January 16, 2018

Department of the Treasury  
Office of the Procurement Executive  
ATTN: Thomas O’Linn  
1722 I Street NW, Mezzanine-M12C  
Washington, DC 20006

Submitted via Regulations.gov

Subject: Public Comment re. Interim Rule, “Department of the Treasury Acquisition Regulations; Tax Check Requirements”

Dear Mr. O’Linn:

The Project On Government Oversight (POGO) provides the following public comment regarding the interim rule, “Department of the Treasury Acquisition Regulations; Tax Check Requirements” (82 Fed. Reg. 53426, November 16, 2017). 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.

This interim rule amends the policies and procedures by which Internal Revenue Service (IRS) contracting officers determine whether prospective contractors have a delinquent federal tax liability and thus may be ineligible to enter into a contract with the IRS.¹ Specifically, the rule will establish a process by which contracting officers can discuss with prospective contractors any adverse information the officer discovers during a “tax check.”

The tax check adds a layer of accountability to the contractor responsibility certification requirement.² The interim rule is a necessary fix to the tax-check process. The rule will decrease the chance that prospective contractors are wrongly disqualified due to seemingly adverse tax information that could have been clarified or resolved with the contracting officer.

The rule will also strengthen the IRS’s compliance with regulations that require federal contracts to be awarded only to responsible entities.³ Contractor tax liability is a serious problem. For many years, POGO

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¹ Section 744 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) prohibits the federal government from entering into a contract with “any corporation that has any unpaid Federal tax liability...unless a Federal 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.”
² FAR Subparts 52.209-5(a)(1)(i)(D), 52.209-11, and 9.104-5
³ FAR Subpart 9.103(a) (“Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.”); FAR Subpart 9.104-1 (“To be determined responsible, a prospective contractor must...have a satisfactory record of integrity and business ethics.”); FAR Subpart 3.1002(a) (“Government contractors must conduct themselves with the highest degree of integrity and honesty.”)
has informed the public of the risks posed by contractors who owe taxes, including contractors who work for the IRS. Tax-delinquent contractors not only deprive the government of revenue (the federal corporate tax gap is estimated to be between $35 billion and $44 billion), they are more likely to perform poorly while maintaining an unfair advantage over competitors who meet their tax obligations.

In conclusion, the interim rule will improve the contracting system by making the award process fairer and more efficient. In the long run, the rule will help lessen the occurrence of fraud and waste, improve the quality of goods and services, and help the government recover some of the billions of dollars in unpaid corporate taxes.

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

Sincerely,

Neil Gordon
Investigator

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