

# **FEMA Must Strengthen Its Responsibility Determination Process**





## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

July 7, 2021

MEMORANDUM FOR: The Honorable Deanne Criswell  
Administrator  
Federal Emergency Management Agency

Randolph D. Alles  
Deputy Under Secretary for Management  
Department of Homeland Security

FROM: Joseph V. Cuffari, Ph.D. JOSEPH V  
Inspector General CUFFARI

SUBJECT: *FEMA Must Strengthen Its Responsibility Determination Process*

Digitally signed by JOSEPH  
V CUFFARI  
Date: 2021.07.03 08:55:16  
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For your action is our final report, *FEMA Must Strengthen Its Responsibility Determination Process*. We incorporated the formal comments provided by your office.

The report contains one recommendation aimed at improving FEMA's responsibility determination process. Your office concurred with our recommendation. Based on information provided in your response to the draft report, we consider the recommendation open and resolved. Once your office has fully implemented the recommendation, please submit a formal closeout letter to us within 30 days so that we may close the recommendation. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to [OIGAuditsFollowup@oig.dhs.gov](mailto:OIGAuditsFollowup@oig.dhs.gov).

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Bruce Miller, Deputy Inspector General for Audits, at (202) 981-6000.



# DHS OIG HIGHLIGHTS

## *FEMA Must Strengthen Its Responsibility Determination Process*

July 7, 2021

### Why We Did This Audit

We received a congressional request to audit the FEMA contracting process. In response to this request, we conducted this audit to determine whether FEMA contracting personnel followed Federal regulations, DHS policies, and FEMA procedures when awarding disaster response contracts.

### What We Recommend

We made one recommendation that, when implemented, should help strengthen FEMA's responsibility determination process.

#### **For Further Information:**

Contact our Office of Public Affairs at (202) 981-6000, or email us at [DHS-OIG.OfficePublicAffairs@oig.dhs.gov](mailto:DHS-OIG.OfficePublicAffairs@oig.dhs.gov)

### What We Found

Federal Emergency Management Agency (FEMA) contracting personnel did not always take the necessary steps to ensure prospective contractors could deliver goods and services during compressed disaster response timeframes. Specifically, in reviewing 16 contract files, we found files that did not have relevant Federal tax information, were missing information on the contractor's past performance evaluations, and contained incomplete and inconsistent documentation. We attribute these deficiencies to FEMA not providing guidance on procedures for implementing Federal regulations to contracting personnel, and the Department of Homeland Security removing guidance from its acquisition manual that is used by component personnel.

As a result of inadequate guidance, FEMA personnel awarded contracts without making fully informed determinations as to whether prospective contractors could meet contract demands. If contractors cannot meet demands, FEMA may have to cancel contracts it has awarded, which has happened in the past and continues. In fact, between March and May 2020, FEMA awarded and canceled at least 22 contracts, valued at \$184 million, for crucial supplies in response to the national COVID-19 pandemic. By awarding contracts without ensuring prospective contractors can meet contract demands, FEMA will continue wasting taxpayer dollars and future critical disaster and pandemic assistance will continue to be delayed.

### FEMA Response

The Department concurred with our recommendation. We included a copy of the Department's response in its entirety in Appendix A.



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### Background

The Federal Emergency Management Agency's (FEMA) primary mission is to provide support to states, local and tribal governments, and certain private nonprofit organizations to help with disaster recovery. To help carry out its mission, FEMA often awards contracts. Disaster-related contracting is essential to survivors in affected communities receiving critical life and property-saving goods and services, such as food, water, power, and housing. These contracts are often extremely urgent and of high value.

Between fiscal years 2014 and 2019, FEMA executed 16,344 contracting actions, valued at \$7.6 billion, which equated to 3,242 disaster-response base contracts. Of the 3,242 contracts, we reviewed 16, which were valued at about \$864 million. FEMA awarded these 16 contracts mainly in response to hurricanes Harvey, Irma, Maria, and Michael, and the 2017 California wildfires. Table 1 shows the total obligation for FYs 2014 through 2019 and the total contract actions per year.

<b>Table 1. FEMA Contracting Actions with Disaster Funding, FYs 2014–2019</b>		
<b>Fiscal Year</b>	<b>Total Obligation (Rounded)</b>	<b>Total Contract Actions</b>
2014	49,851,268	440
2015	410,820,195	2,202
2016	899,087,077	2,648
2017	3,930,223,701	3,983
2018	1,596,643,680	4,173
2019	730,248,124	2,898
<b>Totals</b>	<b>\$7,616,874,045</b>	<b>16,344</b>

Source: OIG analysis of FEMA-provided data

When awarding contracts, FEMA is required to comply with the Federal Acquisition Regulation (FAR). The FAR stipulates that contracts should only be awarded to “responsible contractors” and no award should be made until the contracting officer affirmatively determines that responsibility.<sup>1</sup> This “responsibility determination” should be based on the contractor’s ability to comply with the required delivery or performance schedule, as well as its ability

<sup>1</sup> FAR 9.103(a)–(b). “Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.”





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to obtain required resources. As part of their responsibility determination, contracting officers must also ensure that prospective contractors:

- have adequate financial resources to perform the contract work, or be able to obtain them;
- comply with the required or proposed delivery or performance schedule;
- have a satisfactory performance record;
- have a satisfactory record of integrity and business ethics;
- have the necessary organization, experience, accounting and operational controls, and technical skills, or be able to obtain them;
- have the necessary production, construction, and technical equipment and facilities, or be able to obtain them; and
- be otherwise qualified and eligible to receive an award under applicable laws and regulations.<sup>2</sup>

During the last several years, FEMA has been in the spotlight for awarding and canceling failed contracts. For example, FEMA awarded and canceled contracts for tarps, plastic sheeting,<sup>3</sup> and emergency meals<sup>4</sup> during the 2017 Hurricane Maria disaster response. More recently, the media reported contracting issues related to the COVID-19 pandemic, such as FEMA awarding contracts for test tubes that were not usable for virus testing.<sup>5</sup>

On October 3, 2018, we received a request<sup>6</sup> from U.S. Senators Richard Blumenthal and Elizabeth Warren to conduct an audit of FEMA's contracting process for goods and services for the relief and recovery efforts following natural disasters. The Senators noted concerns with FEMA's vetting process for suppliers due to FEMA's recent history of awarding contracts to companies with little to no experience. In response, we conducted this audit to determine whether FEMA contracting personnel followed Federal regulations, DHS policies, and FEMA procedures when performing responsibility determinations for contracts awarded in response to disaster declarations.

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<sup>2</sup> FAR 9.104-1, *General Standards*.

<sup>3</sup> OIG-19-38 *FEMA Should Not Have Awarded Two Contracts to Bronze Star LLC*, May 7, 2019.

<sup>4</sup> Patricia Mazzei and Agustin Armendariz, *FEMA Contract Called for 30 Million Meals for Puerto Ricans. 50,000 Were Delivered*, The New York Times (February 6, 2018), <https://www.nytimes.com/2018/02/06/us/fema-contract-puerto-rico.html>

<sup>5</sup> Andrea Downing Peck, *FEMA Paid a Just-Formed Company Millions of Dollars for COVID-19 Specimen Collection Tubes That Were Unusable for Clinical Laboratory Testing*, DARK Daily (July 31, 2020), <https://www.darkdaily.com/fema-paid-a-just-formed-company-millions-of-dollars-for-covid-19-specimen-collection-tubes-that-were-unusable-for-clinical-laboratory-testing/>

<sup>6</sup> U.S. Senate request from Richard Blumenthal and Elizabeth Warren, October 3, 2018.



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### **FEMA Did Not Always Take the Necessary Steps When Making Responsibility Determinations for Prospective Contractors**

FEMA contracting personnel did not always take the necessary steps to ensure prospective contractors could deliver goods and services during compressed disaster response timeframes. Specifically, 12 of the 16 contract files we reviewed were missing relevant Federal tax information. In addition, 11 of 16 files were missing information about the contractor's past performance evaluations. Finally, documentation in the contract files on actions taken and affirmative responsibility determinations was incomplete and inconsistent.

#### **Relevant Tax Information Not Verified**

According to the 2015 through 2019 version of the FAR, potential contractors must certify they do not have more than \$3,500 in delinquent Federal taxes within 3 years prior to an offer.<sup>7</sup> In 12 of the 16 contract files we reviewed, contracting officers did not verify the accuracy of relevant tax information when determining whether the contractor could meet the contract requirements. To obtain such information, contracting officers must use the System for Award Management (SAM), which is a Federal government-wide source for information about vendor sources of specific supplies and services and Federal tax information. Contracting officers can obtain SAM data in two ways — by directly logging into the system or querying the system without logging in. Directly logging into the system provides specific tax information necessary to validate potential contractors' representations and certifications.

Although there was evidence that 10 contracting officers<sup>8</sup> viewed SAM data by querying the system, they did not log into SAM to verify the information. For example, for a 2018 contract to support, relocate, and install manufactured housing units, valued at about \$350,000, documentation in the contract file showed the contractor certified it was not delinquent paying Federal taxes. However, we logged into SAM, which showed the contractor's latest reported Federal tax year as 2006, 12 years prior to contract award. Because of this inconsistency, the contracting officer should have requested supporting documentation to confirm the status of the contractor's taxes. The contracting officer was not aware of the tax information we obtained by logging into SAM and did not request additional information before making the responsibility determination. For another 2018 contract for fuel equipment and distribution valued at about \$50 million, the latest Federal tax year reported in SAM was 2010, 8 years prior to contract award. Yet, this contract file also showed the

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<sup>7</sup> FAR 52.212-3(h)(4).

<sup>8</sup> Some contracting officers reviewed more than one contract in our selection. Thus, the 12 contracting officers noted here do not correlate directly and one-to-one with the 12 contract files in which we noted deficiencies.



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contractor certified it was not delinquent paying Federal taxes. According to FEMA personnel, the contracting officer did not run the correct SAM report that showed the potential contractor's tax information. Therefore, the tax information was not visible to the contracting officer.

### **Contract Files Missing Past Performance Evaluations**

FAR 9.105-1(c) requires that contracting officers make a responsibility determination review of prospective contractors to ensure they have a satisfactory performance record. To meet this requirement, according to the FAR, contracting officers shall review the Federal Government's Contractor Performance Assessment Reporting System (CPARS)<sup>9</sup> or Past Performance Information Retrieval System (PPIRS).<sup>10</sup> These systems contain contracting officers' assessments of contractors' performance on previously awarded Federal contracts, which is relevant information for future source selection. The reports from the systems show how well, for example, the contractor met delivery schedules, provided quality workmanship and goods, controlled costs, and had technical capability. The DHS *Homeland Security Acquisition Manual* (HSAM) requires contracting officers to use PPIRS<sup>11</sup> for past performance evaluations<sup>12</sup> and to file evaluation data from the system into the contract file.<sup>13</sup>

Although required, 11 of the 16 contract files we reviewed were missing the contractor's past performance evaluation. Specifically, the contracting officers did not document they reviewed either CPARS or PPIRS to obtain this information. When we requested documentation, one contracting officer could not recall whether there was a review of CPARS or PPIRS. By not reviewing CPARS or PPIRS prior to responsibility determination, contracting officers increase the risk of cancellations by awarding contracts to entities that potentially cannot meet the terms and conditions of the contract.

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<sup>9</sup> Effective October 10, 2019, CPARS replaced PPIRS.

<sup>10</sup> FAR 9.105-1(c), "In making the determination of responsibility, the contracting officer shall consider information available through FAPIIS [Federal Awardee Performance and Integrity Information System] (see 9.104-6) with regard to the offeror and any immediate owner, predecessor, or subsidiary identified for that offeror in FAPIIS, including information that is linked to FAPIIS such as from SAM, and PPIRS."

<sup>11</sup> CPARS replaced PPIRS in HSAM Notice 2020-04.

<sup>12</sup> HSAM *Proposal Evaluation*, chapter 3015.305 (a)(2)(ii).

<sup>13</sup> HSAM *Making Better Use of Performance Information*, chapter 3015.305-70 implements the steps described in the Office of Federal Procurement Policy memorandum titled, *Making Better Use of Contractor Performance Information*, dated July 10, 2014. See Appendix B for excerpt.



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### **Inconsistent Documentation of Actions Taken to Ensure Compliance with FAR Requirements**

During the survey phase of our audit, FEMA personnel stated that FEMA did not have specific responsibility determination procedures for disaster commodities and services. Because there was no management guidance, contracting officers used different methods for documenting both the actions they took to make responsibility determinations and their affirmative determinations.

DHS Form 700-12, *Determination of Contractor Responsibility*, provides a baseline for meeting FAR 9.104-1 responsibility determination requirements and for following procedures in FAR 9.105-1(a) to obtain and document needed information. (See Appendix C for a sample DHS Form 700-12.) The form gives contracting personnel a mechanism to document a potential contractor's ability to meet the demands of the contract, as well as the contracting officer's affirmative responsibility determination. Although the Department removed the DHS Form 700-12 from its HSAM in 2013, FEMA continued using it.

Fourteen of the 16 contract files we reviewed contained a DHS Form 700-12, but 7 of the 14 forms were incomplete. Most of the contracting officers documented their affirmative responsibility determination decision on the DHS Form 700-12. However, they did not complete the evaluation and ratings section. DHS Form 700-12 provides a baseline for meeting FAR responsibility requirements, but contracting officers must use it as intended for FEMA to be reasonably assured that its staff are meeting FAR responsibility determination requirements when awarding contracts.

Additionally, in 11<sup>14</sup> contract files, rather than using a DHS Form 700-12, the contracting officers documented their pre-award actions in a memorandum, which did not include all the minimum documentation requirements in the form. Some contracting officers documented their affirmative responsibility determination decision on the DHS Form 700-12 and others in the memorandum. The memorandum does not cover the minimum documentation requirements as detailed in the DHS Form 700-12, which meets the minimum FAR 9.104-1 responsibility determination requirements.

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<sup>14</sup> Some files included a memorandum and a DHS Form 700-12.





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### **Responsibility Determinations May Have Been Made without Reviewing Required Information**

The Federal Awardee Performance and Integrity Information System (FAPIIS), which contains vendors' past performance and integrity records, is critical to making responsibility determinations. When determining whether a contractor is responsible, the 2015 through 2019 versions of the FAR 9.104-6 requires FAPIIS be reviewed before awarding a contract in excess of \$150,000. As noted previously, SAM contains information about vendor sources of specific supplies and services and Federal tax information.

In 4 of the 16 contracts we reviewed, the dates on the FAPIIS and SAM<sup>15</sup> printouts were later than the date of the contracting officers' responsibility determination. Two of the contracts were awarded and two were not. For the two contracts that were awarded, the contracting officers may have awarded them before obtaining the necessary SAM and FAPIIS information. In one instance, the contracting officer signed a contract for about \$414,000 on September 30, 2015, but the FAPIIS documentation in the contract file was dated October 19, 2015. According to the contracting officer, FAPIIS is reviewed before and at the time of award, but the contract specialist probably did not print the documents until filing the contract. In the second case, the contracting officer signed a contract for about \$304,850 on November 16, 2017, but the FAPIIS documentation was dated December 5, 2017. According to this contracting officer, the database review occurred the same day of award, but the printing and signing of the documentation did not occur until 19 days after award due to having to award multiple disaster response contracts quickly.

For the two contracts not awarded, the contracting officers made affirmative responsibility determinations on October 10, 2017, and November 3, 2017, but the FAPIIS and SAM documentation was dated 2 days and 5 days later, respectively. One contracting officer attributed these later dates to printing issues, and the other one could not recall if there were challenges printing the documents or if they were not printed for the contract file. Although we understand the importance of contracting staff moving at a fast pace during disaster response timeframes, it is equally important to include documentation that supports the dates of their actions.

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<sup>15</sup> FAPIIS and SAM provide procurement personnel with relevant information about a company's contract history, such as past ability to meet the period of performance, exclusions, infrastructure and business processes, and Federal tax information.



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#### Deficiencies Due to Lack of FEMA and Department Guidance

Although the FAR governs the Federal acquisition process, including contractor responsibility determinations, Federal agencies implement and supplement the FAR through acquisition regulations. We attribute the deficiencies we identified to FEMA not having supplemental responsibility determination procedures for its contracting personnel and DHS having removed responsibility determination language from its HSAM, which is used by component personnel.

FEMA has two documents with acquisition guidance for contracting personnel. *A Guide to the FEMA Acquisition Process*, August 2017, focuses on FEMA's acquisition process; and *FEMA Acquisition Planning: A Guide to Preparing Acquisition Packages*, October 2011, focuses on preparing acquisition packages. However, both documents are missing guidance for contracting personnel to follow when going through the responsibility determination process for prospective contractors.

Further, the HSAM, which the DHS Chief Procurement Officer issues, establishes uniform department-wide procurement policies, but does not have enough guidance for contract personnel about making affirmative responsibility determinations. Prior versions of the HSAM provided component personnel more responsibility determination guidance in subchapter 3009.105-2, *Determinations and documentation*. In particular, prior HSAM versions included information on specific systems contracting officers must review and the supporting documentation to include in contract files. Prior versions also included specific procedures for simplified and non-simplified acquisitions, including use of DHS Form 700-12, *Determination of Contractor Responsibility*, to make and document the responsibility determination before awarding a contract. On August 30, 2013, DHS issued HSAM Notice 2013-08, which added requirements for SAM and FAPIIS screen prints, but also removed a substantial number of responsibility determination requirements.

According to DHS Office of the Chief Procurement Officer (OCPO) personnel,<sup>16</sup> FAR 9.104-5 provides general standards and FAR 9.104-3 elaborates as to how contracting officers should apply the standards. OCPO staff also asserted, "Because responsibility determinations are specific to a contract, how a contractor satisfies the responsibility standards in the FAR varies based on the circumstances of each contract." The FAR requirements "provide contracting officers with broad discretion on what information requires review. Use of DHS Form 700-12, which is essentially a checklist, could reduce the responsibility determination to a rote,<sup>17</sup> one-size-fits-all exercise that could limit the factors

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<sup>16</sup> DHS OCPO email correspondence, February 6, 2020.

<sup>17</sup> Merriam-Webster defines rote as the use of memory, usually with little intelligence, or mechanical or unthinking routine or repetition.



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for consideration to only those listed on the form. Removing the mandate to use the DHS Form 700-12 provided contracting officers greater flexibility in conducting a responsibility determination and providing the required supporting documentation.”

The FAR includes overall requirements for responsibility determinations. However, the deficiencies we identified show that, without more specific guidance on procedures to implement the FAR, contracting personnel may not always take the steps necessary to make well-informed responsibility determinations.

### **DHS and FEMA Have Taken Steps to Improve Responsibility Determinations**

During our audit and after meetings with Department OCPO and FEMA personnel, both DHS and FEMA made several changes to improve responsibility determination guidance. First, on November 13, 2020, the Department issued *Job Aide to Assist in Responsibility Determination for Vendors Who May Present an Increased or Unknown Level of Risk to Successful Performance*, and according to Department personnel, held trainings on November 19 and December 17, 2020. (See Appendix D for the DHS responsibility determination job aid.) The six-page job aid acknowledges the importance of the responsibility determination process and states it is a “first line of defense to determining the likelihood of an entity successfully fulfilling its obligations under a prospective contract.” It also highlights the importance of steps the contracting officer should take and provides guidance to contracting officers when awarding a contract to a vendor with no record of successful past performance or prior relevant corporate experience. This job aid includes FAR citations, types of questions contracting officers should consider, and examples of the type of evidence that may be obtained and analyzed to support a responsibility determination.

In addition, FEMA has issued an acquisition alert<sup>18</sup> with specific disaster and non-disaster language for contracting personnel to include in solicitations. This added language should help ensure prospective contractor bids and proposals provide FEMA’s contracting officers with the needed information for a comprehensive responsibility determination process.

Finally, FEMA provided us with a draft *Federal Emergency Management Agency Acquisition Manual*. According to FEMA policy personnel, as of January 26, 2021, the draft was going through FEMA’s review process. The draft manual provides uniform procedures for acquiring supplies and services. It also

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<sup>18</sup> *Financial Responsibility/Technical Ability Language in Solicitations and Resulting Contracts*, March 2, 2020.



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establishes FEMA-wide acquisition procedures, which implement or supplement the FAR and Department policy.

### FEMA Continued Awarding and Canceling Contracts

Although the Department's and FEMA's actions during our audit were steps in the right direction, they occurred after FEMA awarded the contracts. As a result of the gaps in the Department's and FEMA's policies and procedures, FEMA personnel continued to award and cancel contracts. As shown in Table 2, from March through May 2020, FEMA awarded and canceled at least 22 contracts, valued at about \$184 million, for crucial supplies in response to the national COVID-19 pandemic. FEMA canceled 18 of the 22 contracts for convenience,<sup>19</sup> 3 for cause,<sup>20</sup> and 1 for default.<sup>21</sup>

Table 2. FEMA's Terminated Contracts, March – May 2020			
Modification Code & Description	Number of Terminated Contracts	Award Obligation	De-obligation Amount
F – Terminated for convenience	18	\$119,856,785	\$109,720,883
X – Terminated for cause	3	\$59,085,000	\$59,085,000
E – Terminated for default	1	\$5,140,000	\$5,140,000
Totals	22	\$184,081,785	\$173,945,883**

Source: Federal Procurement Data System – Next Generation (FPDS-NG) and Beta SAM

\*Audit team did not review the 22 contract files as part of the audit.

\*\*Difference in amounts attribute to different de-obligation amounts.

Federal regulations require agencies to award contracts to responsible contractors and make a determination of non-responsibility in the absence of information. Although many factors impact contracting personnel during disaster timeframes, it is imperative that contracting officers provide documentation in the contract files to support their actions. It is also vital that

<sup>19</sup> Termination for Convenience – the Government reserves the right to terminate a contract, or any part, for its sole convenience if the Contracting Officer determines that a termination is in the Government's interest.

<sup>20</sup> Termination for Cause – if the contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance.

<sup>21</sup> Termination for Default – to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.





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FEMA continue moving forward by issuing a finalized *FEMA Acquisition Manual* and providing the necessary training. If FEMA continues awarding contracts without fully ensuring that prospective contractors can meet contract demands, it may continue wasting taxpayer dollars, and disaster- and pandemic-affected Americans may continue to suffer delays receiving critical assistance.

### Recommendation

**Recommendation 1:** We recommend the FEMA Administrator develop and implement a consistent responsibility determination approach and quality control process to ensure FEMA contracting personnel meet FAR 9.104-1 requirements. This approach should be a baseline minimum of the steps necessary to determine contractor responsibility during disaster and non-disaster timeframes.

### Management Comments and OIG Analysis

DHS provided written comments in response to a draft of this report. We have included a copy of DHS' response in its entirety in Appendix A. We also received technical comments to the draft report and revised the report as appropriate. A summary of DHS' responses and our analysis follow.

**DHS' Response to Recommendation 1:** Concur. FEMA's Office of the Chief Component Procurement Officer drafted its *FEMA Acquisition Manual* that supplements the HSAM. Part of the *FEMA Acquisition Manual* includes policies for ensuring contracting personnel meet FAR 9.104-1, *General Standards*. In addition, FEMA's Office of the Chief Component Procurement Officer is developing a template for use by contracting personnel for responsibility determinations. Estimated Completion Date: October 29, 2021.

**OIG Analysis:** We consider FEMA's actions responsive to the recommendation. The recommendation is resolved and open until we receive a copy of the finalized *FEMA Acquisition Manual* and responsibility determination template.



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

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

On October 3, 2018, Senators Richard Blumenthal and Elizabeth Warren requested that DHS OIG examine FEMA's contracting process for goods and services for the relief and recovery efforts following natural disasters, especially those in Puerto Rico. The Senators were concerned that FEMA continued to award contracts to companies with little to no experience, and in doing so, raised questions about its process for vetting its suppliers. Our objective was to determine whether FEMA contracting personnel followed Federal regulations, DHS policies, and FEMA procedures when performing responsibility determinations for contracts awarded in response to disaster declarations. To answer our objective, we conducted interviews with officials from DHS' and FEMA's OCPO, as well as individuals directly responsible for contract awards. We also obtained and reviewed previous DHS OIG and U.S. Government Accountability Office reports, congressional reports and letters, Federal regulations, DHS policies, FEMA acquisition guidance, and contract documentation.

We identified control weaknesses in the control activity and monitoring internal control components. We assessed FEMA's control structure, policies, procedures, and practices applicable to acquisitions. Our assessment would not necessarily disclose all material weaknesses in this control structure. However, it disclosed weaknesses in how FEMA applied laws, regulations, internal policies, and procedures governing acquisitions. We discussed these weaknesses in the body of this report.

We used the Federal Procurement Data System – Next Generation (FPDS-NG) to identify and obtain the population for our review. Federal regulation mandates all Federal agencies to report data on contract actions in FPDS-NG. This data is verified and validated by the CPO and the Chief Acquisition Officer. We also reconciled this data against FEMA-provided data and verified the information during our contract file reviews to perform reliability testing. Although we used the data extracted from FPDS-NG, we did not materially rely on it to support our findings, conclusions, or recommendations in this report.

We ran an FPDS-NG query for FEMA's contract actions for fiscal years 2014 through 2019, which gave us our sampling universe of 16,344 contract actions with a total obligation cost of \$7,616,874,045. The 16,344 contract actions equated to 3,242 base contracts. We then removed non-disaster contract actions, General Services Administration (GSA) contracts, and all contract



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modifications after initial award. From the remaining universe, we judgmentally selected a sample of 16 disaster recovery type contracts, representing multiple disasters, and \$863,865,460.30 to review. Due to the coronavirus pandemic, we limited our review to contracts that FEMA could provide electronically.

We conducted this performance audit between September 2019 and March 2021 pursuant to the *Inspector General Act of 1978, as amended*, and according to 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 upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Department of Homeland Security

**Appendix A**  
**FEMA Comments to the Draft Report**

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

June 11, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.  
Inspector General

FROM: Jim H. Crumpacker, CIA, CFE  
Director  
Office of Policy and Program Analysis

JIM H  
CRUMPACKER

Digitally signed by JIM H  
CRUMPACKER  
Date: 2021.06.11  
08:50:46 -04'00'

SUBJECT: Management Response to Draft Report: "FEMA Must  
Strengthen Its Responsibility Determination Process"  
(Project No. 19-038-AUD-FEMA)

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The Department is pleased to note OIG's recognition that disaster-related contracts are often extremely urgent and of high value, in addition to being *essential* (emphasis added) to survivors in affected communities receiving critical life and property-saving goods and services, such as food, water, power, and housing. DHS remains committed to the continued use of these contracts to carry out the Federal Emergency Management Agency's (FEMA) mission of helping people before, during and after disasters.

The draft report contained one recommendation with which the Department concurs. Attached find our detailed response to the recommendation. DHS previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment





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Department of Homeland Security

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**Appendix A (continued)**  
**FEMA Comments to the Draft Report**

**Attachment: Management Response to Recommendation**  
**Contained in Project No. 19-038-AUD FEMA**

OIG recommended that the FEMA Administrator:

**Recommendation 1:** Develop and implement a consistent responsibility determination approach and quality control process to ensure FEMA contracting personnel meet FAR [Federal Acquisition Regulation] 9.104-1 requirements. This approach should be a baseline minimum of the steps necessary to determine contractor responsibility during disaster and non-disaster timeframes.

**Response:** Concur. FEMA's Office of the Chief Component Procurement Officer (OCCPO) drafted its FEMA Acquisition Manual that supplements Homeland Security Acquisition Manual. Part of this manual includes FEMA policies for ensuring contracting personnel meet FAR 9.104-1, "General Standards." In addition, FEMA OCCPO is developing a template for use by contracting personnel for responsibility determinations. Estimated Completion Date: October 29, 2021.



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**Appendix B**  
**Excerpt from *Making Better Use of Contractor Performance Information* Memorandum**

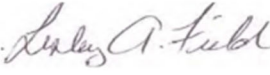


OFFICE OF FEDERAL  
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

July 10, 2014

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM: Lesley A. Field   
Acting Administrator

SUBJECT: Making Better Use of Contractor Performance Information

Over the past several years, the Office of Federal Procurement Policy (OFPP) has asked agencies to improve their reporting of contractor performance and integrity information so contracting officers (COs) can make better informed award decisions. In 2009, OFPP urged agencies to make greater and more effective use of contractor performance evaluations in support of the Presidential Memorandum on Government Contracting.<sup>1</sup> In 2011, we issued an assessment of agencies' reporting compliance and recommended additional steps and strategies for improvement.<sup>2</sup> Last year, OFPP set past performance reporting compliance goals, and shared best practices and training opportunities to help agencies make progress in collecting and using this important information.<sup>3</sup> These efforts and related changes to the Federal Acquisition Regulation (FAR) have helped agencies improve the collection and use of this important information.

Evaluating timely and relevant information about how a contractor performs is critical to the Government's ability to deliver results effectively and efficiently. This guidance asks agencies to take additional steps where the risk is greatest. Agencies are currently required by the FAR to report and use past performance information on contracts and orders over the simplified acquisition threshold (SAT) regardless of the complexity, risk, or type of product and service being procured.<sup>4</sup> However, there is an increased risk of problems on high risk programs, major acquisitions, or other complex contract actions that are critical to an agency's mission. To address this risk and ensure we make awards to contractors with good performance records, as well as to encourage the use of new and innovative companies with little or no Federal experience, agencies are directed to undertake additional outreach and research to make more informed decisions, as described below. These common sense steps are to be applied to, at a minimum, acquisitions (contracts or orders) for complex information technology (IT)

<sup>1</sup>The July 29, 2009 OFPP memorandum, *Improving the Use of Contractor Performance Information* at [http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/improving\\_use\\_of\\_contractor\\_perf\\_info.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/improving_use_of_contractor_perf_info.pdf). Additionally, changes were made to the FAR to mandate the use of one government-wide system information collection and establish roles and responsibilities for using, reporting, and managing performance information, among other regulatory changes.

<sup>2</sup>The January 21, 2011 OFPP Memorandum, *Improving Contractor Past Performance Assessments: Summary of the Office of Federal Procurement Policy's Review, and Strategies for Improvement* at [http://www.whitehouse.gov/sites/default/files/omb/procurement/contract\\_perf/PastPerformanceMemo-21-Jan-2011.pdf](http://www.whitehouse.gov/sites/default/files/omb/procurement/contract_perf/PastPerformanceMemo-21-Jan-2011.pdf).

<sup>3</sup>The March 6, 2013 OFPP memorandum, *Improving the Collection and Use of Information about Contractor Performance and Integrity* at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/improving-the-collection-and-use-of-information-about-contractor-performance-and-integrity.pdf>.

<sup>4</sup>Agencies are required to report past performance information on awards (contracts and orders) above the SAT as stated in FAR subsection 42.1502. Additional reporting thresholds apply to construction and architect-engineer service contracts.



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## Appendix B (continued)

### Excerpt from *Making Better Use of Contractor Performance Information Memorandum*

development, systems, and services over \$500,000, and other acquisitions (contracts or orders) identified by the agency as presenting a significant risk.<sup>5</sup>

#### Agencies Taking Additional Steps on High-risk Contracts

*Broadening the Sources of Performance Information* - The FAR allows the Government to consider information from additional sources of information beyond the Past Performance Information Retrieval System (PPIRS), including information found from conducting this additional research and outreach, when evaluating a contractor's performance history.<sup>6</sup> In order to have the most relevant, recent, and meaningful information about potential business partners considered, agencies shall instruct all COs and/or appropriate agency acquisition officials, in the preaward phase of the acquisition process for high-risk, complex actions described above, to perform the steps described in Attachment 1.<sup>7</sup>

*Evaluating Performance Information* - The source selection authority (SSA) is responsible for determining the relevance of similar past performance information.<sup>8</sup> This input must be evaluated and carefully balanced with available PPIRS information, and documented in the contract file to show how it was considered during the source selection process and in the award decision. When soliciting and reviewing past performance information, the SSA must describe the methodology for evaluating past performance information in solicitations - including the evaluation of similar work for State, local, and foreign governments, commercial contracts, and subcontracts of similar size, scope, and complexity. Also, the SSA should provide offerors an opportunity to respond to adverse past performance information - especially if they were not previously afforded an opportunity - and consider how the company successfully resolved a problem.

*Regularly Share Contractor Performance Information with Senior Leaders* - Monitoring a contractor's performance frequently and at regular intervals after award is critical to keeping a contractor's performance on schedule and within budget, and this is especially important for the agency's highest risk, complex acquisitions (contracts or orders). Therefore, the agency's designated past performance points of contact<sup>9</sup> should provide a list of the annual past performance assessments in PPIRS for the contractors performing on the agencies' highest risk, complex projects, as identified by the agency head or appropriate agency official. Additionally,

<sup>5</sup> The March 6, 2013 [memorandum](#) includes a description of high risk complex actions. Additionally, several agencies have issued policies that deviate from the FAR reporting thresholds, but the steps described in this memorandum apply unless higher thresholds are discussed with and agreed to by OFPP.

<sup>6</sup> In accordance with FAR 15.305(a)(2)(ii), the Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance.

<sup>7</sup> In accordance with FAR 15.303(a), agency heads are responsible for source selection. The CO is designated as the source selection authority (SSA), unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

<sup>8</sup> In accordance with FAR 15.305(a)(2)(ii), the SSA determines the relevance of similar past performance information.

<sup>9</sup> The January 21, 2011 [memorandum](#) required agencies to designate a point of contact accountable for performance reporting.





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## Appendix B (continued)

### Excerpt from *Making Better Use of Contractor Performance Information Memorandum*

this list shall be provided promptly to the Deputy Secretary (or equivalent), Chief Information Officer, Chief Financial Officer, Chief Acquisition Officer, Senior Procurement Executive, and other appropriate agency officials for their awareness and management of agency high profile acquisitions. As contractor performance information must be regularly reviewed, shared, and entered into PPIRS, agencies should consider establishing strategies to incentivize acquisition professionals. This will also enforce management oversight and accountability for source selection and award decisions.

#### Improving Training and Workforce Support

To help all the members of the acquisition workforce<sup>10</sup> understand their unique role in assessing and evaluating contractors, the Federal Acquisition Institute (FAI) and the Defense Acquisition University have developed a number of classes on using past performance systems, which are available at [www.cpars.gov](http://www.cpars.gov) and [www.ppirs.gov](http://www.ppirs.gov).<sup>11</sup> While training on the systems is important, COs and other source selection officials should also have instruction on how best to balance and consider additional, relevant information collected through the standard FAR process and the additional steps described above.<sup>12</sup> Therefore, agencies should encourage their acquisition workforce to take past performance courses,<sup>13</sup> such as the Department of Defense (DOD) *Past Performance Information* course, CLC 028 and *Contracting Officer's Representative with a Mission Focus* course, CLC 106. The CLC 028 learning module discusses how and why past performance information is collected and how to use it to improve program outcomes.<sup>14</sup> The CLC 106 module provides an overview of the acquisition process including proper file documentation, performance assessment methods, remedies for poor performance, and contract management. Agencies should also visit DAU's website, available at [www.dau.mil](http://www.dau.mil), for other training courses related to past performance information.

Additionally, OFPP has asked FAI to develop new learning tools and job aids (e.g., Acquisition Learning Seminars (ALS)) to help the acquisition workforce have a better understanding of the practical use of performance information. OFPP worked with FAI to develop a Past Performance ALS emphasizing the importance of past performance information and agency leadership in improving timely and quality reporting compliance. This ALS was presented on June 18<sup>th</sup> and is available on FAI's website for continuous viewing. Additional training will be established, as needed, and made available in the first quarter of Fiscal Year (FY) 2015. Acquisition Career Managers should distribute this ALS widely and visit FAI's [website](http://www.fai.gov/drupal/) (<http://www.fai.gov/drupal/>) for additional contracting courses related to past performance. Agencies should also make certain that their staff combine this training with appropriate on-the-job experience to effectively fulfill their roles and responsibilities in the pre-and post-award evaluation of contractor performance.

<sup>10</sup> The acquisition workforce members that may provide input into CPARS includes: the technical officer, CO, program and/or project manager and, quality assurance specialist and end users of the product or service, administrative CO, auditor, and any other technical or business advisor, as appropriate.

<sup>11</sup> On the CPARS and PPIRS websites visit the Training tab for many online and onsite courses with continuous learning points. For tips on improving reporting compliance, see [http://www.cpars.gov/cparsfiles/pdfs/Improving\\_Compliance.pdf](http://www.cpars.gov/cparsfiles/pdfs/Improving_Compliance.pdf).

<sup>12</sup> See FAR Subpart 15.3, Source Selection, specifically FAR 15.304 - 15.306, for information on evaluating past performance.

<sup>13</sup> The March 6, 2013 OFPP [memorandum](#). Attachment 2 also includes a list of past performance courses.

<sup>14</sup> This module is based on the DOD Past Performance Integrated Product Team (IPT) Guidebook, *A Guide to Collection and Use of Past Performance Information*, available at: [http://www.acq.osd.mil/dpap/Docs/PPI\\_Guide\\_2003\\_final.pdf](http://www.acq.osd.mil/dpap/Docs/PPI_Guide_2003_final.pdf).





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**Appendix C**  
**DHS Form 700-12 Example**

DEPARTMENT OF HOMELAND SECURITY <b>DETERMINATION OF PROSPECTIVE CONTRACTOR RESPONSIBILITY</b>		1. SEALED BID OR RFP NO.				
2. NAME AND ADDRESS OF PROSPECTIVE CONTRACTOR		3. DESCRIPTION OF SUPPLIES OR SERVICES				
		4. TYPE OF CONTRACT <i>Form</i>				
		5. SMALL BUSINESS ( <i>Check one</i> ) <input type="checkbox"/> YES <input type="checkbox"/> NO				
<b>INSTRUCTIONS</b>  Check type of evaluation and rate each factor applicable to the proposed procurement. All ratings assigned to evaluations shall be supported by attached survey reports, detailed evaluations, EPLS report page, FAPIIS reports, PPIRS reports and other documented analyses. <b>LEGEND: TYPE OF EVALUATION</b> <b>Type - On-site Pre-Award Survey.</b> This constitutes an inspection of the contractor's facility by the Contracting Officer or his/her representative. <b>Type - Desk/Database Type Pre-Award.</b> This consists of information obtained from sources such as: Prospective contractor (e.g., certifications & representations, other submissions), Duns & Bradstreet reports, National Credit Office reports, and records of contractor performance and integrity such as the reports from FAPIIS, PPIRS, the List of Parties Excluded System (EPLS), or Certificates of Competency (CoC) issued by the Small Business Administration.						
<b>6. EVALUATION AND RATINGS</b>						
	<b>FACTOR</b> All References to FAR 9.104-1, unless indicated	<b>EVALUATION</b>				
		<b>On-Site</b>	<b>Desk/ Database</b>	<b>RATINGS, WITH NARRATIVE RATIONALE</b> Indicate Satisfactory (S) or Unsatisfactory (U) Include references to database reports, dates & attachments	<b>N/A</b>	
A	Financial Capability					
B	Ability to meet Delivery or Performance Date(s)					
C	Performance Record on Prior and Current Contracts					
D	Satisfactory Record of Integrity and Business Ethics					
E	Management Personnel					
F	Cost Estimating and Accounting System					
G	Technical Capability					
H	Technical Equipment and Facilities					
I	Production Capability					
J	Property and Inventory Control					
K	Quality Assurance Program and Procedures					
L	Safety					
M	Purchasing System (Make or Buy Program)					
N	Small Business Subcontracting Compliance (9.104-3(a))					
O	Equal Opportunity (22.802)					
P	Environmental/Energy Considerations (23.104(a))					
Q	Drug Free Workplace (23.504(a))					
R	Security Clearance					
S	Otherwise qualified and eligible to receive award under laws and regulations					
T	Other-					
U	FAR 9.104-5(a)(2)-Notification of Offerors existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency. If yes, attach the notification correspondence to the Head of the Contracting Activity (HCA) and insert the date of the notification to the HCA in this field.					
7. DETERMINATION IN ACCORDANCE WITH FAR 9.1						
(if Offeror is considered nonresponsible, the Contracting officer must forward a copy of the determination to the HCA.)						
8. DATE		9. NAME OF CONTRACTING OFFICER		10. SIGNATURE OF CONTRACTING OFFICER		



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## Appendix D

### DHS Responsibility Determination Job Aid

#### **Job Aide to Assist in Responsibility Determination for Vendors Who May Present an Increased or Unknown Level of Risk to Successful Performance**

Whether a Contracting Officer (CO) is assessing a well-known company with a record of successful past performance, one that is expanding its offerings to new products and services, and/or one that is entirely new to federal contracting or the commercial marketplace, the responsibility determination is an important analysis and a first line of defense to determining the likelihood of an entity successfully fulfilling its obligations under a prospective contract. The importance of this task was highlighted during the COVID-19 pandemic with DHS agents seizing millions of dollars in counterfeit medicines and medical supplies, including counterfeit personal protective equipment. If distributed for use, these items would have put the health and safety of Americans at risk. Some of these fake or defective items were even offered for sale to the Government.

While the FAR requires an affirmative determination of responsibility before making an award, this determination is especially important when a CO considers awarding a contract to a vendor that has no record of successful past performance or prior relevant corporate experience. Generally speaking, if the vendor is recently incorporated, if it is not well-established in the particular industry, or if there are recent events that call into question its responsibility (e.g., a lawsuit or investigation), the more thorough the responsibility evaluation will need to be. This job aid provides guidance to the CO on what to consider when conducting a detailed responsibility assessment so that DHS awards contracts only to those companies who are likely to fulfill contractual obligations successfully. Although not exhaustive, this job aid provides the types of questions the CO should consider and examples of the type of evidence that may be obtained and analyzed to support a responsibility determination.

If you have questions, need assistance with obtaining documentation or need additional resources, please email [procurementssupport@hq.dhs.gov](mailto:procurementssupport@hq.dhs.gov) and an analyst will be assigned to assist with the responsibility determination. Note that the analyst can also facilitate secondary vetting from law enforcement sources that may be appropriate, but these reviews may take more than 24 hours to obtain meaningful results.

Additionally, before making a non-responsibility determination, contracting officers should consult with their legal office to review the basis for the determination.



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**Appendix D (continued)**  
**DHS Responsibility Determination Job Aid**

Citation		Considerations	Evidence Examples
FAR 9.104-1(a)	Have adequate financial resources to perform the contract or the ability to obtain them	<p>If the vendor has not performed the same type and size of contract for the government within the past year, consider:</p> <ul style="list-style-type: none"><li>• Does the vendor have a good bond rating if publicly traded?</li><li>• Has the media signaled that the vendor is in financial difficulty or may declare bankruptcy? If yes, obtain additional information to confirm vendor's ability/inability to obtain resources (see next column for examples).</li><li>• Do public sources question the vendor's ability to do the work or meet the delivery schedule? If yes, obtain needed evidence to confirm vendor's ability/inability to obtain resources (see next column for examples).</li></ul>	<p>If there are concerns:</p> <ul style="list-style-type: none"><li>• Obtain an Independent Financial Report (i.e. Dunn and Bradstreet, Bloomberg or CQ).</li><li>• Assess and document financial ratios.</li><li>• Obtain a copy of the line of credit from the contractor.</li><li>• Require a performance bond.</li><li>• Obtain evidence of other financial resources for example subcontract agreements for services/ supplies.</li><li>• Contact the vendor's current customers to learn if media reports concerning financial issues are impacting vendor performance or deliveries.</li><li>• Allow vendor an opportunity to address the allegations.</li></ul>



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**Appendix D (continued)**  
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<b>Citation</b>		<b>Considerations</b>	<b>Evidence Examples</b>
9.104-1(b)	Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments	<p>If not evaluated as part of the award decision and the vendor has not performed the same type and size contract for the government within the past year, consider:</p> <ul style="list-style-type: none"><li>• Has the vendor delivered this exact product in the past in similar quantities?</li><li>• Does the vendor's proposal provide evidence it can deliver the quality and quantity on time?</li><li>• Is there any indication the vendor has overcommitted because product demand is high?</li><li>• If this is a highly modified product or a new product the vendor will deliver, has it done so in the past or does its proposal explain how the vendor plans to revise its production capability?</li></ul>	<p>If there are concerns,</p> <ul style="list-style-type: none"><li>• Obtain a Pre-Award Survey when vendor information is limited (see FAR 9.106).</li><li>• Obtain a document showing available inventory for supplies.</li><li>• Obtain commitment letters, labor agreements or subcontract agreements for services/supplies.</li><li>• If inventory or labor documentation is insufficient, obtain references (ideally from two or three current or recent customers) stating that the named vendor made timely deliveries.</li><li>• Allow vendor an opportunity to address the allegations.</li></ul>
FAR 9.104-1(c)	Have a satisfactory performance record	<p>If not evaluated as part of the award decision, and the vendor has not performed the same type and size contract for the government to consider:</p> <ul style="list-style-type: none"><li>• Has the contractor delivered the product or service at the volume or quantity before?</li><li>• When reviewing past performance, is there any indication or trend of delivering non-conforming or defective products?</li><li>• In open sources is there any record of default or media attention on late or defective deliveries? If yes, obtain needed evidence to confirm vendor's ability/inability to satisfactorily perform resources (see next column for examples).</li></ul>	<p>If there are concerns,</p> <ul style="list-style-type: none"><li>• Verify if the vendor has at least an average rating of Satisfactory in CPARS for similar procurements.</li><li>• Obtain a letter from current or recent customers (ideally two or three) attesting to the quality of performance.</li><li>• Allow vendor opportunity to address alleged performance issues.</li></ul>





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**Appendix D (continued)**  
**DHS Responsibility Determination Job Aid**

Citation		Considerations	Evidence Examples
FAR 9.104-1 (d)	Have a satisfactory record of integrity and business ethics	<ul style="list-style-type: none"><li>• Does the vendor have an established ethics program?</li><li>• Does an internet search indicate that the vendor, its key personnel or designated representative have a reputation for delivering shoddy or defective supplies or services?</li><li>• Does CPARS have any adverse information?</li><li>• Does the vendor have a good record with Department of Labor for equal employment and other labor issues?</li><li>• Are there any concerns in the vendor response to FAR provisions 52.209-5, 52.209-7, 52.209-11 and 52.209-12?</li><li>• Does past performance show any indication subcontractors and suppliers are not paid timely?</li></ul>	<p>Obtain documentation from FAPIIS, EEO Clearance and review of the vendor's ethics policies.</p> <p>If there are concerns:</p> <p>Contact APO to determine available next steps including secondary vetting for association with known fraudulent activity.</p>
FAR 9.104-1 (e)	Have the necessary organization and experience, or the ability to obtain them	<p>If organizational experience was not determined as part of the award evaluation, consider:</p> <ul style="list-style-type: none"><li>• Is the vendor known to the agency as a provider of the same supplies or services in the past?</li><li>• Is there any discussion in CPARS that the vendor is poorly managed?</li><li>• How long has the vendor been in business?</li><li>• If a new entrant, do they have an experienced management team that has performed / produced similar products/services?</li><li>• Has the vendor registered in SAM within the last 12 months?</li></ul>	<p>If there are concerns:</p> <ul style="list-style-type: none"><li>• Analyze CPARS ratings or past performance questionnaires for 3 similar procurements.</li><li>• Obtain a review of the vendor's management plan.</li><li>• If 3 CPARS ratings for similar procurements are not available, obtain a letter from recent or current customers attesting to the quality of vendor's management team or proposed program manager.</li></ul>





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**Appendix D (continued)**  
**DHS Responsibility Determination Job Aid**

Citation		Considerations	Evidence Examples
FAR 9.104-1(e) (cont)	Have the necessary accounting and operational controls or the ability to obtain them	If the contract includes non-commercial items or commercial Time and Material items, consider: <ul style="list-style-type: none"><li>Does the vendor have an internal quality control program?</li><li>Does the vendor have approved accounting and billing systems for cost type and T&amp;M contracts? Check with DCAA (<a href="http://www.dcaa.mil">www.dcaa.mil</a>) (click: Locator).</li><li>Does the vendor have an approved purchasing system? Check with DCAA, and if not, request assistance from DCAA or DCMA.</li></ul>	If there are concerns: <ul style="list-style-type: none"><li>Increase touchpoints in the Quality Assurance Surveillance Plan.</li><li>OSHA compliance documentation or plan to create internal controls document.</li><li>Accounting and billing system audit reports and/or adequacy determination from DCMA or DCAA.</li><li>DCMA purchasing system determination.</li></ul>
FAR 9.104-1(e) (cont)	Have the necessary technical skill or the ability to obtain it	If the award evaluation did not include an evaluation of the vendor's technical skills, consider: <ul style="list-style-type: none"><li>How long has the vendor been in business? If a new entrant, does it have an experienced management team or parent company that has performed/produced similar products/services?</li><li>Are there people with the requisite technical skills available in the general location where the work will be performed?</li></ul>	If there are concerns: <ul style="list-style-type: none"><li>Obtain additional information from the vendor on how the vendor will obtain the requisite technical skill.</li><li>Perform a Pre-award survey when information on vendor is limited (see FAR 9.106).</li></ul>



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**Appendix D (continued)**  
**DHS Responsibility Determination Job Aid**

FAR 104.-1(f)	Have the necessary production, construction, and technical equipment or the ability to obtain it	<p>If the award evaluation did not include an evaluation of these factors, consider:</p> <ul style="list-style-type: none"><li>• Does the vendor's proposal demonstrate its equipment and facilities can meet the Government's need?</li><li>• Have they used the proposed equipment and facilities to produce the product previously? <i>Note:</i> To meet urgent needs, having the necessary equipment and facilities on hand may become increasingly more important.</li><li>• If a small business, is the vendor able to comply with the limitation on subcontracting at 52.219-14. If not, the vendor may be considered non-responsible (see FAR 9.103-4(d)(2).</li><li>• Did the Department of Labor consider any of the vendor's facilities or equipment are unsafe or not properly maintained?</li></ul>	<p>If there are concerns:</p> <ul style="list-style-type: none"><li>• Obtain a Pre-award survey when information on vendor is limited (see FAR 9.106).</li><li>• Obtain the address and facility code of each facility where work will be performed.</li><li>• Obtain lease or other documentation of the ability to obtain the required facilities</li></ul>
FAR 9.104-1(g)	Be otherwise eligible for award	Is the vendor suspended, debarred or otherwise not eligible for award on the day of award? See FAR 9.405(d)(4)	SAM PDF showing the vendor was not suspended or debarred immediately prior to award.

As a reminder, when a small business appears to be non-responsible, the contracting officer must refer the matter to the Small Business Administration who will decide whether to issue a Certificate of Competency (see FAR 9.104-3(d)(1)).



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**Appendix E**  
**Report Distribution**

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