I. Gordon
Administrator

SUBJECT:

Survey of Agency Policies and Practices Regarding Contractor Tax
Delinquencies

On January 20, 2010, the President issued a memorandum to agency and department heads addressing the importance of making sure that Federal contracts are not awarded to companies delinquent in paying taxes and that contracting officials are provided the basic information they need to make informed judgments about offerors' tax status. This information is an important element in establishing if the contractor has a satisfactory record of integrity and business ethics – a prerequisite to doing work for the government and our taxpayers. The President's memorandum instructs the Director of the Office of Management and Budget to evaluate practices of contracting officers and of suspension and debarment officials (SDOs) in response to contractors' certifications of tax delinquencies. It further instructs the Director to recommend process improvements to the President by April 20, 2010.

In response to the President's Memorandum, the Office of Federal Procurement Policy (OFPP) developed the attached survey to gather information about agency policies and practices. I appreciate your assistance in coordinating responses with your agency SDO. To supplement survey responses, OFPP intends to interview a sample of agency Chief Acquisition Officers and Senior Procurement Executives and meet with the Interagency Debarment and Suspension Committee. Feedback will be used to develop recommendations for improvement.

Concurrent with these efforts, the Commissioner of Internal Revenue is conducting a review of the accuracy of certifications of non-delinquency in taxes. The Commissioner will develop a report to the President by April 20, 2010 on the results of the review.

Agencies should provide their survey responses no later than Wednesday March 17, 2010. The survey will be posted to <https://max.omb.gov/community/x/V4ReGg>. Agency personnel responsible for responding to the survey may need to establish a MAX account. Please go to <https://max.omb.gov> and register if you do not already have a MAX account. Agency personnel may also use MAX Help Desk features or call 202-395-6860 for assistance in providing responses. The MAX community website will provide additional information about a kick-off training meeting.

For your convenience, the General Services Administration has collected information on tax delinquency certifications available from the Federal Procurement Data System, the Online

Representations and Certifications Application, and the Central Contractor Registration. This information has been posted to the same MAX community web page cited above.

Questions regarding the substance of this memorandum may be directed to OFPP's Mathew Blum (e-mail: mblum@omb.eop.gov, tel: 202-395-4953) or Jennifer Swartz (e-mail: jswartz@omb.eop.gov, tel: 202-395-6811). Thank you for your prompt attention to this matter.

Attachment

**Survey of Agency Policies and Practices for Handling of
Contractors who Certify to Having Tax Delinquencies
Under FAR 52.209-5**

1. Agencies policies and internal controls
 - a. *General agency policies & internal controls.* What, if any, existing internal policies and/or internal controls exist to assist the officials listed below regarding receipt of and response to responsibility certifications of non-compliance (e.g., violations of law)?
 - i. Acquisition offices & officials
 - ii. Suspension & debarment offices & officials
 - iii. Program offices and officials
 - b. Do these policies address what constitutes adequate rationale for a contracting officer to establish that a contractor is responsible in the face of a non-compliance certification?
 - i. Acquisition offices & officials
 - ii. Suspension & debarment offices & officials
 - iii. Program offices and officials
 - c. *Policies & controls related to tax delinquency.* What, if any, new internal policies and/or internal controls were established in conjunction with the new FAR rule to help the offices and officials identified above regarding use of contractor tax delinquency certifications?
 - d. *Training.* Does the agency provide any training to its personnel on the development and documentation of responsibility determinations? If so, does the training review the agency's policies for making referrals to the suspension and debarment official (SDO)?
2. Actions by contracting officers
 - a. In FY 2009, how much (in terms of number of contracts and dollars obligated) did the agency award to contractors that certified under FAR 52.209-5 to tax delinquencies as of the date of award?
 - b. For those contracts that were awarded in FY 2009 to contractors that certified to tax delinquencies as of the date of award:
 - i. What percentage of the contract files (in terms of number of contract awards and dollars) include rationale to demonstrate the offeror's responsibility (see FAR 9.105-2)?

- ii. For what percentage of contracts (in terms of number of contract awards and dollars) did the contracting officer notify the agency official responsible for initiating debarment or suspension action prior to proceeding with the award?
 - iii. What types of actions (other than notifying the SDO), if any, were taken by contracting officials to protect the government's interest? Where no action was taken by the contracting officer, what types of explanations were given for concluding no action was necessary?
 - c. Did the agency deny awards to any contractors that certified to tax delinquencies in FY 2009? If the answer is yes –
 - i. How many awards were denied and what was the total amount of dollars associated with the acquisition?
 - ii. How many of the contractors were small businesses?
 - iii. What were the bases cited to support the decision to deny award?
 - d. What government-wide steps would the agency recommend to improve awareness and access of tax delinquency certifications?
3. Actions by suspension and debarment officials
- a. Did the agency SDO receive any referrals from contracting officers (or other agency officials, such as the agency Inspector General or General Counsel) of delinquent tax certifications in FY 2009?

If the answer is yes –

 - i. How many referrals were received?
 - ii. How many notices of proposed debarment were issued?
 - iii. How many of the noticed contractors were small businesses?
 - iv. How many of the contractors proposed for debarment were debarred?
 - v. How many cases were resolved through administrative agreement?
 - vi. What types of considerations were taken into account in the decision not to initiate a debarment action if notices of proposed debarment were not issued in response to a referral?

If the answer is no –

 - vii. Is the agency SDO generally aware of any referrals in FY 2009 of non-compliance certifications (under 52.209-5)?

- b. What percentage of the debarment files reviewed contained no documentation to explain the action taken?
- c. Would it be helpful to confer with the Interagency Debarment and Suspension Committee and others to explore how we might build on the lead-agency concept to more fully engage the resources of agencies with expertise in certain areas?