It is in the interest of the United States Government to only award contracts to entities that are responsible and law abiding. This is codified in FAR 9.104 by requiring contracting officers to perform a responsibility determination prior to each contract award by using the standards at FAR 9.104–1, as well as consider information submitted by the contractor and information they research or acquire from other sources. The IRS administers the Internal Revenue Code as enacted by Congress. Since fiscal year 2012, language in the annual consolidated Appropriations Act has prohibited the Federal Government under various conditions from using appropriated funds to enter into a contract with a prospective contractor unless the prospective contractor certifies in writing that it has not been notified of any unpaid Federal tax assessment. Most recently, Sections 744 and 745 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 where the awarding agency is aware of an unpaid Federal tax liability.

For purposes of tax administration, the IRS has access to taxpayer return information that is not otherwise available to other Federal Agencies pursuant to 26 U.S.C. 6103(h)(1). The Department of the Treasury has determined that an IRS contractor’s compliance with the tax laws is a tax administration matter. Additionally, 26 U.S.C. 6103(c) authorizes the IRS to disclose a taxpayer’s return information to such person(s) as the taxpayer may designate in a consent to such disclosure. In many cases, however, the official signing a contract proposal on behalf of an offeror will not be an official to whom the IRS is authorized to disclose the offeror’s tax information. Thus, in order to ensure that IRS is authorized to discuss the offeror’s own tax information with an authorized official of the offeror, a consent to disclosure is required. This consent to disclosure must be in the form of a separate written document pertaining solely to the authorized disclosure and must be signed and dated by an authorized person as required and defined in 26 U.S.C. 6103(c) and 26 CFR 301.6103(c)–1(e)(4).

II. Interim Rule

On November 16, 2017 (82 FR 53426), the Department issued an interim rule to amend the DTAR to establish policies and procedures for performing a tax check on the apparent successful offeror in order to demonstrate the offeror’s tax status as paid-in-full or that an approved payment agreement has been reached, at which time the contracting officer will coordinate with the appropriate office within IRS to validate the offeror’s tax status (see FAR 9.104–5(a)(1), (b)(1) and (e)).

The offeror may want to take steps to confirm it does not have a delinquent Federal tax liability prior to submission of its response to the solicitation. If the offeror recently settled a delinquent Federal tax liability, the offeror may want to take steps to obtain information in order to demonstrate the offeror’s responsibility to the contracting officer, if such information is requested (see FAR 9.104–5(a)(1) and (b)(1)).

The interim rule supplemented paragraph (b) of FAR 9.104–5, Representation and certifications regarding responsibility matters, for the purpose of directing IRS contracting officers to the newly added DTAR requirement for IRS contracting officers to use taxpayer return information that is available only to IRS to perform a tax check on the apparent successful offeror to determine eligibility to receive an award.

The interim rule added DTAR subparts 1009.1, Responsible Prospective Contractors, and 1009.70, Tax Check Requirements. This latter subpart prescribe the policies and procedures IRS contracting officers will use for performing a tax check on the apparent successful offeror to determine eligibility to receive an award.

Definitions of terms “authorized representative(s) of the offeror.”
Treasury received twenty-seven comments and twenty-six of those were outside of the scope of the regulation. The one comment within the scope supported the rule. The commenter noted that the rule will improve the contracting system by making the award process fairer and more efficient. Accordingly, the interim rule is adopted in this final rule without change.

IV. Regulatory Procedures

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) generally requires agencies to conduct an initial regulatory flexibility analysis and a final regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. In this final rule, the Department is adopting an interim rule without change. The interim rule amended the DTAR to establish an internal process that strengthens IRS' compliance with acquisition act restrictions and the FAR prohibition of entering into a contract with contractors having a delinquent Federal tax liability (see FAR 9.104–5(b)). This determination is consistent with the FAR requirements regarding the inclusion of the provisions 52.209–5, 52.209–11 and 52.212–3 as well as various appropriation restrictions.

III. Summary of Public Comments and This Final Rule

The comment period for the interim rule closed on January 16, 2018. Treasury received twenty-seven