

Interim FAR Rule Redefines “Responsible” Federal Contractor

Written by Nick Sanders

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If you are—or want to be—a Federal contractor and your tax returns have all been submitted, and you have no additional tax assessments that the IRS alleges you owe, and you have never been convicted of a Federal felony, you are fine and can receive a new Federal contract award.

But if you are—or want to be—a Federal contractor and your tax returns are overdue, or the IRS has alleged you owe additional taxes, or you have been convicted of a Federal felony, then you will have difficulties in being determined to be a “presently responsible” organization and you may not be able to receive a new Federal contract award.

That’s the deal with the recently promulgated interim [FAR rule](#) entitled “Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction.” The new interim rule creates two new Representations/Certifications: 52.209-11 (“Representation by Corporation Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law”) and 52.209-12 (“Certification Regarding Tax Matters”).

Basically those new Reps/Certs create additional requirements that define when a contractor is “responsible” and we all know that only “responsible” contractors can receive Federal contract awards. Thus, this is kind of a big deal.

If you are an organization that might have some skeletons in your closet that would tend to lead to you mark the “wrong box” in one or the other of the new Reps/Certs, all is not lost. According to the background information published along with the interim rule, you will not be automatically excluded. For example, with respect to a “wrong answer” on the 52.209-11 Representation, the rule states—

When an offeror provides an affirmative response in paragraph (b)(1) or (2) to the representation, the contracting officer is required to request additional information from the offeror and notify the agency official responsible for initiating debarment or suspension action. The contracting officer shall not make an award to the corporation unless an agency suspending or debarring official has considered suspension or debarment of the corporation and determined that this further action is not necessary to protect the interests of the Government.

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Similarly, with respect to the 52.209-12 Certification, the rule states—

If the certification regarding tax matters is applicable, then the contracting officer shall not award any contract in an amount greater than \$5,000,000, unless the offeror affirmatively certified in its offer to all the required certifications regarding tax matters in FAR Clause 52.209-12(b).

So there are some escapes built into the new rule. But to be safe, we strongly suggest Federal contractors take all necessary steps to avoid having to submit a “wrong answer,” because it’s going to create problems for you and your Contracting Officer when it comes time to be considered for a new contract award.