

## 9.105-2 Determinations and documentation.

### (a) Determinations.

(1) The *contracting officer's* signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an *offer* on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the *contracting officer shall* make, sign, and place in the contract file a determination of nonresponsibility, which *shall* state the basis for the determination.

(2) If the *contracting officer* determines that a responsive small business lacks certain elements of responsibility, the *contracting officer shall* comply with the procedures in subpart 19.6. When a Certificate of Competency is issued for a small business concern (see subpart 19.6), the *contracting officer shall* accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the concern.

### (b) Support documentation.

(1) Documents and reports supporting a determination of responsibility or nonresponsibility, including any *preaward survey* reports, the use of FAPIIS information (see 9.104-6), and any applicable Certificate of Competency, *must* be included in the contract file.

(2)

(i) The *contracting officer shall* document the determination of nonresponsibility in FAPIIS (available at <https://www.cpars.gov>) if-

(A) The contract is valued at more than the *simplified acquisition threshold*;

(B) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics; and

(C) The Small Business Administration does not issue a Certificate of Competency.

(ii) The *contracting officer* is responsible for the timely submission, within 3 working days, and sufficiency, and accuracy of the documentation regarding the nonresponsibility determination.

(iii) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except *past performance* reviews, will be publicly available. FAPIIS consists of two *segments*-

(A) The non-public *segment*, into which Government officials and contractors post information, which can only be viewed by-

(1) Government personnel and authorized users performing business on behalf of the Government; or

(2) An *offeror* or contractor, when viewing data on itself; and

(B) The publicly-available *segment*, to which all data in the non-public *segment* of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for-

(1) *Past performance* reviews required by subpart [42.15](#);

(2) Information that was entered prior to April 15,2011; or

(3) Information that is withdrawn during the 14-calendar-*day* waiting period by the Government official who posted it in accordance with paragraph (b)(2)(iv) of this section.

(iv) The *contracting officer*, or any other Government official, *shall* not post any information in the non-public *segment* of FAPIIS that is covered by a disclosure exemption under the Freedom of Information Act. If the contractor asserts within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public *segment* of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information *must* within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information Act procedures, prior to reposting the releasable information.

**Parent topic:** [9.105 Procedures](#).