

(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.

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 27489, July 31, 1986; 60 FR 48237, Sept. 18, 1995; 61 FR 39201, July 26, 1996]

#### **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.

[48 FR 42142, Sept. 19, 1983, as amended at 54 FR 20496, May 11, 1989; 55 FR 36795, Sept. 6, 1990; 62 FR 232, Jan. 2, 1997]

#### **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

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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 block 21 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 under the Javits-Wagner-O'Day Act.**

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. 46-48c, 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

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People Who Are Blind or Severely Disabled.

[59 FR 67029, Dec. 28, 1994, as amended at 73 FR 53995, Sept. 17, 2008]

### **9.108 Prohibition on contracting with inverted domestic corporations.**

#### **9.108-1 Definition.**

*Inverted domestic corporation*, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

[74 FR 31563, July 1, 2009]

#### **9.108-2 Relationship with the Internal Revenue Code and Treasury regulations.**

(a) Inverted domestic corporations are covered not only in the Department of Homeland Security statute at 6 U.S.C. 395, but also are similarly covered in the Internal Revenue Code at 26 U.S.C. 7874. A foreign corporation is treated as an inverted domestic corporation for U.S. Federal income tax purposes, rather than as a foreign corporation, if—

(1) At least 80 percent (80%) of the stock is now held by former shareholders of the domestic corporation or partners of the domestic partnership; and

(2) The foreign entity plus companies connected to it by 50 percent (50%) or more ownership do not have substantial business activities in the foreign country.

(b) A foreign corporation that is treated as an inverted domestic corporation for U.S. Federal income tax purposes, is also treated as one for purposes of this section.

(c) A foreign entity that escapes the tax consequence of 26 U.S.C. 7874 only because the inversion transactions were completed on or before the March 4, 2003, date in section 7874, is nevertheless treated as an inverted domestic