



February 1, 2016

General Services Administration  
Regulatory Secretariat (MVCB)  
ATTN: Ms. Flowers  
1800 F Street, NW, 2<sup>nd</sup> Floor  
Washington, DC 20405-0001

Submitted via Regulations.gov

Subject: FAR Case 2015-011

Dear Ms. Flowers:

The Project On Government Oversight (POGO) provides the following public comment to FAR Case 2015-011, “Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction” (80 Fed. Reg. 75903, December 4, 2015). POGO is an independent nonprofit organization committed to achieving a more accountable and transparent federal government. A large part of our work involves investigating, exposing, and proposing ways to eliminate waste and corruption in federal contracting.

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement sections 523, 744, and 745 of the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. 113-235). These sections prohibit federal agencies from entering into a contract with any corporation having a delinquent federal tax liability or a federal felony conviction within the past two years, unless the agency “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.”<sup>1</sup>

POGO supports this interim rule. It will facilitate more rigorous scrutiny of companies with a recent federal conviction or unpaid federal taxes. Therefore, the rule will help ensure that federal contractors have a “satisfactory record of integrity and business ethics”<sup>2</sup> and “conduct themselves with the highest degree of integrity and honesty.”<sup>3</sup>

For many years, POGO has warned of the risks posed by contractors who owe taxes.<sup>4</sup> Tax-delinquent contractors not only deprive the government of revenue, but also are more likely to perform poorly on the contract.<sup>5</sup>

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<sup>1</sup> “Federal Acquisition Regulation: Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction,” 80 Fed. Reg., Vol. 80, No. 233, December 4, 2015, p.75904.  
<https://www.gpo.gov/fdsys/pkg/FR-2015-12-04/pdf/2015-30456.pdf>. (Downloaded February 1, 2016)

<sup>2</sup> FAR Subpart 9.104-1(d) (48 CFR 9.104-1(d))

<sup>3</sup> FAR Subpart 3.1002(a) (48 CFR 3.1002(a))

<sup>4</sup> Project On Government Oversight, “If At First You Don’t Succeed, Try Again...and Again...and Again,” May 7, 2013. <http://www.pogo.org/blog/2013/05/20130507-if-at-first-you-dont-succeed-try-again-and-again.html>

Furthermore, contractors who owe taxes have an unfair competitive advantage over competitors who pay their fair share. By leveling the commercial playing field, the rule will also increase competition, which saves money, improves contractor performance, and promotes accountability.<sup>6</sup>

The rule will also help shrink the federal corporate tax gap and improve corporate behavior. With billions of dollars in federal business at stake, tax-delinquent companies will have an incentive to settle their debts. Likewise, companies with a recent felony conviction will be compelled to mend their ways.

We are pleased that the rule does not have exceptions for commercially available off-the-shelf (COTS) and commercial item acquisition contracts. The government conducts a substantial amount of business under COTS and commercial item contracts. Including these items will better protect the government's and taxpayers' interests.

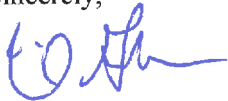
The rule, however, and the newly created FAR Subsection 9.104-5(b)(2), might create a conflict with the existing provision at 9.104-5(a)(2). Currently the FAR requires a contracting officer to "[n]otify, prior to proceeding with award, in accordance with agency procedures...the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,500." The newly created 9.104-5(b)(2) requires that the contracting officer notify suspension and debarment authorities, but the tax delinquency threshold is not included, and it was not included in the law. Based on the fact that the law established a zero tolerance policy for contractor tax delinquencies, the FAR Council should resolve the conflicting notification requirement at 9.104-5(b)(2). Such a change would also require that FAR Subpart 52.209-5(a)(1)(i)(D) be revised to remove the \$3,500 threshold.

We also urge the FAR Council to expand the certification provision to include reporting of state and local tax delinquencies. If certification and agency actions are limited to federal tax delinquencies, the federal government will still be at risk of awarding contracts to companies lacking the requisite integrity, business ethics, and honesty.

In conclusion, the interim rule will be a boon for the government and taxpayers. By weeding out risky, non-responsible contractors, it will lessen the occurrence of fraud and waste and improve the quality of goods and services. At the same time, the rule will help the government recover delinquent corporate taxes and strengthen corporate ethics and compliance.

If you have any questions, I can be reached at [ngordon@pogo.org](mailto:ngordon@pogo.org) or (202) 347-1122.

Sincerely,



Neil Gordon  
Investigator

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<sup>5</sup> Treasury Inspector General for Tax Administration, *Federal Guidelines Do Not Prohibit the Awarding of Contracts to Contractors With Delinquent Tax Liabilities*, September 28, 2010, p. 4 (“[T]ax indebtedness may indicate serious issues that could jeopardize contract performance.”).

<https://www.treasury.gov/tigta/auditreports/2010reports/201030120fr.pdf> (Downloaded January 27, 2016)

<sup>6</sup> Government Accountability Office, *Early Attention in the Acquisition Process Needed to Enhance Competition*, GAO-14-395, May 2014, p. 1 (“Competitive contracts can help save money, improve contractor performance, curb fraud, and promote accountability for results.”). <http://www.gao.gov/assets/670/662985.pdf> (Downloaded January 27, 2016)