



FAR Part 9

Contractor Qualifications



FY 2021
\$663 Billion
 "That equals
 approximately
 \$1.8B per day"

Introduction

The federal government awarded over **\$663 billion dollars** to commercial companies, large and small, new and old, within every industry, from every state in the nation and beyond.

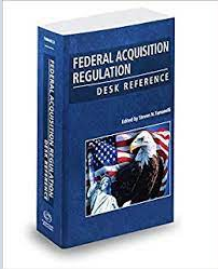
They all had at least one thing in common – they all met the government’s definition of **“responsible”**.

Purpose

The purpose of this report is to help you better understand each of the 7 criteria the federal government uses in determining whether your organization qualifies as a responsible contractor.

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Federal Acquisition Regulations (FAR)

These 7 responsibility criteria are listed on page 233 of the Federal Acquisition Regulation, or “FAR”. The FAR is the principal set of rules in the Federal Acquisition Regulation System.

We will analyze each of these criteria throughout this paper.

Excerpt

Here is the exact wording in FAR, Subpart 9.1 – Responsible Prospective Contractors – 9.104-1 General standards:



To be determined responsible, a prospective contractor must:

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them (see [9.104-3\(a\)](#));
- (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) Have a satisfactory performance record (see [9.104-3\(b\)](#) and [Subpart 42.15](#)). A prospective contractor shall not be determined responsible or non-responsible solely on the basis of a lack of relevant performance history, except as provided in [9.104-2](#);
- (d) Have a satisfactory record of integrity and business ethics (for example, see [Subpart 42.15](#)).
- (e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See [9.104-3\(a\)](#).)
- (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see [9.104-3\(a\)](#)); and
- (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations (see also inverted domestic corporation prohibition at [9.108](#)).

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&
Responsible



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7 Keys

1.) Have adequate financial resources to perform the contract, or the ability to obtain them.

In assessing this criterion, contracting officers (government buyers) consider the factors generally used to assess businesses' financial health:

- ✓ Ratio of assets to liabilities,
- ✓ Working capital,
- ✓ Cash flow projections,
- ✓ Credit ratings,
- ✓ Profitability, and
- ✓ Liquidity of assets.

A contractor's filing for bankruptcy does not, in itself, mean that the contractor lacks adequate financial resources. Contractors may demonstrate their financial capacity by offering performance bonds.

2.) Be able to comply with the required or proposed delivery or performance schedule.

Any circumstances suggesting that a contractor might not comply with the contract's schedule for delivery or performance could form the basis for an unfavorable finding on this criterion. Such circumstances may include:

- ✓ Recent relocation;
- ✓ Labor disputes;
- ✓ Delivery problems under prior contracts; and
- ✓ Inability to demonstrate that suppliers or subcontractors are committed to delivering necessary items or equipment.



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3.) Have a satisfactory performance record.

Under the FAR, “a prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be non-responsible, unless the contracting officer determines that the circumstances were properly beyond the contractor’s control, or that the contractor has taken appropriate corrective action.” Serious deficiencies in performance may include:

- ✓ Delinquent performance;
- ✓ Delivery of nonconforming items;
- ✓ Failure to adhere to contract specifications;
- ✓ Late deliveries;
- ✓ Poor management or technical judgment;
- ✓ Failure to correct production problems;
- ✓ Failure to perform safely; and
- ✓ Inadequate supervision of subcontractors.

Contracting officers must consider the circumstances surrounding any deficient performance when making determinations, and poor performance or default on one or several prior contracts is not, per se, sufficient ground for disqualification.

4.) Have a satisfactory record of integrity and business ethics.

In evaluating this criterion, contracting officers may consider:

- ✓ Convictions or indictments of corporate officers; integrity offenses constituting grounds for suspension under the FAR;
- ✓ Repeated violations of state law; or
- ✓ Pending debarments.

A lack of integrity on the part of entities with which the contractor has close relationships may also be considered. Due process could potentially be required when non-responsibility determinations are based on concerns about the contractor’s integrity because contractors have a liberty interest in being able to challenge allegations about their integrity that could deprive them of their livelihood.



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5.) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.

Contracting officers considering this criterion focus on prior work experiences, as well as the present organization of corporations. Inability to implement necessary programs or procedures (e.g., for quality assurance), unsatisfactory experience, or lack of experience may be grounds for non-responsibility determinations. Agencies may consider the experience of:

- ✓ Predecessor firms, when the contractor retains key personnel;
- ✓ Parent firms, when their resources would be committed to performing the contract; and
- ✓ Principal officers or key employees.

6.) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Contractors may be found non-responsible based on this criterion when they do not presently possess necessary equipment or facilities, or cannot prove ability to access them in the future. Contracting officers may also evaluate the safety or capacity of equipment or facilities.

7.) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Contracting officers evaluating this criterion consider whether contractors are disqualified from or ineligible for a proposed award because of collateral requirements, or other provisions of law specifying when contractors are disqualified from or ineligible for awards.



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Additional Resources



Resource

[Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures](#)

Provided By

The Congressional Research Service

Purpose

Lists major collateral requirements presently in effect government-wide. Contracting officers may also consider whether contractors have or can acquire any necessary federal licenses or permits.

Resource

[Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures](#)

Provided By

The Congressional Research Service

Purpose

Detailed analysis of federal contracting responsibility evaluation criteria.

Schedule a consultation:



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Schedule](#)



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