

(b) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(c) *Affiliated concerns.* Affiliated concerns (see *Concern* in 19.001 and *Affiliates* in 19.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

(d)(1) *Small business concerns.* If a small business concern's offer that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether or not to issue a Certificate of Competency (see subpart 19.6).

(2) A small business that is unable to comply with the limitations on subcon-

tracting at 52.219-14 may be considered nonresponsible.

[48 FR 42142, Sept. 19, 1983, as amended at 53 FR 27463, July 20, 1988; 53 FR 34226, Sept. 2, 1988; 56 FR 55378, Oct. 25, 1991; 60 FR 48260, Sept. 18, 1995; 61 FR 67410, Dec. 20, 1996; 62 FR 44820, Aug. 22, 1997; 63 FR 70267, Dec. 18, 1998; 65 FR 80264, Dec. 20, 2000; 66 FR 66989, Dec. 27, 2001; 67 FR 13068, Mar. 20, 2002]

#### 9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

### 9.105 Procedures.

#### 9.105-1 Obtaining information.

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or