

(d)(1) *Small business concerns.* Upon making a determination of nonresponsibility with regard to a small business concern, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether to issue a Certificate of Competency (see subpart 19.6).

(2) A small business that is unable to comply with the limitations on subcontracting at 52.219-14 may be considered nonresponsible.

[48 FR 42142, Sept. 19, 1983, as amended at 53 FR 27463, July 20, 1988; 53 FR 34226, Sept. 2, 1988; 56 FR 55378, Oct. 25, 1991; 60 FR 48260, Sept. 18, 1995; 61 FR 67410, Dec. 20, 1996; 62 FR 44820, Aug. 22, 1997; 63 FR 70267, Dec. 18, 1998; 65 FR 80264, Dec. 20, 2000; 66 FR 66989, Dec. 27, 2001; 67 FR 13068, Mar. 20, 2002; 75 FR 14065, Mar. 23, 2010]

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

9.104-5 Certification regarding responsibility matters.

(a) When an offeror provides an affirmative response in paragraph (a)(1) of the provision at 52.209-5, Certification Regarding Responsibility Matters, or paragraph (h) of provision 52.212-3, the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information

from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,000.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

[73 FR 21798, Apr. 22, 2008]

9.104-6 Federal Awardee Performance and Integrity Information System.

(a) Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information System (FAPIS), (available at www.ppirs.gov, then select FAPIS).

(b) The contracting officer shall consider all the information in FAPIS and other past performance information (see subpart 42.15) when making a responsibility determination. For source selection evaluations of past performance, see 15.305(a)(2). Contracting officers shall use sound judgment in determining the weight and relevance of the information contained in FAPIS and how it relates to the present acquisition. Since FAPIS may contain information on any of the offeror's previous contracts and information covering a five-year period, some of that information may not be relevant to a determination of present responsibility, e.g., a prior administrative action such as debarment or suspension that has expired or otherwise been resolved, or information relating to contracts for completely different products or services.