



*Existing Procurement Practices Allowed
Corporations With Federal Tax Debt to
Obtain Contract Awards*

March 26, 2015

Reference Number: 2015-10-011

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

EXISTING PROCUREMENT PRACTICES ALLOWED CORPORATIONS WITH FEDERAL TAX DEBT TO OBTAIN CONTRACT AWARDS

Highlights

Final Report issued on
March 26, 2015

Highlights of Reference Number: 2015-10-011 to the Internal Revenue Service Chief, Agency-Wide Shared Services and Chief Financial Officer.

IMPACT ON TAXPAYERS

Beginning with Fiscal Year (FY) 2012, Federal law has prohibited the IRS from using appropriated funds to enter into a contract with a corporation that has certain Federal tax debt and/or felony convictions, unless the Department of the Treasury Suspension and Debarment official has considered suspending or debarment of the corporation. Awarding contracts to corporations with Federal tax debt conveys a contradictory message in relation to the IRS's mission to ensure compliance with the tax laws.

WHY TIGTA DID THE AUDIT

This review was conducted to determine whether the IRS had well designed and effective management controls in place over the use of FYs 2012 and 2013 appropriated funds to implement the requirements of the Federal law that prohibits the award of contracts to corporations with certain Federal tax debt and/or felony convictions.

WHAT TIGTA FOUND

The IRS did not have effective controls in place to prevent the award of contracts to corporations with certain Federal tax debt and/or felony convictions. TIGTA identified 17 corporations that were awarded a total of 57 contracts valued at about \$18.8 million (including nearly \$18 million for contract modifications) during FYs 2012 and 2013, while they had Federal tax debt. The IRS has not established a definition of

Federal tax debt for this purpose and does not perform proactive tax checks to comply with this Federal law.

In addition, TIGTA found that the IRS did not follow the Department of the Treasury requirement to insert specific language in solicitations requiring corporations to assert whether or not they have certain Federal tax debt and/or felony convictions.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS update current IRS procurement policies and procedures to reflect Treasury Department requirements and ensure that contractor self-certifications are obtained and reviewed prior to awarding contracts. TIGTA also recommended that the IRS develop procedures to determine what constitutes Federal tax debt, as defined by the Consolidated Appropriations Act of 2012, for the purpose of conducting tax checks to comply with this Federal law.

In their response, IRS management agreed with two recommendations and partially agreed with two other recommendations. The IRS plans to conduct training for its contracting officials and monitor contracting actions for compliance with Treasury Department policy. However, the IRS asserts that it was appropriate to award nearly \$18 million of contract modifications to contractors with Federal tax debt.

TIGTA disagrees with this assertion. The contract modifications were related to contracts awarded before the new requirements of the Federal law were effective. However, all 32 modifications were awarded after the law was enacted and the nearly \$18 million to fund the new work related to these modifications was obligated after the new law became effective. Therefore, TIGTA believes that the IRS was prohibited from using appropriated funds to make these awards per the Treasury Department's implementing guidance.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 26, 2015

MEMORANDUM FOR CHIEF, AGENCY-WIDE SHARED SERVICES
CHIEF FINANCIAL OFFICER

FROM:

Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Existing Procurement Practices Allowed
Corporations With Federal Tax Debt to Obtain Contract Awards
(Audit #201410013)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) had well designed and effective management controls in place over the use of Fiscal Years 2012 and 2013 appropriated funds to implement the requirements of the Federal law that prohibits the award of contracts to corporations with certain Federal tax debt and/or felony convictions. This review is included in our Fiscal Year 2015 Annual Audit Plan and addresses the major management challenge of Fraudulent Claims and Improper Payments.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit, (Management Services and Exempt Organizations).



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Table of Contents

Background Page 1

Results of Review Page 4

Existing Practices Allowed Corporations With Federal Tax Debt
and/or a Felony Conviction to Obtain Contracts Page 4

Recommendations 1 through 3:..... Page 8

Recommendation 4:..... Page 9

Appendices

Appendix I – Detailed Objective, Scope, and Methodology Page 10

Appendix II – Major Contributors to This Report Page 13

Appendix III – Report Distribution List Page 14

Appendix IV – Outcome Measure Page 15

Appendix V – Federal Tax Debt Methodology Page 16

Appendix VI – Management’s Response to the Draft Report Page 19



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Abbreviations

CO	Contracting Officer
FY	Fiscal Year
IRS	Internal Revenue Service
SAM	System for Award Management
TIGTA	Treasury Inspector General for Tax Administration



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

Background

The Treasury Inspector General for Tax Administration (TIGTA) and the Government Accountability Office have reported¹ that thousands of contractors have abused the Federal tax system. Federal contractors who abuse the tax system cause significant loss of tax revenue while at the same time benefitting from taxes paid by compliant individuals and corporations. When the Internal Revenue Service (IRS) conducts business with contractors that do not pay their Federal taxes, it conveys a conflicting message in relation to its mission to ensure compliance with tax laws. Beginning in Fiscal Year (FY) 2012, Federal appropriations law enacted new requirements for Federal agencies to determine whether a prospective contractor has Federal tax debt prior to the award of contract actions.

Specifically, beginning with the Consolidated Appropriations Act of 2012² (the Act), covered agencies, including the IRS, have been prohibited from using appropriated funds to enter into a contract³ with any corporation that had 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, where the awarding agency is aware of the unpaid tax liability. Further, none of the funds made available by the Act may be used to enter into a contract with a corporation (or officer or agent of the corporation acting on behalf of the corporation) that has been convicted of a felony criminal violation under any Federal law within the preceding 24 months, unless the Suspension and Debarment official has considered suspending or debarring the corporation and determines that further action to protect the interests of the Government is not required.⁴

On February 2, 2012, the Department of the Treasury issued implementing guidance for the Act to all of its bureaus and offices, including the IRS.⁵ The guidance directed contracting officers

¹ TIGTA, Ref. No. 2013-10-116, *Vendors Had Millions of Dollars of Federal Tax Debt* p. 8 (Sept. 2013). Government Accountability Office, GAO-07-742T, *Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System* p. 1 (Apr. 19, 2007).

² Pub L. 112-74, enacted December 23, 2011.

³ Federal Acquisition Regulation (FAR) § 2.101. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

⁴ The prohibitions in the Consolidated Appropriations Act of 2012 have also been included in subsequent years' appropriations (through FY 2015).

⁵ Acquisition Bulletin No. 12-01 revision 1, Class Deviation, FAR 52.209-5, Certifications Regarding Responsibility Matters (Apr. 2013).



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

(CO) to include language in all solicitations requiring offerors to declare certain Federal tax debt and felony convictions, in all contract awards that used appropriated funds made available by the Act.⁶ The Department of the Treasury subsequently issued implementing acquisition guidance in both FYs 2013 and 2014. See Figure 1 for the contractor representation and certification that was required beginning on February 2, 2012.

Figure 1: Representation by Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under Federal Law

- | |
|--|
| <ol style="list-style-type: none">(1) The offeror, does <input type="checkbox"/> does not <input type="checkbox"/> have any unpaid Federal tax liabilities 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.(2) The offeror, its officers or agents acting on its behalf have <input type="checkbox"/> have not <input type="checkbox"/> been convicted of a felony criminal violation under any Federal law within the preceding 24 months. |
|--|

Source: Department of the Treasury Acquisition Bulletin No. 12-01.

In addition to the representation and certification included in contract solicitations, information is available about prospective contractors in the System for Award Management (SAM).⁷ Contractors must make specific certifications in the SAM related to responsibility matters, such as whether they have been notified of Federal tax debt more than \$3,000 in the preceding three years which remains unsatisfied.

We obtained from the IRS Integrated Procurement System⁸ a list of contracts awarded from December 24, 2011, through September 30, 2013, that used FYs 2012 and 2013 appropriated funds and identified the contractors associated with these awards. We then determined which contractors were corporations. We did not review non-corporate entities, such as sole proprietorships, partnerships, or government agencies receiving contract awards during this period, as they are not regulated by the Act.

The IRS maintains a file of all “unpaid assessments.” These unpaid assessments are legally enforceable claims against taxpayers and consist of taxes, penalties, and interest that have not been paid or abated. For the purposes of this report, we refer to these unpaid assessments as Federal tax debt. Our methodology for identifying corporations with Federal tax debt at the time

⁶ 48 CFR 2.101 (Title 48, FAR) defines a solicitation as “any request to submit offers or quotations to the Government.”

⁷ The SAM consolidated and replaced a number of Federal procurement reporting systems including the Central Contractor Registration, a required point of registration for all contractors wanting to do business with the Federal Government; the Online Representations and Certifications Application, a system that allowed contractors to enter representations and certifications for Federal contracts; and the Excluded Parties List System, a database listing parties excluded from receiving Federal contracts and certain subcontracts, as well as certain types of Federal financial and nonfinancial assistance.

⁸ The IRS procurement system that tracks all incoming requests and captures the information necessary to make awards, such as purchase orders, delivery orders, task orders, contract awards, interagency agreements, and associated modifications.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

of their contract award is included as Appendix V. Our review was limited to reviewing IRS unpaid assessment files that were dated September 30, 2013, and December 31, 2013, because this was the most current Federal tax debt information available. Because each unpaid assessment file represents a snapshot in time, there may have been additional contractors with Federal tax debt that were awarded a contract during our audit period (December 24, 2011, through September 30, 2013) that were not evident in the files we reviewed.

We used the Recovery Operation Center⁹ to identify corporations that had been convicted of a felony within 24 months prior to receiving an IRS contract award. The focus of our review was to determine whether or not the IRS was in compliance with requirements outlined in the Act and the Consolidated and Further Continuing Appropriations Act of 2013.

We held discussions with personnel and analyzed data obtained from the Agency-Wide Shared Services Office of Procurement in Oakland, California; Atlanta, Georgia; Oxon Hill, Maryland; New York, New York; and Farmers Branch, Texas, during the period January 2014 through September 2014. 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 finding and conclusions based on our audit objective. Detailed information about our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

⁹ A central data analytics service used to support fraud detection and oversight of all Federal spending.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Results of Review

***Existing Practices Allowed Corporations With Federal Tax Debt and/or
a Felony Conviction to Obtain Contracts***

***Required representations and certifications were not obtained from corporations
prior to contract award***

TIGTA determined that the IRS was not in compliance with Department of the Treasury implementing guidance which required COs to obtain a self-certification from corporations as to whether they have certain Federal tax debt and/or felony convictions prior to awarding contracts with FYs 2012 and 2013 appropriated funds. The IRS has not established a definition of Federal tax debt⁹ and currently does not perform proactive tax checks specifically to determine if prospective contractors are in compliance with Federal appropriation law. We reviewed a statistical sample of 143 contracts and found that the IRS did not require any of the corporations in our sample to self-certify this information prior to awarding the contracts. Based on our statistical sample, we estimate that at least 94 percent of all the contracts awarded by the IRS in FYs 2012 and 2013 did not include the required self-certification.¹⁰ As a result, COs had no basis to determine whether or not contract awards were being made in compliance with the Act, or whether a referral to the Department of the Treasury Suspension and Debarment official was necessary prior to making the contract award.

To determine the reason that none of the corporations in our sample were required to self-certify prior to award, we interviewed 52 COs and contract specialists responsible for these contracts.¹¹ The COs told us that either they did not recall receiving the Department of the Treasury guidance due to the significant volume of policy information they continually receive, or they did receive it but did not understand how it was to be implemented because they received no training on

⁹ The IRS has not yet determined what constitutes an unpaid Federal tax liability that is consistent with the definition outlined in the Act [*i.e.*, it has not developed an approach to determine the point in the collection process when a corporation's unpaid tax debt is finally determined (all judicial remedies exhausted or lapsed) and is therefore prohibited from being awarded a contract using IRS appropriated funds]. Subsequent to the completion of our fieldwork, the IRS informed us that they will initiate work to develop such a definition.

¹⁰ Our review identified zero contracts in which the CO inserted the required contract clause and obtained the required representation and certification prior to contract award. This resulted in a 94 percent error rate. The point estimate projection is based on a one-sided 95 percent confidence interval. We are 95 percent confident that between 3,738 and 3,970 new contracts (from a population of 3,970) awarded to corporations during our audit period were done so without inserting the required contract clause and obtaining required representation and certification prior to award.

¹¹ In some cases, the COs responsible for the contracts were no longer working at the IRS, in which case we interviewed the responsible COs' managers.



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

these new requirements. The COs also informed us that they did not include the language in solicitations because they did not believe the guidance pertained to procurements below the simplified acquisition level (those valued at less than \$150,000). The COs also stated that they relied on the representations and certifications in the SAM and did not believe additional certifications were required.

The IRS's existing practices for implementation of the Act do not currently include a requirement for the COs to independently verify whether a contractor: (1) is a corporation; (2) has Federal tax debt; or (3) has felony convictions. IRS Office of Procurement Policy officials stated that while the COs could use the SAM to determine if a contractor is in fact a corporation and whether the contractor's SAM certifications are consistent with the representation and certifications made during solicitation, there is no current IRS policy requirement to do so. In addition, the IRS existing practice is to generally rely on an offeror to self-identify as a corporation during the solicitation phase.

For example, contractors must certify in the SAM whether they have or have not, in the past three years, been notified of any Federal tax debt in an amount that exceeds \$3,000 for which the liability remains unsatisfied. The Federal tax liability in question must be finally determined. A Federal tax liability has not been finally determined if it is pending administrative or judicial challenge. The definition of what constitutes a Federal tax liability is generally consistent between the Act language and the SAM certification with respect to the fact that the tax liability must be finally determined (*i.e.*, judicial and administrative challenges have been exhausted). However, the Act sets no dollar threshold or time frame for reporting. This means that a corporation with \$2,500 in Federal tax debt could certify that it does not have any delinquent Federal taxes in the SAM, but would still need to self-certify the outstanding Federal tax debt during the contract solicitation phase prior to award to be compliant with the Act.

Finally, while the COs do not currently request a tax check for the specific purpose of determining compliance with the Act, they are required by policy to request tax checks of prospective contractors for contracts valued more than \$250,000 as part of their responsibility determinations as required by the Federal Acquisition Regulation.¹² This tax check is supposed to be performed by analysts in the Revenue Transactional Analysis Section, Office of the Chief Financial Officer. However, the information provided to the COs by the Chief Financial Officer is not sufficient to allow a CO to determine if a corporation had made a false statement regarding Federal tax liability status during self-certification. These checks provide information only indicating whether or not a prospective contractor has any Federal tax debt and the dollar amount of the balance. In order for these tax checks to be useful in determining contractor compliance with the Act, procedures must be developed by the IRS to determine what constitutes a Federal tax debt that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and whether the contractor corporation is in a current installment

¹² FAR 52.209-5 Certification Regarding Responsibility Matters. Also, per FAR 9.103, it is the policy of the Government to award contracts to only responsible prospective contractors.



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

agreement. This model could then be applied when the Chief Financial Officer conducts its contractor tax checks for the IRS Office of Procurement. These determinations should be provided to agency COs, and if Federal tax debt exists, to the Department of the Treasury Suspension and Debarment official for the purpose of making contract award decisions that are in compliance with the Act, as appropriate..

Seventeen IRS contractors with Federal tax debt received 57 contracts

TIGTA identified 17 corporations with unpaid Federal tax debt at the time of contract award.¹³ These 17 corporations received 57 contracts valued, at the time of our review, at about \$18.8 million. TIGTA identified these corporations as meeting the definition of unpaid Federal tax debt as outlined in the Act. Twenty-five of the 57 contracts were new awards with a total value of almost \$900,000. Thirty-two of the 57 contracts were modifications to existing contracts with a total value of approximately \$18 million. All of these existing contracts were originally initiated as zero dollar awards that did not result in the obligation of FY 2012 appropriated funds. As a result, the new work solicited for under the modifications to existing contracts used previously unobligated FYs 2012 or 2013 appropriated funds and thus was regulated by the requirements of the Act and the Department of the Treasury implementing guidance. The IRS informed us that their interpretation of the Department of the Treasury implementing guidance for the Act excluded modifications to existing contracts. The IRS had improperly interpreted the Department of the Treasury implementing guidance to be only applicable to newly competed contracts awarded subsequent to the enactment of the Act.

The methodology outlined in Appendices IV and V provides additional information on how we performed our analysis.

In the 57 contracts we reviewed for tax compliance, the IRS was unable to provide documentation that the COs included the representation clause required by the Department of the Treasury into contract solicitation documents and did not require the corporations to self-certify through the representation clause whether they had Federal tax debt prior to the award of these contracts. Awarding contracts to corporations with Federal tax debt conveys a conflicting message in relation to the IRS's mission to ensure compliance with the tax laws.

Some IRS contractors did not attest to the presence of unpaid Federal tax debt, as required

Contractors are required to report unpaid Federal tax debt of more than \$3,000 in the SAM. We determined that eight of the 17 corporations had Federal tax debt of more than \$3,000 at the time of contract award, yet did not certify as such in the SAM. Federal Acquisition Regulations and Department of the Treasury guidance require a corporation with a tax liability of more than \$3,000 to be referred to Suspension and Debarment officials. The details of these eight cases

¹³ We eliminated from further review any corporation with less than \$500 in Federal tax debt.



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

with potential false statements¹⁴ have been forwarded to the TIGTA Office of Investigations for further review. Relying on prospective contractors' self-certifications of unpaid Federal tax debt without independent verification of such self-certifications through tax checks increases the possibility that some contractors with unpaid Federal tax debt may be awarded IRS contracts.

One IRS contractor with a felony conviction received three contracts

For the majority of corporations that were awarded a contract during our audit period, there was no indication that the corporations had been convicted of a felony within 24 months of receiving a contract. The Recovery Operation Center could not determine whether any officers or agents acting on behalf of the corporations had been convicted of a felony. However, the Recovery Operation Center determined that the IRS awarded three contracts worth more than \$67,000 to one corporation with a felony conviction. In all three instances, the COs did not include the representation clause required by Department of the Treasury guidance into contract solicitation documents and did not require the contractor to self-certify whether it had felony convictions prior to the award of the contracts. For two of the contracts, the COs stated that because the contracts were simplified acquisitions and, therefore, no formal solicitations were issued, they did not insert the representation clause. We discussed this concern with Department of the Treasury officials responsible for the guidance who stated that the requirement to obtain a representation and certification was implied by the guidance, regardless of whether or not there was a formal solicitation awarded (because the term solicitation is defined as any request for offers or quotations to the Government). For the third contract, the CO stated that the clause was not included by oversight although a solicitation was issued. As a result of the COs not following Department of the Treasury requirements, the responsible COs missed the opportunity to evaluate the integrity of the corporation and did not have sufficient information to determine if a referral of the matter to the Department of the Treasury Suspension and Debarment official was necessary prior to making the contract award.

We determined that independent verification of felony convictions by contracting officials is not practical, as they have no access to data sources that would provide this information, and this task is not consistent with the current duties and requirements of their position. This is further evidence of the need for the COs to obtain the required self-certification from corporations prior to the contract award.

¹⁴ 18 U.S. Code § 1001.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Recommendations

The Chief, Agency-Wide Shared Services, should:

Recommendation 1: Update current IRS procurement policies and procedures to reflect Department of the Treasury requirements.

Management's Response: IRS management partially agreed with this recommendation. The Office of Procurement has taken several steps to disseminate the Department of the Treasury guidance. The Office of Procurement has electronically notified all contracting officials of the current Department of the Treasury policy and scheduled training for contracting officials on inclusion of a new Treasury Department clause, 1052.209-1, "Representation By Corporation Regarding an Unpaid Federal Tax Liability or Conviction of a Felony Criminal Violation Under Federal Law (Deviation 2015-00002) (JAN 2015)."

Office of Audit Comment: It appears that the IRS is taking additional steps to notify and train its contracting officials regarding the Department of the Treasury policy implementing the statutory prohibition of using appropriated funds to contract with corporations that have Federal tax debt. However, we note that the IRS response indicated that no additional policy has been issued. Treasury Acquisition Bulletin No. 15-02, Class Deviation, Prohibition Against Using Funds to Contract With Corporations That Have an Unpaid Federal Tax Liability or Was Convicted of a Felony Conviction Under Federal Law (Jan. 2015) requires Treasury Bureau Chief Procurement Officers to update their internal policies and procedures impacted by this guidance. We continue to believe that IRS internal policies and procedures need to be updated to fully reflect the Department of the Treasury's policy on implementing the requirements of the Act.

Recommendation 2: Ensure that specific language is inserted in all solicitations requiring contractors to assert whether or not they have certain Federal tax debt and/or felony convictions.

Management's Response: The IRS agreed with this recommendation. In accordance with Treasury Acquisition Bulletin 15-02, the Office of Procurement will monitor compliance with the Treasury Acquisition Bulletin and instances of noncompliance, along with corrective action(s) taken to address the matter of noncompliance, will be reported to the Office of the Procurement Executive.

Recommendation 3: Ensure that the self-certifications are obtained and reviewed prior to awarding contract actions, and when Federal tax debt and/or a felony conviction is declared by the prospective contractor, ensure that a referral to the Department of the Treasury Suspension and Debarment official is made and a written determination is received prior to awarding contract actions.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Management's Response: The IRS agreed with this recommendation. In accordance with Treasury Acquisition Bulletin 15-02, compliance will be monitored by the Office of Procurement and any instances of affirmative responses from prospective contractors will be referred to the Suspension and Debarment official for consideration. An award cannot be made until a written determination has been completed by the Suspension and Debarment official stating that no further action is necessary to protect the interest of the Government.

Recommendation 4: The Chief Financial Officer, in consultation with IRS Counsel and the Small Business/Self-Employed Division, should develop procedures to determine what constitutes an unpaid Federal tax liability that is consistent with the definition outlined in the Act. Once a determination of what constitutes an unpaid Federal tax liability has been developed, provide such information to the COs to use in the conduct of comprehensive tax checks and to the Department of the Treasury Suspension and Debarment official for the purpose of making contract award decisions that are in compliance with the Act.

Management's Response: The IRS partially agreed with this recommendation. The Treasury Senior Procurement Executive properly issues guidance on the question of what constitutes a Federal tax debt under the Act, and policy respecting such guidance is set by the Office of Management and Budget's Office of Federal Procurement Policy. The IRS Chief Financial Officer, Counsel, and Small Business/Self-Employed Division will coordinate, as needed, with both offices to ensure definitional and policy consistency when assessing existing procedures and proposing revisions to those procedures.

Office of Audit Comment: We agree with the IRS's plans to develop a policy and methodology to identify noncompliant IRS contractors. However, the IRS did not indicate whether it would be routinely producing and using information on contractors with Federal tax debt to complete comprehensive tax checks that would provide contracting officers and Department of the Treasury Suspension and Debarment officials critical information for the purpose of making contract award decisions that are in compliance with the Act. We continue to believe that the IRS should more proactively identify and prevent contractors with Federal tax debt from receiving contract awards and contract modifications.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine whether the IRS had well designed and effective management controls in place over the use of FYs 2012 and 2013 appropriated funds to implement the requirements of the Federal law that prohibits the award of contracts to corporations with certain Federal tax debt and/or felony convictions. To accomplish this objective, we:

- I. Determined what controls the IRS had in place to prohibit the use of FYs 2012 and 2013 appropriated funds to enter into a contract with any corporation that has a Federal tax debt or a Federal felony conviction unless the Department of the Treasury Suspension and Debarment official has considered suspending or debarring the corporation and determines that further action to protect the interests of the Government is not required.
 - A. Identified and reviewed Department of the Treasury and IRS implementing guidance for the Consolidated Appropriations Act of 2012¹ (the Act) and the Continuing Resolution for FY 2013.²
 - B. Interviewed IRS procurement and program office staff and officials and Department of the Treasury Senior Procurement Executives to identify and document their roles and responsibilities in the implementation of the Act's requirements.
- II. Evaluated the effectiveness of IRS management controls for identifying all corporations with Federal tax debt and felony convictions through the use of data analysis techniques.
 - A. Obtained from the Integrated Procurement System a list of new contracts awarded from December 24, 2011, through September 30, 2013, that used FYs 2012 and 2013 appropriated funds. We assessed the reliability of the Integrated Procurement System data by examining contract data fields such as the contract award number, vendor name, and award date. We determined that the data were sufficiently reliable to use for our audit tests.
 - B. From the list obtained in Step II.A., determined the number of unique contractors associated with these awards.
 - C. From the list of unique contractors identified in Step II.B., determined which contractors were corporations. We determined corporate status based on whether a

¹ Pub L. 112-74, enacted December 23, 2011.

² Section 1105 of the full-year Continuing Resolution for FY 2013 (Pub. L. 113-06) provided that the requirements, authorities, conditions, limitations, and other provisions of the Act remained in effect for FY 2013.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

company was required to file an IRS Form 1120, *U.S. Corporation Income Tax Return*.

- D. Matched the list of corporations identified in Step II.C. with the IRS's unpaid assessment file to identify all corporations with Federal tax debt³ at the time of contract award. First, we identified contractors with Federal tax debt and then we compared the date(s) at which each corporation had Federal tax debt against the date(s) those corporations obtained contracts. See Appendix V for additional information on how this analysis was conducted.
 - E. Provided the Recovery Operations Center the list of corporations identified in Step II.B. to perform a data analysis to determine if any corporations had felony convictions. For any felony convictions identified by the Recovery Operations Center, we determined whether these convictions occurred within the 24 months prior to the contract award.
 - F. For the contracts identified in Steps II.D. and II.E., we determined, to the extent possible, whether: (1) the COs inserted the required contract clause in solicitations awarded on or after February 2, 2012;⁴ (2) the COs obtained representations and certifications from all corporations during the solicitation phase; and (3) these corporations accurately responded to questions regarding Federal tax debt and felony convictions during the contract solicitation phase.
- III. Evaluated the effectiveness of IRS management controls for implementing the Act and the Consolidated and Further Continuing Appropriations Act of 2013.
- A. From the list of new contracts issued to corporations on or after February 2, 2012, we worked with TIGTA's contract statistician to determine a statistical sample of contracts for review. We reviewed a stratified random sample of 150 contracts (30 from each of the five procurement offices) from a population of 3,970 new contracts. We selected a stratified random sample to ensure that we reviewed contracts from each of the five procurement offices and to allow the results to be projected to the overall population. We relied on TIGTA's contract statistician to verify our sampling methods. The IRS was unable to locate seven of the 150 contract files; therefore, we reviewed a total of 143 contracts. Our confidence level is

³ We used the definition of a Federal tax liability (unpaid taxes) as defined in the Act. A Federal tax liability is one 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 liability.

⁴ On February 2, 2012, the Department of the Treasury issued implementing guidance to all bureaus and offices, including the IRS. The guidance instructed COs to include language, which required offerors to declare Federal tax debt and felony convictions, in all solicitations that used funds made available by the Consolidated Appropriations Act of 2012. Treasury Acquisition Bulletin No. 12-01, Class Deviation, FAR 52.209-5, Certifications Regarding Responsibility Matters (Feb. 2012).



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

95 percent with at least a 94 percent error rate. Since our error rate is 100 percent, there is no single precision amount in the usual sense. However, we can state that the lower precision amount is 5.84 percent.

- B. For the selection of contract files chosen in Step III.A., we determined whether the COs: (1) inserted the required contract clause in solicitations; and (2) obtained representation and certifications from all corporations during the solicitation phase.

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 that the following internal controls were relevant to our audit objective: the policies, procedures, and practices for implementing and managing compliance with the Act and the Consolidated and Further Continuing Appropriations Act of 2013 issued by Congress, the Department of the Treasury, and IRS Office of Procurement. In addition, we evaluated whether IRS Procurement personnel were complying with the Act's requirements by interviewing contracting officers and management; reviewing contract file documentation; analyzing Master File, Integrated Data Retrieval System, and unpaid assessment file results to determine whether contractors had Federal tax debt before contract award; and reviewing a statistical sample of contract awarded cases.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Appendix II

Major Contributors to This Report

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*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
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Chief, Agency-Wide Shared Services OS:A
Director, Procurement OS:A:P
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National Taxpayer Advocate TA
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 Deputy Commissioner for Operation Support OS
 Chief, Agency-Wide Shared Services OA:S
 Chief Financial Officer OS:CFO



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Protection of Resources – Potential \$18,810,362 related to 57 contracts in which the corporation awarded the contract had unpaid Federal tax debt at the time of contract award (see page 4).

Methodology Used to Measure the Reported Benefit:

TIGTA identified 57 contracts related to 17 corporations with unpaid Federal tax debt at the time of contract award. At the time of our review, twenty-five of the 57 contracts were new awards with a total value of \$878,636, and 32 of the 57 contracts were modifications to existing contracts with a total value of \$17,931,726.

The 17 corporations associated with these awards had exhausted all administrative and judicial remedies, had two-party consent, and were not part of an active installment agreement. As a result, these awards did not comply with the Department of the Treasury implementing guidance for the Consolidated Appropriations Act of 2012.¹ Requiring potential contractors with unpaid Federal tax debt to become compliant before being awarded contracts by the IRS could increase contractor tax compliance and Federal tax revenue.

¹ Pub L. 112-74, enacted December 23, 2011. In addition, Section 1105 of the full-year Continuing Resolution for FY 2013 (Pub. L. 113-06) provided that the requirements, authorities, conditions, limitations, and other provisions of the Act remained in effect for FY 2013. The Consolidated Appropriations Act of 2014 (Pub. L. 113-76) continued such requirements for FY 2014.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Appendix V

Federal Tax Debt Methodology

The IRS maintains a file of all “unpaid assessments.” These unpaid assessments are legally enforceable claims against taxpayers and consist of taxes, penalties, and interest that have not been paid or abated. For the purposes of this report, we refer to these unpaid assessments as Federal tax debt. This Federal tax debt is generally created when a taxpayer files a return without full payment, an IRS audit identifies additional amounts owed, and the IRS makes adjustments to correct inaccuracies on a return. In addition, a Federal tax debt can be identified as a part of IRS enforcement programs. These enforcement programs generally identify taxpayers who fail to file or timely file required Federal returns, accurately report their taxes, or voluntarily pay the amount of taxes due. The IRS classifies its total unpaid Federal tax inventory into the following four categories:

- Taxes receivable: Assessments that are self-assessed by the taxpayer, an agreed examination, a court ruling in favor of the IRS, *etc.*
- Compliance: Assessments not agreed to by the taxpayer.
- Write-Offs: Assessments that the IRS still has the statutory authority to collect but for which there is no collection potential.
- Memo: Assessments that are not receivables according to Federal financial standards, including duplicate assessments, assessments due to a fraudulent return filed by a taxpayer, assessments involving many tax periods with related and/or intermingled issues, and instances in which an examination/appeal will not be resolved for more than one year.

Under Federal accounting standards, Federal tax debt requires taxpayer or court agreement to be considered Federal tax receivables. Because of this distinction, when we refer to Federal tax debt in this report, we are referring to those debts that require taxpayer or court agreement that are classified by the IRS as taxes receivable and write-offs. Compliance assessment and memo accounts are not considered Federal taxes receivable because they have not been agreed to by the taxpayers or the courts.



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

In order to identify Federal tax debt that met the definition of the Consolidated Appropriations Act of 2012 (the Act),¹ we:

- Removed tax modules that were part of a payment plan.
- Removed tax modules that did not have two-party agreement (*i.e.*, Compliance and Memo Financial Categories).
- We included tax modules identified by a collection status indicating that all judicial and administrative remedies had been exhausted or lapsed, and that were not being paid in a timely manner pursuant to an agreement. Such tax modules included:
 - Currently not collectable – Accounts can be declared currently not collectible for various reasons including the IRS’s inability to locate or contact the taxpayer, death of the taxpayer, bankruptcy, or hardship. A hardship occurs when an individual taxpayer is unable to meet his or her basic living expenses.
 - Fourth notice – The final notice sent to a taxpayer informing of a balance due before the tax module is referred as a tax delinquent account.
 - Taxpayer Delinquency Account – A balance due account of a taxpayer. A separate Taxpayer Delinquency Account exists for each delinquent tax period.
 - Collection Field Function – The unit in the field offices consisting of revenue officers who handle personal contacts with taxpayers to collect delinquent accounts or secure unfiled returns.
 - Automated Collection System – telephone contact system through which telephone assistants collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.
 - Queue – An automated holding file for unassigned inventory of delinquent cases for which the Collection function does not have enough resources to immediately assign the cases for contact.

We reviewed the last two unpaid assessment files in Calendar Year 2013 to obtain the most current information. We compared these unpaid assessment files to a list of corporations that received contracts between December 24, 2011, and September 30, 2013, that used FYs 2012 and 2013 appropriated funds. We determined that:

- 30 corporations had total unpaid Federal tax debt of \$10,240,413 as of September, 30, 2013.

¹ Pub L. 112-74, enacted December 23, 2011. In addition, Section 1105 of the full-year Continuing Resolution for FY 2013 (Pub. L. 113-06) provided that the requirements, authorities, conditions, limitations, and other provisions of the Act remained in effect for FY 2013. The Consolidated Appropriations Act of 2014 (Pub. L. 113-76) continued such requirements for FY 2014.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

- 13 corporations had total unpaid Federal tax debt of \$1,813,333 as of December 31, 2013.²

Based on our methodology described above, we determined that these corporations had exhausted all administrative and judicial remedies, had two-party consent, and were not part of an active installment agreement.

We then removed from further review any corporations that did not have at least \$500 of Federal tax debt. We identified 17 corporations that were awarded 109 contracts.

Next, we compared the date the Federal tax debt appeared in the IRS's unpaid assessment file, with the dates that these 17 corporations were awarded the 109 contracts.

- Of the 109 awards, 57 were made when the corporation had Federal tax debt; these awards had a total value of \$18,810,362 at the time of our review.
 - 25 of the 57 were new awards; these awards had a total value of \$878,636.
 - 32 of the 57 were modifications to existing contracts; these awards had a total value of \$17,931,726. All of these existing contracts were originally initiated as zero dollar awards that did not result in the obligation of FY 2012 appropriated funds. As a result, the new work solicited for under these existing contracts all used previously unobligated fiscal year 2012 and 2013 appropriated funds and thus were regulated by the requirements of the Act and the Department of the Treasury implementing guidance.

² We note that the tax debt decreased considerably between cycle dates September 30, 2013, and December 31, 2013.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

Appendix VI

Management's Response to the Draft Report



CHIEF
AGENCY-WIDE
SHARED SERVICES

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

May 5, 2015

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kevin Q. McIver 
Acting Chief, Agency-Wide Shared Services

SUBJECT: Draft Audit Report – Existing Procurement
Practices Allowed Corporations With Federal Tax
Debt to Obtain Contract Awards - # 201410013

Thank you for the opportunity to respond to the subject draft audit report. We are committed to ensuring that the IRS complies with all regulatory guidance and take this matter seriously.

Of the four recommendations, we fully agree with two and partially agree with two. We will develop and implement the corrective actions detailed in our attached response. However, while we are in agreement with the recommendations, we take exception to those statements of measurable benefits within the report which claim that TIGTA identified a total of 57 contracts, valued at about \$18.8 million, during Fiscal Years 2012 and 2013. These statements are found under "Highlights," within the cover memo from Michael E. McKenney, and on page 6 of the report, under "Seventeen IRS Contractors with Federal Tax Debt Received 57 Contracts." These 57 contracts include 32 modifications which have a total value of approximately \$18 million. In this regard, TIGTA acknowledges on pages 2 and 6, the following:

"The [Treasury] guidance directed contracting officers (CO) to include language in all solicitations requiring offerors to declare certain Federal tax debt and felony convictions, in all contract awards that used appropriated funds made available by the Act." (Page 2)

"Twenty-five of the 57 contracts were new awards with a total value of almost \$900,000. Thirty two of the 57 contracts were modifications to existing contracts with a total value of approximately \$18 million.... The IRS informed us that their interpretation of the Department of the Treasury implementing guidance for the Act excluded modifications to existing contracts. The IRS had interpreted the



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

2

*Department of Treasury implementing guidance to be only applicable to newly
completed contracts awarded subsequent to the enactment of the Act.” (Page 6)*

By including the 32 modifications within TIGTA's calculation, we feel TIGTA improperly interpreted the 2012 and 2013 policies on this matter. The policies were clear in that they only applied to new solicitations. A proper analysis shows the identification of 25 new awards valued at less than \$900,000.

We appreciate the continued support and assistance provided by your office. If you have any questions, please contact me at (202) 317-7500, or a member of your staff may contact David R. Dasher, Acting Director, Procurement, at (240) 613-8500. For matters concerning audit procedural follow-up, please contact Patricia Alvarado, Resource and Operations Management, Agency-Wide Shared Services, at (202) 317-3272.

Attachment



Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards

Attachment

RECOMMENDATION 1:

Update current IRS procurement policies and procedures to reflect Department of the Treasury requirements.

CORRECTIVE ACTION:

We partially agree with this recommendation. The Department of Treasury set forth policy guidance with respect to the implementation of the Consolidated Appropriations Act of 2012, 2013, 2014, and 2015. The Office of Procurement is required to follow this guidance and therefore no additional policy has been issued. The Office of Procurement has taken several steps to disseminate the Treasury guidance. The Office of Procurement has electronically notified all contracting officials of the current Department of Treasury policy, set forth in Treasury Acquisition Bulletin (AB) 15-02, Subject: "Class Deviation – Prohibition Against Using Funds to Contract with Corporations that have an Unpaid Federal Tax Liability or Was Convicted of a Felony Criminal Violation under Federal Law," dated January 7, 2015. The Office of Procurement has met with its managerial personnel and informed them of the Treasury requirement and of the need to ensure compliance with the Treasury policy set forth in the AB. Additionally, it scheduled training for contracting officials on inclusion of a new Treasury clause, 1052.209-71, "Representation By Corporation Regarding an Unpaid Federal Tax Liability or Conviction of a Felony Criminal Violation Under Federal Law (Deviation 2015-00002) (JAN 2015)" on January 27-29, 2015. This training was provided to Headquarters and Area Office contracting officials. The Office of Procurement will continue to disseminate Treasury guidance as it becomes available.

IMPLEMENTATION DATE:

January 29, 2015

RESPONSIBLE PARTY:

Director, Procurement, Agency-Wide Shared Services

CORRECTIVE ACTION MONITORING PLAN:

N/A

RECOMMENDATION 2:

Ensure that specific language is inserted in all solicitations requiring contractors to assert whether or not they have certain Federal tax debt and/or felony convictions.

CORRECTIVE ACTION:

We agree with this recommendation. In accordance with the Treasury AB 15-02, the Office of Procurement will monitor compliance with the AB and instances of non-compliance along with corrective action(s) taken to address the matter of non-compliance will be reported to the Office of the Procurement Executive (OPE).



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

2

IMPLEMENTATION DATE:

February 27, 2015

RESPONSIBLE OFFICIAL:

Director, Procurement, Agency-Wide Shared Services

CORRECTIVE ACTION MONITORING PLAN:

Director, Procurement, will enter accepted corrective actions into Joint Audit Management Enterprise System (JAMES). These corrective actions are monitored on a monthly basis until completion.

RECOMMENDATION 3:

Ensure that the self-certifications are obtained and reviewed prior to awarding contract actions, and when Federal tax debt and/or a felony conviction is declared by the prospective contractor, ensure that a referral to the Department of the Treasury Suspension and Debarment official is made and a written determination is received prior to awarding contract actions.

CORRECTIVE ACTION:

We agree with this recommendation. In accordance with the Treasury AB 15-02, compliance will be monitored by the Office of Procurement and any instances of affirmative responses from prospective contractors will be referred to the Suspension and Debarment official for consideration. An award cannot be made until a written determination has been completed by the Suspension and Debarment official stating no further action is necessary to protect the interest of the Government.

IMPLEMENTATION DATE:

February 27, 2015

RESPONSIBLE OFFICIAL:

Director, Procurement, Agency-Wide Shared Services

CORRECTIVE ACTION MONITORING PLAN:

Director, Procurement, will enter accepted corrective actions into JAMES. These corrective actions are monitored on a monthly basis until completion.



*Existing Procurement Practices Allowed Corporations With
Federal Tax Debt to Obtain Contract Awards*

3

RECOMMENDATION 4:

The Chief Financial Officer, in consultation with IRS Counsel and the Small Business/Self-Employed Division, should develop procedures to determine what constitutes an unpaid Federal tax liability that is consistent with the definition outlined in the Act. Once a determination of what constitutes an unpaid Federal tax liability has been developed, provide such information to the COs to use in the conduct of comprehensive tax checks and to the Department of the Treasury Suspension and Debarment official for the purpose of making contract award decisions that are in compliance with the Act.

CORRECTIVE ACTION:

The IRS partially agrees with this recommendation. The Treasury Senior Procurement Executive properly issues guidance on the question of what constitutes a federal tax debt under the Act, and policy respecting such guidance is set by the Office of Management and Budget's Office of Federal Procurement Policy. The IRS Chief Financial Officer, Counsel, and Small Business/Self-Employed Division will coordinate, as needed, with both offices to ensure definitional and policy consistency when assessing existing procedures and proposing revisions to those procedures.

IMPLEMENTATION DATE:

September 30, 2015

RESPONSIBLE OFFICIALS:

IRS Chief Financial Officer, Counsel, and Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:

Chief Financial Officer, will enter accepted corrective actions into JAMES. These corrective actions are monitored on a monthly basis until completion.