



U.S. Department  
of Transportation

Office of the Secretary  
of Transportation

JAN 10 2017

ORDER

DOT 4200.6

**SUBJECT: Appropriations Act Requirements for Procurement and Non-procurement  
Regarding Tax Delinquency and Felony Convictions**

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1. **PURPOSE.** This Order prescribes standards and procedures for implementing the tax delinquency and felony conviction considerations for procurement and non-procurement as required by Consolidated Appropriations Act 2014 at Public Law 113-76, Title IV, Division L. General Provisions, sections 415-416 (January 17, 2014) and similar provisions in subsequent appropriations acts.

2. **POLICY.** It is the policy of the United States Department of Transportation (DOT) to properly manage funds appropriated or otherwise made available to DOT in compliance with all applicable Federal requirements. This policy ensures that awards occur only with corporations and recipients that do not have a verified Federal tax delinquency and have not been convicted of a Federal felony offense within the twenty-four (24) months prior to the award date of a contract, assistance agreement or memorandum of understanding. To carry out this responsibility, DOT officers and employees will use the DOT procurement (acquisitions) and non-procurement (financial assistance, e.g. grants, cooperative agreements, loans and other transactions) processes, and the suspension and debarment process to ensure that only responsible entities and recipients participate in DOT procurement and non-procurement programs and projects as well as memorandums of understanding.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable by law or in equity by any individual or legal entity against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person. If any provision or portion of this Order is inconsistent with the Federal Acquisition Regulations, Transportation Acquisition Regulations or Transportation Acquisition Manual, the pertinent regulation shall control.

3. **REFERENCES.**
  - a. Consolidated Appropriations Act 2014 at Public Law 113-76, Title IV, Division L. General Provisions, sections 415-416 (January 17, 2014).
  - b. Consolidated Appropriations Act 2015 at Public Law 113-235, Title VII, Division E, Sections 744-745 (December 16, 2014).

- c. Consolidated Appropriations Act 2016 at Public Law 114-113, Title VII, Government-Wide General Provisions, sections 745-746 (December 18, 2015).
- d. 2 C.F.R. Part 180, Government-wide Debarment and Suspension (non-procurement), effective amended December 19, 2014, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective January 1, 2015, provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement transactions, programs, and activities.

The Government-wide non-procurement regulation can be accessed through the following website:

[http://www.whitehouse.gov/sites/default/files/omb/assets/grants/111506\\_grants\\_full.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/grants/111506_grants_full.pdf)

- e. 48 C.F.R. Chapter 1, Subpart 9.4, Federal Acquisition Regulation (FAR), Debarment Suspension, and Ineligibility, provides rules for a Federal government wide system of debarment and suspension for procurement actions; FAR, 48 C.F.R. Chapter 1, Subpart 9.1, Responsible Prospective Contractors; FAR 48 C.F.R. Chapter 1, Subpart 52. Solicitation Provisions and Contract Clauses, particularly sections 52.204-8 and 52.209; FAR, 48 C.F.R. Chapter 1, Part 3, Improper Business Practices and Personal Conflicts of Interest; and FAR 48 C.F.R. Section 52.209-11 implementing the 2015 Appropriations Act sections 744-745, are also applicable and should be referenced. The FAR can be accessed through the following website: <http://www.acquisition.gov/far/>.
- f. Department of Transportation Acquisition Manual (TAM), Subpart 1209.4, Debarment, Suspension, and Ineligibility, supplements FAR, 48 C.F.R. Subpart 9.4. The TAM, issued by the Office of the Senior Procurement Executive (OSPE), establishes uniform internal operating acquisition procedures which implement or supplement the FAR and the Transportation Acquisition Regulation (TAR). The TAM can be accessed through the following website: <https://one.dot.gov/ost/m1/m60/Shared%20Documents/Transportation%20Acquisition%20Manual/tam.htm>.
- g. Acquisition Management System (AMS), Procurement Guidance, T3.2.2.7, provides guidance for procurement debarment and suspension actions for the Federal Aviation Administration (FAA). The AMS, Procurement Guidance, can be accessed through the following website: <http://fast.faa.gov/docs/procurementGuidance/T3.2.2.7ContractorQualifications.pdf>.

4. **APPLICABILITY.** This Order applies to all DOT Operating Administrations (including the FAA) and Secretarial Offices that make, execute, or approve procurement and non-procurement transactions or make, execute or approve memorandums of



understanding. Though not subject to the FAR, the FAA applies similar procedures through the AMS for its procurement transactions.

5. **KEY TERMS.** For the purposes of this Order, the following terms apply:

**Contracting Officer:** The Contracting Officer is a person in a direct Federal procurement transaction with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the Contracting Officer. *See*, 48 C.F.R. Chapter 1, FAR Sub Part 2.1, section 2.101.

**Authorizing Official:** Authorizing Official is a person within a Federal Agency or the prime recipient organization using Federal funds in a non-procurement transaction who can bind his or her organization to the terms and conditions of the Federal non-procurement award, program or project, including financial assistance (e.g. grants, cooperative agreements, loans and other transactions). This term also includes officials who can execute memorandums of understanding on behalf of the Federal Agency. *See*, 2 C.F.R. Part 200.

**Corporation:** Corporation means any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association.

**Non-Federal Entity:** Non-Federal entity means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal award (financial assistance) as a recipient or subrecipient.

**Recipient:** Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program (financial assistance). The term recipient does not include subrecipients. *See*, 2 C.F.R. Part 200.

**Tax Delinquency:** A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**Felony conviction:** Felony conviction means a conviction within the preceding twenty-four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

**Suspending and Debarring Official:** The Suspending and Debarring Official is an Operating Administration or Secretarial official authorized by to impose suspension and debarment.

6. **RESPONSIBILITIES.** All Operating Administrations and Secretarial Offices must have a process in place to implement the requirements of the 2014 Appropriations Act (and similar provisions in subsequent appropriations acts) by ensuring that the following steps occur in the procurement and non-procurement processes:

(a) Referral process: When a corporation or recipient provides an affirmative response to the certifications regarding tax delinquency or felony conviction as provided below, the Contracting Officer for a procurement transaction or the Authorizing Official for a non-procurement transaction shall-

- (1) Promptly, upon receipt of notice, request such additional information from the corporation as the Contracting Officer or Authorizing Official deems necessary to demonstrate the corporation's or recipient's present responsibility;
- (2) Notify, in accordance with agency procedures, the agency's Suspending and Debarring Official; and
- (3) Not award to the corporation or recipient unless an agency or Secretarial Office Suspending and Debarring Official has considered suspension or debarment, and made a determination that suspension or debarment on this tax delinquency or felony basis is not necessary to protect the interests of the Government. For acquisitions conducted under the FAA's AMS, the Contracting Officer must follow AMS' procedures prior to making an award.

(b) Procurement:

- (1) Incorporation in Prime Contract and Flow-down: Each contract the Contracting Officer signs with a prime contractor, and each subcontract the prime contractor signs with a subcontractor, through all tiers of subcontracting process for both services and materials, Operating Administrations, Secretarial Offices and prime contractors must include the referral process and certifications identified in subsections 6(a) and (b), with no limitation on the dollar amount of these contracts and subcontracts.
- (2) SAM.gov certifications: The Contracting Officer awarding the contract must ensure that a check of the General Services Administration (GSA) website for corporations, presently [www.SAM.gov](http://www.SAM.gov), occurs (i) to see if an entry for the corporation exists, and (ii) to see if information appears on the website showing that the corporation has a tax delinquency or felony conviction within the prior twenty-four (24) months. If the [www.SAM.gov](http://www.SAM.gov) site shows that the corporation has a tax delinquency or felony conviction within the prior twenty-four (24) months, the Operating Administrations and Secretarial Offices' Contracting Officer must follow the procedure provided in subsection 6(a).



(3) Procurement certifications:

- (i) FAR-compliant USDOT (excluding FAA) procurements: If the SAM.gov check does not provide an affirmative answer to the tax delinquency or felony questions in the SAM.gov certifications, the Contracting Officer must use the FAR certifications implementing the 2014 Appropriations Act (and similar provisions in subsequent appropriations acts) through the FAR Section 52.209-11, or any FAR section implementing these Appropriations Acts. If a corporation returns an answer of yes to either of these certifications, the Operating Administrations and Secretarial Offices' Contracting Officers must follow the procedure provided in Section 6(a) above.
- (ii) FAA AMS procurements: For acquisitions which exceed the FAR defined Simplified Acquisition Threshold, if the SAM.gov check does not provide an affirmative answer to the tax delinquency or felony questions in the SAM.gov annual certifications, the Contracting Officer must include the following certifications in the overall contract documents, requiring the corporation to certify whether the corporation:
  - (a) has a felony conviction under any Federal law within the two-year period preceding this proposal; and
  - (b) has any unpaid Federal tax delinquency, as defined in section 5 "Key Terms."

(c) Non-procurement:

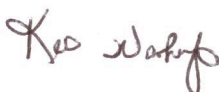
- (1) Flow down: Each award the Authorizing Official of an Operating Administration or Secretarial Office signs to a prime recipient, and each sub-recipient of the prime recipient, through all tiers of the award process for both services and materials, the Operating Administrations and Secretarial Offices must include the referral process and certifications identified in subsections 6 (a) and (c), with no limitation on the dollar amount of these awards and subawards.
- (2) SAM.gov certifications: The Authorizing Official for the Operating Administrations, Secretarial Offices, and the Authorizing Official for the recipient of Federal funds should, and are strongly recommended to, ensure that a check of the GSA website for recipients, presently [www.SAM.gov](http://www.SAM.gov) occurs, to see if an entry for the recipient exists, and if information appears on the website showing that the recipient has a tax delinquency or felony within the prior twenty-four (24) months. If the [www.SAM.gov](http://www.SAM.gov) site shows that the recipient has a tax delinquency or felony within the prior twenty-four (24) months, the Authorizing Official

should report the issue to the Operating Administration or Secretarial Office. Upon receipt of such a report from the recipient's Authorizing Official, the Operating Administration or Secretarial Office must follow the procedure provided in subsection 6(a).

- (3) Non-procurement Certifications: The Authorizing Official for the Operating Administrations, Secretarial Offices, and the recipients of Federal funds should, and are strongly recommended to, include the following certifications in the overall award documents, requiring the recipient to certify whether the recipient:
- (i) has been convicted of a felony violation under any Federal law within the preceding twenty-four (24) months; and
  - (ii) has any unpaid Federal tax delinquency, as defined in section 5, "Key Terms."

If a recipient returns an answer of yes to either of these certifications, the Authorizing Official for the recipient should ensure the issue is reported to the Operating Administration or Secretarial Office. Upon receipt of such a report from the recipient's Authorizing Official, the Operating Administration or Secretarial Office must follow the referral process provided in subsection 6(a).

7. **CONTACT.** If you have specific questions related to this Order, please contact the Office of the Senior Procurement Executive Acquisition Policy Oversight Business Strategy (M-61) at (202) 366-4974 or Financial Assistance Policy and Oversight Division (M-65) at (202) 493-0469.



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