

Date: November 13, 2014

From: Associate Deputy Assistant Secretary for Procurement Policy, Systems and Oversight (003A2)

Subj: VA PPM (2013-05) – Determining Contractor Responsibility (REVISED – This VA PPM supersedes VA PPM (2013-05) dated August 12, 2013)

To: See Distribution

1. **Purpose.** This Procurement Policy Memorandum (PPM) rescinds Information Letter 049-08-03, “Use of Dun and Bradstreet Reports as a Means of Assisting in Determining Contractor Responsibility”, dated April 11, 2008 and Information Letter 049-04-1, “The Specially Designated Nationals (SDN) List, the Denied Persons List, and Other Lists,” dated January 5, 2004. The PPM provides guidance to VA acquisition community on determining contractor responsibility. It prescribes policies, standards, and procedures for determining whether prospective contractors (and subcontractors) are responsible.

2. **Background.** The Federal Acquisition Regulation (FAR) states that purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. Responsible contractors must have the financial and technical resources (including expertise) to provide the Government the supplies or services required under the prospective contract. Business practices, including ethics and past performance shall be considered. FAR 9.104-1 defines what constitutes a responsible prospective contractor.

In addition, the FAR states under FAR 9.104-7, which solicitation provisions and contract clauses shall be incorporated. VA issued a Class Deviation from FAR 52.209-5, Certification Regarding Responsibility Matters, under Acquisition Flash 12-25 on September 27, 2012. The PPM issued on May 10, 2013 anticipated the class deviation would be incorporated into the FAR. Subsequently, PPS learned the class deviation would not be incorporated into the FAR. On August 12, 2013 the PPM was updated to revise guidance under Section 8, Solicitation Provisions and Contract Clauses. The current update to this PPM changes all references to “Dun and Bradstreet” to “Experian”. Additionally, the Supplier Analysis Report is changed to the Premier Profile Report.

3. **Applicability.** This requirement applies to all initial procurement actions (contracts and orders). All prospective contractors shall be checked against the Excluded Parties List System (EPLS) (see www.sam.gov) after receipt of offers, bids, and proposals and before any transaction (award, modification, etc.) is made with that contractor.

In accordance with FAR 9.103 (b), no purchase or award shall be made unless the contracting officer (CO) makes an affirmative determination of responsibility. COs shall determine prospective contractors' responsibility by considering information submitted by the contractor or otherwise acquired by the agency. When the CO lacks sufficient information to determine the contractor is responsible, they must make a determination of nonresponsibility.

4. **Effective Date.** Immediately

5. Responsible vs. Nonresponsible Contractors.

a. A responsible prospective contractor must meet the general standards listed at FAR [9.104-1](#). These standards apply to all procurement contracts, even if they are not incorporated into the solicitation. They include the following seven criteria related to contractors' capabilities and conduct:

- (1) Adequate financial resources or ability to obtain them (see 9.104-3(a));
- (2) Ability to comply with the delivery or performance schedule;
- (3) Satisfactory performance record;
- (4) Satisfactory record of integrity and business ethics;
- (5) Necessary organization and experience, accounting and operational controls, and technical skills or ability to obtain them;
- (6) Necessary production, construction, and technical equipment and facilities or the ability to obtain them; and
- (7) Otherwise qualified and eligible under applicable laws and regulations.

b. Contractors may be found nonresponsible when, among other things, they:

- (1) Do not comply with federal equal employment opportunity requirements;
- (2) Fail to agree to an acceptable plan for subcontracting with small businesses;
- (3) Are known government employees, (see FAR 3.602 for exceptions);
- (4) Are quasi-military armed forces; or
- (5) Have organizational conflicts of interest.

6. Methods of Determining Contractor Responsibility.

a. The sources of information that may be used to support this determination of responsibility include the following:

- (1) List of Parties Excluded from Federal Procurement or Nonprocurement Program (EPLS) (see www.sam.gov).
- (2) The Federal Awardee Performance and Integrity Information System (FAPIS) (see www.sam.gov).

- (3) Past Performance Data (including Past Performance Information Retrieval System (PPIRS) (see www.sam.gov).
- (4) Bid and Proposal Information
- (5) Pre-award survey reports
- (6) Experian reports
- (7) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and program offices
- (8) Other sources (publications, suppliers, subcontractors, etc.)

b. Experian Reports

The Office of Acquisition Operations - Acquisition Service has awarded a contract to Experian for unlimited access to multiple reports including the Premier Profile Report.

Utilizing Premier Profile Reports will enhance the ability of COs to assess the financial and operational stability of prospective contractors. In the absence of or in addition to the Experian report information, COs should utilize the type of information as described in subparagraph 5a above.

c. Subcontractor Responsibility (FAR 9.104-4)

Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. 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.

When it is in the Government's interest to do so, the CO 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.

d. Federal Awardee Performance and Integrity Information System (FAPIS)
(FAR 9.104-6)

FAPIS is a distinct application that is accessed through the PPIRS and is available to federal acquisition professionals for their use in award and responsibility determinations. FAPIS provides users access to integrity and performance information from the FAPIS reporting module in the Contractor Performance Assessment Reporting System (CPARS), information from the Central Contractor Registration (CCR) Database, and suspension and debarment information from the EPLS (see www.sam.gov).

(1) Before awarding a contract in excess of the simplified acquisition threshold, the CO shall review FAPIIS, (currently available at <http://www.ppirs.gov/>, then select FAPIIS – FAPIIS and PPIRS will be transitioned to www.sam.gov in the near future).

(2) If the CO 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 CO shall, unless the contractor has already been debarred or suspended—

(a) Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the CO (but see FAR 9.405); and

(b) 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.

(3) The CO shall document the contract file for each contract in excess of the simplified acquisition threshold 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 CO who makes a nonresponsibility determination is required to document that information in FAPIIS in accordance with FAR 9.105-2(b)(2).

7. Solicitation Provisions and Contract Clauses (FAR 9.104-7).

a. The CO shall use the VA Class Deviation from FAR 52.209-5, Certification Regarding Responsibility Matters, issued under [Acquisition Flash 12-25](#) on September 27, 2012, in solicitations where the contract value is expected to exceed the simplified acquisition threshold. The class deviation shall be in effect until it is rescinded.

b. The CO shall insert the provision at FAR 52.209-7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed \$500,000.

c. The CO shall insert the clause at FAR 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters-

(1) In solicitations where the resultant contract value is expected to exceed \$500,000; and

(2) In contracts in which the offeror checked "has" in paragraph (b) of the provision at FAR 52.209-7.

8. Determinations and Documentation (FAR 9.105-2).

a. Determinations

(1) The CO's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract (FAR 9.105-2(a)(1)). When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the CO shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the CO determines that a responsive small business lacks certain elements of responsibility, the CO shall comply with the procedures in FAR Subpart 19.6. When a Certificate of Competency is issued for a small business concern (see Subpart 19.6), the CO 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 nonresponsibility, including any preaward survey reports, the use of FAPIIS information (see FAR 9.104-6), and any applicable Certificate of Competency must be included in the Electronic Contract Management System (eCMS) action briefcase.

(2) The CO shall document the determination of nonresponsibility in 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.

(3) The CO is responsible for the timely submission (within three (3) working days) of the documentation regarding the nonresponsibility determination, as well as

the sufficiency and accuracy of the documentation.

(4) The CO, or any other Government official, shall not post any information in the non-public segment of FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act. If the contractor asserts within seven (7) calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within seven (7) calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information Act procedures, prior to reposting the releasable information.

9. **Preaward Surveys (FAR 9.106).** A preaward survey is normally required only when the information on hand or readily available to the CO, 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, the CO should not request a preaward survey unless circumstances justify its costs. For more information on preaward surveys and the conditions for conducting preaward surveys, see VA Acquisition Regulation (VAAR) Subpart 809.106-1.

10. **Questions or Concerns.** Please direct questions regarding this Procurement Memorandum to the Office of Acquisition and Logistics, Procurement Policy and Warrant Management Service, at (202) 632-5288, or email at: VA.Procurement.Policy@va.gov.

/s/

C. Ford Heard III

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