

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

Universal Service

CFR Correction

■ In Title 47 of the Code of Federal Regulations, Parts 40 to 69, revised as of October 1, 2017, on page 186, in § 54.410, make the following corrections:

- In paragraph (f)(2)(iii), remove the words “the National Verifier, state Lifeline administrator, or state agency” and add, in their place, “the eligible telecommunications carrier”;
- In paragraph (f)(4), remove the words “re-certification or subscribers’ Lifeline” and add, in their place, “re-certification of subscribers’ Lifeline”;
- In paragraph (f)(5), remove the words “state agency’s inability” and add, in their place, “state agency that it is unable”.

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DEPARTMENT OF THE TREASURY

48 CFR Parts 1009 and 1052

Department of the Treasury Acquisition Regulations; Tax Check Requirements

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim rule that amended the Department of the Treasury Acquisition Regulation (DTAR) by adding a subpart titled “Responsible Prospective Contractor” and a paragraph concerning Representation and certifications regarding responsibility matters, for the purpose of directing IRS contracting officers to the newly added DTAR subpart titled “Tax Check Requirement,” which prescribes the policies and procedures for performing a tax check on the apparent successful offeror in order to determine eligibility to receive an award.

DATES: Effective date: May 11, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas O’Linn, Procurement Analyst, Office of the Procurement Executive, at (202) 622-2092.

SUPPLEMENTARY INFORMATION:

I. Background

The DTAR, which supplements the Federal Acquisition Regulation (FAR), is codified at 48 CFR Chapter 10.

It is in the interest of the United States Government to only award contracts to entities that are responsible and law abiding. This is codified in FAR 9.104 by requiring contracting officers to perform a responsibility determination prior to each contract award by using the standards at FAR 9.104-1, as well as consider information submitted by the contractor and information they research or acquire from other sources. The IRS administers the Internal Revenue Code as enacted by Congress. Since fiscal year 2012, language in the annual consolidated Appropriations Act has prohibited the Federal Government under various conditions from using appropriated funds to enter into a contract with a prospective contractor unless the prospective contractor certifies in writing that it has not been notified of any unpaid Federal tax assessment. Most recently, Sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) prohibits the Federal Government from entering into a contract with any corporation where the awarding agency is aware of an unpaid Federal tax liability.

For purposes of tax administration, the IRS has access to taxpayer return information that is not otherwise available to other Federal Agencies pursuant to 26 U.S.C. 6103(h)(1). The Department of the Treasury has determined that an IRS contractor’s compliance with the tax laws is a tax administration matter. Additionally, 26 U.S.C. 6103(c) authorizes the IRS to disclose a taxpayer’s return information to such person(s) as the taxpayer may designate in a consent to such disclosure. In many cases, however, the official signing a contract proposal on behalf of an offeror will not be an official to whom the IRS is authorized to disclose the offeror’s tax information. Thus, in order to ensure that IRS is authorized to discuss the offeror’s own tax information with an authorized official of the offeror, a consent to disclosure is required. This consent to disclosure must be in the form of a separate written document pertaining solely to the authorized disclosure and must be signed and dated by an authorized person as required and defined in 26 U.S.C. 6103(c) and 26 CFR 301.6103(c)-1(e)(4).

II. Interim Rule

On November 16, 2017 (82 FR 53426), the Department issued an interim rule to amend the DTAR to establish policies and procedures that facilitate successful, timely, and economical execution of IRS contractual actions in

compliance with the FAR and various appropriation restrictions. Specifically, the interim rule established an express requirement for IRS contracting officers to use taxpayer return information that is available only to IRS to perform a tax check on the apparent successful offeror for purposes of determining eligibility to enter into a contract with the IRS. The IRS has established an internal Procedure, Guidance and Information (PGI) that further supplements the DTAR requirement for IRS contracting officers to use when conducting a tax check. To ensure compliance with 26 U.S.C. 6103(h)(1) and to safeguard taxpayer return information, the PGI restricts the number of personnel within the IRS Office of Procurement who have access to tax compliance information. The PGI also limits the amount of information provided to the contracting officer regarding a delinquent Federal tax liability. Upon notification by the contracting officer that the offeror has a delinquent Federal tax liability, the offeror may provide the contracting officer with documentation that demonstrates the offeror’s tax status as paid-in-full or that an approved payment agreement has been reached, at which time the contracting officer will coordinate with the appropriate office within IRS to validate the offeror’s tax status (see FAR 9.104-5(a)(1), (b)(1) and (e)).

The offeror may want to take steps to confirm it does not have a delinquent Federal tax liability prior to submission of its response to the solicitation. If the offeror recently settled a delinquent Federal tax liability, the offeror may want to take steps to obtain information in order to demonstrate the offeror’s responsibility to the contracting officer, if such information is requested (see FAR 9.104-5(a)(1) and (b)(1)).

The interim rule supplemented paragraph (b) of FAR 9.104-5, Representation and certifications regarding responsibility matters, for the purpose of directing IRS contracting officers to the newly added DTAR subpart 1009.70, which prescribes the policies and procedures for performing a tax check on the apparent successful offeror to determine eligibility to receive an award.

The interim rule added DTAR subparts 1009.1, Responsible Prospective Contractors, and 1009.70, Tax Check Requirements. This latter subpart prescribes the policies and procedures IRS contracting officers will use for performing a tax check on the apparent successful offeror to determine eligibility to receive an award. Definitions of terms “authorized representative(s) of the offeror,”