

Contract Formation

Activity 22: Responsibility Determination

Determining a prospective contractor's capability, tenacity, and perseverance to perform a contract.

Related Flow Charts: [Flow Chart 22](#)

Part A: Responsibility for Contractors and Subcontractors

Tasks	FAR Reference(s)	Additional Information
1. If the award is over the simplified acquisition threshold (SAT), review the Federal Awardee Performance and Integrity Information System (FAPIS).	FAR 9.104-6 Federal Awardee Performance and Integrity Information System [standards].	<p>FAPIS is available at https://www.ppirs.gov.</p> <p>Consider all the information in FAPIS and other past performance information (see FAR Subpart 42.15) when making a responsibility determination. For source selection evaluations of past performance, see FAR 15.305(a)(2). Use sound judgment in determining the weight and relevance of the information contained in FAPIS and how it relates to the present acquisition.</p> <p>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.</p> <p>Because FAPIS is a database that provides information about prime contractors, the contracting officer posts information required to be posted about a subcontractor to the record of the prime contractor. The prime contractor has the opportunity to post in FAPIS any mitigating factors. The contracting officer must consider any mitigating factors posted in FAPIS by the prime contractor.</p> <p>Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer must review the performance and integrity information available in FAPIS, including FAPIS information from the System for Award Management (SAM)</p>

Tasks	FAR Reference(s)	Additional Information
		Exclusions and the Past Performance Information Retrieval System (PPIRS). FAPIIS also identifies: (i) An affiliate that is an immediate owner or subsidiary of the offeror, if any (see 52.204-17, Ownership or Control of Offeror); and (ii) All predecessors of the offeror that held a Federal contract or grant within the last three years (see 52.204-20, Predecessor of Offeror).
<p>2. Request further information if relevant information from FAPIIS involves criminal, civil, or administrative proceedings in connection with the award.</p>	<p>FAR 9.104-6(c) Federal Awardee Performance and Integrity Information System [standards].</p>	<p>If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of nonresponsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the contracting officer must, unless the contractor has already been debarred or suspended:</p> <ul style="list-style-type: none"> • Promptly 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 FAR 9.405); and • Notify, prior to proceeding with award, in accordance with agency procedures (see FAR 9.406-3(a) and FAR 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official’s consideration.
<p>3. Document in the contract file how the information in FAPIIS was considered in any responsibility determination.</p>	<p>FAR 9.104-6(d) Federal Awardee Performance and Integrity Information System [standards].</p>	<p>Document the contract file for each contract in excess of the SAT to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. A contracting officer who makes a nonresponsibility determination is required to document that information in FAPIIS in accordance with 9.105-2 (b)(2).</p>

Tasks	FAR Reference(s)	Additional Information
<p>4. 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>FAR 9.405 Effect of listing.</p>	<p>Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies cannot solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see FAR 9.405-1(b), FAR 9.405-2, FAR 9.406-1(c), FAR 9.407-1(d), and FAR 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.</p> <p>Contractors included in SAM Exclusions as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.</p> <p>Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see Part 28).</p>
<p>5. 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>FAR 9.405-2 Restrictions on subcontracting [debarment, suspension, and ineligibility].</p>	<p>Never consent to a proposed subcontract on the List of Parties Excluded from Federal Procurement unless the agency head or a designee states in writing the compelling reasons for the consent action.</p>

Tasks	FAR Reference(s)	Additional Information
<p>6. Identify information that can be used to support a determination on the prospective contractor's responsibility.</p>	<p>FAR 9.104-1 General standards [responsible prospective contractors]. FAR 9.104-2 Special standards [responsible prospective contractors]. FAR 9.104-3 Application of standards [responsible prospective contractors].</p>	<p>Identify information available from any source (including online 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>7. Evaluate the prospective offeror's responsibility using both general standards of responsibility and any special standards established in the solicitation.</p>	<p>FAR 9.104 Standards [responsible prospective contractors].</p>	<p>To be determined responsible, a prospective contractor must have satisfied all the standards listed in the applicable FAR and supplement FAR applicable to the solicitation.</p>
<p>8. Determine whether to request a preaward survey.</p>	<p>FAR 9.106-1 Conditions for preaward surveys [responsible prospective contractors].</p>	<p>Only request a preaward survey when the information on hand is not sufficient to make a determination regarding responsibility.</p>

Tasks	FAR Reference(s)	Additional Information
9. Prepare and submit the request for a preaward survey, if applicable.	FAR 9.106-2 Requests for preaward surveys [responsible prospective contractors].	The request for preaward survey must: <ul style="list-style-type: none"> Identify additional factors needed; Include the complete solicitation package; State whether the contracting office will participate in the survey; Specify the date by which the report is required; and When appropriate, limit the scope of the survey.
10. Determine prospective contractor responsibility or nonresponsibility.	FAR 9.105-2 Determinations and documentation [responsible prospective contractors].	The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. Otherwise, inform the contractor in writing, sign, and place in the contract file a determination of nonresponsibility, which states the basis for the determination.
11. Obtain Department of Labor equal employment opportunity clearance for contracts or subcontracts with an estimated price of \$10 million or more.	FAR 22.805 Procedures [equal employment opportunity].	Request clearance from the appropriate Office of Federal Contract Compliance Programs (OFCCP) regional office before contract award.

Part B: Responsibility for Small Business Concerns

Tasks	FAR Reference(s)	Additional Information
1. Determine if the apparent successful offeror lacks certain elements of responsibility.	FAR 19.602-1 Referral.	Elements of responsibility include, but are not limited to, capability, competency, capacity, credit, integrity, perseverance, tenacity, and limitations on subcontracting.
2. If the apparent successful offeror is responsible, make the award.		
3. If the apparent successful offeror lacks certain elements of responsibility, withhold contract award.	FAR 19.602-1(a)(1) Referral.	

Tasks	FAR Reference(s)	Additional Information
<p>4. Refer the matter to the cognizant SBA Government Contracting Area Office.</p>	<p>FAR 19.602-1(a)(2) Referral.</p>	<p>Referral is not necessary if the small business concern:</p> <ul style="list-style-type: none"> • Is determined to be unqualified and ineligible because it does not meet the standard in FAR 9.104-1(g); provided, that the determination is approved by the chief of the contracting office; or • Is suspended or debarred.
<p>5. Await the SBA determination on the apparent successful offeror's Certificate of Competency (COC), but make every effort to reach a resolution before the SBA takes final action on the COC.</p>	<p>FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.</p>	<p>When disagreements arise about a concern's ability to perform, the contracting officer and the SBA are to make every effort to reach a resolution before the SBA takes final action on a COC.</p> <p>If agreement cannot be reached between the contracting officer and the SBA Area Office, the contracting officer is to request that the Area Office suspend action and refer the matter to SBA Headquarters for review. The SBA Area Office will honor the request for a review if the contracting officer agrees to withhold award until the review process is concluded. Without an agreement to withhold award, the SBA Area Office will issue the COC in accordance with applicable SBA regulations.</p> <p>SBA Headquarters will furnish written notice to the procuring agency's Director, Office of Small and Disadvantaged Business Utilization (OSDBU) or other designated official (with a copy to the contracting officer) that the case file has been received and that an appeal decision may be requested by an authorized official.</p>
<p>6. If new information causes the contracting officer to determine that the concern is responsible, notify the SBA and withdraw the referral.</p>	<p>FAR 19.602-4 Awarding the contract [certificates of competency and determinations of responsibility].</p>	<p>If new information causes the contracting officer to determine that the concern referred to the SBA is actually responsible to perform the contract, and award has not already been made, the contracting officer must reverse the determination of nonresponsibility, notify the SBA of this action, withdraw the referral, and proceed to award the contract.</p>

Tasks	FAR Reference(s)	Additional Information
7. After receiving notification of the SBA's COC issuance, determine whether to appeal the decision.	FAR 19.602-2 Issuing or denying a Certificate of Competency (COC). FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.	If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a time period agreed upon by both agencies) that it intends to appeal the issuance of the COC.
8. File the appeal and notify SBA Headquarters through the appropriate channel within 10 business days.	FAR 19.602-3 Resolving differences between the agency and the Small Business Administration.	If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its procuring agency's Director, OSDBU, or other designated official, within 10 business days (or a time period agreed upon by both parties) that it intends to appeal the issuance of the COC.
9. Document the contract file.	FAR 4.8 Contents of contract files.	The contract file must contain: <ul style="list-style-type: none"> Contracting officer's determination of the contractor's responsibility Small Business Administration COC.
10. Publicize the proposed contract action.	FAR 5.201 General [proposed contract actions].	The contracting officer must transmit a notice to the GPE for each contract action over \$25,000.
11. Report the award to the Federal Procurement Data System-Next Generation (FPDS-NG).	FAR 4.603 Policy [contract reporting].	Contracts whose estimated value is \$3,000 or more or that may be \$3,000 or more must be reported in FPDS-NG. Every modification to that contract, regardless of dollar value must be reported to FPDS-NG.

Part C: Qualified Bidders, Manufacturers, and Product Lists

Tasks	FAR Reference(s)	Additional Information
<p>1. Request that a qualified bidder's list (QBL), qualified manufacturer's list (QML), or qualified product's list (QPL) requirement not be enforced when it does not appear to benefit the Government.</p>	<p>FAR 9.206-1(e)(3) General [acquisitions subject to qualification requirements].</p>	<p>Follow agency procedures to request that a requirement not be enforced if it appears to unreasonably restrict competition, increase prices, prevent timely delivery, or otherwise negatively affects the acquisition process.</p> <p>For example, question a list when market research reveals that required materials or processes are obsolete.</p> <p>Except when the agency head or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with FAR 9.202(a).</p>
<p>2. In acquisitions subject to qualification requirements, use presolicitation notices in appropriate cases to advise potential suppliers before issuing solicitations.</p>	<p>FAR 9.206-1(e)(1) General [acquisitions subject to qualification requirements].</p>	<p>Issue a presolicitation notice when time permits and market research suggests that a number of suppliers might use the early warning to become qualified.</p> <p>The notices must identify the specification containing the qualification requirement and establish an allowable time period, consistent with delivery requirements, for prospective offerors to demonstrate their abilities to meet the standards specified for qualification.</p> <p>Publicize the notice in accordance with FAR 5.204.</p>
<p>3. Distribute solicitations with qualification requirements to prospective offerors whether or not they have been added to the applicable qualification list.</p>	<p>FAR 9.206-1(e)(2) General [acquisitions subject to qualification requirements].</p>	<p>Ensure that the solicitation includes any qualification requirements for the required end item or component.</p> <p>Allow the maximum time, consistent with delivery requirements, between issuing the solicitation and the contract award.</p>
<p>4. Screen offers against the QBL, QML, or QPL, and forward requests from potential suppliers for information on a qualification requirement to the agency activity responsible for establishing the requirement.</p>	<p>FAR 9.206-1(e)(4) General [acquisitions subject to qualification requirements].</p> <p>FAR 9.206-1(e)(5) General [acquisitions subject to qualification requirements].</p> <p>FAR 9.206-3 Competition [acquisitions subject to qualification requirements].</p>	<p>Only consider timely offers from offerors that demonstrate meeting the established qualification requirement or the ability to meet it before the award date.</p> <p>Allow the maximum time, consistent with delivery requirements, between issuing the solicitation and the contract award.</p>

Tasks	FAR Reference(s)	Additional Information
<p>5. Report any conditions that may merit contractor removal or omission of a source from a QBL, QML, or QPL.</p>	<p>FAR 9.207 Changes in status regarding qualification requirements.</p>	<p>These conditions exist when:</p> <ul style="list-style-type: none"> • Products or services submitted for inspection or acceptance do not meet the qualification requirement; • Products or services were previously rejected and the defects were not corrected when submitted for inspection or acceptance; • A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured; • A manufacturer of a product which met the qualification requirement has discontinued manufacture of the product; • A source requests removal from a QPL, QML, or QBL; • A condition of meeting the qualification requirement was violated; • A revised specification imposes a new qualification requirement; • Manufacturing or design changes have been incorporated in the qualification requirement; • The source is listed in the SAM Exclusions; or • Performance of a contract subject to a qualification requirement is otherwise unsatisfactory.
<p>6. Document your justification for using a qualified bidder's list (QBL), qualified manufacturer's list (QML), or qualified product's list (QPL) requirement not be enforced when it does not appear to benefit the Government.</p>	<p>FAR 9.202 Policy [qualification requirements].</p>	<p>Include in the written justification why the requirement must be demonstrated from either QBL, QML, or QPL before you award the contract.</p>