

Government Contracts Blog

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President Obama Issues Memorandum Addressing Tax Delinquency With Government Contractors

On January 20, 2010, the President issued a Memorandum ordering the Department of the Treasury and the Office of Management and Budget (“OMB”) to block the award of government contracts to companies that are delinquent on their taxes. The Memorandum calls for the review of certifications of non-delinquency, which was added in 2008 to FAR 52.209-5, “Certification Regarding Responsibility Matters.” Citing GAO reports as a justification, the Memorandum states that “Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies.”

The Memorandum requires:

- The Commissioner of the Internal Revenue Service to review contractor certifications of non-delinquency pursuant to FAR 52.209-5 and to report back to the President within 90 days regarding their overall accuracy;
- The Director of the Office of Budget and Management (“OMB”), working with the Treasury Department and other agency heads, to evaluate the practices of contracting officers and debaring officials in response to contractors’ certifications; and
- The OMB Director to report to the President within 90 days about process improvements to ensure that contractors who are considered “delinquent” are not awarded new contracts. This includes a plan to make contractor certifications available in a Government-wide database.

The President also stated that he would ask for legislation from Congress that would sanction contractors for their failure to pay taxes. Additionally, the administration is planning to reintroduce language from last year’s budget that would allow the government to offset payments to contractors by the amount of taxes they owed.

The Memorandum comes at a time of heightened scrutiny for contractors, and is the latest in a series of directives to reduce contracting waste, fraud and abuse.

In light of this Memorandum, contractors should make sure that they document any disputes they have with the IRS in order to prevent the Government from using this policy as leverage for

settlement purposes. Additionally, this policy should put contractors on notice that they could receive show-cause notices from suspension and debarment officials when they have a dispute with the IRS.

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