



*Contract Files Lacked Sufficient  
Information to Support Determinations  
of Present Responsibility*

**September 30, 2011**

**Reference Number: 2011-10-095**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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## HIGHLIGHTS

### **CONTRACT FILES LACKED SUFFICIENT INFORMATION TO SUPPORT DETERMINATIONS OF PRESENT RESPONSIBILITY**

## Highlights

**Final Report issued on  
September 30, 2011**

Highlights of Reference Number: 2011-10-095 to the Internal Revenue Service Chief, Agency-Wide Shared Services.

### **IMPACT ON TAXPAYERS**

As of May 31, 2011, the Internal Revenue Service (IRS) Office of Procurement was responsible for administering 1,008 procurements with a reported life-cycle value of approximately \$39.2 billion. The IRS does not have an effective process to ensure that contracting officers' determinations of present responsibility are adequately conducted and documented in compliance with Federal Acquisition Regulation requirements. As a result, the IRS has an increased risk that procurements may be awarded to nonresponsible contractors.

### **WHY TIGTA DID THE AUDIT**

This audit was initiated because the Federal Acquisition Regulation requires that Federal agencies award procurements only to contractors that are presently responsible (i.e., reliable, dependable, and capable of performing required work on time and in a satisfactory manner). The overall objective of this review was to determine whether the IRS has an effective process for conducting and documenting present responsibility determinations to ensure that dishonest, unethical, or otherwise nonresponsible contractors are not awarded IRS procurements.

### **WHAT TIGTA FOUND**

The IRS does not have an effective process to ensure that contracting officers' determinations of present responsibility are adequately documented. Contract files did not contain

sufficient documentation to support IRS contracting officers' affirmative determinations of contractors' present responsibility in 60 (68 percent) of 88 files reviewed. In addition, managerial reviews of present responsibility determinations were either not conducted or did not address the missing documentation. As a result, the IRS has an increased risk that procurements may be awarded to nonresponsible contractors, potentially leading to additional costs to the Federal Government due to subsequent default, late deliveries, or other unsatisfactory contractual performance.

### **WHAT TIGTA RECOMMENDED**

TIGTA recommended that the Chief, Agency-Wide Shared Services: 1) develop and implement guidance clearly indicating specific, minimally acceptable, required documentation for present responsibility determinations, and establish a specific time period for reviewing the Excluded Parties List System and the Central Contractor Registration database; 2) provide training for contracting officers on properly conducting and documenting present responsibility determinations; and 3) update managerial review guidance to include review of the contracting officers' present responsibility determinations.

IRS officials agreed with the recommendations. The IRS stated it issued new guidance which includes a requirement for contracting officers to perform all required contractor qualification checks and maintain documentation of these checks in the contract files. The IRS also conducted a "Lessons Learned" training session in June 2011 on the new guidance. Additionally, the IRS is updating managerial review guidance to include more explicit contract file review requirements.

TIGTA noted that the new guidance issued does not fully address all of the concerns TIGTA identified. Additional guidance is needed on how procurement staff should conduct responsibility determinations, examples of appropriate documentation to be maintained for each of the criteria and provisions of law that must be examined, and the specific time period for conducting contractor qualification checks.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 30, 2011

**MEMORANDUM FOR CHIEF, AGENCY-WIDE SHARED SERVICES**

*Michael R. Phillips*

**FROM:**

Michael R. Phillips  
Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – Contract Files Lacked Sufficient Information to Support Determinations of Present Responsibility (Audit # 200910023)

This report presents the results of our review to determine whether the Internal Revenue Service has an effective process for conducting and documenting present responsibility determinations to ensure that dishonest, unethical, or otherwise nonresponsible contractors are not awarded Internal Revenue Service procurements. This review was included in our Fiscal Year 2009 Annual Audit Plan and addresses the major management challenge of Erroneous and Improper Payments.

Management's complete response to the draft report is included as Appendix VII.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.



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*Abbreviations*

CCR	Central Contractor Registration
EPLS	Excluded Parties List System
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
GSA	General Services Administration
IRS	Internal Revenue Service
PPIRS	Past Performance Integrated Retrieval System



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## *Background*

As of May 31, 2011, the Internal Revenue Service (IRS) Office of Procurement was responsible for administering 1,008 procurements<sup>1</sup> – 807 contracts of varying types (including associated task and delivery orders) and 201 in blanket purchase agreements and interagency contracts and agreements. The 1,008 active procurements have a reported systems life value of approximately \$39.2 billion.

While the Federal Government seeks to procure goods and services at the lowest possible cost, awarding a contract based on lowest price alone may not always result in the best value to the Federal Government. Additional unforeseen and/or unplanned costs may be incurred by the Government due to subsequent contract default, late deliveries, or other unsatisfactory contractual performance when awards are made to contractors who are not qualified (or “nonresponsible”) to perform the work. Contracting officers make present responsibility determinations, after considering whether prospective contractors meet certain legal standards, and must use the policies, standards, and procedures prescribed in the Federal Acquisition Regulation (FAR)<sup>2</sup> to make the determinations. They must consider whether prospective contractors: 1) can be expected to complete contract work on time and in a satisfactory manner, 2) are structured in such a way that doing business with them promotes socioeconomic goals, and 3) meet statutory or regulatory requirements for eligibility. Currently, under the FAR, the Government relies upon two primary means to avoid doing business with nonresponsible contractors: present responsibility determinations and exclusion (i.e., suspension and debarment).<sup>3</sup>

Contracting officers are required to determine prospective contractors’ responsibility prior to each contract award by considering information submitted by the contractor or information they research or acquire from other sources. However, contracting officers have substantial discretion as to the nature and quantity of information considered in making present responsibility determinations.<sup>4</sup> Because of the potential for bid protest, it is important that present responsibility determinations be thoroughly conducted and well documented.

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<sup>1</sup> We broadly use the term procurements throughout this report to include contracts, task or delivery orders off of existing contracts, General Services Administration Schedule contracts, and simplified acquisitions.

<sup>2</sup> 48 C.F.R. ch. 1 (2009).

<sup>3</sup> *Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures*, (Congressional Research Service, by Kate M. Manuel, Legislative Attorney, Reference Number R40633, dated October 1, 2010).

<sup>4</sup> See Appendix IV for a list of the various types of information that may be used in the contracting officers’ determination of present responsibility.



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To be considered presently responsible under the FAR, prospective contractors must meet general standards. These standards include the following seven criteria related to contractors' capabilities and conduct:

- 1) Adequate financial resources.
- 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.
- 6) Necessary equipment and facilities.
- 7) Otherwise qualified and eligible.<sup>5</sup>

In addition to the general standards, contractors may have to meet special standards which apply only to specific procurements. Special standards must be explicitly included in agencies' solicitations. They are used, for example, when unique expertise, special facilities, or specific experience or equipment are necessary to ensure that the Federal Government's needs are met. These special standards are also considered in the contracting officers' present responsibility determinations.

Agencies also use exclusion, collectively known as suspension and debarment, to avoid doing business with nonresponsible contractors. Decisions to exclude are made by agency heads or their designees (above the contracting officer's level) based upon evidence that contractors have committed certain integrity offenses, including any "offenses indicating a lack of business integrity or honesty that seriously affect the present responsibility of a contractor."<sup>6</sup> Exclusion is Government-wide and not contract specific.

Contracting officers should first check the Excluded Parties List System (EPLS) to ensure that excluded contractors do not unintentionally receive new procurements during their period of exclusion (i.e., while the contractor is suspended, debarred, or proposed for debarment). The EPLS contains the names of companies or individuals excluded from Federal procurements or other Federal funding such as grants. The EPLS also includes an archive of "past exclusions" dating back to Calendar Year 1988. Past exclusions have no present impact on contractor

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<sup>5</sup> This criterion includes other provisions of law specifying when contractors are disqualified from or are ineligible for awards. See Appendix V for a list of the provisions.

<sup>6</sup> Grounds for debarment include, among other things, convictions or civil judgments involving fraud or criminal offenses in connection with obtaining or performing a Government contract; violations of Federal or State antitrust laws relating to the submission of offers; embezzlement, theft, forgery, or similar offenses; and intentional misuse of the "Made in America" designation.



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eligibility, but provide information on whether the entity has engaged in repetitive inappropriate patterns of conduct, and may indicate an unsatisfactory record of integrity and business ethics.

The FAR also requires prospective Federal Government contractors to be registered in the Central Contractor Registration (CCR) database in order to be awarded procurements by the Federal Government. The CCR database is the primary contractor registration database for the Federal Government. The CCR database is a part of the Business Partner Network which collects, validates, stores, and disseminates data in support of agency acquisition missions, including Federal agency contract and assistance awards. In addition, contractors must report semiannually and maintain accurate information in the CCR on any occurrences such as criminal convictions, civil proceedings, and administrative proceedings.

This review was performed at the Office of Procurement in Oxon Hill, Maryland, and at the IRS regional Procurement Field Offices in Oakland, California; Atlanta, Georgia; New York, New York; and Dallas, Texas, during the period October 2009 through May 2011. The scope of this audit was focused on present responsibility determinations and did not include a review of any other preaward requirements, including tax checks.<sup>7</sup> We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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<sup>7</sup> Policy and Procedures Memorandum No. 9.1 (dated January 1, 2008) provides that IRS employees will complete a tax check on prospective contractors for all IRS solicitations more than \$250,000, except for orders made under existing contracts awarded by other agencies, including General Services Administration Federal Supply Schedule contracts. For more information on tax checks see Treasury Inspector General for Tax Administration report *Federal Guidelines Do Not Prohibit the Awarding of Contracts to Contractors With Delinquent Tax Liabilities* (Reference Number 2010-30-120, dated September 28, 2010).



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## *Results of Review*

The IRS does not have an effective process to ensure that contracting officers' determinations of present responsibility are adequately documented. As a result, we could not determine whether the determinations were conducted in compliance with FAR requirements or whether the IRS awarded the related procurements to only presently responsible contractors. We found that 60 (68 percent) of 88 contract files did not contain sufficient documentation to support IRS contracting officers' determinations of contractors' present responsibility. In addition, managerial reviews of present responsibility determinations were either not conducted or did not address the missing documentation supporting the present responsibility determinations. Where sufficient information was available in the contract files, we did not identify contractors that were nonresponsible. However, due to the lack of documentation, the IRS has an increased risk that procurements may have been awarded to nonresponsible contractors, potentially leading to additional costs to the Federal Government due to subsequent default, late deliveries, or other unsatisfactory contractual performance.

### ***Contract Files Did Not Always Support Contracting Officers' Affirmative Determinations of Present Responsibility***

Contracting officers must make an affirmative determination that a prospective contractor is responsible prior to awarding the contract. The contracting officer must also obtain sufficient information to be satisfied that the prospective contractor meets the responsibility requirements. When contracting officers lack sufficient information to determine that the contractor is responsible, they must make a determination of nonresponsibility.

The FAR also specifically requires that the contracting officer review the EPLS after the opening of bids or receipt of proposals and again "immediately prior to award" to ensure that no award is made to a contractor that is excluded (i.e., suspended, debarred, or proposed for debarment). In addition, upon the opening of bids or receipt of proposals, the FAR requires the contracting officer to verify the prospective contractor is registered in the CCR database.

The responsible contracting officer must establish a unique contract file to house both required and supporting documentation from the origination of the procurement through the life of the contract. This file serves as a background for informed decisions at each step of the acquisition process, provides information for reviews and investigations, and furnishes essential facts in the event of litigation (e.g., bid protest) or congressional inquiries. In addition, the *Standards for*



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*Internal Control in the Federal Government*<sup>8</sup> requires clear documentation of all transactions and other significant events, and that the documentation be readily available for examination. Internal control standards also require that qualified and continuous supervision be provided to ensure that internal control objectives are achieved. While IRS guidance states that procurement reviews will address legal, quality, and regulatory compliance issues, the current guidance does not include specific guidance on the review of present responsibility determinations.

We reviewed a sample of 88 contract files.<sup>9</sup> Our sample included the following types of procurements:

- **Formal Contracts**: The full range of FAR requirements for present responsibility determinations is applicable to these procurements. Our assessment included the identification and evaluation of past performance information; contractor qualifications, reference checks, and/or questionnaire responses for surveys of third-party sources; credit reports (e.g., Dun & Bradstreet Comprehensive Report) or financial statements; research of the EPLS “immediately prior to award” requirement; and the CCR database.<sup>10</sup> Our sample included 44 formal contracts where the contractor was not selected from the General Services Administration (GSA) Schedule.
- **Simplified Acquisitions**: The FAR does not require certain aspects of the present responsibility determination for simplified acquisitions, including past performance evaluations or preaward surveys. Our review was limited to the assessment of IRS contracting officers’ research of the EPLS “immediately prior to award,” and to ensure that the contractor is registered in the CCR database. Our sample included 16 simplified acquisitions.
- **GSA Schedule Contracts**: FAR requirements for present responsibility determinations do not apply to agencies that use contracts awarded by other agencies. Our review was limited to evaluation of documentation of the contracting officers’ review of the EPLS “immediately prior to award.” Our sample included 28 procurements from the GSA Schedules.

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<sup>8</sup> GAO/AIMD-00-21.3.1, dated November 1999.

<sup>9</sup> See Appendix I for details of the sample selection.

<sup>10</sup> See Appendix IV for additional information on sources of information to support present responsibility determinations.



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Contract files did not contain sufficient documentation to support IRS contracting officers' affirmative determination of present responsibility in 60 (68 percent) of 88 files reviewed. The contract files did not document:<sup>11</sup>

- The full range of FAR requirements for present responsibility determinations in 13 (30 percent) of 44 formal contracts.
- The contracting officers' review of the EPLS "immediately prior to award" in 50 (57 percent) of 88 procurements.<sup>12</sup>
- The contracting officers' review of the CCR database prior to awarding the contract in 11 (18 percent) of 60 procurements (44 formal contracts and 16 simplified acquisitions).

**Formal contracts were not adequately documented for present responsibility determinations**

Our review showed that 13 (30 percent) of 44 formal contract files did not contain sufficient support of the contracting officers' evaluation of prospective contractors' performance records, financial resources, and/or qualifications. The 13 formal contract files lacked documentation of contractors' past performance information from either the Past Performance Integrated Retrieval System (PPIRS) and/or reference checks internal to the IRS, or from other Federal agencies. Credit reports and contractor professional qualifications were also not documented in 7 (54 percent) of the 13 contract files.

We reviewed the 13 formal contract files for evidence of managerial review and found that 6 (46 percent) of the 13 formal contract files were not reviewed. In the remaining seven, the contract files were reviewed, but we identified no review comments regarding the missing support for determinations of present responsibility.

The FAR provides a list of sources for contracting officers' use as a basis for documenting that FAR standards have been met by the prospective contractor. However, contracting officers have broad discretion in determining what specific documents from those sources provide the best information to support their decision. See Appendix IV for a list of the various sources of information that may be used to determine present responsibility.

Although the IRS has overall guidance for present responsibility determinations, the guidance does not specify the documentation required to provide reasonable assurance that present responsibility determinations were adequately conducted and documented. For example, IRS guidance for present responsibility determinations includes a contract file content checklist that

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<sup>11</sup> The counts do not total 60 because we identified formal contracts and simplified acquisitions that had more than one type of information missing.

<sup>12</sup> The requirement for contracting officer review of the EPLS "immediately prior to award" applied to all contracts included in our sample (i.e., formal contracts, simplified acquisitions, and GSA Schedule contracts).



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includes steps requiring determinations of present responsibility; however, the checklist does not indicate the specific documentation that should be reviewed and maintained in the contract files. Finally, the IRS did not provide any formal training for the proper conduct of present responsibility determinations to ensure consistency and completeness. We believe that a lack of specific policy guidance and training on how to properly conduct and document present responsibility determinations contributed to the inconsistencies in conducting and documenting the present responsibility determinations that we assessed. For example, discussions with 30 contracting officers indicated that 19 (63 percent) did not regularly use database systems, such as the PPIRS, which are readily available to them for obtaining information on contractor past performance.

**Contract files lacked documented evaluations of contractors' suspension or debarment status**

Our review showed that 50 (57 percent) of 88 contract files did not support that the contracting officers reviewed the EPLS “immediately prior to award.” This included 26 of 44 formal contracts, 7 of 16 simplified acquisitions, and 17 of 28 GSA Schedule contracts. We identified instances where the contracting officers: 1) researched the EPLS, but the research was more than 15 calendar days prior to awarding the procurements (29 instances); 2) did not research the EPLS until after awarding the procurements (12 instances); or 3) did not research the EPLS at all (9 instances). When contracting officers do not research the EPLS immediately prior to awarding a procurement, there is an increased risk that procurements may be awarded during periods of contractor ineligibility. Our research of the EPLS for these 50 contractors did not identify any contractors that had been suspended, debarred, or proposed for debarment at the time the procurements were awarded.<sup>13</sup>

Neither the FAR nor IRS policy and procedures define a time period for “immediately prior to award.” We used 15 calendar days prior to the award date to evaluate whether IRS contracting officers reviewed the EPLS “immediately prior to award.” In practice, we believe that the review of the EPLS should occur as close as possible to the day the procurement is awarded to ensure the most current information is considered before awarding procurements. Because we could not readily determine when the opening of bids or receipt of proposals occurred, we focused our observations on the contracting officers’ research of the EPLS in relation to the procurement award date. The requirement for contracting officer review of the EPLS applied to all procurements included in our sample (i.e., formal contracts, simplified acquisitions, and GSA Schedule contracts) and should have been conducted for each of those procurements.

IRS procedures include steps for reviewing the EPLS; however, the IRS indicated that the requirement to review the EPLS “immediately prior to award” was often overlooked. This may

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<sup>13</sup> Our research included reviewing the EPLS archive for contractors who were suspended or debarred. The archive includes historical information of “past exclusions” dating back to Calendar Year 1988.



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be due in part to the lack of IRS guidance in defining a specific time period for compliance with the FAR's "immediately prior to award" requirement. Our discussions with contracting officers indicated that they all were aware of the requirement to review the EPLS to ensure that contractors were not currently suspended, debarred, or proposed for debarment. However, IRS procurement policy does not define the time period for this requirement. An IRS Office of Procurement Policy official stated that the FAR does not define the word 'immediately' (used approximately 148 times and in many different contexts in the FAR) and, according to FAR 1.108(a), undefined words retain their common dictionary meaning.<sup>14</sup> Further, in performing the EPLS reviews and other responsibilities, contracting officers should be allowed wide latitude to exercise business judgment (FAR 1.602-2) and must have the authority, to the maximum extent practicable and consistent with the law, to determine the application of rules, regulations, and policies on a specific procurement.

We believe that defining the "immediately prior to award" time period is necessary to ensure that the time between the contracting officer's review of the EPLS and the awarding of the procurement is minimal. In addition, supporting documentation, such as a screen print of the portions of the EPLS site that were examined and used as a basis for the determination, should be maintained in the contract file to facilitate management reviews to ensure that this step has been timely conducted.

Our analysis of contract file documentation showed that 65 (74 percent) of the 88 procurements had a documented EPLS review that was conducted prior to the procurement award. Figure 1 shows our analysis of the IRS's research of the EPLS by the number of calendar days: 1) prior to awarding the procurements, 2) after awarding the procurements, or 3) not documented. Our analysis showed that, while 65 of 88 procurements had EPLS research conducted prior to the award, in only 36 instances (41 percent) was the research conducted within 15 calendar days of the procurement being awarded.

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<sup>14</sup> Dictionary.com defines "immediately" as without lapse of time, without delay, instantly, or at once.



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**Figure 1: Analysis of Documented IRS Research of EPLS**

EPLS Research Conducted	Number of Procurements	Percentage of Total
<b><i>On or within 15 calendar days of procurement award:</i></b>		
Day of award	16	18%
1 to 15 calendar days prior to award	20	23%
<b>Subtotal</b>	<b>36</b>	<b>41%</b>
<b><i>More than 15 calendar days prior to procurement award:</i></b>		
16 to 30 calendar days prior to award	12	14%
31 to 60 calendar days prior to award	6	7%
61 calendar days or more prior to award	11	13%
<b>Subtotal</b>	<b>29</b>	<b>33%<sup>15</sup></b>
<b>Total prior to procurement award</b>	<b>65</b>	<b>74%</b>
<b><i>Other observations:</i></b>		
After procurement award	12	14%
Not documented	9	10%
Date of research could not be determined	2	2%
<b>Subtotal</b>	<b>23</b>	<b>26%</b>
<b>Total</b>	<b>88</b>	<b>100%</b>

Source: Our analysis of 88 active contract files.

**Contract files lacked documented evaluations of the central contractor registration database**

In 11 (18 percent) of the 60 contract files reviewed which required review of the CCR database (44 formal contracts and 16 simplified acquisitions), the documentation present in the file did not support that the contracting officer researched the CCR database prior to awarding the contract. Our research of the CCR database showed that all 11 contractors were registered at the time of our review (i.e., after award); however, we could not determine whether the contractors were registered at the time of contract award because we did not have access to historical CCR database information.

IRS management indicated that this occurred in most instances because the contracting officers relied on the interface between the IRS Integrated Procurement System and the CCR database that downloads information daily on registrants. They believe that the automated process in the Integrated Procurement System will identify a contractor who is not registered in the CCR

<sup>15</sup> Percentage does not total 33 percent due to rounding.



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database, and that this is sufficient to meet the requirements of the FAR. We do not believe that this process meets FAR requirements for ensuring the contractor is registered prior to the contract award.

When contracting officers do not verify that the contractor is registered in the CCR database early in the contractor selection process, rather than at the time of award, it increases the risk that the resulting present responsibility determinations may not be based on the appropriate contractor information (e.g., Data Universal Numbering System number). In addition, because the contractor must maintain information on any occurrences of criminal convictions, civil proceedings, and administrative proceedings in the CCR database, the contracting officer should review this information early in the selection process. Based on the CCR review, if the prospective contractor provided information indicating serious integrity and business concerns, the contractor could be eliminated from the selection process, or the contracting officer may need to obtain additional information during the present responsibility determination review to make an affirmative determination.

IRS management indicated that they do not believe the FAR requires contracting officers to maintain documents supporting their responsibility determination in the contract file. They stated that it was sufficient if the contracting officer indicates that they completed this step on the current contract file content checklist and signed the procurement indicating responsibility was affirmed.

**Procedures lack guidance for managerial review of present responsibility determinations**

IRS guidance<sup>16</sup> broadly states that Procurement Office Directors are accountable for procurement quality and shall establish review systems to ensure quality standards are maintained for all procurement actions within their offices, including simplified acquisitions. However, IRS procedures for review of individual procurement actions do not specifically address the review of present responsibility determinations. In addition, our discussions with 11 managers showed that the procurement office managers had varying approaches for reviewing contract files and did not have a consistent contract file review methodology. This included the frequency of review and the status of the procurements selected. For example, the frequency of review varied from reviewing contract files prior to award, before closeout, twice per year, or after the contract was awarded. Many of the managers also indicated they reviewed a sample, rather than reviewing all contract files.

Without sufficient documentation in the contract files and adequate review of present responsibility determinations, IRS management cannot ensure that contracting officers adequately perform determinations of responsibility and effectively ensure that procurements are

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<sup>16</sup> Policy and Procedures Memorandum No.4.1 (B), dated January 1, 2010.



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not awarded to excluded or ineligible contractors. As a result, the IRS has an increased risk that procurements may be awarded to nonresponsible contractors. This could lead to additional costs to the Federal Government due to contractor misconduct, integrity issues, subsequent default, late deliveries, or other unsatisfactory contractual performance. In addition, determinations based on inadequate information may disadvantage the prospective contractor or other bidders, and could potentially increase the risk of a bid protest. We believe IRS management should review the adequacy of the present responsibility determination as part of their contract file review, whether before or after procurement award.

**Changes implemented for present responsibility determinations**

The Federal Awardee Performance and Integrity Information System (FAPIIS) was developed and implemented on April 22, 2010, to improve the Federal Government's ability to evaluate the business ethics and expected performance of prospective contractors and grantees, and protect the Federal Government from doing business with entities that are nonresponsible. The FAPIIS is a distinct application accessed through the PPIRS and available to Federal acquisition professionals for their use in award and responsibility determinations. The FAPIIS provides users access to integrity and performance information, proceedings information from the CCR database, and suspension and debarment information from the EPLS. As of April 2010, the FAR requires contracting officers to review information on the FAPIIS, document contract files for each contract to indicate how the information in the FAPIIS was considered in any responsibility determination, and document actions taken as a result of the information. When a nonresponsibility determination is made, the contracting officer is required to document that information in the FAPIIS.

Management Action: Toward the end of our fieldwork, the IRS issued new guidance that includes:

- **Policy and Procedures Memorandum 4.1, dated March 22, 2011:** This memorandum updated procedures for the uniform structure of file content and contains a content file checklist which now includes the updated step "Contracting Officer's Determination of Contractor's Responsibility or Nonresponsibility Checklist and Supporting Documents (including Dun & Bradstreet reports, FAPIIS records, etc.)."
- **Policy and Procedures Memorandum 9.1(A), dated April 14, 2011:** This memorandum provides guidance for using the FAPIIS and indicates that "Contracting Officers are responsible for performing and filing all required contractor qualification checks (as applicable) in the contract file: Dun & Bradstreet, PPIRS, CCR, EPLS (after receipt of proposals and "immediately prior to award"), and tax checks." The guidance also includes the *Determination of Responsibility or Nonresponsibility* checklist.

While we did not test these new processes and procedures, we believe that the guidance is an improvement over the guidance that was in place at the time of our audit testing. However, we



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noted that the guidance does not fully address all of the concerns identified during our review. The guidance does not clearly define the required range of supporting documentation<sup>17</sup> from the FAR-required sources that should be included in the contract file. For example, the policy guidance indicates “as applicable” but does not explain what that means. The new guidance also indicates that the FAPIIS report is to be included in the contract file, but the guidance does not specify which FAPIIS reports the contracting officer should obtain. In addition, the guidance has not established a time period for defining the EPLS check “immediately prior to award” and has not established the required supporting documentation, such as a screen print, for reviews of the EPLS and the CCR database.

### ***Recommendations***

The Chief, Agency-Wide Shared Service, should:

**Recommendation 1:** Develop and implement guidance for the proper conduct of present responsibility determinations. This guidance should:

- Clearly indicate specific, minimally acceptable, required documentation to support the contracting officer’s research for making the responsibility determination.
- Require documentation of EPLS research, such as a screen print, and define a specific time period for compliance with the FAR requirement for reviewing the EPLS “immediately prior to award.”
- Define the time period for when the CCR database should be researched and require documentation of the CCR database research, such as a screen print.

**Management’s Response:** The IRS agreed with this recommendation. The new Procurement Policy and Procedure Memorandum 9.1(A) includes an explicit requirement for contracting officers to support their responsibility determinations by performing all required contractor qualification checks as applicable, completing the Determination of Responsibility form, and filing evidence of each required contractor qualification check in the contract file as documentation. The IRS’s standard practice is to check certain contractor qualifications after the receipt of the proposals and immediately prior to contract award. The IRS believes this to be an effective practice, and that, to date, the IRS has never awarded a contract to a suspended or debarred contractor. The IRS believes defining a specific time period for compliance with qualifications research does not allow the contracting officers the latitude necessary to “exercise business judgment” and to determine the application of rules and policies prescribed in the FAR.

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<sup>17</sup> The current guidance does not specify the documentation that must be included in the contract file (e.g., screen print of the EPLS).



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to Support Determinations of Present Responsibility*

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**Office of Audit Comment:** While the new Policy and Procedure Memorandum 9.1(A), dated April 14, 2011, addresses some of our requested corrective actions, it does not sufficiently address the following aspects of our recommendation. This guidance does not provide detailed instructions on how procurement staff should conduct responsibility determinations (to include how the seven FAR criteria and other provisions of law should be applied, the appropriate sources from which to obtain contractor qualification documentation, and examples of appropriate documentation to be maintained in the contract file for each of the FAR criteria and provisions of law that must be examined prior to making a responsibility determination).<sup>18</sup>

Additionally, we believe it is important for the IRS to define the “immediately prior to award” time period for performing the EPLS contractor qualification check. During our review, we determined that this EPLS review occurred in many instances significantly prior to procurement award. For example, the EPLS review occurred more than 60 calendar days prior to award in 11 of the 88 procurements we tested and was not performed prior to award in 12 instances. We believe this indicates a need for IRS management to clarify expectations of when the EPLS “immediately prior to award” review should be conducted. IRS management could establish a specific time period which addresses the intent of “immediately prior to award” and still allows some flexibility for contracting officer’s judgment.

**Recommendation 2:** Provide training for IRS contracting officers on the proper conduct and documentation of present responsibility determinations.

**Management’s Response:** The IRS agreed with this recommendation. The Office of Procurement Policy conducts annual “Lessons Learned” training based on quality assurance review findings and internal contract file auditing efforts. The latest training, conducted in June 2011, included an emphasis on the use of the required contract file checklists and included responsibility determination documentation requirements implemented in the new Procurement Policy and Procedure Memorandum.

**Recommendation 3:** Update guidance for managerial review to include specific requirements for review of the contracting officer’s detailed analysis and documented evaluation of present responsibility determinations in the contract file.

**Management’s Response:** The IRS agreed with this recommendation. The IRS is updating the managerial review guidance to add that each review shall confirm and ensure the proper file organization and content (including the responsibility determination form with supporting documentation attached), and solicitation and contractor/order

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<sup>18</sup> The FAR Part 9 requires that documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, the use of FAPIIS information, and any applicable Certificate of Competency, must be included in the contract file.



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quality. The IRS also stated that two separate “Lessons Learned” training sessions were conducted for managers to emphasize key areas to review for compliance.



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## Appendix I

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to determine whether the IRS has an effective process for conducting and documenting present responsibility determinations to ensure that dishonest, unethical, or otherwise nonresponsible contractors are not awarded IRS procurements. To accomplish our objective, we:

- I. Determined whether the IRS and the Department of the Treasury have established policies and procedures that comply with applicable authorities relating to the contracting officer's determination of present responsibility, and how they ensure contractors that were suspended,<sup>1</sup> debarred, or proposed for debarment prior to award or option renewal, are prevented from being awarded additional Federal procurements.
  - A. Obtained, reviewed, and evaluated copies of the IRS's and the Department of the Treasury's written policies and procedures and documented practices used in determining when suspension and/or debarment of a contractor are in the Federal Government's best interest.
  - B. Determined the current practices used to ensure that if contractors are suspended, debarred, or proposed for debarment immediately prior to award or option renewal, they are prevented from being awarded additional Federal procurements.
- II. Determined whether the IRS effectively performs the contracting officers' determinations of present responsibility as demonstrated by its ability to identify and exclude nonresponsible contractors from being awarded procurements.
  - A. Obtained a complete list of current contracting officers and a current list of active procurements.
  - B. Selected a judgmental sample of 30 contracting officers from a population of 130 IRS contracting officers as of September 2, 2009. We selected 7 of 87 contracting officers from the Office of Procurement in Oxon Hill, Maryland; 6 of 13 contracting officers from Oakland, California; 7 of 14 contracting officers from Dallas, Texas; 6 of 8 contracting officers from Atlanta, Georgia; and 4 of 8 contracting officers from New York, New York. The contracting officers selected at each location were those who administered/awarded procurements equal to or greater than \$50,000. We used judgmental sample selection techniques to obtain representation of all the

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<sup>1</sup> See Appendix VI for a glossary of terms.



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- procurements the IRS Office of Procurement administers and to ensure coverage of the four regional IRS Procurement offices.
- C. Interviewed contracting officers and obtained an understanding of their current practices in completing the determination of present responsibility under the FAR Part 9.<sup>2</sup>
- D. Interviewed the sample contracting officers' managers and determined the part they have in the present responsibility determination process.
- E. Selected a judgmental sample of 88 active procurements. This included 74 procurements administered by the 30 contracting officers identified in Step II.B and 14 administered by or assigned to 8 contracting officers' managers identified in Step II.D. The sample procurements had a total value of more than \$142 million. The 38 contracting officers and supervisory contracting officers were assigned 365 active procurements totaling more than \$361 million. We selected procurements equal to or greater than \$50,000. The procurements were selected from IRS active procurements as of August 27, 2009, for Oakland, California; as of September 24, 2009, for Dallas, Texas; as of December 2, 2009, for Oxon Hill, Maryland, and Atlanta, Georgia; and as of January 25, 2010, for New York, New York. These dates were selected to correspond with our site visits to these locations.
1. Reviewed the contract files and determined whether the assessment of present responsibility was properly documented.
  2. Determined whether the contracting officers reviewed the PPIRS for prior identified performance issues and documented that review in the contract file.
  3. Determined whether the contracting officers contacted prior users (third-party sources) of the contractors, either internally at the IRS or externally from other Federal agencies, to obtain a reference on their past performance in terms of product or service quality, timely completion, and cost.
  4. Determined whether the contracting officers reviewed the EPLS to determine whether the contractor and its subcontractors were currently suspended, debarred, or proposed for debarment.
  5. Determined whether any of the contractors selected in our sample were listed on the EPLS. If any contractors selected in our sample appeared in the EPLS, we

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<sup>2</sup> 48 C.F.R. ch. 1 (2009).



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reviewed the contract award dates and determined whether they were suspended, debarred, or proposed for debarment at the time of award or option renewal.<sup>3</sup>

6. Determined whether the contracting officers reviewed the CCR database to ensure that the potential contractor was registered and eligible to be awarded a contract by the Federal Government.

**Internal controls methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the FAR,<sup>4</sup> Department of the Treasury regulations, and IRS policies and procedures. We evaluated these controls by interviewing management and contracting officers, reviewing applicable documentation, and analyzing a judgmental sample of procurements.

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<sup>3</sup> Our evaluation of the EPLS for our sample contracts did not identify any contractors that were listed as currently suspended or debarred on the EPLS.

<sup>4</sup> 48 C.F.R. ch. 1 (2009).



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**Appendix II**

*Major Contributors to This Report*

Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations)  
Alicia Mrozowski, Director  
Darryl Roth, Audit Manager  
Mildred Rita Woody, Audit Manager  
Julia Moore, Acting Audit Manager  
Melvin Lindsey, Lead Auditor  
Ken Henderson, Senior Auditor  
Trisa Brewer, Auditor



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**Appendix III**

*Report Distribution List*

Commissioner C  
Office of Commissioner – Attn: Chief of Staff C  
Deputy Commissioner for Operations Support OS  
Director, Procurement OS:A:P  
Chief Counsel CC  
National Taxpayer Advocate TA  
Director, Office of Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis RAS:O  
Office of Internal Control OS:CFO:CPIC:IC  
Audit Liaisons:  
    Deputy Commissioner for Operations Support OS  
    Chief, Agency Wide Shared Services OS:A  
    Director, Procurement OS:AP



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## **Appendix IV**

### *Sources of Information for Present Responsibility Determinations*

In making the determination of present responsibility, the contracting officer shall consider relevant past performance information. The FAR<sup>1</sup> states that the contracting officer should use the following sources of information to support present responsibility determinations:

- Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.
- The prospective contractor, including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.
- Commercial sources of supplier information of a type offered to buyers in the private sector.
- Preaward survey reports.<sup>2</sup>
- Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

Confidence in a prospective contractor's ability to perform satisfactorily or better is an important factor in making a present responsibility determination decision. One method of gaining this confidence is the evaluation of a prospective contractor's performance on recently completed or ongoing procurements for the same or similar goods or services. The FAR stipulates that, "a prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action." Serious deficiencies in performance may include delinquent performance, delivery of nonconforming items, failure to adhere to contract specifications, late deliveries, poor management or technical judgment, failure to correct production problems, failure to perform safely, and inadequate supervision of subcontractors. Contracting officers must consider the circumstances surrounding any deficient performance when making present

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<sup>1</sup> 48 C.F.R. ch. 1 (2009).

<sup>2</sup> See Appendix VI for a glossary of terms.



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responsibility determinations, and poor performance or default on one or several prior procurements is not, by itself, sufficient grounds for disqualification.

Another important aspect of the FAR's general standards for present responsibility determinations is the evaluation of integrity and business ethics. In evaluating a contractor's integrity and business ethics, contracting officers may consider convictions or indictments of corporate officers, integrity offenses constituting grounds for suspension under the FAR, repeated violations of State law, or pending debarments. A lack of integrity on the part of entities with which the contractor has close relationships may also be considered. Because contractors have an interest in being able to challenge allegations about their integrity that could deprive them of their livelihood, due process is required when a nonresponsibility determination is based on concerns about the contractor's integrity.

**Sources of information to support present responsibility determinations**

Based on our discussions with contracting officers and evaluation of FAR requirements, the following are various sources of information and the relation of the information to the present responsibility determination requirements. The sources of information include, but are not limited to:

- Past performance information, such as from the PPIRS, to evaluate whether or not the contractor has complied with prior performance schedules,<sup>3</sup> the contractor's overall past performance record,<sup>4</sup> and the contractor's record of integrity or business ethics.<sup>5</sup> When information is not available, and/or when additional information on contractor performance is needed for the present responsibility determination, the contracting officer may conduct reference checks or preaward surveys of third-party sources.
- Credit reports (e.g., Dun & Bradstreet Comprehensive Report) or financial statements to evaluate whether the contractor has the necessary financial<sup>6</sup> and technical<sup>7</sup> resources and the necessary organizational structure and experience.<sup>8</sup>

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<sup>3</sup> FAR Part 9 requires that the contractor must be able to comply with the delivery or performance schedule.

<sup>4</sup> FAR Part 9 requires that the contractor must have a satisfactory performance record.

<sup>5</sup> FAR Part 9 requires that the contractor must have a satisfactory record of integrity and business ethics.

In evaluating the criterion for integrity and business ethics, contracting officers may consider convictions or indictments of corporate officers, integrity offenses constituting grounds for suspension under the FAR, repeated violations of State law, or pending debarments. The evaluation of this requirement may also include research of the EPLS and the CCR database.

<sup>6</sup> The FAR Part 9 requires that the contractor must have adequate financial resources.

<sup>7</sup> The FAR Part 9 requires that the contractor must have the necessary organization, experience, accounting and operational controls, and technical skills.

<sup>8</sup> The FAR Part 9 requires that the contractor must have the necessary production, construction, and technical equipment and facilities to perform the work required.



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- Contractor qualifications or curriculum vitae from the contractor to evaluate technical skills, past experience, and training.
- The EPLS and the CCR database to evaluate whether the contractor is otherwise qualified and eligible.<sup>9</sup> Among other considerations, this includes determining whether the contractor has been suspended, debarred, or proposed for debarment under the FAR, and is registered in the CCR database. The cause and condition codes in the EPLS may provide the provisions of law that were violated and/or any other basis for exclusion or ineligibility.

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<sup>9</sup> The FAR Part 9 requires that the contractor must be otherwise qualified and eligible. See Appendix V for a list of the provisions of law specifying when contractors are disqualified from or ineligible for awards.



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**Appendix V**

*Legal Provisions for Disqualification  
From or Ineligibility for Awards*

To be determined responsible according to the FAR,<sup>1</sup> prospective contractors must otherwise be qualified and eligible. This criterion encompasses collateral requirements, or other provisions of law specifying when contractors are disqualified from or ineligible for awards. Among other things, contractors are disqualified or ineligible for awards if 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, 4) are quasi-military armed forces, or 5) have unavoidable and unmitigated organizational conflicts of interest. The following are the major collateral requirements when contractors are disqualified from or ineligible for awards.

**Figure 1: Major Collateral Requirements<sup>2</sup>**

<b>Requirement</b>	<b>Application</b>
Equal Employment Opportunity (48 C.F.R. § 22.802(b); Exec. Order No. 11246, 30 Fed. Reg. 12319 (September 24, 1965))	<ul style="list-style-type: none"><li>• Contractors are ineligible if they do not comply with the Equal Employment Opportunity requirements in Executive Order 11246, which requires, among other things, that contractors “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.”</li><li>• Contractors cannot receive an award with an expected value of \$10 million or more (excluding construction contracts) unless the Office of Federal Contract Compliance Programs at the Department of Labor determines in writing that the contractor is compliant with Executive Order 11246.</li></ul>

<sup>1</sup> 48 C.F.R. ch. 1 (2009).

<sup>2</sup> *Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures*, (Congressional Research Service, by Kate M. Manuel, Legislative Attorney, Reference Number R40633, dated October 1, 2010).



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<b>Requirement</b>	<b>Application</b>
<p>Small Business Subcontracting Plans</p> <p>(15 USC § 637(d)(4)(C) (plans in negotiated procurements); 15 USC § 637 (d)(5)(B) (plans in sealed-bid procurements))</p>	<ul style="list-style-type: none"> <li>Contractors are ineligible if they fail to agree to an acceptable plan for subcontracting with small businesses under the contract. Section 637(d) of the Small Business Act (15 U.S.C. § 637(d)) requires that all contracts with expected values of more than \$650,000 (\$1.5 million in the case of construction contracts) include a “subcontracting plan” that provides the “maximum practicable opportunity” for various subcategories of small businesses to participate in performing the contract. Plans must include percentage goals for subcontracting with small businesses, veteran-owned and service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. Plans must also describe the steps that contractors will take to ensure that small businesses have an equitable opportunity to compete for subcontracts.</li> </ul>
<p>Government Employees</p> <p>(48 C.F.R. §§ 3.601-602)</p>	<ul style="list-style-type: none"> <li>Agencies may not knowingly award contracts to Government employees or entities owned, or substantially owned or controlled, by Government employees.</li> <li>Contracting with Government employees is permitted under certain narrow exceptions, such as when the Government’s needs cannot otherwise be met.</li> <li>If a contracting officer unknowingly contracts with a Government employee, the award generally will not be disturbed unless there appears to have been favoritism or other impropriety.</li> </ul>
<p>Quasi-Military Armed Forces</p> <p>(5 U.S.C. § 3108; 48 C.F.R. § 37.109)</p>	<ul style="list-style-type: none"> <li>Agencies may not contract with the Pinkerton Detective Agency or “similar organizations.”</li> <li>Prohibition applies “only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract’s character.”</li> </ul>
<p>Organizational Conflicts of Interest</p> <p>(48 C.F.R. §§ 9.500-9.508)</p>	<ul style="list-style-type: none"> <li>Agencies may not award contracts where there are organizational conflicts of interest that cannot be avoided or mitigated. Disqualifying organizational conflicts of interest could arise if a prospective contractor provided systems engineering and technical direction, prepared specifications or work statements, provided evaluation services, or obtained access to other contractors’ proprietary information while performing other Government contracts.</li> <li>Possibility of an organizational conflict of interest is not, in itself, grounds for disqualification. Rather, when contracting officers identify an organizational conflict of interest, they must notify the contractor and allow the contractor a reasonable opportunity to respond.</li> <li>Contracting officers have substantial discretion in determining whether organizational conflicts of interest exist, and their determinations will generally be reversed, if protested, only when they are clearly unreasonable or directly contrary to statute or regulation.</li> </ul>



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**Appendix VI**

*Glossary of Terms*

<b>Term</b>	<b>Definition</b>
Affirmative Determination	Affirmative is defined as “a statement of agreement with an assertion or request.” In this instance, it is a positive determination of responsibility for the prospective contractor.
Bid Protest	A bid protest is a dispute about contracts that have been, or are about to be, awarded. Persons and companies may file a bid protest with the Government Accountability Office, and the Government Accountability Office will issue a decision on whether the Federal agency issuing the contract has complied with Federal procurement laws and regulations.
Bidder	Any entity that is responding to or has responded to a solicitation, including an offeror under a negotiated acquisition.
Business Partner Network	The single source for vendor data for the Federal Government. The Business Partner Network is a search mechanism that provides unprecedented views into several key databases across Federal agencies.
Central Contract Registration (CCR)	The primary contractor registration database for the Federal Government. The database is used to collect, validate, store, and disseminate data in support of agency acquisition missions, including Federal agency contract and assistance awards. The required information includes the contractor’s legal business name, address, and Data Universal Numbering System number (the nine-digit number assigned by Dun & Bradstreet, Inc. to identify unique business entities). Certain contractors are exempt from the registration requirement, including classified contracts and contracts to support unusual or compelling needs. <sup>1</sup>

<sup>1</sup> See the FAR Part 4 for a complete listing of the contractors exempt from the CCR database registration requirement.



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<b>Term</b>	<b>Definition</b>
Certificate of Competency	Document issued by a designated authority that the named contractor has fulfilled the requirements of receiving and performing a particular contract.
Credit Report	A record of an individual's or company's past borrowing and payment history, including information about late payments and bankruptcy.
Curriculum Vitae	A comprehensive list of professional history including terms of employment, academic credentials, publications, contributions, or significant achievements.
Data Universal Numbering System Number	The nine-digit number assigned by Dun & Bradstreet to identify unique business entities.
Debarment	An action taken by a designated agency official to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period of time. A contractor that is excluded is "debarred."
Due Process	No person can be subject to an individualized proceeding in which he or she stands to lose one of the protected interests (in the context of administrative law, either property or liberty) without sufficient procedures to ensure that the Governmental action is fundamentally fair.
Dun & Bradstreet Comprehensive Report	A commercial source of credit report information providing insight on businesses, including financial stability.
Excluded Parties List System (EPLS)	A web-based system maintained by the GSA that includes information regarding entities suspended, debarred, proposed for debarment, excluded, or disqualified under the nonprocurement common rule, or otherwise declared ineligible from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits.
Financial Statements	Written reports that quantitatively describe the financial health of a company. These include an income statement and a balance sheet, and often also include a cash flow statement. Financial statements are usually compiled on a quarterly and annual basis.
Formal Contracts	Open market acquisitions with award amounts of more than the simplified acquisition threshold.



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<b>Term</b>	<b>Definition</b>
General Services Administration (GSA) Schedule	GSA Schedules are also referred to as Multiple Award Schedules and Federal Supply Schedules. Under the GSA Schedules program, GSA establishes long-term, Government-wide contracts with commercial firms to provide access to millions of commercial supplies (products) and services at volume discounts.
Option Renewal	Exercising the right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.
Past Performance Information Retrieval System (PPIRS)	A web-enabled, Enterprise application that provides timely and pertinent contractor past performance information for the Department of Defense and the Federal acquisition community for use in making source selection decisions.
Preaward Survey Reports	An evaluation of a prospective contractor's ability to perform a proposed contract.
Simplified Acquisitions	The acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold. The simplified acquisitions threshold at the time of our review was \$100,000; however, effective October 1, 2010, it was raised to \$150,000.
Socioeconomic Goals	It is the policy of the United States, as stated in the Small Business Act (15 U.S.C. § 631), that all small businesses have the maximum practicable opportunity to participate in providing goods and services to the Government. To ensure that small businesses get their fair share, the Small Business Administration negotiates annual procurement preference goals with each Federal agency and reviews each agency's results.
Solicitation	A request to submit offers or quotations to the Federal Government. Solicitations under sealed bid procedures are called "invitations for bids." Solicitations under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.



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<b>Term</b>	<b>Definition</b>
Suspension	A temporary exclusion of a party pending the completion of an investigation for debarment. A contractor that is under a formal investigation is suspended.



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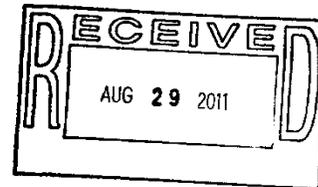
**Appendix VII**

*Management's Response to the Draft Report*

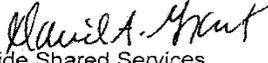


DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

August 29, 2011



MEMORANDUM FOR MICHAEL R. PHILLIPS  
DEPUTY INSPECTOR GENERAL FOR AUDIT

From: David A. Grant   
Chief, Agency-Wide Shared Services

Subject: Draft Audit Report – Contract Files Lacked Sufficient Information  
to Support Documentation of Present Responsibility  
(Audit #200910023)

Thank you for the opportunity to respond to the subject audit report. This audit was conducted to determine whether the IRS has established pre-award policies and procedures that are in compliance with applicable authorities as they relate to the Contracting Officers' (COs') determination of present responsibility, especially as it relates to suspension and debarment. The Treasury Inspector General for Tax Administration (TIGTA) also sought to determine if the IRS effectively performs the COs' determination of present responsibility as demonstrated by its ability to identify and exclude non-responsible contractors from being awarded contracts. Our response is attached.

TIGTA's review resulted in a finding that the IRS does not have an effective process to ensure that COs' determinations of present responsibility are adequately documented. We agree with TIGTA's recommendations, as they will provide consistency in the responsibility determination process. However, we feel it is important to emphasize that TIGTA did not identify any contracts awarded to suspended or debarred contractors, nor did they find that CO file documentation practices violated the Federal Acquisition Regulation (FAR) or the Agency's procurement policy.

CO responsibility determination deficiencies exist only to the extent that Federal law, the FAR, or the Agency's procurement policy was not followed. For example, there is no FAR requirement to include copies of the Excluded Parties List System (EPLS) review results in the contract file when the contractor in question is not listed – only that the CO review the list twice. There is also no FAR requirement to include a copy of the Central Contractor Registration (CCR) review results in the contract file – only that the CO verify contractor registration; therefore, no responsibility determination deficiency exists merely because EPLS and CCR reviews were not documented in the contract file.



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However, our file content checklists, maintained in Policy and Procedures 4.1, File Content Checklist, require verification of EPLS and CCR prior to contract award. This provision, in accordance with the FAR, states that the "contracting officer'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)).

We appreciate the continued support and the valuable assistance and guidance that your team provides. If you have any questions, please contact me or a member of your staff may contact Barry Kearns, Director, Office of Procurement Policy, at (202) 283-1410. For matters concerning follow-up, please contact Larry Pugh, Office of Strategy and Finance, Agency-Wide Shared Services, at (202) 622-4541.

Attachment



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*Contract Files Lacked Sufficient Information  
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**RECOMMENDATION #1:** Develop and implement guidance for the proper conduct of present responsibility determinations. This guidance should:

- Clearly indicate specific, minimally acceptable, required documentation to support the contracting officer's research for making the responsibility determination.
- Require documentation of EPLS research, such as a screen print, and define a specific time period for compliance with the FAR requirement for reviewing the EPLS "immediately prior to award".
- Define the time period for when the CCR database should be researched and require documentation of the CCR database research, such as a screen print.

**CORRECTIVE ACTION:** We agree with this recommendation. The new P&P 9.1(A), Federal Awardee Performance and Integrity Information System (FAPIIS), includes an explicit requirement for COs to support their responsibility determinations by performing all required contractor qualification checks (Dun & Bradstreet, Past Performance, CCR, two EPLS, and Tax Checks as applicable), completing the Determination of Responsibility form linked within P&P 9.1(A), and filing evidence of each required contractor qualification check in the contract file as documentation.

In regard to defining a specific time period for compliance with EPLS research or CCR database research, our standard practice, as defined in P&P 9.1(A), is to check certain contractor qualifications after receipt of proposals and immediately prior to contract award. We feel this is an effective practice and, to date, we have never awarded a contract to a suspended or debarred contractor. We feel that defining a specific time frame for compliance with qualifications research does not allow contracting officers the latitude necessary to "exercise business judgment", and to determine the application of rules and policies, as prescribed in FAR 1.602-2.

**IMPLEMENTATION DATE:** Completed April 14, 2011

**RESPONSIBLE OFFICIAL:** Director, Procurement, Agency-Wide Shared Services (OS:A:P).

**CORRECTIVE ACTION MONITORING PLAN:** N/A

**RECOMMENDATION #2:** Provide training for IRS contracting officers on the proper conduct and documentation of present responsibility determinations.

**CORRECTIVE ACTION:** We agree with this recommendation. The Office of Procurement Policy conducts annual "Lessons Learned" training throughout Procurement based on quality assurance review findings and internal contract file auditing efforts. This included an emphasis on the use of the required contract file



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checklists, specifically, the lists included in P&P Memorandum 4.1, File Content Checklists. P&P 4.1 provides a structured approach to ensure Contracting Officers (COs) uniformly comply with the responsibility determination requirement.

An updated "Lessons Learned" training was conducted in June 2011 and included responsibility determination documentation requirements implemented in the new P&P 9.1(A).

**IMPLEMENTATION DATE:** Completed July 20, 2011

**RESPONSIBLE OFFICIAL:** Director, Procurement, Agency-Wide Shared Services (OS:A:P).

**CORRECTIVE ACTION MONITORING PLAN:** N/A

**RECOMMENDATION #3:** Update guidance for managerial review to include specific requirements for review of the contracting officer's detailed analysis and documented evaluation of present responsibility determinations in the contract file.

**CORRECTIVE ACTION:** We agree with this recommendation. We are also updating managerial review guidance to add the following or more explicit review requirements to P&P 4.1(B) at 4.1(B)(5)(b)(1) under Internal Reviews:

"Each review shall confirm and ensure the following: (1) proper file organization and content (signed P&P 9.1(A) responsibility determination form with supporting documentation attached, as well as all other documentation required by the checklist), and (2) solicitation and contract/order quality (evaluation criteria in both technical evaluation plan and solicitation are identical, etc.)."

The Office of Procurement Policy conducted "Lessons Learned" training throughout Procurement last year, based on quality assurance review findings and internal contract file auditing efforts, which included an emphasis on the use of the required contract file checklists. Two separate "Lessons Learned" training sessions were also conducted for managers who reviewed contract files to emphasize key areas to review for compliance. Future contract file review workshops will continue to include manager oversight reviews responsibilities.

**IMPLEMENTATION DATE:** December 31, 2011

**RESPONSIBLE OFFICIAL:** Director, Procurement, Agency-Wide Shared Services (OS:A:P).

**CORRECTIVE ACTION MONITORING PLAN:** Corrective Actions will be monitored in the JAMES system until complete.