

US Contractors Must Reveal Felony, Tax Info Under New Reg

By **Adam Sege**

Law360, Washington (December 4, 2015, 1:56 PM ET) -- Federal contractors responding to solicitations from three major agencies will soon be required to disclose recent felony convictions and unpaid taxes, according to a rule published by the government Friday in the Federal Register.

Under the interim rule, scheduled to take effect Feb. 26, contractors for the Department of Defense, NASA and the General Services Administration must affirm as part of their applications whether they have any felony convictions in the last two years and whether they have unpaid federal tax liability that has been assessed but is not being appealed or paid.

"It is in the interest of the United States to only award contracts to entities that are responsible and law-abiding," the government says in the notice.

Contractors who do not certify their tax and felony status as required by the bill will be given an opportunity to update their application and include the certification. If they do not, the rule instructs contracting officers to reject the application.

The rule also instructs contracting officials not to issue awards to contractors who answer in the affirmative, unless a suspension or debarment official from the awarding agency has reviewed their situation and determined the contractor should not be excluded.

By requiring contractors to disclose the covered felony and tax statuses, the rule implements a requirement of the 2015 Consolidated and Further Continuing Appropriations Act, which asked contracting officers to weigh these issues in their award decisions.

"This action is necessary because these appropriations act restrictions apply to all funds appropriated under the respective acts, and it is important to provide immediate direction to contracting officers, so that they do not inadvertently violate the conditions placed upon the expenditure of the funds," the government says in the Federal Register notice.

While appropriations acts have for years asked contracting officers to consider contractors' recent felony and tax statuses, requiring a certification or disclosure from contractors makes this consideration more enforceable, according to Peter J. Eyre, a partner in Crowell & Moring LLP's government contracts group.

For contractors who cannot answer the tax and felony questions in the negative, it therefore adds

pressure on them to take proactive steps such as making their case for consideration to suspension and debarment officials, Eyre said.

"Contractors who have had felony convictions or who are in the process of resolving felony matters need to pay very close attention to this rule," Eyre said. "Making sure that you feature this rule as part of your process is going to be very important to make sure you don't accidentally stumble into suspension and debarment issues."

The Federal Register notice marks the beginning of a 60-day public comment period.

--Editing by Jeremy Barker.

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