



*Significant Improvements Are Needed in the
Contractor Tax Check Process*

July 20, 2016

Reference Number: 2016-10-049

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.

Redaction Legend:

1 = Tax Return/Return Information

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HIGHLIGHTS

SIGNIFICANT IMPROVEMENTS ARE NEEDED IN THE CONTRACTOR TAX CHECK PROCESS

Highlights

Final Report issued on July 20, 2016

Highlights of Reference Number: 2016-10-049 to the Internal Revenue Service Chief Financial Officer and Chief Procurement Officer.

IMPACT ON TAXPAYERS

Since Fiscal Year 2012, annual appropriation acts have prohibited, with limited exceptions, the IRS from making contract awards to corporations with unpaid Federal tax liabilities. TIGTA has reported previously that the IRS does not effectively screen its contractors for delinquent Federal taxes. As a result, the IRS has been unable to systematically prevent contractors that have not met their Federal tax responsibilities from receiving Federal contract dollars.

WHY TIGTA DID THE AUDIT

This audit was initiated to determine whether contracting officers are completing the required tax checks to ensure that contractors with serious delinquencies do not receive taxpayer funds through contracts with the IRS.

WHAT TIGTA FOUND

The IRS tax check process was not effective in identifying tax delinquent contractors. As a result, the IRS remains at risk of awarding contracts to entities that are not in compliance with tax law. Current IRS policy requires a tax check for all bidders in the competitive range of solicitations greater than \$250,000. TIGTA reviewed a statistical sample of 73 contract awards from a population of 336 contracts of \$250,000 or more awarded during the period September 2012 through August 2014, and found that 21 (29 percent) of the 73 contract awards reviewed did not have evidence that the contracting officer performed the required tax check on the winning bidders. *****1*****

*****1*****

*****1***** In all 73 contracts (100 percent), there was no evidence that the other qualified bidders underwent a tax check, as required.

Several factors need to be addressed for the IRS to have an effective tax check process. For example, tax check results did not contain sufficient information to enable contracting officers to support their responsibility determinations. In addition, policies did not give contracting officers the ability to communicate tax check results to the affected contractor using consent processes when tax check results indicated tax debt. Finally, tax checks were only performed for solicitations greater than \$250,000. As such, contracting officers could inadvertently violate the conditions placed upon the expenditure of appropriated funds.

The Office of the Chief Financial Officer has undertaken efforts to revise and automate the tax check process and has developed criteria to identify contractors prohibited from receiving contracts as outlined in the Federal appropriations law and the Federal Acquisition Regulation. However, the Office of Procurement revision of its tax check policies and procedures had not occurred as of March 2016.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Chief Financial Officer ensure that information provided to contracting officers in tax check results contains information necessary to determine whether the contractor is prohibited from receiving contract awards under Federal appropriations law. TIGTA also made several recommendations to the Chief Procurement Officer to improve the policies and processes that support contracting officer actions related to tax checks.

In their response, IRS management agreed with our recommendations. The IRS has developed a database that automatically identifies tax indebtedness status for contracting officer use in determining contractor eligibility for awards. In addition, a Notice and Consent provision has been drafted to include in all solicitations to advise prospective contractors that a tax check will be conducted prior to contract award. This notice will be published in the Federal register.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 20, 2016

MEMORANDUM FOR CHIEF FINANCIAL OFFICER
CHIEF PROCUREMENT OFFICER

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Significant Improvements Are Needed in the
Contractor Tax Check Process (Audit # 201410022)

This report presents the result of our review to determine whether contracting officers are completing the required tax checks to ensure that contractors with serious delinquencies do not receive taxpayer funds through contracts with the Internal Revenue Service (IRS). This audit was included in our Fiscal Year 2015 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

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

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).



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Table of Contents

[Background](#).....Page 1

[Results of Review](#)Page 4

[The Tax Check Process Was Not Effective in Identifying Tax
Delinquent Contractors](#).....Page 4

[Recommendations 1 and 2:](#).....Page 7

[Recommendations 3 and 4:](#).....Page 8

Appendices

[Appendix I – Detailed Objective, Scope, and Methodology](#).....Page 9

[Appendix II – Major Contributors to This Report](#).....Page 11

[Appendix III – Report Distribution List](#).....Page 12

[Appendix IV – Outcome Measures](#).....Page 13

[Appendix V – Management’s Response to the Draft Report](#).....Page 14



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Abbreviations

CFO	Chief Financial Officer
CO	Contracting Officer
FAR	Federal Acquisition Regulation
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration



Significant Improvements Are Needed in the Contractor Tax Check Process

Background

In January 2010, the President issued a memorandum directing the Department of the Treasury and the Office of Management and Budget to block awards of Government contracts to companies that were delinquent on their taxes.¹ The memorandum also required the Department of the Treasury to offer recommendations on ways to better identify contractors with delinquent tax debts.

Further, since Fiscal Year (FY) 2012,² language in the Internal Revenue Service (IRS) annual appropriations has prohibited the IRS from using appropriated funds to enter into a contract with any corporation that had unpaid Federal tax liability:

- That has been assessed.
- For which all judicial and administrative remedies have been exhausted or have lapsed.
- That is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- In which the awarding agency is aware of the unpaid tax liability and/or certain felony convictions, unless the Suspension and Debarment Official has first considered suspending or debarring the corporation and determines making the award is in the best interests of the Government.³

Under the Federal Acquisition Regulation (FAR),⁴ the Government relies upon three primary means to avoid doing business with nonresponsible contractors (to include those with serious tax delinquencies): responsibility determinations, contractor representations and certifications, and exclusion, *i.e.*, suspension and debarment.

It is the policy of the Federal Government that purchases shall be made from, and contracts shall be awarded only to, responsible contractors that are otherwise qualified and eligible to receive an award under applicable laws and regulations.⁵ Contracting officers (CO) are required to perform responsibility determinations prior to each contract award by using the FAR 9.104-1 standards and consider information submitted by the contractor or information they research or acquire from other sources. To be considered responsible, the prospective contractor must meet the standards in FAR 9.104, and specifically: 1) have adequate financial resources to perform the

¹ Pub. L. No. 112-56.

² Pub. L. No. 112-74, was enacted December 23, 2011.

³ The prohibitions in the Consolidated Appropriations Act of 2012 have also been included in subsequent years' appropriations (through FY 2016).

⁴ 48 C.F.R. pts. 1-53 (2009).

⁵ FAR 9.103.



Significant Improvements Are Needed in the Contractor Tax Check Process

contract or the ability to obtain those resources; 2) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments; 3) have a satisfactory performance record; 4) have a satisfactory record of integrity and business ethics; 5) have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; 6) have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and 7) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

IRS Office of Procurement Policy and Procedures Memorandum No. 9.1 (dated August 27, 2012) establishes processes for the COs to obtain and use information provided by the Chief Financial Officer (CFO) Revenue Transactional Analysis Office concerning the Federal tax indebtedness of prospective contractors for the purpose of determining contractor responsibility and eligibility for awards in conformance with Federal appropriations law. As part of that process, IRS policy requires the COs to request a tax check on all contractors under consideration for awards greater than \$250,000. The IRS CFO maintains unpaid tax assessment data on individuals and business entities that include the amount of the unpaid tax, and any assessed penalty and interest, which the CFO uses to determine taxpayer compliance and is the basis for the tax results provided to the requesting CO. Access to IRS contractor return information is permitted for the COs in accordance with Internal Revenue Code (I.R.C.) Section (§) 6103(h)(1) as having a tax administration basis. Under the authority of I.R.C. § 6103(c), a taxpayer (both individuals and entities) can consent to the IRS disclosing its return information to anyone the taxpayer chooses, simply by providing a written request. If during the procurement process a question should arise regarding a prospective contractor's tax compliance, the IRS may request the contractor to consent to the disclosure of its return information using Form 8821, *Tax Information Authorization*.

In March 2015,⁶ the Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS had awarded contracts valued at approximately \$18.8 million to 17 corporations that had Federal tax debt, and found that eight of these contractors did not accurately attest to the presence of their unpaid Federal tax debt in the System of Award Management, as required by the FAR. TIGTA recommended that the IRS update current procurement policies and procedures to reflect the Department of the Treasury's 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 2012,⁷ for the purpose of conducting tax checks to comply with this Federal law. While the IRS has implemented some of these recommendations, two remain open as of March 2016. In particular, IRS Office of Procurement

⁶ TIGTA, Ref. No. 2015-10-011, *Existing Procurement Practices Allowed Corporations With Federal Tax Debt to Obtain Contract Awards* (March 2015).

⁷ Pub. L. No. 112-74, was enacted December 23, 2011.



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

policy and procedures related to tax checks and responsibility determinations are outdated and need to be updated to reflect Federal appropriation law and current FAR requirements.

This review was performed at the Office of the CFO and the Office of Procurement, Agency-Wide Shared Services, in Oakland, California; Washington, D.C.; Atlanta, Georgia; New York, New York; and Dallas, Texas, and the Small Business/Self-Employed Division, Office of Collection Policy in Maitland, Florida, during the period December 2014 through March 2016. 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.



Significant Improvements Are Needed in the Contractor Tax Check Process

Results of Review

The Tax Check Process Was Not Effective in Identifying Tax Delinquent Contractors

Several factors need to be addressed for the IRS to have an effective tax check process. For example, tax check results did not contain sufficient information to enable COs to support their responsibility determinations. In addition, policies did not give COs the ability to communicate tax check results to the affected contractor using consent processes when tax check results indicated tax debt. Finally, tax checks were only performed for solicitations greater than \$250,000 potentially causing COs to inadvertently violate the conditions placed upon the expenditure of appropriated funds.

COs did not consistently follow IRS tax check policies

The IRS tax check process was not effective in identifying tax delinquent contractors. As a result, the IRS remains at risk of awarding contracts to entities that are not in compliance with tax law. Federal appropriations law prohibits the IRS from awarding contracts to tax delinquent corporations. Current IRS policy requires a tax check for all bidders in the competitive range (under consideration for award) on solicitations greater than \$250,000.8 This policy is communicated to the COs through an Office of Procurement Policy and Procedures Memorandum. We reviewed a random statistical sample of 73 contracts9 from a population of 336 contracts with awards of \$250,000 or more (these awards were not modifications to existing contracts), awarded during the period of September 2012 through August 2014. We determined that 21 (29 percent) of the 73 contract awards did not contain documentation in the contract files that a tax check had been performed on the winning bidder prior to the award. *****1*****
*****1*****10 *****
*****1*****
1**. In all 73 contracts (100 percent), we found no support that tax checks had been completed on the other qualified bidders, as required. In the 52 contract awards in which tax checks were performed prior to award, we also identified three occurrences in which the tax check results showed a combined total of \$13,688 in unpaid tax balance amounts, and the COs

8 FAR 2.1 defines "Solicitation" as "any request to submit offers or quotations to the Government." Thus, even in a sole source environment, a CO must request an offer or quotation.
9 We requested 75 contracts. However, one contract could not be located due to a pending office move, and one contract could not be retrieved from archived storage in time for the completion of our fieldwork.
10 A finally determined and assessed tax debt is a tax liability that has been assessed and 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 unpaid Federal tax liability.



Significant Improvements Are Needed in the Contractor Tax Check Process

awarded contracts totaling more than \$2 million. However, we found no evidence to indicate that the responsible COs attempted to obtain additional information to identify whether these unpaid tax balances were finally determined and assessed, or if the contractors were current in a repayment plan. In two of these instances, the required tax debt referral to the Office of Collection Policy to facilitate the collection of the tax debt was not made. The responsible COs we interviewed did not provide a justification for why these referrals were not made. Not making appropriate referrals to the Office of Collection Policy may result in missing the opportunity to timely collect tax debt because the IRS Collection function was not made aware that there were contractor payments that it could levy. The responsible COs we interviewed were generally aware of their obligation to conduct tax checks and explained the lack of tax checks as an oversight. Additionally, some COs relied on contractor tax checks conducted on a previous contract award without obtaining updated tax check results for the current award.

Finally, the COs did not consistently follow the IRS internal policy requiring them to perform tax checks on all contractors under consideration for contract award. Specifically, none of the contract files for the 73 contract awards showed evidence that the other contractors under consideration for award received a tax check. The COs responsible for requesting these tax checks stated that it was generally their practice to only request tax checks for the contractor selected to receive the contract award. The COs cited reasons such as time constraints and a lack of familiarity or understanding with all the elements of the related Policy and Procedures Memorandum to explain why they did not perform tax checks on all contractors under consideration. Not performing comprehensive tax checks may result in the IRS awarding contracts to contractors that are ineligible to receive contracts under Federal appropriations law and the FAR responsibility requirements.

Tax check results provided by the Office of the CFO did not contain sufficient information to enable COs to support their responsibility determinations

Tax check results provided by the CFO Revenue Transactional Analysis Office did not contain sufficient information to enable COs to determine if bidders with tax debt were ineligible for an IRS contract award. Corporations with qualifying tax debt cannot pass the responsibility test that requires the contractor to be otherwise qualified and eligible to receive an award under applicable laws and regulations. The Office of the CFO provides information on the tax compliance status of contractors under consideration for award to the COs requesting tax checks. The information provided to the COs contains information such as the type and amount of Federal tax owed. However, no information is provided to the COs that would allow them to determine whether unpaid Federal taxes identified in a tax check were finally determined, assessed, and not in a current repayment plan. The presence of such unpaid Federal taxes could prevent the contractor from receiving an award under law. As a result, the COs cannot fully determine how the tax debt of the bidding contractor affects its eligibility to receive an award under Federal appropriations law. Further, the COs who have not established whether tax debt identified through a tax check falls under the restrictions contained in the annual appropriations may not be in full compliance with FAR requirements for determining contractor responsibility.



Significant Improvements Are Needed in the Contractor Tax Check Process

During our fieldwork, the Office of the CFO had undertaken efforts to revise the tax check process to move from a manual tax check process to an automated business and individual Master File tax check process with requested implementation dates of on/or before July 1, 2016, and February 2017, respectively. These new tax check processes will provide information on finally determined and assessed tax debt, which is not in a current repayment plan to CO's on all types of business entities.¹¹ As a result, COs will have the tax results they need in order to conform to the requirements and prohibitions outlined in the FAR and Federal appropriations law. The Office of Procurement has not changed its tax check process, but does anticipate issuing a revised policy in August of 2016. As a result, some recommendations made in our March 2015 report remain open, and the IRS remains unable to systematically prevent contractors that have not met their Federal tax responsibilities from receiving Federal contract dollars.

Procurement policies do not give COs the ability to communicate tax check results to the affected contractor

Current Office of Procurement policies and procedures are outdated, do not accurately reflect the tax debt prohibitions in Federal appropriations law, and do not allow communication between contractors and COs to resolve award eligibility matters specific to tax debt. The FAR provides that COs can request additional information from the bidder to assist in their determination of responsibility, and requires that these requests be made promptly, upon receipt of offers, and has placed the burden on the bidder to demonstrate its responsibility to perform the proposed contract. Tax information is generally confidential, and prohibited from disclosure, under I.R.C. § 6103, unless consent is obtained from the taxpayer. Currently, IRS contract solicitations do not include a notification to prospective contractors that they will be subject to a tax check as part of the contract award process. In addition, the IRS does not request or obtain consent for the disclosure and use of contractor tax information for determining the contractor's eligibility under Federal appropriations law. Consequently, COs do not currently have the ability to communicate tax check results with bidders under consideration for award.¹²

By having contractors provide consent for disclosure in instances in which tax checks indicate tax debt, the COs could then advise the contractor of the tax issue, thereby allowing the contractor the ability to demonstrate its tax compliance or the presence of a repayment agreement and thus be accorded due process. If the potential contractor failed to provide evidence to prove

¹¹ Entities covered by the new tax check processes (Business Master File and Individual Master File) that will provide CO's with finally determined and assessed tax check results include sole proprietors, partnerships, limited liability companies, non-profit organizations and corporations.

¹² I.R.C. § 6103 (Confidentiality and Disclosure of Returns and Returns Information) generally prohibits the disclosure of tax payer information, including tax debts. Access to IRS contractor return information is permitted for the COs pursuant to I.R.C. § 6103(h)(1) as having a tax administration basis. Consent from or notification of the contractor is not required to perform the tax check. However, unless the IRS obtains consent from the taxpayer, this tax information cannot be disclosed outside of the IRS.



Significant Improvements Are Needed in the Contractor Tax Check Process

tax compliance, the CO could have a basis to find them nonresponsible and deny the contract award. Corporations could still receive an IRS contract if the Department of the Treasury has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Tax checks were only performed for procurements of more than \$250,000

Currently, IRS internal policy only requires the performance of tax checks on procurements valued at greater than \$250,000. However, Federal appropriations law prohibits the IRS from using any appropriated funds to enter into a contract with any corporation that has certain unpaid Federal tax liabilities, and does not provide a minimum dollar threshold. Based on a review of the applicable laws and regulations, and discussions with the Department of the Treasury's Senior Procurement Executive, TIGTA believes the IRS should be reviewing all solicitations that use appropriated funds to determine the potential contractor's overall responsibility and specific eligibility under Federal appropriations law, prior to making an award. Otherwise, the IRS risks doing business with contractors that are not tax compliant and potentially ineligible to receive an award under law.

Recommendations

Recommendation 1: The CFO should ensure that tax check results provided to COs contain relevant tax information necessary to determine whether the contractor is prohibited from receiving contract awards under Federal appropriations law.

Management's Response: The IRS agreed with this recommendation. The CFO collaborated with the Chief Technology Officer to develop a database that automatically identifies tax indebtedness status, in accordance with agreed upon criteria, for COs use in determining award eligibility as part of the responsibility determination.

The Chief Procurement Officer should:

Recommendation 2: Ensure that Office of Procurement tax check policies and procedures provide COs the ability to communicate tax check results, which indicate tax debt, to the affected contractors and obtain their consent to use the tax information for purposes of determining contractor responsibility and eligibility for award.

Management's Response: The IRS agreed with this recommendation. A Notice and Consent provision has been drafted to advise prospective contractors that a tax check will be conducted prior to contract award and that an affirmative delinquent Federal tax liability will result in ineligibility for award, except where the Department of the Treasury Suspension and Debarment Official has considered suspension or debarment of the contractor, and made a written determination that neither of these actions are necessary to protect the interests of the Government. The draft provision must be posted in the Federal Register and will be implemented in all IRS solicitations immediately upon



Significant Improvements Are Needed in the Contractor Tax Check Process

publication of an interim rule. CO's will notify the apparent successful offeror when IRS tax records show they have a delinquent Federal tax liability and will request documentation from the offeror that demonstrates the offeror's payment of the delinquent Federal tax liability.

Recommendation 3: Ensure procurement policies for responsibility determinations implement the requirements of Federal appropriations law. Further, provide mandatory training to COs to strengthen their understanding of the proper procedure for requesting a tax check, how to use the tax check results to determine contractor award eligibility, the process for communicating the results to the contractor (as appropriate), and how to properly document the contract award decisions in their contract files.

Management's Response: The IRS agreed with this recommendation. The Office of Procurement has drafted a new version of the Tax Check Policy and Procedures Memorandum, as well as a complementary document that explains the process and steps COs must take to determine contractor eligibility prior to contract award, regardless of dollar value, in order to comply with Federal appropriations law. All IRS COs completed mandatory Lessons Learned training as of June 2, 2016. This training included a module titled "Tax Check Changes Overview" to ensure that COs are familiar with requirement to perform a tax check prior to contract award.

Recommendation 4: Ensure that tax checks are requested on all solicitations, regardless of award amount, so COs do not inadvertently violate the conditions placed upon the expenditure of appropriated funds.

Management's Response: The IRS agreed with this recommendation. A Notice and Consent provision has been drafted to advise prospective contractors that a tax check will be conducted prior to award and that an affirmative delinquent tax liability results in ineligibility of award, except where the Department of the Treasury Suspension and Debarment Official has considered suspension or debarment of the contractor and made a written determination that neither of these actions are necessary to protect the interests of the Government. The draft provision must be published as a Notice in the Federal Register. Upon publication of the interim rule, the CO shall immediately insert the provision in all IRS solicitations.



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective of this review was to determine whether IRS COs are completing the required tax checks to ensure that contractors with serious delinquencies do not receive taxpayer funds through contracts with the IRS. To accomplish this audit objective, we:

- I. Assessed the adequacy of the criteria, policies, and guidelines the IRS has in place over the process of completing tax checks on potential contractors.
 - A. Identified and reviewed Federal laws and regulations and IRS policies and guidance for the tax check process.
 - B. Interviewed key IRS personnel from the Office of Collection Policy, Small Business/Self-Employed Division; Office of the CFO; Agency-Wide Shared Services; and other IRS management officials; and the Department of the Treasury's Senior Procurement officials, and documented their roles and responsibilities in the tax check process.
- II. Determined whether tax checks were effectively completed and processed.
 - A. Requested a list of procurement contracts dated September 2012 through August 2014 and determined if all required tax checks of contractors awarded contracts on solicitations exceeding \$250,000 were performed.
 - B. Determined if the completion of a tax check was documented in accordance with policy guidance.
- III. Determined whether tax liabilities identified through the tax check process were tracked and collected.
 - A. Determined whether all contractors with identified qualifying tax liabilities were referred to the Office of Collection Policy.
 - B. Based on the results identified in Step II.A., worked with TIGTA's statistician to determine the proper case selection and sampling approach. We selected a random statistical sample of 73 new award (not modification) contracts from a total population of 336 contracts. A statistical sample was used to ensure that all contracts in our population had an equal chance of being selected.



Significant Improvements Are Needed in the Contractor Tax Check Process

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: policies and procedures guiding the request and performance of tax checks, IRS efforts to develop a definition of unpaid tax debt consistent with appropriations law, and required CO actions when receiving tax check results identifying the presence of unpaid Federal tax debt. We reviewed these controls by researching and reviewing relevant guidelines and criteria associated with the tax check process, selecting and reviewing a sample of IRS contracts awarded between September 2012 and August 2014, and interviewing responsible contracting and management officials.



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Appendix II

Major Contributors to This Report

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Alicia P. Mrozowski, Director

Seth Siegel, Audit Manager

Evan Close, Lead Auditor

Trisa Brewer, Auditor



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Commissioner for Operations Support
Deputy Commissioner for Services and Enforcement
Deputy Chief Financial Officer
Director, Office of Audit Coordination



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Appendix IV

Outcome Measures

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 – *****1*****
*****1*****
*****1*****

Methodology Used to Measure the Reported Benefit:

We reviewed the tax compliance status of contractors for 21 of our 73 random statistically sampled contracts for which a tax check was not performed in order to determine if there was a balance due at the time of contract award. *****1*****
*****1*****
*****1*****.



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

Appendix V

Management's Response to the Draft Report



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

July 7, 2016

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Shanna R. Webbers *Shanna R. Webbers*
Chief Procurement Officer

Subject: Draft Audit Report – Significant Improvements Are
Needed in the Contractor Tax Check Process
(Audit #201410022)

Thank you for the opportunity to respond to the subject draft audit report. We are committed to improving our processes and controls regarding Contractor Tax Checks.

The IRS has reviewed the draft report and agrees with the recommendations. The Office of Procurement has drafted a new version of the Tax Check Policy and Procedures (P&P) Memorandum (P&P 9.1)¹. Additionally, a complementary document providing Procedures, Guidance, and Information (PGI) has been drafted that explains the process and steps Contracting Officers (COs) must take prior to contract award to implement the requirements outlined in P&P 9.1. In order to advise prospective contractors that the IRS is expanding the requirements set forth in FAR 52.209-11², a Notice and Consent provision³ has been drafted indicating a tax check will be performed on the apparent successful offeror prior to award to determine eligibility. The IRS intends to implement the tax check process in a phased approach, starting with corporations in order to comply with Federal appropriations law⁴. Phase 2 of implementation will include validating authorities and processes required to conduct tax checks on all entities prior to award.

Additionally, the IRS agrees with the importance of protecting resources and the audit outcome measures. The IRS took action and collected the full delinquent tax liability on the contractor cited in the report. The new P&P 9.1 and PGI require COs to conduct a

¹ P&P 9.1, associated PGI, and provision only apply to IRS appropriated funded contracts.

² FAR 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law (Feb 2016)

³ Provision 1009.209-9002, Notice and Consent to Disclose and Use of Tax Information

⁴ Sections 744 and 745 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar provisions, if contained in subsequent appropriations acts.



*Significant Improvements Are Needed in the Contractor
Tax Check Process*

tax check, regardless of dollar value, on the apparent successful offeror prior to award and that an affirmative delinquent tax liability results in ineligibility of award, except where the Treasury Suspension and Debarment Official (SDO) has considered suspension or debarment of the contractor and made a written determination that neither of these actions are necessary to protect the interests of the Government.

We appreciate the continued support and assistance provided by your office. We will develop and implement the corrective actions detailed in our attached response. If you have any questions, please contact me at (202) 317-3473. For matters concerning audit procedural follow-up, please contact Michael Crawford, Office of Procurement Policy at (202) 613--5838.

Attachment



Significant Improvements Are Needed in the Contractor Tax Check Process

Attachment

RECOMMENDATION 1:

The CFO should ensure that tax check results provided to COs contain relevant tax information necessary to determine whether the contractor is prohibited from receiving contract awards under Federal appropriations law.

CORRECTIVE ACTION:

The IRS agrees with this recommendation. CFO collaborated with the Chief Technology Officer (CTO) to develop a database that automatically identifies tax indebtedness status, in accordance with agreed upon criteria, for Contracting Officer (CO) use in determining award eligibility as part of the responsibility determination.

IMPLEMENTATION DATE: June 30, 2016

RESPONSIBLE OFFICIAL: Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN:

The IRS automatically receives data from the System for Award Management (SAM), which is used as the basis for comparing vendors that could potentially do business with the IRS and tax indebtedness status. Each week a new report is posted on a secure server that can be accessed by personnel within the Office of Procurement.

RECOMMENDATION 2:

Ensure that Office of Procurement tax check policies and procedures provide COs the ability to communicate tax check results, which indicate tax debt, to the affected contractors and obtain their consent to use the tax information for purposes of determining contractor responsibility and eligibility for award.

CORRECTIVE ACTION:

The IRS agrees with this recommendation. A Notice and Consent provision⁵ has been drafted to advise prospective contractors that a tax check will be conducted prior to award and that an affirmative delinquent tax liability results in ineligibility of award, except where the Treasury Suspension and Debarment Official (SDO) has considered suspension or debarment of the contractor and made a written determination that neither of these actions are necessary to protect the interests of the Government. The draft provision must be published as a Notice in the Federal Register prior to use so the Office of Procurement is coordinating with the Treasury Office of the Procurement Executive to request an interim rule. Upon publication of the interim rule, the CO shall immediately insert the provision in all IRS solicitations, including solicitations for acquisitions of commercial items under FAR part 12.

⁵ Treasury approval of the proposed draft provision is set forth in DTAP 1001.304(b)(1)



Significant Improvements Are Needed in the Contractor Tax Check Process

In accordance with draft provision, the Offeror affirms by submission of its offer or quotation consent to the disclosure and use of its tax information by officers and employees of the Department of the Treasury, for determining the Offeror's eligibility to receive a contract, including but not limited to implementation of the statutory prohibition of making an award to corporations that have a delinquent federal tax liability (see FAR 9.104-5(b)).

The COs will notify the apparent successful offeror that IRS tax records show they have a delinquent Federal tax liability regardless if the result of the tax check supports or does not support the offeror's response in paragraph (b)(1) of the provision at FAR 52.209-11 or paragraph (q)(2)(i) of the provision at FAR 52.212-3 (see FAR 9.104-5(b)). Additionally, the CO shall request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's payment of the delinquent federal tax liability. Since COs are not tax professionals the Office of Procurement is coordinating with IRS Chief Counsel and Small Business/Self Employed Collection Operations to develop standard language the CO would use if the offeror asks specific questions related to the tax indebtedness status to ensure consistent guidance is provided to the vendor community.

IMPLEMENTATION DATE: October 5, 2016

RESPONSIBLE OFFICIAL: Chief Procurement Officer

CORRECTIVE ACTION MONITORING PLAN:

The IRS intends to implement the tax checks process in a phased approach, starting with corporations in order to comply with Federal appropriations law. Phase 2 of implementation will include validating authorities and processes, required to conduct tax checks on all entities prior to award. Furthermore, the Office of Procurement has requested a system change be incorporated in its contract writing system, Integrated Procurement System, so the provision will automatically be included in all IRS solicitations, regardless of dollar amount, upon publication of the interim rule in the Federal Register.

RECOMMENDATION 3:

Ensure procurement policies for responsibility determinations implement the requirements of Federal appropriations law. Further, provide mandatory training to COs to strengthen their understanding of the proper procedure for requesting a tax check, how to use the tax check results to determine contractor award eligibility, the process for communicating the results to the contractor (as appropriate), and how to properly document the contract award decisions in their contract files.

CORRECTIVE ACTION:

The IRS agrees with this recommendation. The Office of Procurement has drafted a new version of the Tax Check Policy and Procedures (P&P) Memorandum (P&P 9.1), as well as a complementary document providing Procedures, Guidance, and



Significant Improvements Are Needed in the Contractor Tax Check Process

Information (PGI) that explains the process and steps COs must take prior to contract award, regardless of dollar value, in order to comply with Federal appropriations law.

All IRS COs completed mandatory Lessons Learned training by June 2, 2016. It included a module titled "Tax Check Changes Overview" to ensure COs are familiar with the requirement to perform a tax check prior to contract award. The training provided preliminary instructions outlined in the draft PGI for conducting tax checks and reminded COs of the requirement to perform responsibility determinations, in accordance with FAR 9.103(a), and to document the decision and findings in the contract file via use of the prescribed *Determination of Responsibility or Non-Responsibility* form.

The COs will notify the apparent successful offeror that IRS tax records show they have a delinquent Federal tax liability regardless if the result of the tax check supports or does not support the offeror's response in paragraph (b)(1) of the provision at FAR 52.209-11 or paragraph (q)(2)(i) of the provision at FAR 52.212-3 (see FAR 9.104-5(b)). Additionally, the CO shall request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's payment of the delinquent federal tax liability. Since COs are not tax professionals the Office of Procurement is coordinating with IRS Chief Counsel and Small Business/Self Employed Collection Operations to develop standard language the CO would use if the offeror asks specific questions related to the tax indebtedness status to ensure consistent guidance is provided to the vendor community.

IMPLEMENTATION DATE: October 5, 2016

RESPONSIBLE OFFICIAL: Chief Procurement Officer

CORRECTIVE ACTION MONITORING PLAN:

The Office of Procurement will update the training, as necessary, once P&P 9.1, PGI, and the provision are published. Annual refresher training will be required for all COs. The tax check requirement will be added to all internal quality control checklists. A control plan will be developed to audit contract files for accuracy and completeness.

RECOMMENDATION 4:

Ensure that tax checks are requested on all solicitations, regardless of award amount, so COs do not inadvertently violate the conditions placed upon the expenditure of appropriated funds.

CORRECTIVE ACTION:

The IRS agrees with this recommendation. A Notice and Consent provision⁶ has been drafted to advise prospective contractors that a tax check will be conducted prior to award and that an affirmative delinquent tax liability results in ineligibility of award, except where the Treasury Suspension and Debarment Official (SDO) has considered suspension or debarment of the contractor and made a written determination that neither of these actions are necessary to protect the interests of the Government. The

⁶ Treasury approval of the proposed draft provision is set forth in DTAP 1001.304(b)(1)



Significant Improvements Are Needed in the Contractor Tax Check Process

draft provision must be published as a Notice in the Federal Register prior to use so the Office of Procurement is coordinating with the Treasury Office of the Procurement Executive to request an interim rule. Upon publication of the interim rule, the CO shall immediately insert the provision in all IRS solicitations, including solicitations for acquisitions of commercial items under FAR part 12.

IMPLEMENTATION DATE: October 5, 2016

RESPONSIBLE OFFICIAL: Chief Procurement Officer

CORRECTIVE ACTION MONITORING PLAN:

The IRS intends to implement the tax checks process in a phased approach, starting with corporations in order to comply with appropriations law. Phase 2 of implementation will include validating authorities and processes required to conduct tax checks on all entities prior to award. The Office of Procurement has requested a system change be incorporated in its contract writing system, Integrated Procurement System, so the provision will automatically be included in all IRS solicitations, regardless of dollar amount, upon publication of the interim rule.