

**SUBCHAPTER B—ACQUISITION PLANNING**

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- [M809-A](#) Determination of Contractor's Responsibility Template
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SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART M809—CONTRACTOR QUALIFICATIONS

Subpart M809.1—Responsible Prospective Contractors

**M809.104 Standards.**

**M809.104-1 General standards.**

(a) The contracting officer may consider any of the following to determine that the prospective contractor has adequate financial resources:

(1) Contacting the prospective awardee's financial institution.

(2) Obtaining Dun & Bradstreet (D&B) Company Reports. In the event the award of a contract is delayed for any reason which causes the D&B Business Credit Report to be more than 60 days old, the contracting officer will run a new report to ensure nothing has changed that may prevent the award.

(3) Obtaining company audits and annual financial reports.

(4) Obtaining annual tax returns.

(5) Contractor's past performance and delivery history.

**M809.104-2 Special standards.**

(a) For a pre-award survey prescribed by [809.106-1](#), a contracting officer must develop special standards of sanitation applicable to the acquisition of subsistence and services prescribed by [809.106-1\(a\)](#).

(b) An appropriate specialist will assist the contracting officer in developing the special standards under paragraph (a) of this section.

(c) VA Nutrition and Food Services is responsible for the identification and purchasing of all subsistence items and food service supplies needed for patient and resident food services. All products are purchased in accordance with the Subsistence Prime Vendor contract and other authorized procurement services as needed.

**M809.104-5 Representation and certifications regarding responsibility matters.**

The contracting officer may not award a contract to an offeror that has a Federal tax delinquency or a felony conviction within the past 24 months (see [FAR 52.209-11](#)), unless the Suspending and Debaring Official (SDO) has determined suspension and

debarment (S&D) is unnecessary. The SDO responsibilities at [FAR 9.104-5](#) are not delegated, therefore, when a contracting officer identifies a Federal tax delinquency or a felony conviction in a contractor's Representations and Certifications, it must be referred to the SDO.

### **M809.105 Procedures**

#### **M809.105-1 Obtaining information.**

Along with the sources cited at [M809.104-1](#), the contracting officer may use the following sources to support the responsibility of determination:

- (1) Bid and proposal information.
  - (2) Pre-award survey reports (see [809.106-1](#) for conditions for conducting pre-award surveys).
  - (3) Records and experience data including verifiable knowledge of personnel within the contracting office.
  - (4) Audit offices, contract administration offices, program offices and other sources (i.e., publications, suppliers, subcontractors, etc.).
- (g) The contracting officer shall review the following resources to ensure the prospective contractor or subcontractor is registered and/or doesn't have negative past performance:
- (1) System for Award Management (SAM): Inquiries should be made via [SAM](#). Per [FAR 4.1102\(a\)](#), offerors and quoters are required to be registered in SAM at the time an offer or quotation is submitted (see [FAR 4.1102\(a\)](#) for exceptions).
  - (2) VETS-4212. In accordance with [FAR 22.1302](#), the contractor is required to submit the annual form [VETS-4212](#), Federal Contractor Veterans' Employment Report if applicable. See [FAR 22.1303](#) to determine applicability.
  - (3) D&B is the VA's vendor to provide business credit reports. Contracting officers have unlimited access to pull reports at D&B's [MyDNB](#) page to assist in determining if the prospective awardee has adequate financial resources to perform the contract or the ability to obtain them.
  - (4) Vendor Information Pages (VIP) database: In order for a SDVOSB or VOSB to receive contract awards under VA's Veterans First Contracting Program, they must then be listed as verified on the [VIP database](#) per [819.7003](#).

**M809.105-2 Determinations and documentation.**

(a) *Determinations.* (1) When the contracting officer lacks sufficient information to determine the contractor responsible, the contracting officer must make a determination of non-responsibility. The contracting officer will make a determination of non-responsibility in accordance with [FAR 9.105-2](#).

(2) Contractors may be found nonresponsible when, among other things, they:

- (i) Do not comply with federal equal opportunity requirements.
- (ii) Fail to agree to an acceptable plan for subcontracting with small businesses.
- (iii) Have an organizational conflict of interest.
- (iv) Are known government employees (see [FAR 3.602](#) for exceptions).
- (v) Are quasi-military armed forces.

(b) *Support documentation.* The contracting officer must include a written determination of responsibility or non-responsibility to support the decision and upload it to the Electronic Contract Management System contract briefcase. Contracting officers must ensure the required responsibility determination is thoroughly completed and documented in the contract file.

(1) Contracting officers are encouraged to use the template in Attachment [M809-A](#) when documenting a contractor's responsibility.

(2) Attachment [M809-B](#) is provided as a sample Determination of Contractor's Responsibility document.

**Subpart M809.2—Qualifications Requirements**

**M809.202 Policy.**

The HCA must sign a written justification before establishing a qualification requirement in accordance with [FAR 9.202\(a\)\(1\)](#).

**M809.206 Acquisitions subject to qualification requirements.**

**M809.206-1 General.**

(b) The HCA is designated to determine whether or not an emergency exists, as provided in [FAR 9.206-1\(b\)](#).

**Subpart M809.5—Organizational and Consultant Conflicts of Interest**

**M809.502 Applicability.**

(d) In any solicitation for the services addressed at [FAR 9.502](#), the contracting officer must require that each offeror submits a statement with its offer disclosing all facts relevant to an existing or potential organizational conflict of interest involving the contractor or any subcontractor during the life of the contract (see [809.507-1\(b\)](#) and [852.209-70](#)).

**M809.503 Waiver.**

The HCA is delegated authority to waive any general rule or procedure of [FAR subpart 9.5](#). As provided at [FAR 9.503](#), this authority may not be re-delegated.

**M809.504 Contracting officer responsibilities.**

(e) If the contracting officer finds that it is in the best interest of the government notwithstanding an organizational conflict of interest, the contracting officer may request a waiver from the HCA.

(1) Before granting a waiver request under this paragraph, the HCA must obtain the concurrence of Office of General Counsel.

(2) If the HCA grants a waiver request, the contracting officer may set contract terms and conditions to reduce any organizational conflict of interest to the greatest extent possible.