

## Federal Acquisition Regulation

9.106-1

promptly exchange relevant information.

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 52 FR 9038, Mar. 20, 1987; 54 FR 19813, May 8, 1989; 60 FR 16718, Mar. 31, 1995; 60 FR 33065, June 26, 1995; 61 FR 39201, July 26, 1996; 69 FR 76349, Dec. 20, 2004; 73 FR 21798, Apr. 22, 2008; 74 FR 31560, July 1, 2009; 75 FR 14066, Mar. 23, 2010]

### 9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. 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 shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination.

(2) If the contracting officer determines that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in subpart 19.6. When a Certificate of Competency is issued for a small business concern (see subpart 19.6), the contracting officer shall accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the concern.

(b) *Support documentation.* (1) Documents and reports supporting a determination of responsibility or non-responsibility, including any preaward survey reports, the use of FAPIIS information (see 9.104-6), and any applicable Certificate of Competency, must be included in the contract file.

(2)(i) The contracting officer shall document the determination of non-responsibility in FAPIIS (available at [www.cpars.csd.disa.mil](http://www.cpars.csd.disa.mil), then select FAPIIS) if—

(A) The contract is valued at more than the simplified acquisition threshold;

(B) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics; and

(C) The Small Business Administration does not issue a Certificate of Competency.

(ii) The contracting officer is responsible for the timely submission, within 3 working days, and sufficiency of the documentation regarding the non-responsibility determination.

[48 FR 42142, Sept. 19, 1983, as amended at 75 FR 14066, Mar. 23, 2010]

### 9.105-3 Disclosure of preaward information.

(a) Except as provided in subpart 24.2, Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

(c) Preaward survey information may contain proprietary or source selection information and should be marked with the appropriate legend and protected accordingly (see 3.104-4).

[48 FR 42142, Sept. 19, 1983, as amended by 54 FR 20496, May 11, 1989; 62 FR 232, Jan. 2, 1997; 67 FR 13063, Mar. 20, 2002]

## 9.106 Preaward surveys.

### 9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.