



April 2019

# FEDERAL CONTRACTING

## Opportunities to Improve Compliance with Regulations and Enhance Tax Collections

## Why GAO Did This Study

The federal government obligated approximately \$507 billion on contracts in fiscal year 2017. Businesses, including federal contractors, pay billions of dollars in taxes each year. Some businesses, however, do not pay owed taxes, contributing to what is known as the tax gap. Federal contractors owe some of the taxes that contribute to the tax gap, and, since 2015, federal law prohibits agencies, under certain circumstances, from using appropriated funds to contract with those who have qualifying tax debt. The IRS also has authority to levy certain payments of contractors with qualifying federal tax debt.

GAO was asked to review issues related to federal contractors and tax debt. Among other things, GAO examined whether, in calendar years 2015 and 2016, (1) selected federal agencies had control activities that ensured contractors' reported federal tax debts were considered before contract award and (2) the IRS levied selected federal contractors' payments. GAO analyzed contract and IRS data from 2015 and 2016 (the most-recent data available), reviewed five agencies that represent 51 percent of contract obligations, and reviewed seven awards to contractors reporting tax debt.

## What GAO Recommends

GAO is making 12 recommendations, including that selected agencies enhance controls for considering contractors' qualifying federal tax debt before awarding contracts and that the IRS evaluate options to obtain comprehensive contract-payment information. All the agencies generally agreed with GAO's recommendations.

View [GAO-19-243](#). For more information, contact Rebecca Shea at (202) 512-6722 or [shear@gao.gov](mailto:shea.r@gao.gov).

# FEDERAL CONTRACTING

## Opportunities to Improve Compliance with Regulations and Enhance Tax Collections

### What GAO Found

The five selected agencies GAO reviewed have control activities—such as policies and procedures—to help ensure they consider qualifying federal tax debts as defined by Federal Acquisition Regulation (FAR) § 52.209-11 and § 52.209-5 before awarding contracts. However, these controls were potentially ineffective in ensuring compliance with relevant laws and regulations. According to GAO's analysis, in 2015 and 2016 the Departments of Energy, Health and Human Services, and Veterans Affairs, and the Army and Navy, awarded 1,849 contracts to contractors that reported qualifying federal tax debts, such as delinquent debts over \$3,500 (see table). When a contractor reports qualifying tax debts under these regulations, the contracting officer must take several actions, including notifying the agency suspension and debarment official (SDO). However, SDOs at all five agencies told GAO they did not receive any notifications of contractors reporting tax debt in this period. As a result, these contracts may have been awarded without potential required actions, indicating potential violations of federal regulations and, in some cases, appropriations law.

**Number of Contract Awards to Contractors Reporting Qualifying Tax Debt under FAR § 52.209-11 and § 52.209-5 in Calendar Years 2015 and 2016, by Selected Agency**

| Agency                                  | Contract awards under § 52.209-11 | Contract awards under § 52.209-5 |
|---|-----------------------------------|----------------------------------|
| Department of Defense, Army             | 73                                | 324                              |
| Department of Defense, Navy             | 54                                | 266                              |
| Department of Energy                    | 0                                 | 22                               |
| Department of Health and Human Services | 7                                 | 78                               |
| Department of Veterans Affairs          | 9                                 | 1,016                            |
| <b>Total</b>                            | <b>143</b>                        | <b>1,706</b>                     |

Source: GAO analysis of General Services Administration data. | GAO-19-243

GAO's nongeneralizable review of seven contracts illustrate two cases where contractors were collectively awarded more than \$510,000 in contract obligations while having more than \$250,000 in tax debt, including tax penalties for willful noncompliance with tax laws. Officials from the selected agencies were unable to explain why their control activities were potentially ineffective without reviewing each contract to determine whether FAR requirements were applicable and whether control activities were applied. Understanding why existing control activities did not operate effectively will help these agencies enhance controls to avoid future misuses of appropriated funds. GAO plans to provide information on the instances of potential noncompliance GAO identified to the selected agencies.

Of the over 2,700 executive-branch contractors GAO found to have likely qualifying federal tax debt as of December 2016, the Internal Revenue Service (IRS) had identified over 2,000 for levy through its automated Federal Payment Levy Program (FPLP). However, the FPLP cannot levy all contractors because not all payments are processed by the system the FPLP uses. The data the IRS receives from agencies does not allow it to readily identify payments made using other systems—information the IRS needs for agency outreach about inclusion in the FPLP and to more quickly initiate a manual levy. With this information, the IRS may be able to improve its levy capacity and enhance tax collections.

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## Abbreviations

|                |  |
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| CFO            | Chief Financial Officer                            |
| DOE            | Department of Energy                               |
| FAR            | Federal Acquisition Regulation                     |
| Fiscal Service | Bureau of the Fiscal Service                       |
| FPDS-NG        | Federal Procurement Data System–Next<br>Generation |
| FPLP           | Federal Payment Levy Program                       |
| GSA            | General Services Administration                    |
| HHS            | Department of Health and Human Services            |
| IRS            | Internal Revenue Service                           |
| SAM            | System for Award Management                        |
| SDO            | suspension and debarment official                  |
| TFRP           | Trust Fund Recovery Penalty                        |
| Treasury       | Department of the Treasury                         |
| VA             | Department of Veterans Affairs                     |

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April 15, 2019

The Honorable Elijah E. Cummings  
Chairman  
The Honorable Jim Jordan  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives

The Honorable Richard E. Neal  
Chairman  
The Honorable Kevin Brady  
Ranking Member  
Committee on Ways and Means  
House of Representatives

The federal government obligated approximately \$507 billion on contracts and awarded about 537,000 new contracts to over 100,000 contractors in fiscal year 2017.<sup>1</sup> Businesses, including those that receive federal contracts, are responsible for paying their share of taxes including employment and income tax, which results in billions of dollars in tax revenue each year. Some taxes are not paid voluntarily and on time, however, leading to what is known as a “tax gap.”<sup>2</sup> A portion of the tax gap is owed by individuals and businesses receiving payments from the federal government. In its most-recent estimate, the Internal Revenue Service (IRS) stated that the average annual gross tax gap was \$458 billion for tax years 2008–2010. The IRS estimated that it would eventually collect \$52 billion of this amount, leaving a net tax gap of \$406 billion in unpaid taxes for each of those 3 years. In an effort to help close the tax gap, Congress gave the IRS the authority to collect assets or payments, including federal contract payments, to collect unpaid taxes, and these collections are referred to as a levy.<sup>3</sup> IRS enforcement of tax

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<sup>1</sup>These contract obligations include task orders reported by federal agencies to the Federal Procurement Data System–Next Generation (FPDS-NG). The FPDS-NG is the central repository for capturing information on federal procurement actions. Dollar amounts reported by federal agencies to FPDS-NG represent the net amount of funds obligated and deobligated as a result of procurement actions.

<sup>2</sup>The tax gap is the difference between the taxes that should have been paid voluntarily and on time and what was actually paid.

<sup>3</sup>I.R.C. § 6331(h). A levy is a legal seizure of property (including payments) to satisfy a tax debt.

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laws is vital to promote compliance by giving taxpayers confidence that others are paying their fair share. Because of the challenges that the IRS faces in its enforcement of tax laws, we continue to include it as a high-risk area.<sup>4</sup>

Our prior work, as well as that of the Treasury Inspector General for Tax Administration, identified thousands of federal contractors that abused the federal tax system, causing significant loss of tax revenue.<sup>5</sup> For example, in 2007 we found that thousands of federal contractors had substantial amounts of unpaid federal taxes. Specifically, about 63,000 federal contractors owed approximately \$7 billion in unpaid taxes. At the time of that report, there was no requirement that contracting officers consider most instances of unpaid federal taxes prior to the award.<sup>6</sup>

Since as early as 2008, under the Federal Acquisition Regulation (FAR),<sup>7</sup> certain prospective contractors have been required to report delinquent federal tax. Furthermore, since fiscal year 2015, appropriations statutes have included a government-wide provision prohibiting federal agencies, under certain circumstances, from using appropriated funds to enter into contracts with corporations that have certain federal tax debts. Specifically, fiscal years 2015 and 2016 appropriations statutes contain a

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<sup>4</sup>GAO, *High-Risk Series: Progress on Many High-Risk Areas, While Substantial Efforts Needed on Others*, [GAO-17-317](#) (Washington, D.C.: Feb. 15, 2017).

<sup>5</sup>GAO, *Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System*, [GAO-07-742T](#) (Washington, D.C.: Apr. 19, 2007); *Recovery Act: Thousands of Recovery Act Contract and Grant Recipients Owe Hundreds of Millions in Federal Taxes*, [GAO-11-485](#) (Washington, D.C.: Apr. 28, 2011); Treasury Inspector General for Tax Administration, *Existing Procurement Practices Allowed Corporations With Federal Tax Debt To Obtain Contract Awards*, 2015-10-011 (Mar. 26, 2015); *Significant Improvements Are Needed in the Contractor Tax Check Process*, 2016-10-049 (July 20, 2016).

<sup>6</sup>[GAO-07-742T](#).

<sup>7</sup>The FAR is the primary regulation used by all federal executive agencies to acquire supplies and services with appropriated funds. The Office of Federal Procurement Policy was established by Congress in 1974 to provide overall direction for government-wide procurement policies, regulations, and procedures, and to promote economy, efficiency, and effectiveness in acquisition processes. The Interagency Suspension and Debarment Committee was created by, and is responsible for monitoring the implementation of, Executive Order 12549, 51 Fed. Reg. 6370 (Feb. 18, 1986), which requires executive departments' and agencies' participation in a system for debarment and suspension. The committee acts in a leadership role to help agencies build and maintain the expertise necessary to protect the government's business interests from harm. The Civilian Agency Acquisition Council assists the Administrator of the General Services Administration (GSA) in developing and maintaining the FAR system by developing or reviewing all proposed changes to the FAR.

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government-wide provision stating that funds may not be used to enter into a contract with any corporation that has any unpaid federal tax liability (1) that has been assessed, (2) for which all judicial and administrative remedies have been exhausted or have lapsed, and (3) that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, when the awarding agency is aware of the unpaid tax liability, unless a federal agency has considered suspension or debarment of the corporation and has made a determination that further action is not necessary to protect the interests of the government.<sup>8</sup> To implement the appropriations requirement and avoid misuse of appropriated funds, in 2016 the FAR was revised to require contracting officers to include a new tax debt–related provision in all solicitations regardless of contract value. Further, the revised regulation required that prospective contractors respond to this tax provision in the System for Award Management (SAM)<sup>9</sup> as part of their annual representations and certifications.

You asked us to review issues related to federal contractors and tax debt. This report first examines the extent to which, in calendar years 2015 and 2016,<sup>10</sup> (1) selected federal agencies had control activities that ensured contractors' reported federal tax debts were considered before contract award. The remainder of the report assesses the same period; however, it focuses on all executive-branch agencies and examines the extent to which (2) federal contracts were awarded to contractors with federal tax debt, including the characteristics of those contracts and contractors, and (3) the IRS identified selected federal contractors' payments for levy.

To identify the extent to which selected federal agencies had control activities that ensured contractors' reported federal tax debts were

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<sup>8</sup>Pub. L. No. 113-235, Div. E., Tit. VII, § 744, 128 Stat. 2130, 2391 (Dec. 16, 2014) and Pub. L. No. 114-113, Div. E., Tit. VII, § 745, 129 Stat. 2242, 2485 (Dec. 18, 2015). For the purpose of this report we refer to "corporations" as "contractors."

<sup>9</sup>SAM is the primary government repository for prospective federal awardee information and the centralized government system for certain contracting, grants, and other assistance-related processes. It includes data collected from prospective federal awardees required for the conduct of business with the government; prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and identification of those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and nonfinancial assistance and benefits.

<sup>10</sup>All years in this report are calendar years unless otherwise specified.



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considered before contract award (including task orders),<sup>11</sup> we analyzed contract obligation information from the Federal Procurement Data System—Next Generation (FPDS-NG) and selected for our review the five agencies with the highest contract obligations associated with contract awards for 2015 and 2016. We selected this 2-year period because it included the most-recent contract award data available at the time of our review and covered a period in which the newest FAR tax-debt provision was implemented.<sup>12</sup> Specifically, we selected the three civilian agencies with the highest obligations—the Departments of Energy (DOE), Health and Human Services (HHS), and Veterans Affairs (VA)—and, within the Department of Defense, the two agencies with the highest obligations—the Departments of the Army and Navy.<sup>13</sup> The results of our review of these five selected agencies are not generalizable to all federal agencies. However, these five selected agencies awarded about 51 percent of contract obligations associated with contract awards for 2015 and 2016.

We reviewed the selected agencies' policies and procedures related to awarding contracts to prospective contractors that report they owe certain tax debts and we met with agency officials to discuss how their agencies consider contractors' reported federal tax debt before awarding a federal

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<sup>11</sup>A task order is an order for services placed against an established contract or with government sources. The established contract is called a task order contract, which is a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract. For the purposes of our review, we use the term “contract award” to include task orders.

<sup>12</sup>At the time we initiated our review, the 2016 contract obligation data were the most current data available. FAR § 52.209-11(b)(1) became effective on February 26, 2016, and § 52.209-5(a)(1)(i)(D) had been in place since 2008. Under FAR § 52.209-11(b)(1), the prospective contractor represents whether it is a corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. Under FAR § 52.209-5(a)(1)(i)(D), the prospective contractor certifies whether it or any of its principals have, within a 3-year period preceding the offer, been notified of any delinquent federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied. Delinquent federal taxes under this provision are those where the tax liability is finally determined and assessed, with no pending administrative or judicial challenge, and all judicial appeal rights exhausted; and the taxpayer is delinquent in making payment, unless enforced collection action is precluded. The taxpayer is not delinquent if the taxpayer has entered into an installment agreement and is making timely payments in compliance with the agreement terms.

<sup>13</sup>For this report, we use “the Army” and “the Navy” to refer to the Departments of the Army and Navy, respectively.

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contract. Specifically, we met with agency officials who supervise contracting officers, such as the Head of Contracting Activity,<sup>14</sup> Director of Contracts, or other contracting managers, policy and procurement officials, and suspension and debarment officials (SDO) from the selected agencies. Additionally, we reviewed and analyzed applicable laws, regulations, and policy memorandums, as well as applicable policies and procedures, from DOE, HHS, VA, the Navy, and the Army for considering contractors' reported federal tax debt when awarding federal contracts.<sup>15</sup> We interviewed officials from the Office of Management and Budget's Office of Federal Procurement Policy, the Interagency Suspension and Debarment Committee, and the Civilian Agency Acquisition Council to obtain an understanding of how the law is implemented through the FAR. We also met with the General Services Administration (GSA) to obtain an understanding of SAM, including the registration of prospective contractors and their reporting of certain federal tax debt pursuant to the representation requirement of FAR § 52.209-11 and the certification requirement of § 52.209-5.<sup>16</sup>

As part of this work, we analyzed FPDS-NG contract award and SAM contractor registration data to identify instances where contractors reported having certain federal tax debt and received a contract award. Specifically, we electronically matched FPDS-NG contract award data from 2015 and 2016 to the relevant contractors' SAM registration. We then analyzed the relevant contractors' representations and certifications most recently updated in SAM before the relevant contract award to identify all instances where contractors reported that they had a federal tax debt as defined in FAR § 52.209-11 or § 52.209-5 within our time frame. From the resulting list, we identified the contracts that selected agencies awarded to contractors that reported these federal tax debts. In addition, we reviewed a nongeneralizable sample of 15 contract awards

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<sup>14</sup>The Head of the Contracting Activity means the official who has overall responsibility for managing the contracting activity, including the authority to approve contracts before award when necessary and monitoring a process to report contract data to FPDS-NG in coordination with the Senior Procurement Executive. The Senior Procurement Executive is responsible for managing the direction of the agency's procurement system, including implementation of the agency's unique procurement policies, regulations, and standards.

<sup>15</sup>We did not meet with agency officials or review policies and procedures from all contracting offices within each agency.

<sup>16</sup>GSA is an independent agency led by an administrator and manages the FPDS-NG and SAM databases. For this report, we will use FAR § 52.209-11 or § 52.209-5 to refer to the obligation to disclose tax debt in FAR § 52.209-11(b)(1) or § 52.209-5(a)(1)(i)(D).

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from the five selected agencies to provide illustrative examples of the extent to which these agencies' control activities ensured required actions were taken before contract award. These 15 contract awards were selected based on numerous criteria, including the prospective contractors' (1) responses under FAR § 52.209-11 or § 52.209-5 in SAM and (2) having tax debts as of December 15, 2016, that were not in a repayment agreement with the IRS.<sup>17</sup> Further, when selecting contract awards that had a § 52.209-5 certification we considered only contractors having at least \$3,500 in tax debts as of December 15, 2016. We reviewed seven contract awards made to contractors that reported that they had certain tax debts and eight contract awards made to contractors that reported that they did not have certain tax debts as part of their § 52.209-11 representations and § 52.209-5 certifications in SAM. For these 15 contract awards, we reviewed pre-contract award documentation and copies of historical tax transcripts and other records, such as revenue officers' notes obtained from the IRS.<sup>18</sup>

To determine the extent to which executive-branch agency contracts were awarded in 2015 and 2016 to federal contractors with federal tax debt and characteristics of those contract awards and contractors, we electronically matched data from FPDS-NG on contract awards with (1) data from SAM on contractors' representations and certifications of their tax debt and (2) data from the IRS on tax debts owed by these contractors. Our analysis included all of the executive-branch agencies. Further, our analysis describes some characteristics of these debts, including the total amount of debt outstanding and whether or not contractors had unpaid taxes that were timely paid or appeared to be finally determined as of December 15, 2016, which was the time of our data extract. We also analyzed whether contractors that were assessed unpaid taxes in the IRS data<sup>19</sup> reported

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<sup>17</sup>Our analysis of contractors in the IRS data includes only those with unpaid taxes that were (1) assessed before a new contract award during 2015 and 2016; (2) unpaid as of December 15, 2016; and (3) greater than \$100 as of December 15, 2016. The amount of \$100 is defined by the IRS as a de minimis amount, below which any amount is so small as to make accounting for it unreasonable or impractical. We analyzed contracts awarded before December 15, 2016.

<sup>18</sup>For the illustrative examples presented in this report, we rounded tax debt and contract obligation amounts, did not identify the awarding agency, and did not meet with awarding agency officials to discuss each contract award to protect sensitive taxpayer information.

<sup>19</sup>As mentioned, our analysis of contractors in the IRS data includes only those with unpaid taxes that were (1) assessed before a new contract award during 2015 and 2016; (2) unpaid as of December 15, 2016; and (3) greater than \$100 as of December 15, 2016.

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having certain tax debts as part of their § 52.209-11 representations and § 52.209-5 certifications in SAM. We reviewed the most-recent § 52.209-11 representation and § 52.209-5 certification prior to the relevant contract award.

To determine the extent to which the IRS identified selected federal contractors' payments for levy in 2015 and 2016, we identified the population of contractors that owed taxes at the time they received a contract award during our period by matching FPDS-NG, SAM, and IRS Unpaid Assessment data, as described above. We then determined whether the tax debt had ever been identified for levy by the Federal Payment Levy Program (FPLP) as of December 15, 2016, according to IRS data.<sup>20</sup> We also interviewed IRS officials about levying federal contractor payments and reviewed Internal Revenue Manual sections and other relevant documents from the IRS.

We assessed the reliability of FPDS-NG, SAM, and IRS Unpaid Assessment data by reviewing relevant documentation, interviewing knowledgeable agency officials, and performing electronic testing to determine the validity of specific data elements in the databases and determined that these databases were sufficiently reliable for the purposes of our reporting objectives. For additional details on our scope and methods, see appendix I.

We conducted this performance audit from February 2017 to April 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>20</sup>In July 2000, the IRS, in conjunction with the Department of the Treasury (Treasury), Bureau of the Fiscal Service (Fiscal Service), started the FPLP, which is authorized by I.R.C. § 6331(h). Through the FPLP, the IRS can collect overdue taxes through a continuous levy on certain federal payments disbursed by the Fiscal Service. There are certain situations for which contractors with tax debt can be excluded from the FPLP such as currently not collectible hardship accounts, approved installment agreements, pending or approved offers in compromise, and open bankruptcies or litigation. Further, IRS revenue officers can exclude a contractor's account from FPLP if they are working with the taxpayer to resolve the tax debt.

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## Background

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### Pertinent Regulations Governing Federal Contractors and Tax Debt

The FAR, among other things, sets forth requirements that must be met before agencies can award contracts to prospective contractors. Beginning February 26, 2016, contracting officers are required to include a provision in all contract solicitations that require contractors to report information about unpaid federal taxes regardless of the contract value.<sup>21</sup> Specifically, FAR § 52.209-11 incorporates the language from the fiscal years 2015 and 2016 appropriations acts that prohibits the government from entering into contracts with corporations with unpaid federal taxes that

- have been assessed,
- for which all judicial and administrative remedies have been exhausted or have lapsed, and
- that are not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,
- where the awarding agency is aware of the unpaid tax liability,
- unless an agency has considered suspension or debarment of the corporation and made a determination such action is not necessary to protect the interests of the government.

If the prospective contractor reports having unpaid federal taxes under this provision,<sup>22</sup> the contracting officer must

- request additional information from the prospective contractor;
- in accordance with agency procedures, notify the officials responsible for debarment and suspension actions, commonly referred to as the suspension and debarment officials (SDO); and
- not award to the corporation unless an agency SDO has considered suspension or debarment of the corporation and has made a

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<sup>21</sup>A solicitation is any request to submit offers or quotations to the government.

<sup>22</sup>Or unpaid federal taxes reported under the alternative FAR provision for commercial items, § 52.212-3(q)(2)(i).

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determination that suspension or debarment is not necessary to protect the interests of the government.<sup>23</sup>

Additionally, the FAR requires that contracting officers include in certain contract solicitations another provision for prospective contractors to report delinquent taxes. Specifically, contracting officers are also required to include FAR § 52.209-5 in contract solicitations in which the contract value is expected to exceed the simplified acquisition threshold, which was generally \$150,000 at the time of our review, under which prospective contractors report delinquent federal taxes owed.<sup>24</sup> This requirement has been in place since 2008. Under this provision, the prospective contractor must report whether it or any of its principals have, within the preceding 3-year period, been notified of “delinquent federal taxes” in an amount that exceeds \$3,500.<sup>25</sup> For purposes of this provision, “delinquent federal taxes” are those for which

- the tax liability is finally determined and assessed, with no pending administrative or judicial challenge, and all judicial appeal rights are exhausted;<sup>26</sup> and
- the taxpayer is delinquent in making payment, unless enforced collection action is precluded (the taxpayer is not delinquent if the taxpayer has entered into an installment agreement and is making timely payments in compliance with the agreement terms).<sup>27</sup>

If the prospective contractor reports having federal tax debt under this provision, the contracting officer must (1) request additional information from the prospective contractor and (2) in accordance with agency

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<sup>23</sup>FAR § 9.104-5(b). FAR § 9.405 generally notes that contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts and, if applicable, subcontracts, for a set period unless the agency head determines that there is a compelling reason to award the contract.

<sup>24</sup>The simplified acquisition threshold is set by statute but reviewed by the FAR Council every 5 years for possible adjustment for inflation.

<sup>25</sup>Prior to October 1, 2015, this amount was \$3,000. 80 Fed. Reg. 38293, 38299 (July 2, 2015). The alternative FAR provision for commercial items, § 52.212-3(h)(4), requires the same reporting from prospective contractors for commercial item contracts.

<sup>26</sup>For the purposes of this report, we use the term “finally determined” as defined in FAR § 52.209-5, which is that the tax liability has been assessed, with no pending administrative or judicial challenge, and all judicial appeal rights are exhausted.

<sup>27</sup>For the purposes of our report, we use the term “qualifying federal tax debt” to refer to those debts that would meet the definition provided in FAR § 52.209-11 or § 52.209-5.

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procedures notify the officials responsible for debarment and suspension actions. Further, the contracting officer is not required to receive a suspension and debarment determination before contract award for tax debt reported under this certification.<sup>28</sup>

In addition, the FAR generally requires prospective contractors to register in SAM before a contract can be awarded.<sup>29</sup> As part of registering in SAM, prospective contractors must make up to 54 representations and certifications, which must be updated as necessary but at least annually.<sup>30</sup> Included among these is the federal tax debt FAR § 52.209-11 representation and § 52.209-5 certification. The representations and certifications in SAM must be kept current, accurate, and complete.

Unpaid federal tax debts reported under FAR § 52.209-11 and delinquent federal taxes reported under § 52.209-5 do not automatically disqualify the prospective contractor from receiving a contract, but rather are used as part of the contracting officer's responsibility determination of the prospective contractor. Contracting officers rely on the contractors' representations and certifications in SAM to identify qualifying federal tax debts. Federal tax law generally prohibits the IRS from disclosing taxpayer data to other federal agencies for the purpose of determining whether potential contractors owe qualifying federal tax debt.<sup>31</sup> As a result, contracting officers cannot verify a contractor's tax-debt status by obtaining taxpayer information directly from the IRS without the contractor's prior consent.

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## Pre-Contract Award Requirements Related to Tax Debt

In general, the federal pre-contract award process consists of the agency identifying its needs for goods and services, creating an acquisition plan, posting a solicitation that allows interested contractors to submit bids or proposals, and assessing and selecting a prospective contractor to meet its needs. Agency contracting personnel have a variety of pre-contract

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<sup>28</sup>FAR § 9.104-5(a)(2) only requires that contracting officers notify an SDO, before contract award, when a prospective contractor certified to having tax debt under § 52.209-5.

<sup>29</sup>FAR § 4.1102(a) (2016). Effective October 26, 2018, § 4.1102 and several other provisions in the FAR were amended to require offeror registration in SAM prior to submission of an offer, rather than prior to award. 83 Fed. Reg. 48691 (Sept. 26, 2018).

<sup>30</sup>FAR § 4.1201(a) and (b).

<sup>31</sup>I.R.C. § 6103.

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award responsibilities. As one of these responsibilities, the contracting officer is to identify the FAR provisions and clauses required to be included in contract solicitations based on various criteria, such as the contract type and contract value.<sup>32</sup> For example, contracts expected to be above the simplified acquisition threshold are required to include § 52.209-5 in the solicitation. After the solicitation is issued and prospective contractors' offers are obtained, the contracting officer, among other tasks, generally must verify that the prospective contractor is registered in SAM, and that the contractor is not suspended or excluded from doing business with the federal government prior to contract award.<sup>33</sup>

The contracting officer must also determine whether the prospective contractor is "responsible." FAR § 9.104-1 requires that to be determined responsible, prospective contractors must have adequate financial resources to perform the contract, or the ability to obtain them; have a satisfactory record of integrity and business ethics; and be otherwise qualified and eligible to receive an award under applicable laws and regulations, among other things. As part of the responsibility determination, the contracting officer must also access, review, and document the prospective contractor's applicable representations and certifications, including qualifying federal tax debt reported under § 52.209-11 and § 52.209-5.<sup>34</sup> See figure 1 for an overview of the pre-contract award requirements related to tax debt.

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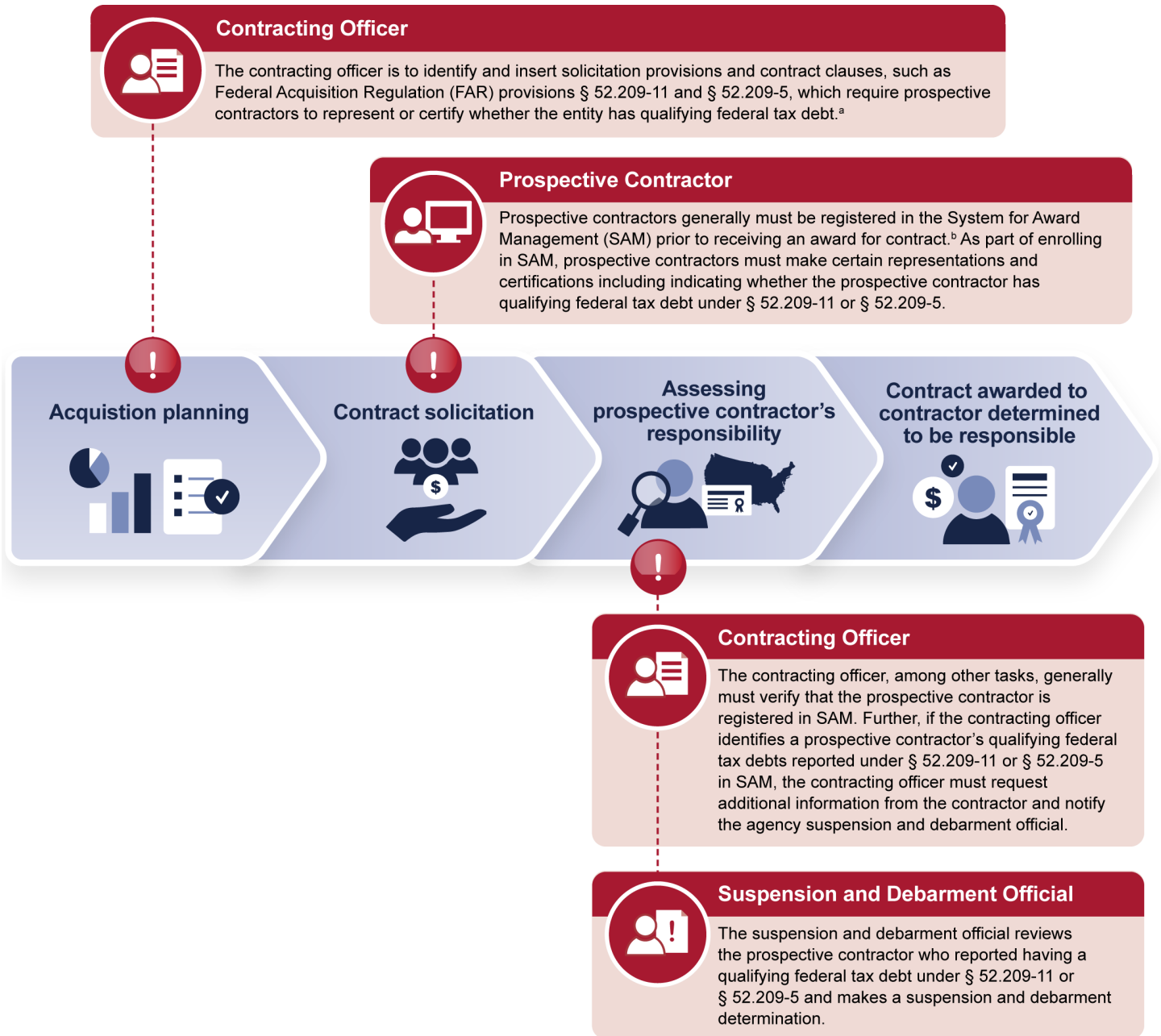
<sup>32</sup>Generally, if the contract amount is greater than \$25,000, then the agency posts a solicitation on the Federal Business Opportunities (FedBizOpps) website, available at <https://www.fbo.gov>. At a minimum, a solicitation identifies what an agency wants to buy, provides instructions to would-be offerors, identifies the source selection method that will be used to evaluate offers, and includes a deadline for the submission of bids or proposals.

<sup>33</sup>FAR § 4.1103(a)(1) and FAR § 9.405(d)(1) and (4), respectively.

<sup>34</sup>FAR § 4.803(a)(11) and § 9.105-1(a) requires contracting officers possess or obtain information to meet applicable standards, such as contractors' SAM representations and certifications, and include such document the information in the contract file.



**Figure 1: Overview of Pre-Contract Award Requirements Related to Qualifying Federal Tax Debt**



Source: GAO. | GAO-19-243

<sup>a</sup>Qualifying federal tax debt refers to those tax debts that would meet the definition provided in FAR § 52.209-11 or § 52.209-5.

<sup>b</sup>Effective October 26, 2018, offerors must be registered in SAM prior to submission of an offer, rather than prior to award. 83 Fed. Reg. 48691 (Sept. 26, 2018).

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## IRS Levies to Collect Unpaid Taxes

The IRS, which is located in the Department of the Treasury (Treasury) and led by a commissioner, may collect assets or payments, including federal contract payments to collect unpaid taxes, and these collections are referred to as a “levy.”<sup>35</sup> The IRS will usually levy only after notifying the taxpayer in writing of the amount of the unpaid tax and the right of the taxpayer to request a hearing within a 30-day period before the levy occurs. However, if the taxpayer is a federal contractor, the taxpayer is given the opportunity for the hearing within a reasonable period after the levy.<sup>36</sup> One way the IRS levies federal contractor payments is through the FPLP, which is an automated program that can collect overdue taxes through a continuous levy on certain federal payments processed by Treasury’s Bureau of the Fiscal Service (Fiscal Service). In addition to the FPLP, the IRS can also levy federal contractors manually. Specifically, the IRS may levy federal contractor payments directly from federal agencies to collect unpaid taxes.<sup>37</sup>

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## Selected Agencies Have Controls to Identify Contractors’ Reported Tax Debt, but the Controls Were Potentially Ineffective at Ensuring Compliance with Regulations

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<sup>35</sup>I.R.C. § 6331.

<sup>36</sup>I.R.C. § 6330(f)(4).

<sup>37</sup>According to IRS officials, the IRS has the authority to contact third parties directly, including federal agencies, for the purpose of establishing a levy to collect unpaid taxes. For example, a revenue officer may contact a federal agency to establish a levy of a contract payment to collect unpaid taxes owed by the contractor prior to giving the Collection Due Process notice. In doing so, the revenue officer would not share the contractor’s full tax history, but only the information necessary to establish the levy.

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## Agencies Have Control Activities to Identify Contractors That Reported Qualifying Federal Tax Debt

The five selected agencies we examined have established control activities to varying degrees to help contracting officers comply with federal laws and regulations related to identifying prospective contractors' reported qualifying federal tax debt. These control activities include the following:

- **Class Deviations:** The five agencies issued class deviations from the FAR to implement the tax debt–related appropriations restriction prior to February 26, 2016.<sup>38</sup> These class deviations generally required contracting officers to include an alternative provision in solicitations and, if a contractor reported having qualifying tax debt, to not award the contract without a written suspension and debarment determination from an agency SDO. For example, the Department of Defense, DOE, HHS, and VA issued class deviations as early as 2012 that required contracting officers to take two actions: (1) insert an alternate provision when issuing solicitations using appropriated funds and (2) obtain an SDO determination that suspension or debarment is not necessary to protect the interests of the government before awarding a contract to a contractor who reported qualifying tax debts.<sup>39</sup>
- **Policies and Procedures:** VA, DOE, and HHS issued policies and procedures to varying degrees that generally direct contracting officers to the relevant sections of the FAR when assessing contractor responsibility. For example, both VA and DOE issued policies or guidance on determining contractor responsibility and including § 52.209-5 in solicitations where the value was expected to exceed the simplified acquisition threshold. In addition, agency officials who supervise contracting officers told us that contracting officers use contractors' representations and certifications in SAM to identify qualifying federal tax debts and document their review of the information when determining contractor responsibility before contract

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<sup>38</sup>Agencies issue class deviations when the agency must take alternative acquisition actions to meet specific agency needs and requirements that affect more than one contract. All five of these agencies were subject to similar appropriation act restrictions as early as 2012, and issued relevant class deviations to implement these restrictions prior to February 26, 2016, as discussed below. See, for example, Pub. L. No. 112-74, Div. A, Tit. VIII, § 8124, 125 Stat. 786, 837 (Dec. 11, 2011). The appropriations acts restriction were included in the FAR via the rulemaking process, thus none of these class deviations are currently active.

<sup>39</sup>Department of Defense class deviations are applicable to both the Army and the Navy.

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award.<sup>40</sup> For example, one of the Navy's responsibility-determination templates requires contracting officers to notate that they verified, in SAM, that the prospective contractor did not report qualifying federal tax debts under FAR § 52.209-5.<sup>41</sup>

Further, the five agencies have also issued procedures outlining the SDO suspension and debarment referral and review process, as required by federal regulations. For example, HHS issued guidance on suspension and debarment that includes (1) relevant contact information, (2) required or optional documentation to include, and (3) potential causes for suspension or debarment, such as the contractor reported qualifying federal tax debt. Both the Army and Navy issued policy alerts informing contracting officers of the February 26, 2016, effective date of FAR § 52.209-11<sup>42</sup> and the requirement that an SDO determine that suspension or debarment is not necessary to protect the interests of the government before awarding a contract to a contractor who reported having tax debts under this provision.

- **Contract-File Compliance Tools:** The five agencies told us that contracting officers have tools available that help ensure required information, including information related to federal tax debt, is reviewed and documented in contract files. For example, contracting officer supervisors and policy officials at these agencies told us that contracting officers use agency contract-writing systems to assist with identifying and inserting required FAR provisions and clauses in the contract solicitation.<sup>43</sup> HHS and VA contracting officer supervisors also told us contracting officers use contract-file checklists to ensure

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<sup>40</sup>During the course of our review, agency officials told us that contracting officers also review the "Debt Subject to Offset" flag, which was known as the "Delinquent Federal Debt" flag prior to June 15, 2017, in SAM when determining a contractor's responsibility before contract award. However, the "Debt Subject to Offset" flag indicates a delinquent debt subject to the Treasury Offset Program. The Debt Subject to Offset flag does not reflect the contractor's qualifying federal tax debt reported under § 52.209-11 or § 52.209-5 in SAM.

<sup>41</sup>The Navy contracting office memorandum also documents the contracting officers' consideration of contractors' responses under FAR § 52.212-3.

<sup>42</sup>As mentioned previously, for this report, we will use FAR § 52.209-11 or § 52.209-5 to refer to the obligation to disclose tax debt in FAR § 52.209-11(b)(1) or § 52.209-5(a)(1)(i)(D).

<sup>43</sup>FAR § 52.301 provides a matrix listing the FAR provisions and clauses relevant to each new contract type or purpose, which can be used to manually identify required provisions and clauses.

required FAR provisions and clauses are included in the contract solicitation. In addition, some of the five selected agencies' contract-file checklists or memorandums we reviewed generally document that the contracting officer verified the prospective contractor's SAM registration, and suspension and debarment status, and retrieved the relevant SAM representations and certifications before contract award. Further, some VA and DOE contract checklists we reviewed also document that the contracting officer considered tax debts reported under § 52.209-5 or federal tax debt in general (see fig. 2).

Figure 2: Excerpt from Agency Contract Award Checklist

|   |                                     |
|---|-------------------------------------|
| TAB 27 Contractor Responsibility Determination (FAR 9.1)                          | <input type="checkbox"/>            |
| System for Award Management (SAM) / EPLS  | <input checked="" type="checkbox"/> |
| Federal Awardee Performance and Integrity Information System (FAPIS)              | <input checked="" type="checkbox"/> |
| Representations and Certifications (FAR Report - RFP Section K) & Tax Delinquency | <input checked="" type="checkbox"/> |

Source: Contracting office within the Department of Energy. | GAO-19-243

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- **Periodic Compliance Reviews of Samples of Contracts:** The five agencies' policy officials and contracting officer supervisors we interviewed told us they generally conduct compliance reviews on a sample of contract files before and after contract award to ensure that the required FAR provisions and clauses are inserted in contract solicitations, including peer-to-peer, management, and legal compliance reviews. Agency officials also told us this includes verifying that the contracting officer considered and documented the prospective contractors' SAM representations and certifications before contract award. For example, the Army's procurement management review program is designed to ensure regulatory and policy compliance, among other things, via oversight by a multilevel program that reviews each contracting activity every 3 years.
  - **Training:** DOE and VA provide training that generally discusses contractor responsibility determinations and references the requirement that contracting officers inform the SDO when prospective contractors report that they have qualifying federal tax debt before contract award. The Department of Defense provides training on the causes for suspension, and the Navy SDO also provides training discussing the requirement to notify the SDO when prospective contractors report qualifying federal tax debt. HHS suspension and debarment staff we interviewed told us that they provide general suspension and debarment training that includes causes for suspension and debarment referrals, such as tax debt. Further, one Navy contracting office also provides training on inserting the tax-debt provision in all contract solicitations.

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**Selected Agencies' Control Activities Potentially Did Not Ensure Compliance with Requirements Related to Contractors' Reported Qualifying Tax Debt**

We identified 1,849 contracts awarded by the five selected agencies in 2015 and 2016 to contractors that reported qualifying federal tax debt that potentially should have resulted in these agencies taking required follow-up actions before contract award, such as notifying the agency SDO of these tax debts. Specifically, according to our analysis of FPDS-NG and SAM data for this period, the five selected agencies potentially should have notified an SDO prior to awarding 1,849 contracts to contractors that reported having qualifying federal tax debt under their § 52.209-11 representation or § 52.209-5 certification, which we discuss further below.<sup>44</sup> However, none of the five selected agencies' SDOs we interviewed were notified of any instances in which a contracting officer

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<sup>44</sup>The 1,849 contracts awards can be associated with contractors' qualifying federal tax debt reported before contract award under either § 52.209-11 or § 52.209-5, or both.

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identified a prospective contractor with these reported qualifying federal tax debts, and they did not receive any tax debt-related referrals within this period. Agency officials we interviewed were unable to explain why the SDOs were not notified without reviewing each of the 1,849 contract files. Because referrals were not made to an SDO before awarding the contract, agencies' control activities do not appear to have operated effectively to identify contractors' reported tax debt and to consider suspension and debarment when required. As a result, these contracts may have been awarded without required actions being taken—a potential violation of federal regulations and, in some cases, the Antideficiency Act.<sup>45</sup>

In addition, we reviewed a nongeneralizable sample of seven contracts where prospective contractors reported qualifying tax debts before receiving contract awards and identified two illustrative examples where agency control activities did not ensure regulatory compliance. The tax debts for these contractors were collectively more than \$250,000, and historical IRS tax records include instances<sup>46</sup> where the IRS had assessed a Trust Fund Recovery Penalty (TFRP), indicating willful failure to collect, account for, or pay taxes owed.<sup>47</sup> Nonetheless, the contracting officers awarded these two contracts without taking required follow-up actions for these awards. These contractors were awarded more than \$510,000 in contract obligations in total, in 2015 and 2016.

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<sup>45</sup>The Antideficiency Act, among other things, prohibits agencies from obligating funds in excess of the amount available in the appropriation. The 2015 and 2016 appropriations statutes contain a government-wide provision stating that, among other things, funds may not be used to enter into a contract with any corporation that has any unpaid federal tax liability, when the awarding agency is aware of the unpaid 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. Thus, obligating funds to a contractor who reported federal tax debt without taking the follow-up steps required by law indicates the obligations were potentially made without authorization.

<sup>46</sup>Due to I.R.C. § 6103 requirements related to safeguarding taxpayer information, we cannot disclose the number of examples associated with TFRPs.

<sup>47</sup>Specifically, when a business willfully fails to collect, account for, or pay the taxes it is legally required to withhold from its employees' wages, such as Social Security or individual income-tax withholdings (what is commonly referred to as "trust fund taxes"), the IRS assesses underpayment penalties against the business and may impose an additional TFRP against the responsible officers. Having a TFRP does not disqualify a contractor from obtaining a contract, but can be considered when the agency determines prospective contractors' responsibility and whether to suspend or debar, according to agency contracting or suspension and debarment officials we spoke with.

Four Agencies Did Not Take Potentially Required Actions before Contract Award When Contractors Reported Qualifying Federal Tax Debt under FAR § 52.209-11

In our analysis of the five selected agencies, we identified 143 contracts at four of the agencies that were awarded to contractors who reported qualifying federal tax debt in SAM under § 52.209-11 from February 26, 2016, through December 31, 2016.<sup>48</sup> Table 1 shows the number of contract awards to contractors who reported qualifying federal tax debt under § 52.209-11 from February 26, 2016, through December 31, 2016, by selected agency. We did not identify contracts awarded by DOE during this period to similar contractors, and thus did not assess the operational effectiveness of the agency’s controls activities for compliance with its relevant class deviation.<sup>49</sup>

**Table 1: Number of Contracts Awarded by Selected Agencies to Contractors That Reported Qualifying Tax Debt under § 52.209-11 from February 26, 2016, through December 31, 2016**

| Agency                                  | Contract awards |
|---|-----------------|
| Department of Defense, Army             | 73              |
| Department of Defense, Navy             | 54              |
| Department of Energy                    | 0               |
| Department of Health and Human Services | 7               |
| Department of Veterans Affairs          | 9               |
| <b>Total</b>                            | <b>143</b>      |

Source: GAO analysis of General Services Administration data. | GAO-19-243

<sup>48</sup>This analysis is limited to this 10-month period because the FAR requirements related to § 52.209-11 representations were effective beginning February 26, 2016. Therefore, contracting officers did not need to include this provision in solicitations, and prospective contractors did not report tax debt in SAM under § 52.209-11, until February 26, 2016. However, all five agencies issued class deviations prior to this period directing contracting officers to include alternative provisions when issuing solicitations using funds appropriated in 2015 and 2016. Our analysis reviewed the § 52.209-11 representations in SAM most recently updated by the contractor before their relevant contract award. We could not determine based on available data whether there was a solicitation issued for each of these 143 contract awards, the tax-debt provisions were included as appropriate, and the contractor also reported these qualifying tax debts under the alternative agency provision, which is necessary to determine whether § 52.209-11 is relevant.

<sup>49</sup>As mentioned earlier, DOE’s class deviation required contracting officers to insert and use an alternative provision in all solicitations, regardless of the estimated value, to meet this requirement. We discuss contracts awarded by this agency to contractors that reported they had tax debt under 52.209-5 during this period below.



### Example 1

#### Contracting Officer Did Not Comply with Federal Acquisition Regulation Requirements for a Prospective Contractor's Federal Tax Debt Reported under § 52.209-11, Indicating a Potential Violation of Appropriations Law



According to the documentation we reviewed for one contract, the contracting officer accessed and retrieved the prospective contractor's System for Award Management representations and certifications before contract award. This document indicated the prospective contractor reported having qualifying federal tax debt. Our review of the contract file did not identify evidence that the contracting officer took the required follow-up actions:

1. requested that the contractor provide such additional information the contractor deemed necessary in order to demonstrate responsibility;
2. notified, in accordance with agency procedures, a suspension and debarment official (SDO) of the contractor's reported qualifying federal tax debt, before award, for suspension and debarment review; and
3. received an SDO suspension and debarment determination before award.

The agency's control activities did not effectively ensure compliance with regulatory requirements. The agency obligated more than \$60,000 to the contractor while the contractor had thousands of dollars in tax debt—an obligation potentially awarded in violation of the Antideficiency Act.

Source: GAO analysis of agency, General Services Administration, and Internal Revenue Service data. | GAO-19-243

However, none of the four agencies that awarded these 143 contracts took required follow-up actions that potentially should have resulted from the contractor's reporting qualifying tax debt before contract award. As mentioned earlier, when prospective contractors report having qualifying federal tax debt under § 52.209-11, the FAR requires that contracting officers (1) request that the contractor provide such additional information as the contractor deems necessary in order to demonstrate responsibility; (2) notify, in accordance with agency procedures, the SDO of the contractor's reported qualifying federal tax debt, before award, for suspension and debarment review; and (3) not award the contract unless an SDO determines that further action is not required to protect the interest of the government.<sup>50</sup> The FAR also requires that contracting officers possess or obtain information sufficient to determine whether the prospective contractor is responsible.<sup>51</sup> As mentioned above, qualifying federal tax debts reported under this representation do not automatically disqualify the prospective contractor from receiving a contract, but rather are used as part of the contracting officer's responsibility determination of the prospective contractor. In our review of contract-file documentation for seven contract awards to contractors that reported they had qualifying tax debt under either provision, we could determine for one case under this representation that the contracting officer did not take required follow-up actions to ensure compliance with federal regulations. We highlight this example in the sidebar to the left.<sup>52</sup>

Agency contracting officer supervisors we interviewed from the four selected agencies that awarded the 143 contracts discussed earlier told us that they were not aware of any instances in which a contracting officer identified a prospective contractor's reported qualifying federal tax debt under § 52.209-11 and notified the SDO during this period. As mentioned, the SDOs we interviewed at these four agencies told us that they did not

<sup>50</sup>Under FAR § 9.405(a), contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action. Such contractors are also excluded from conducting business with the government as agents or representatives of other contractors.

<sup>51</sup>FAR § 9.105-1(a) and applicable standards in § 9.104, as discussed earlier.

<sup>52</sup>For the remaining five contract awards, we could not determine, using the provided contract-file documentation, whether the contracting officers were required to consider these reported tax debts before contract award. Specifically, the agency contract-file documentation we reviewed did not indicate whether a solicitation was issued and the tax-debt provisions were included as appropriate before contract award.

Five Agencies Did Not Take Potentially Required Actions before Contract Award When Contractors Reported Qualifying Federal Tax Debt under FAR § 52.209-5

receive, nor were they aware of, any notifications to review prospective contractors that reported having qualifying federal tax debt during this period. All four of these SDOs told us that they track notifications to the SDO manually or via a case-management tracking system. Further, none of the agency officials we interviewed at the selected agencies were able to identify specific reasons a contracting officer would not notify an SDO of reported qualifying federal tax debt as required.

Our analysis of the five selected agencies also identified 1,706 contracts awarded in 2015 and 2016 to contractors that reported having qualifying federal tax debt in SAM under § 52.209-5.<sup>53</sup> Table 2 shows the number of contract awards to contractors that reported having qualifying tax debt under § 52.209-5 in 2015 and 2016, by selected agency.

**Table 2: Number of Contracts Awarded by Selected Agencies to Contractors That Reported Qualifying Tax Debt under § 52.209-5 in Calendar Years 2015 and 2016**

| Agency                                  | Contract awards |
|---|-----------------|
| Department of Defense, Army             | 324             |
| Department of Defense, Navy             | 266             |
| Department of Energy                    | 22              |
| Department of Health and Human Services | 78              |
| Department of Veterans Affairs          | 1,016           |
| <b>Total</b>                            | <b>1,706</b>    |

Source: GAO analysis of General Services Administration data. | GAO-19-243

However, none of the five agencies that awarded these 1,706 contracts took required follow-up actions that potentially should have resulted from the contractor’s reporting qualifying tax debt before contract award. As mentioned above, as early as 2008, contractors were required to certify whether they had qualifying federal tax debt if, within the preceding 3-year period, they or any of their principals had been notified of “delinquent federal taxes” in an amount that exceeds \$3,500 for which the liability remained unsatisfied. Also as previously mentioned, tax debts must only be reported under this provision if the tax liability is finally determined with no pending administrative or judicial challenge, all judicial appeal rights have been exhausted, enforcement action is not precluded, and the

<sup>53</sup>We could not determine based on available data whether there was a solicitation issued for each of these 1,706 contract awards, whether the contract value was expected to be above the simplified acquisition threshold, and the tax-debt provisions were included as appropriate, which is necessary to determine whether § 52.209-5 is relevant.

## Example 2

### Contracting Officer Did Not Comply with Federal Acquisition Regulation Requirements for Prospective Contractor's Federal Tax Debt Reported under § 52.209-5



According to the documentation we reviewed for one contract, the estimated value of the contract award was above the simplified acquisition threshold. Additionally, the contracting officer accessed and retrieved the prospective contractor's System for Award Management representations and certifications before contract award and saved them in the contract file. This document indicated the prospective contractor reported having qualifying federal tax debt. However, our review of the contract file did not identify evidence that the contracting officer took the required follow-up actions.

The agency's control activities did not effectively ensure compliance with regulatory requirements. The agency obligated more than \$450,000 to the contractor who had hundreds of thousands of dollars in tax debt—an obligation potentially awarded in violation of relevant regulations.

Source: GAO analysis of agency, General Services Administration, and Internal Revenue Service data. | GAO-19-243

taxpayer is not in compliance with an installment repayment agreement. Qualifying federal tax debts reported under this certification do not automatically disqualify the prospective contractor from receiving a contract, but rather are used as part of the contracting officer's responsibility determination. Further, contracting officers are to insert this FAR provision in solicitations where the value of the contract is expected to be greater than the simplified acquisition threshold. If a prospective contractor reports qualifying tax debt, contracting officers must request such additional information as the contractor deems necessary in order to demonstrate responsibility, and, prior to proceeding with the award, notify the agency's SDO in accordance with agency procedures.

While we cannot readily determine whether all 1,706 contract awards were out of compliance with federal regulations due to limitations in the data, as discussed earlier, our review of seven contract awards with reported qualifying tax debt under either provision identified an instance under this certification where we confirmed that the solicitation was above the simplified acquisition threshold and the contracting officer did not take follow-up actions to ensure compliance with federal regulations (see sidebar to the left).<sup>54</sup>

As mentioned, agency contracting officer supervisors we interviewed from the five agencies told us that they were not aware of any instances in which a contracting officer identified a prospective contractor's reporting qualifying federal tax debt under § 52.209-5 and notified the SDO during this period. Further, SDOs we interviewed at these five agencies told us that they did not receive, nor were they aware of, any notifications identifying prospective contractors that reported qualifying federal tax debt under this FAR provision during this period. As mentioned earlier, four out of the five SDOs told us that they track SDO notifications, and none of the agency officials we interviewed identified specific reasons a contracting officer would not notify an SDO as required.

When discussing these 1,849 contracts with agency officials, they were unable to explain whether or why their control activities did not operate

<sup>54</sup>As discussed earlier, we could not determine using the provided contract-file documentation whether the contracting officers were required to consider these reported qualifying tax debts before contract award for the remaining five contracts. The remaining eight out of the 15 contracts reviewed were awarded to prospective contractors that reported they did not have qualifying tax debt before contract award. We do not report the results of this contract-file review due to contract-file documentation limitations, as discussed earlier and further below.

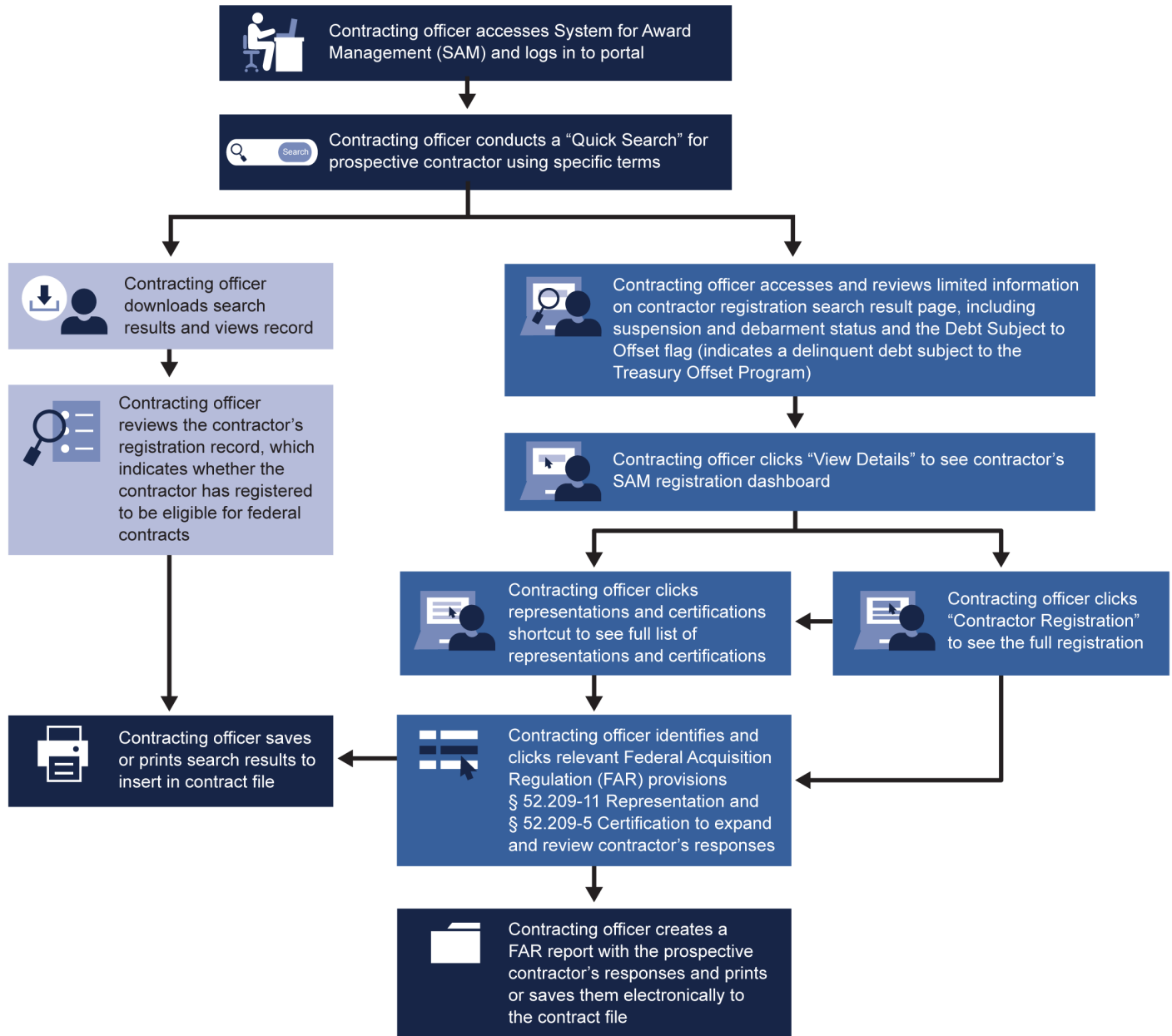
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effectively to ensure compliance with applicable federal laws and regulations. To do so, some of these officials told us that they would need to review the contract files for each of the 1,849 instances of potential noncompliance we identified. Specifically, the agency must confirm that (1) a solicitation was issued, and (2) the estimated value of the contract award was above the simplified acquisition threshold, when applicable, to determine whether the regulatory requirements applied. If the regulatory requirement applied to the contract award, the agency must then determine why their control activities did not operate effectively to ensure compliance. We plan to refer these contract awards to the appropriate agency's Inspector General for review, and share them with the agencies at that time as well. Understanding why existing control activities potentially did not operate effectively will help these agencies ensure they are taking necessary steps to protect the interests of the government and avoid the misuse of appropriated funds in the future.

The five selected agencies told us, in response to our review, they plan to take actions to improve control activities to identify contractors' federal tax debts reported under § 52.209-11 and § 52.209-5. These planned actions include issuing new guidance, providing additional training, verifying that contracting officers considered reported tax debts in postaward compliance reviews, and updating preaward contract-file checklists to ensure compliance with federal laws and regulations.

Some of the selected agencies also noted that the FAR requirements apply to all executive agencies and that a broader solution to accessing, identifying, and reviewing qualifying federal tax debt reported in SAM representations and certifications could be useful. Agency officials explained that contracting officers have to individually identify and review each relevant representation and certification—up to 54 representations and certifications—to become aware of the prospective contractor's response before contract award. Further, agency officials told us that contractors' responses are not easily identifiable in SAM and contracting officers can miss the contractor's reported qualifying federal tax debt under § 52.209-11 and § 52.209-5. As mentioned earlier, accessing, reviewing and documenting the SAM representations and certifications is one part of the preaward contracting process and is one of the actions contracting officers are required to take as part of the contract award process. The SAM tax-related representations and certifications that must be reviewed before contract award are determined by various factors, including contract award value. See figure 3 for an overview of the general process to access, review, and identify prospective contractors' qualifying tax debts reported in SAM.

**Figure 3: Process for Accessing, Reviewing, and Identifying Prospective Contractors' Qualifying Tax Debt Reported in the System for Award Management**



Source: GAO analysis of General Services Administration data. | GAO-19-243

Note: Data are from public SAM registration records search and the SAM Federal User Guide.

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As mentioned earlier, GSA manages SAM, and while the GSA official we interviewed acknowledged the challenges raised by the selected agencies, this official noted that SAM representation and certification data are accessible to contracting officers for the purpose of reviewing qualifying federal tax debt reported by prospective contractors and taking any required follow-up actions. Nevertheless, this official noted that GSA is in the process of upgrading SAM, which may include changes to the representations and certifications. *Standards for Internal Control in the Federal Government* state that management should use high-quality information to achieve its objectives and that management should consider the accessibility of information and make revisions when necessary so that the necessary information is accessible.<sup>55</sup> As GSA makes planned upgrades to SAM, it is in a position to consider improvements to SAM users' experience with representations and certifications that may help executive-branch agency contracting officers more easily identify contractors' reported qualifying federal tax debt under § 52.209-11 and § 52.209-5.

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<sup>55</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014). High-quality information is accessible, current, and complete, among other characteristics.

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## Federal Contracts Were Awarded to Thousands of Contractors with Potentially Qualifying Federal Tax Debt

Of the 120,000 federal contractors that were awarded contracts in 2015 and 2016, our analysis found that over 4,600 of them had unpaid taxes<sup>56</sup> at the time they received the award. These contractors collectively owed \$1.8 billion in unpaid taxes as of December 15, 2016, and received contract award obligations totaling \$17 billion. We could not confirm, however, whether at the time of the contract awards these contractors' unpaid taxes met the relevant legal definitions of qualifying federal tax debt under § 52.209-11 and § 52.209-5 due to limitations in the data.<sup>57</sup> However, we were able to determine which debts likely met the definition of qualifying tax debt, and to determine those that did not meet the definition, as of December 15, 2016—a date after the contract award. Specifically, over 2,700 of these contractors had unpaid taxes that were all likely qualifying federal tax debt as of December 15, 2016.<sup>58</sup> In addition, about 1,900 had unpaid taxes that were not qualifying federal tax debt. As previously noted, agencies are required by the FAR to consider contractors' reported qualifying federal tax debt before awarding contracts. Generally, as mentioned earlier, agencies are not restricted from awarding contracts to contractors that report having qualifying federal tax debt if an agency SDO determines suspension and debarment of the contractor is not necessary to protect the interests of the

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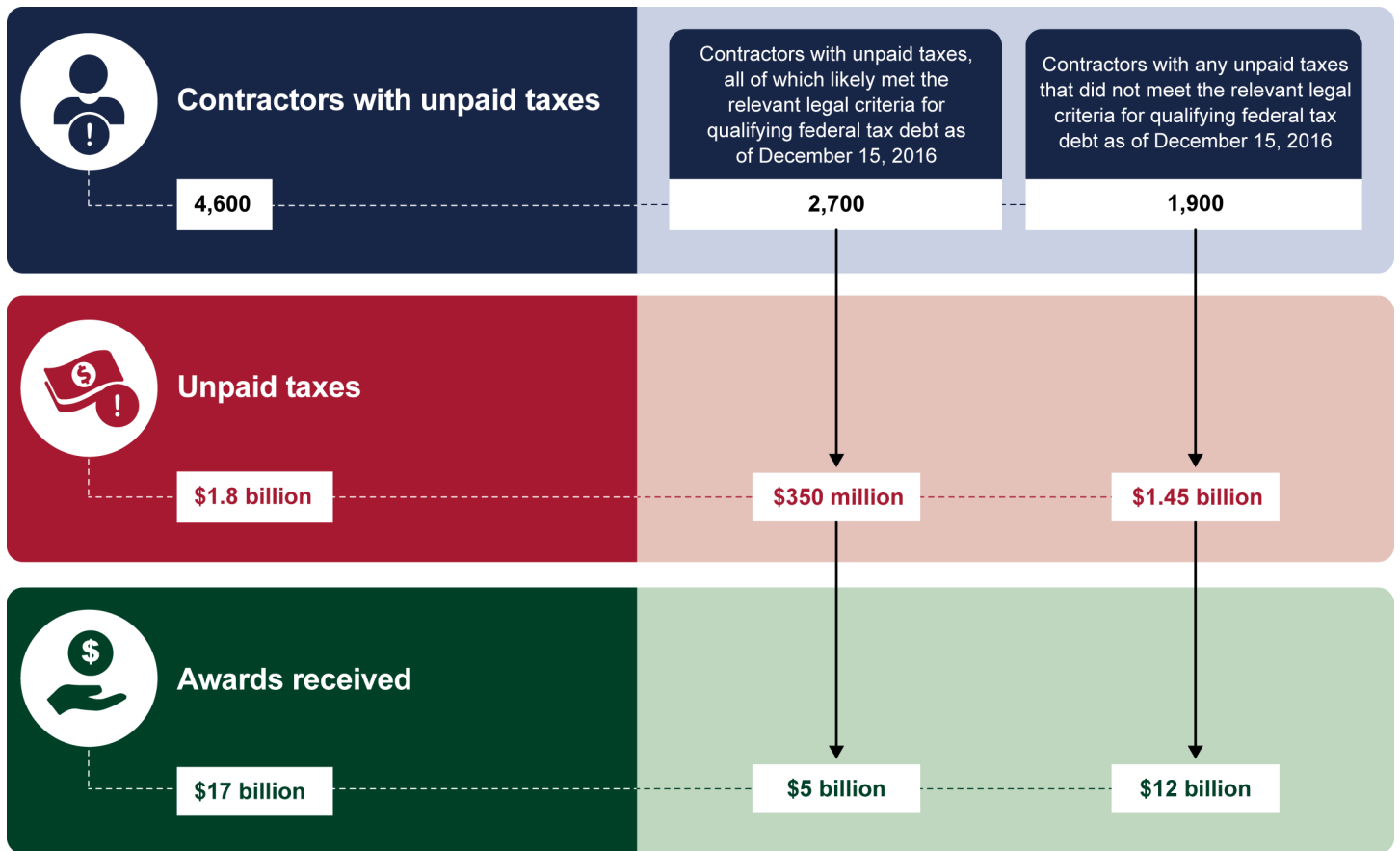
<sup>56</sup>Our analysis includes all of the executive-branch agencies with contract awards in 2015 and 2016. This analysis includes only contractors with unpaid taxes that (1) were greater than \$100 and (2) remained unpaid as of December 15, 2016. Our analysis describes some characteristics of these contractors, including the total amount of debt outstanding and whether or not contractors likely had qualifying federal tax debt, as of December 2016, which was the time of our data extract. Our analysis may understate the population of contractors with tax debt to the extent that contractors owed federal taxes at the time of a new contract award during this period but resolved their tax debts before December 15, 2016. Additionally, our analysis does not focus on any contractors that owed tax debt and to whom federal agencies obligated funds during 2015 and 2016 for modifications to contracts awarded in 2014 or earlier. Federal agencies obligated \$400 billion in 2015–2016 for awards made in 2014 or earlier, which comprised almost half of all federal contract obligations made in 2015–2016.

<sup>57</sup>Specifically, the electronic data we obtained do not contain sufficient information to determine whether all judicial and administrative remedies for addressing these tax debts had been exhausted or had lapsed at the time of the contract award. As mentioned, the IRS data we obtained are a snapshot in time as of December 15, 2016. They provide information on tax debts with a balance remaining as of the date of the data extract. Tax debts that were paid in full prior to the data extract we obtained would not be included in the data.

<sup>58</sup>These debts were likely qualifying federal tax debt as of December 15, 2016, because they were not being timely paid and appeared to be finally determined. We used criteria used by the IRS to screen its own prospective contractors for compliance with the 2015 and 2016 appropriations acts.

government. We describe characteristics of the unpaid taxes and contract awards for these 4,600 contractors with unpaid taxes below. (See fig. 4.)

**Figure 4: Breakdown of Contractors with Unpaid Taxes at the Time of Award by Debt Status—Likely Qualifying or Not Qualifying Federal Tax Debt—as of December 15, 2016**



Source: GAO analysis of General Services Administration and Internal Revenue Service data. | GAO-19-243

Note: Numbers of contractors are generally rounded to the nearest 100, and amounts of unpaid taxes and awards received are rounded to the units indicated.

### Contractors Owed Unpaid Taxes at the Time They Received Contract Awards

We identified over 4,600 federal contractors that had unpaid taxes at the time they received a contract award in 2015 and 2016. However, we could not confirm whether these contractors' unpaid taxes met the relevant legal definitions under § 52.209-11 and § 52.209-5 at the time of the contract award due to limitations in the data we obtained, as previously described. These 4,600 contractors received about \$17 billion in contract awards and owed \$1.8 billion in unpaid taxes as of December



**Contractors That Received Contract Awards from More than One Executive-Branch Agency**



**1,500 contractors**

Almost 1,500 contractors (over 30 percent of the more than 4,600 contractors) received contract awards from more than one executive-branch agency.

**Unpaid Taxes**



**\$600 million**

These 1,500 contractors receiving awards from multiple agencies owed almost \$600 million as of December 15, 2016.

Source: GAO analysis of General Services Administration and Internal Revenue Service data. | GAO-19-243

Note: Numbers of contractors are generally rounded to the nearest 100, and amounts of unpaid taxes are rounded to the nearest hundred million.

15, 2016. The characteristics of these 4,600 federal contractors with unpaid taxes in December 15, 2016, are discussed below:

- **Average and Total Debt Associated with Contractors with Unpaid Taxes:** About 1,000 contractors had unpaid taxes of at least \$51,000 each. These contractors collectively owed about 98 percent of the \$1.8 billion in unpaid taxes we identified. About 1,900 contractors each had unpaid taxes between \$3,500 and \$51,000. They collectively owed about \$30 million in taxes. About 1,700 contractors each had unpaid taxes over \$100 but less than \$3,500.<sup>59</sup> They collectively owed about \$2 million in taxes.
- **Chief Financial Officers (CFO) Act Agencies Associated with Contractors with Unpaid Taxes:** The 4,600 contractors with unpaid taxes as of December 15, 2016, received contract awards in our 2-year period from one or more of all 24 CFO Act agencies.<sup>60</sup> Almost 1,500 contractors received contract awards from more than one agency. These contractors owed almost \$600 million in unpaid taxes as of December 15, 2016 (see sidebar to the left). Although, as discussed above, we reviewed the control activities of five agencies, all executive-branch agencies are required by the FAR to consider the qualifying federal tax debt of prospective contractors before making an award. If a contractor is receiving awards from multiple federal agencies, the suspension and debarment determination of any agency SDO is relevant to other agencies considering the same contractor for an award. For example, as discussed earlier, we identified 1,849 contract awards by five selected agencies to contractors that reported qualifying tax debt before contract award, and none of these agency SDOs were notified. There were some instances where more than one agency made a contract award to the same contractor that reported having qualifying tax debts. These obligations might not have been made by multiple agencies if one of these agencies' SDOs had been notified of the reported tax debt as required.

<sup>59</sup>The amount of \$100 is defined by the IRS as a de minimis amount, below which any amount is so small as to make accounting for it unreasonable or impractical.

<sup>60</sup>The Chief Financial Officers Act of 1990, Pub. L. No. 101-576, 104 Stat. 2838 (Nov. 15, 1990), established chief financial officers (CFO) to oversee financial management activities at 23 major executive departments and agencies. The list now includes 24 entities, which are often referred to collectively as CFO Act agencies, and is codified, as amended, in 31 U.S.C. § 901.

### Contractors Associated with Trust Fund Recovery Penalty (TFRP)



600 contractors

We identified 600 contractors (13 percent of the more than 4,600 contractors) whose tax records as of December 15, 2016, indicate that officers from the entity had a TFRP (a civil penalty of willfully failing to collect or pay certain taxes).

### Unpaid Taxes



\$200 million

These 600 contractors had \$200 million in unpaid taxes as of December 15, 2016.

Source: GAO analysis of General Services Administration and Internal Revenue Service data. | GAO-19-243

Note: Numbers of contractors are generally rounded to the nearest 100, and amounts of unpaid taxes are rounded to the nearest hundred million.

- **Contractors with Unpaid Taxes and Associated with TFRP:** We also identified about 600 contractors whose tax records indicate the IRS assessed a TFRP to the owner or officers associated with the contractor, as shown in the sidebar to the left. As mentioned previously, a TFRP indicates willful failure to collect, account for, or pay certain taxes owed. These 600 contractors had \$200 million in unpaid taxes in December 2016. Having a TFRP does not disqualify a contractor from obtaining a contract, but it can be considered when the agency determines a prospective contractor's responsibility under the FAR,<sup>61</sup> according to agency contracting and suspension and debarment officials (SDO) we spoke with.

<sup>61</sup>FAR § 9.104-1.

## Over 2,700 Federal Contractors Likely Had Qualifying Federal Tax Debt on December 15, 2016, but Few Reported Qualifying Tax Debt in SAM

### Accuracy of Contractors' Reporting of Qualifying Tax Debts



**1,848 contractors**

We found that 1,848 contractors with likely qualifying federal tax debt as of December 15, 2016, certified in the System for Award Management (SAM) that they did not have such debt prior to receiving contract awards.

### Unpaid Taxes



**\$300 million**

These 1,848 contractors had \$300 million in unpaid taxes as of December 15, 2016.

Source: GAO analysis of agency, General Services Administration, and Internal Revenue Service data. | GAO-19-243

Note: Amounts of unpaid taxes are rounded to the nearest hundred million.

We found that over 2,700 contractors owed about \$350 million in unpaid taxes that likely met the relevant legal criteria for qualifying federal tax debt on December 15, 2016. However, few of those contractors reported having qualifying tax debts in SAM. Because the contracts were awarded before December 2016, we cannot determine whether these unpaid taxes met the relevant legal criteria under § 52.209-11 and § 52.209-5 for qualifying federal tax debt at the time of the contract award.<sup>62</sup> However, because these tax debts were unpaid as of December 15, 2016, we determined they were likely qualifying tax debts because they were not being timely paid consistent with a collection agreement and appeared to be finally determined.<sup>63</sup> These tax debts amounted to about 20 percent of the \$1.8 billion in unpaid taxes we identified. The 2,700 contractors received almost \$5 billion of the \$17 billion in federal contract obligations for awards made to contractors with unpaid taxes.

We examined the SAM § 52.209-11 representations and § 52.209-5 certifications for these over 2,700 contractors to determine whether they reported this debt as qualifying federal tax debt. We identified about 2,000 contractors that had completed a representation or certification, and, when applicable, met the tax-debt threshold for § 52.209-5. Of those 2,000, 93 percent (1,848) did not report their debt as qualifying federal tax debt, compared to fewer than 150 who did report qualifying federal tax debt under one or both tax-debt provisions (see sidebar to the left).<sup>64</sup>

Specifically:

- Over 1,300 contractors completed the § 52.209-11 representation in SAM (which took effect on Feb. 26, 2016), and less than two dozen of

<sup>62</sup>The electronic data we obtained do not contain sufficient information to determine whether all judicial and administrative remedies for addressing these tax debts had been exhausted or had lapsed at the time of the contract award without a case-by-case, manual review of contractor-specific data and documentation. As mentioned, the IRS data we obtained represent a snapshot in time as of December 15, 2016. They provide information on tax debts with a balance remaining as of the date of the data extract. Tax debts that were paid in full prior to the data extract we obtained would not be included in the data.

<sup>63</sup>We used criteria used by the IRS to screen its own prospective contractors for compliance with the 2015 and 2016 appropriations acts.

<sup>64</sup>Our analysis reviewed prospective contractors' § 52.209-11 representations and § 52.209-5 certifications most recently before the contract award and includes the affirmative and not affirmative responses to these representations and certifications. We did not include all approximately 2,700 contractors in our analysis because some did not have tax debt that met the debt threshold for § 52.209-5 and the others did not have to respond to the § 52.209-11 representation because the requirement to respond went into effect after they received awards.

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these contractors reported having qualifying federal tax debt under § 52.209-11 before receiving contract awards.

- Nearly 1,400 contractors completed the § 52.209-5 certification in SAM and as of December 15, 2016, had unpaid taxes over the certification threshold.<sup>65</sup> Fewer than 140 of these contractors reported under § 52.209-5 that they had been notified of qualifying federal tax debt above \$3,500 before receiving a contract award.

The accuracy of contractors' reported tax-debt status in SAM is critical to federal agencies' ability to identify reported qualifying federal tax debt owed by prospective contractors. As described earlier, contracting officers generally rely on the contractors' representations and certifications in SAM to identify qualifying federal tax debts. Contracting officers generally cannot verify a contractor's tax-debt status by obtaining taxpayer information directly from the IRS without the contractor's prior consent, because federal tax law generally prohibits the IRS from disclosing taxpayer data for this purpose. While contracting officers cannot independently verify whether federal contractors accurately report qualifying federal tax debt, any qualifying federal tax debt may be available for levy by the IRS, as discussed further below.

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### About 1,900 Federal Contractors Owed Unpaid Taxes That Were Not Qualifying Federal Tax Debt as of December 15, 2016

We found that about 1,900 contractors had about \$1.4 billion in unpaid taxes that did not meet the relevant criteria for qualifying federal tax debt on December 15, 2016, a date after which their contracts were awarded.<sup>66</sup> Specifically, these unpaid taxes were not finally determined or were being paid in a timely manner consistent with a collection agreement as of December 15, 2016. If the status of these debts was the same at the time of contract award, then the contractors did not need to report them during the contracting process and agencies were not required to consider the debts before awarding the contract. Although we were able to determine that these unpaid taxes did not meet the legal definitions of qualifying federal tax debt as of December 15, 2016, we could not determine whether this was also the case at the time of the contract award. Federal agencies obligated \$12 billion to these 1,900 contractors

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<sup>65</sup>The nearly 1,400 contractors with § 52.209-5 certifications overlap with the over 1,300 contractors with § 52.209-11 representations because contractors respond to both representations and certifications.

<sup>66</sup>Almost 300 of these contractors also collectively owed about \$50 million in unpaid taxes that likely were qualifying federal tax debt on December 15, 2016.

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between 2015 and 2016, for awards made while the contractors owed taxes.<sup>67</sup>

Of these 1,900 contractors, about 1,400 owed \$1.3 billion in unpaid taxes that were not finally determined on December 15, 2016.<sup>68</sup> About 700 contractors owed \$90 million in unpaid taxes that were being timely paid consistent with a collection agreement in December 15, 2016, due to installment agreements or offers-in-compromise accepted by the IRS.

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## The IRS Identified Most Federal Contractors with Unpaid Taxes for Levy, but the FPLP Cannot Comprehensively Identify All Federal Contractors for Levy

Through its FPLP, the IRS identified for levy most contractors we found to have likely qualifying federal tax debt, according to our analysis of IRS data.<sup>69</sup> Specifically, of the over 2,700 executive-branch agency contractors with likely qualifying federal tax debt as of December 15, 2016, discussed above, the IRS identified over 2,000 for levy through the FPLP, a program administered by Treasury's Fiscal Service.<sup>70</sup> These 2,000 contractors collectively owed about \$300 million of the roughly \$350 million in likely qualifying federal tax debt.<sup>71</sup>

According to IRS data, the FPLP did not identify almost 700 of the 2,700 contractors we found to have likely qualifying federal tax debt as of December 15, 2016. These 700 contractors owed about \$50 million in likely qualifying federal taxes. IRS officials responsible for the FPLP told us that they would need to review these instances to determine whether

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<sup>67</sup>As mentioned, our analysis includes only contractors with unpaid taxes that were (1) assessed before a new contract award during 2015 and 2016; (2) unpaid as of December 15, 2016; and (3) greater than \$100 as of December 15, 2016.

<sup>68</sup>By not finally determined, we mean the contractors' administrative and judicial remedies have not been exhausted or had lapsed, including collections suspended for investigations or open bankruptcy proceedings.

<sup>69</sup>Taxes that are being timely paid and or have not exhausted administrative and judicial remedies are generally not eligible for levy. Consequently, we are treating qualifying federal tax debt as taxes potentially eligible for levy.

<sup>70</sup>By "identified" by the FPLP, we mean that the IRS had either levied their tax debt or excluded it from being levied. This only reflects FPLP levies, and does not take into account any amounts collected via levies outside of the FPLP, such as when revenue officers seize payments from federal agencies to collect unpaid taxes.

<sup>71</sup>These 2,000 contractors all had tax debt identified by the levy program, but, as of December 15, 2016, only part of the \$300 million tax debt owed by these contractors had been identified by the levy program. Specifically, as of December 15, 2016, the FPLP had identified about \$220 million of the \$300 million in unpaid taxes owed by these contractors.

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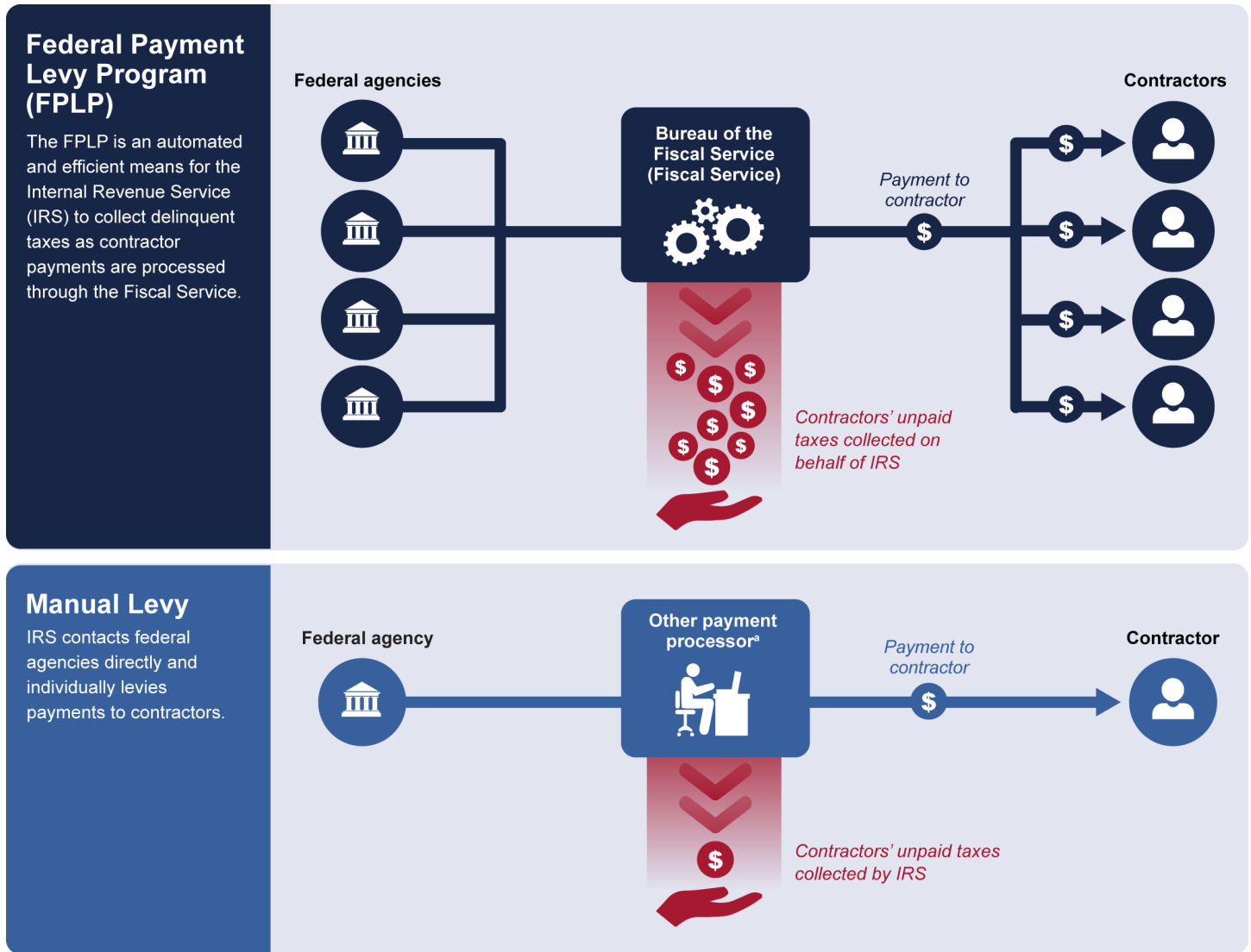
the contractors were eligible for levy as of December 15, 2016, and if so why they were not identified by the FPLP. We plan to share these cases with the IRS to determine whether the contractors were eligible for levy at that time and take any appropriate enforcement action.

It is possible that the IRS did not identify these 700 contractors for levy through the FPLP because the IRS did not have access to their payments. The FPLP was developed as an automatic and efficient means for the IRS to collect delinquent taxes as payments were processed through the Fiscal Service. Accordingly, the FPLP can only levy federal agency payments processed by the Fiscal Service, but not all federal agencies process their payments through the Fiscal Service. As a result, payments disbursed by other means—such as payments that agencies make directly to contractors—are not included in the FPLP, although they can be levied by the IRS through other manual methods<sup>72</sup> (see fig. 5).

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<sup>72</sup>The IRS generally prefers to levy federal contractors through the FPLP, which is an automated program that allows the IRS to collect tax debts through the Fiscal Service's Treasury Offset Program. However, the IRS can also levy agency payments to federal contractors using traditional nonautomated methods. Specifically, the IRS can manually levy an agency payment, which involves an IRS revenue officer directly contacting the federal agency responsible for the payment to relinquish funds to satisfy a contractor's tax debt. Such a levy must be manually prepared and issued by a revenue officer.

**Figure 5: IRS Process for Collecting Federal Contractors' Delinquent Taxes through the Department of the Treasury's Fiscal Service FPLP and Other Manual Levy Methods**



Source: GAO analysis of IRS information. | GAO-19-243

<sup>3</sup>Agency payments not disbursed or administered by the Fiscal Service are not eligible for the FPLP and require a manual levy by the IRS.

The IRS cannot readily identify which payments are made outside of the Fiscal Service, and such payments cannot be levied through the FPLP. While the IRS receives some information about contractor payments from agencies, it does not receive information that would allow it to

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comprehensively determine which payments are processed by the Fiscal Service and can be levied through the FPLP and which payments are not and must be levied manually. Specifically, executive-branch agencies, including those that do and do not process payments through the Fiscal Service, are required to report information to the IRS about some federal contracts through the IRS Form 8596 information return. Reporting agencies identify themselves on the Form 8596, and the IRS uses data from this form to identify federal contractors for potential levy.<sup>73</sup> However, the Form 8596 information return lacks information on whether payments to federal contractors are processed by the Fiscal Service or through some other means. Without visibility into the payments made outside the Fiscal Service, the IRS is limited in its ability to identify nonparticipating agencies for outreach about the efficiencies of leveraging the FPLP to collect contractors' unpaid taxes, as opposed to manual levies.<sup>74</sup> Further, without information on agencies' payment methods, the IRS cannot quickly identify payments that must be levied through manual methods. Expanding Form 8596 to include payment-method information could help the IRS identify which agencies to target for outreach and avoid delays in identifying contractor payments requiring manual levy. IRS officials told us the IRS has the legal authority to expand Form 8596 reporting requirements and would have to determine whether a change to add information on Fiscal Service processing of agency payments was warranted.

In addition, we found the IRS is missing an opportunity to further enhance the FPLP levy process for certain contractor payments. Within the FPLP, the IRS has an expedited process to levy federal contractors and, as noted above, the IRS uses data from Form 8596 to identify federal

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<sup>73</sup>Federal agencies also can elect to have the Federal Procurement Data Center report payment information to the IRS on the agencies' behalf if the agencies are already submitting the required payment information to the Federal Procurement Data Center.

<sup>74</sup>The Treasury Inspector General for Tax Administration reported on this in 2017 and recommended that the IRS work with the Fiscal Service to identify agencies that do not participate in the FPLP and establish a process to add those agencies. In response, the IRS agreed to discuss potential solutions to this issue with the Fiscal Service. See Treasury Inspector General for Tax Administration, *Delinquent Federal Contractors Are Not Always Included in the Federal Payment Levy Program*, TIGTA 2017-30-053 (Aug. 14, 2017).



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contractors for potential levy.<sup>75</sup> However, Form 8596 reporting requirements do not apply to federal contracts for which the amount obligated is \$25,000 or less.<sup>76</sup> When Form 8596 reporting requirements were initially established, this threshold was consistent with Federal Procurement Data System (FPDS) contract reporting requirements for agencies at the time. However, subsequent FAR amendments revised the reporting threshold from contracts over \$25,000 to contracts over the micropurchase amount, which is currently set at \$10,000. Because the Form 8596 reporting threshold is higher than FPDS reporting requirements, information about contracts in the \$10,000 to \$25,000 range is available in FPDS, but is not required to be shared with the IRS. Such information could help the IRS identify and use expedited levy procedures on federal contractors with contract obligations in the \$10,000–\$25,000 range. According to the IRS, an amendment to its regulations would be needed to align the Form 8596 reporting threshold with FPDS reporting requirements.

*Standards for Internal Control in the Federal Government* state that management should use high-quality information to achieve the entity's objectives. To do this, management obtains relevant data from reliable internal and external sources, processes the obtained data into high-quality information, and uses high-quality information to make informed decisions and evaluate the entity's performance in achieving key objectives. Without additional information about and from the agencies making these payments, the IRS may be missing opportunities to identify federal contractors for levy to enhance tax collections.

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## Conclusions

Considering prospective contractors' reported qualifying federal tax debt—in accordance with federal regulations—helps ensure federal agencies comply with federal appropriations law, supports the integrity of the contracting process, and protects the interests of the government.

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<sup>75</sup>If the IRS identifies the taxpayer as a federal contractor, the IRS may issue any levy on the taxpayer prior to giving a Collection Due Process notice. The IRS generally must notify taxpayers of their right to a Collection Due Process hearing at least 30 days before the taxpayers can be levied, and up to 15 percent of payments can be levied. For federal contractors however, the IRS is permitted to levy payments before notifying them of their right to a hearing, and can levy as much as 100 percent of payments.

<sup>76</sup>This information return is not required for contracts for which the amount obligated is \$25,000 or less, for confidential or classified contracts, for contracts that provide for all payments to be made within 120 days following the date of the contract action if it is reasonable to expect that all amounts will be paid, and for certain other exceptions.

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The five federal agencies we reviewed had control activities, such as policies, procedures, and training, to help ensure contracting officers consider prospective contractors' reported qualifying federal tax debt before making an award. However, these controls were not always effective in ensuring that potentially required actions were taken. Determining the reasons the contracts we identified were awarded without appropriate consideration of contractors' reported qualifying federal tax debt and taking additional steps to ensure tax debts are appropriately considered in future contract award decisions is necessary to ensure contracting opportunities are appropriately awarded. Improving accessibility of SAM representation and certification data to allow contracting officers to more easily identify and consider reported qualifying federal tax debt before contract award can help contracting officers meet required steps, such as referring them to the SDO.

Federal tax law generally prohibits the IRS from disclosing taxpayer data to other federal agencies for the purpose of determining whether potential contractors owe qualifying federal tax debt. Consequently, federal agencies generally rely on contractors' reported qualifying federal tax debt to detect any tax debt owed by their potential contractors. However, agencies cannot independently verify the accuracy of contractors' reported qualifying federal tax debts when awarding contracts. This limitation heightens the importance of the IRS's levy process for recouping revenue from businesses that have failed to pay their taxes in a timely way but are receiving federal contract dollars, and the recoupment of revenue can help reduce the tax gap. Accordingly, the IRS has opportunities to use available data to improve its detection and collection of qualifying federal tax debts owed by federal contractors, which can help enhance revenue collection and compliance.

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## Recommendations for Executive Action

We are making 12 recommendations—two each to the Army, HHS, the Navy, and VA; one each to DOE and GSA; and two to the IRS.

The Senior Procurement Executive for the Department of the Army should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt; if so, (2) determine the reasons controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 1)

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The Senior Procurement Executive for HHS should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt; if so, (2) determine the reasons controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 2)

The Senior Procurement Executive for the Department of the Navy should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt; if so, (2) determine the reasons controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 3)

The Senior Procurement Executive for VA should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt; if so, (2) determine the reasons controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 4)

The Senior Procurement Executive for the Department of the Army should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reasons controls to identify and notify the SDO of these contractors before contract award did not operate effectively and (2) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 5)

The Senior Procurement Executive for DOE should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the

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solicitation was issued and, if so, (1) determine the reasons controls to identify and notify the SDO of these contractors before contract award did not operate effectively and (2) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 6)

The Senior Procurement Executive for HHS should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reasons controls to identify and notify the SDO of these contractors before contract award did not operate effectively and (2) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 7)

The Senior Procurement Executive for the Department of the Navy should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reasons controls to identify and notify the SDO of these contractors before contract award did not operate effectively and (2) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 8)

The Senior Procurement Executive for VA should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reasons controls to identify and notify the SDO of these contractors before contract award did not operate effectively and (2) design or modify controls to help ensure compliance with applicable regulations. (Recommendation 9)

The Administrator of GSA should coordinate with the appropriate SAM users, such as agency procurement officials, to identify potential updates to facilitate contracting officers' identification of contractors that report qualifying federal tax debt under the § 52.209-11 representation and § 52.209-5 certification. (Recommendation 10)

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The Commissioner of the IRS should evaluate options to identify which contract payments federal agencies expect to be processed by the Fiscal Service, including amending the reporting requirements for Form 8596 to require federal agencies to include information about whether contractor payments are expected to be processed by the Fiscal Service. If the IRS amends Form 8596 reporting requirements, the IRS should (1) systematically note this information on taxpayer accounts to help the IRS identify which payments may be available for levy through the FPLP and which payments may be available for other (i.e., manual) levies and (2) analyze these data to help identify agencies that do not participate in the FPLP and inform its efforts to expand the number of agencies participating in the FPLP. (Recommendation 11)

The Commissioner of the IRS should evaluate options to obtain comprehensive contract payment data above the existing FPDS-NG reporting threshold of \$10,000, including assessing the costs and benefits of changing the current threshold for contracts that agencies are required to report to the IRS through Form 8596 information returns to be consistent with the existing reporting threshold for FPDS-NG, determine whether regulatory revisions are necessary, and change the reporting threshold, if appropriate. (Recommendation 12)

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## Agency Comments

We provided a draft of this report to the Department of Defense (for the Army and Navy), HHS, VA, DOE, GSA, the IRS and the Office of Management and Budget for review and comment. In written comments (reproduced in appendixes II–VI), the Department of Defense, HHS, VA, DOE, and GSA agreed with our recommendations. The IRS generally agreed with our recommendations (see appendix VII). The Office of Management and Budget had no comments. HHS and the Navy provided technical comments, which we incorporated as appropriate.

The Department of Defense, HHS, VA, and DOE noted that they plan to review the contract awards identified in our review. In addition, several agencies described steps they will be taking to address our recommendations. For example, the Department of Defense noted that it plans to take corrective actions or add controls as necessary. HHS noted that it will assess internal controls and take appropriate action. VA noted that it will provide an action plan. DOE noted that it will design or modify controls for regulatory compliance, if necessary. GSA noted that it will work with the procurement community through established governance channels to identify potential approaches for drawing contracting officers' attention to qualifying federal tax-debt information reported in SAM. The

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IRS noted its commitment to obtaining accurate information on potential levy sources and, accordingly, indicated it will review the benefits of expanding the information included on its Form 8596, along with other alternatives, to determine their feasibility, effectiveness, and relative burden. The IRS further noted that it will review the potential benefits and costs that would result from changing the current reporting threshold for contract payments, and submit its findings to the Office of IRS Chief Counsel to consider this addition to the IRS Priority Guidance Plan.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Secretary of Defense, the Secretary of the Navy, the Secretary of the Army, the Secretary of Energy, the Administrator of GSA, the Commissioner of Internal Revenue, the Director of the Office of Management and Budget, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-6722 or [shear@gao.gov](mailto:shear@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VIII.



Rebecca Shea  
Director  
Forensic Audits and Investigative Service

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# Appendix I: Objectives, Scope, and Methodology

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This report first examines the extent to which, in calendar years 2015 and 2016,<sup>1</sup> (1) selected federal agencies had control activities that ensured contractors' reported federal tax debts were considered before contract award. The remainder of the report assesses the same period; however, it focuses on all executive-branch agencies and examines the extent to which (2) federal contracts were awarded to contractors with federal tax debt, including the characteristics of those contracts and contractors, and (3) the Internal Revenue Service (IRS) identified selected federal contractors' payments for levy.

To identify the extent to which selected federal agencies had control activities that ensured contractors' reported federal tax debts were considered before contract award (including task orders),<sup>2</sup> we analyzed contract obligation information from the Federal Procurement Data System—Next Generation (FPDS-NG)<sup>3</sup> and selected for our review the five agencies with the highest contract obligations associated with contract awards for 2015 and 2016, which is the period when contract award data were available at the time of our review. In addition, the revised FAR tax-debt provision went into effect during this period. Specifically, we selected the three civilian agencies with the highest obligations—the Departments of Energy (DOE), Health and Human Services (HHS), and Veterans Affairs (VA)—and, within the Department of Defense, the two agencies with the highest obligations—the Departments of the Army and Navy.<sup>4</sup> The results of our review of these five selected agencies are not generalizable to all federal agencies. However, these five selected agencies awarded about 51 percent of contract obligations associated with contract awards for 2015 and 2016, which were the most-recent contract award data available at the time of our review, and during this period the newest Federal Acquisition

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<sup>1</sup>All years are calendar years unless otherwise specified.

<sup>2</sup>A task order is an order for services placed against an established contract or with government sources. The established contract is called a task order contract, which is a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract. For the purposes of our review, we use the term “contract award” to include task orders.

<sup>3</sup>The FPDS-NG is the central repository for capturing information on federal procurement actions. Dollar amounts reported by federal agencies to FPDS-NG represent the net amount of funds obligated and deobligated as a result of procurement actions.

<sup>4</sup>For this report, we use “the Army” and “the Navy” to refer to the Departments of the Army and Navy, respectively.

Regulation (FAR) tax-debt provision was implemented.<sup>5</sup> We reviewed selected agencies' policies and procedures related to awarding contracts to prospective contractors that report they owe certain tax debts and met with agency officials to discuss how their agencies consider contractors' reported federal tax debt before awarding a federal contract. Specifically, we met with agency officials who supervise contracting officers, such as the Head of Contracting Activity,<sup>6</sup> Director of Contracts, or other contracting managers, policy and procurement officials, and suspension and debarment officials from the selected agencies. Additionally, we reviewed and analyzed applicable laws and regulations, as well as applicable policies and procedures from DOE, HHS, VA, the Navy, and the Army for considering contractors' reported federal tax debt when awarding federal contracts.<sup>7</sup> In addition, we interviewed staff from the Office of Management and Budget's Office of Federal Procurement Policy and officials from the Interagency Suspension and Debarment Committee, and the Civilian Agency Acquisition Council to obtain an

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<sup>5</sup>At the time we initiated our review, the 2016 contract obligation data were the most current data available. The FAR is the primary regulation used by all federal executive agencies to acquire supplies and services with appropriated funds. FAR § 52.209-11 became effective on February 26, 2016, and § 52.209-5 has been in place since 2008. Under FAR § 52.209-11, the prospective contractor represents whether it is a corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. Under FAR § 52.209-5, the prospective contractor certifies whether it or any of its principals have, within a 3-year period preceding the offer, been notified of any delinquent federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied. Delinquent federal taxes under this provision are those where the tax liability is finally determined and assessed, with no pending administrative or judicial challenge, and all judicial appeal rights exhausted; and the taxpayer is delinquent in making payment, unless enforced collection action is precluded. The taxpayer is not delinquent if the taxpayer has entered into an installment agreement and is making timely payments in compliance with the agreement terms.

<sup>6</sup>The Head of the Contracting Activity means the official who has overall responsibility for managing the contracting activity, including the authority to approve contracts before award when necessary and monitoring a process to report contract data to FPDS-NG in coordination with the Senior Procurement Executive. The Senior Procurement Executive is responsible for managing the direction of the agency's procurement system, including implementation of the agency's unique procurement policies, regulations, and standards.

<sup>7</sup>We did not meet with agency officials or review policies and procedures from all contracting offices within each agency.



understanding of how the law is implemented through the FAR.<sup>8</sup> We also met with the General Services Administration (GSA) to obtain an understanding of the System for Award Management (SAM),<sup>9</sup> including the registration of prospective contractors and their reporting of certain federal tax debt to the representation requirement of FAR § 52.209-11 and the certification of § 52.209-5.

As part of this work, we analyzed FPDS-NG contract award and SAM contractor registration data to identify instances where contractors reported having certain qualifying federal tax debt and received a contract award (including task orders). Specifically, we electronically matched FPDS-NG contract award data from 2015 and 2016 to the relevant contractors' SAM registration. We then analyzed the relevant contractors' representations and certifications most recently updated in SAM before the relevant contract award to identify all instances where contractors reported that they had a federal tax debt as defined in FAR § 52.209-11 or § 52.209-5 within our time frame. From the resulting list, we identified the contracts that selected agencies awarded to contractors that reported these qualifying federal tax debts. In addition, we reviewed a nongeneralizable sample of 15 contract awards selected from the five selected agencies to provide illustrative examples of the extent to which these agencies' control activities ensured required actions were taken before contract award. These 15 contract awards were selected based on numerous criteria, including the prospective contractors' (1) responses under FAR § 52.209-11 or § 52.209-5 in SAM before the new contract

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<sup>8</sup>The Office of Federal Procurement policy was established by Congress in 1974 to provide overall direction for government-wide procurement policies, regulations, and procedures, and to promote economy, efficiency, and effectiveness in acquisition processes. The Interagency Suspension and Debarment Committee was created by, and is responsible for monitoring the implementation of, Executive Order 12549, 51 Fed. Reg. 6370 (Feb. 18, 1986), which requires executive departments' and agencies' participation in a system for debarment and suspension. The committee acts in a leadership role to help agencies build and maintain the expertise necessary to protect the government's business interests from harm. The Civilian Agency Acquisition Council assists the Administrator of the General Services Administration (GSA) in developing and maintaining the FAR system by developing or reviewing all proposed changes to the FAR.

<sup>9</sup>SAM is the primary government repository for prospective federal awardee information and the centralized government system for certain contracting, grant, and other assistance-related processes. It includes data collected from prospective federal awardees required for the conduct of business with the government; prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and identification of those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and nonfinancial assistance and benefits.

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award,<sup>10</sup> and (2) having tax debts as of December 15, 2016, that were not in a repayment agreement with the IRS.<sup>11</sup> Further, when selecting contract awards that had a § 52.209-5 certification, we considered only contractors having at least \$3,500 in tax debts as of December 15, 2016.

We identified the relevant contractor population and then considered the following factors simultaneously to select the 15 case examples:

- unique contractor Taxpayer Identification Number across selected agencies and departments,
- agency contracting office locations,
- the amount of tax debt owed by the prospective contractor,
- the amount of award obligations, and
- IRS assessment of a Trust Fund Recovery Penalty (TFRP).<sup>12</sup>

We selected case examples that represent a variety of these factors. We reviewed seven contract awards made to contractors that reported that they had certain tax debts and eight contract awards made to contractors that reported that they did not have certain tax debts as part of their § 52.209-11 representations and § 52.209-5 certifications in SAM. For these 15 contract awards, we reviewed pre-contract award documentation, which included tax debt-related representations and certifications retrieved by the selected agencies from SAM, and copies of historical tax transcripts and other records, such as revenue officers' notes obtained from the IRS. For the case examples presented in this

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<sup>10</sup>For the purpose of our review, contracts include task orders, definitized contracts, purchase orders, and indefinite delivery, indefinite quantity base contracts.

<sup>11</sup>Our analysis of contractors in the IRS data includes only those with unpaid taxes that were (1) assessed before a new contract award during 2015 and 2016; (2) unpaid as of December 15, 2016; and (3) greater than \$100 as of December 15, 2016. The amount of \$100 is defined by the IRS as a de minimis amount, below which any amount is so small as to make accounting for it unreasonable or impractical.

<sup>12</sup>A TFRP indicates willful failure to collect, account for, or pay certain taxes owed. Specifically, when a business willfully fails to collect, account for, or pay the taxes it is legally required to withhold from its employees' wages, such as Social Security or individual income tax withholdings (what is commonly referred to as "trust fund taxes"), the IRS assesses underpayment penalties against the business and may impose an additional TFRP against the responsible officers. Thus, individuals within the business (e.g., corporate officers) may be held personally liable for the withheld amount not forwarded and they may be assessed a TFRP.

report, we rounded tax debt and contract obligation amounts, did not identify the awarding agency, and did not meet with awarding agency officials to discuss each contract award to protect sensitive taxpayer information.

To determine the extent to which executive-branch agency contracts were awarded in 2015 and 2016 to federal contractors with federal tax debt, and characteristics of those contract awards and contractors, we electronically matched data from FPDS-NG on contract awards (including task orders) for all executive agencies with (1) data from SAM on contractors' representations and certifications of their tax debt, and (2) data from the IRS on tax debts owed by these contractors. Specifically, we used the Data Universal Numbering System number<sup>13</sup> to match data from FPDS-NG with contractor registration data from SAM to obtain additional information on these contractors, such as the contractors' Taxpayer Identification Numbers and their representations and certifications of tax debt. Using the contractor Taxpayer Identification Number from SAM, we then matched our list of contractors with IRS data to identify our population of contractors that received a contract award and had unpaid federal tax debts. Our analysis included all of the executive-branch agencies. Further, our analysis describes some of characteristics of these debts, including the total amount of unpaid taxes, whether the contractors had a TFRP, and whether or not contractors had unpaid taxes that were timely paid or appeared to be finally determined, as of December 15, 2016, which was the time of our data extract. We also analyzed whether contractors that were assessed unpaid taxes in the IRS data<sup>14</sup> reported having certain tax debts as part of their § 52.209-11 representations and § 52.209-5 certifications in SAM. We reviewed the most-recent § 52.209-11 representation and § 52.209-5 certification prior to the relevant contract award. Our analysis may understate the population of contractors with tax debt to the extent that contractors repaid their tax debts before the timing of our data extract. Specifically, our analysis does not include any contractors that may have owed federal taxes at the time of a new contract award during this period, but that paid

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<sup>13</sup>The Data Universal Numbering System number is a unique nine-digit identification number assigned to prospective contractors by Dun & Bradstreet.

<sup>14</sup>Our analysis of contractors that were assessed unpaid taxes in the IRS data includes only contractors with unpaid taxes that were (1) assessed before a new contract award during 2015 and 2016; (2) unpaid as of December 15, 2016; and (3) greater than \$100 as of December 15, 2016.

or otherwise resolved their tax debts before December 15, 2016.<sup>15</sup> Additionally, our analysis focuses on contract awards made in 2015 and 2016, and not contract modifications made during this period. In 2015 and 2016, federal agencies obligated \$400 billion in modifications to contracts made in 2014 or earlier, almost half of all federal contract obligations in this period. We identify contractors who potentially may have had federal tax debt meeting the definitions of tax debt under FAR § 52.209-11 and § 52.209-5 before the contract award, but cannot verify whether that was the case.

To determine the extent to which the IRS identified selected federal contractors' payments made for levy in 2015 and 2016, we identified the population of contractors that owed taxes at the same time they received a contract award during our period by matching FPDS-NG, SAM, and IRS Unpaid Assessment data, as described above.<sup>16</sup> We then determined whether the tax debt had ever been levied or blocked by the Federal Payment Levy Program (FPLP) as of December 15, 2016, according to IRS data.<sup>17</sup> We also interviewed IRS officials about levying federal contractor payments and reviewed Internal Revenue Manual sections and other relevant documents from the IRS.

We assessed the reliability of FPDS-NG, SAM, and IRS Unpaid Assessment data by reviewing relevant documentation, interviewing knowledgeable agency officials, and performing electronic testing to determine the validity of specific data elements in the databases. We determined that these databases were sufficiently reliable for the purposes of our reporting objectives.

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<sup>15</sup>The IRS data we obtained are a snapshot in time as of December 15, 2016. They provide information on tax debts with a balance remaining as of the date of the data extract. Tax debts that were paid in full prior to the data extract we obtained would not be included in the data.

<sup>16</sup>A levy is a legal seizure of property (including payments) to satisfy a tax debt.

<sup>17</sup>In July 2000, the IRS, in conjunction with the Department of the Treasury, Bureau of the Fiscal Service, started the FPLP, which is authorized by I.R.C. § 6331(h). Through the FPLP, the IRS can collect overdue taxes through a continuous levy on certain federal payments disbursed by the Bureau of the Fiscal Service. There are certain situations for which contractors with tax debt can be excluded from the FPLP such as currently not collectible hardship accounts, approved installment agreements, pending or approved offers in compromise, and open bankruptcies or litigation. Further, IRS revenue officers can exclude a contractor's account from FPLP if they are working with the taxpayer to resolve the tax debt.

# Appendix II: Comments from the Department of Defense



ACQUISITION  
AND SUSTAINMENT

## OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 18 2019

Ms. Rebecca Shea  
Director, Forensic Audits and Investigative Service  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Shea,

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report, GAO-19-243, "Federal Contracting: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections," dated February 12, 2019 (GAO Code 101695). Detailed comments on the report recommendations are enclosed.

Sincerely,

Kim Herrington  
Acting Principal Director,  
Defense Pricing and Contracting

Enclosure:  
As stated

GAO DRAFT REPORT DATED FEBRUARY 12, 2019  
GAO-19-243 (GAO CODE 101695)

**“FEDERAL CONTRACTING: OPPORTUNITIES TO IMPROVE COMPLIANCE  
WITH REGULATIONS AND ENHANCE TAX COLLECTIONS,” DATED**

**DEPARTMENT OF DEFENSE COMMENTS  
TO THE GAO RECOMMENDATIONS**

**GAO RECOMMENDATION 1:** The Senior Procurement Executive for the Department of the Army should review the contracts we identified as being awarded to contractors that report qualifying federal tax debt under FAR 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt and, if so, (2) determine the reason(s) controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations.

**DoD RESPONSE:** Concur. Within 30 days after GAO has provided the Department with the listings of the contracts identified and the personnel interviewed, DoD will review the contracts and 1) determine whether, in each case, there was, or was not, noncompliance with FAR 52.209-11 and FAR 52.209-05; 2) if there are systemic noncompliance issues, the DoD will then determine, within an additional 60 days, what additional efforts or added controls are required to ensure that DoD contracting officers fully comply with the requirements of FAR 9.104-5(b); and 3) DPC will then implement any necessary corrective actions or added controls within 180 days of receipt of the GAO listings of DoD contracts and DoD POCs.

**GAO RECOMMENDATION 3:** The Senior Procurement Executive for the Department of the Navy should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt and, if so (2) determine the reason(s) controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations.

**DoD RESPONSE:** Concur. Within 30 days after GAO has provided the Department with the listings of the contracts identified and the personnel interviewed, DoD will review the contracts and 1) determine whether, in each case, there was, or was not, noncompliance with FAR 52.209-11 and FAR 52.209-05; 2) if there are systemic noncompliance issues, the DoD will then determine, within an additional 60 days, what additional efforts or added controls are required to ensure that DoD contracting officers fully comply with the requirements of FAR 9.104-5(b); and 3) DPC will then implement any necessary corrective actions or added controls within 180 days of receipt of the GAO listings of DoD contracts and DoD POCs.

**GAO RECOMMENDATION 5:** The Senior Procurement Executive for the Department of the Army should review the contracts we identified as being awarded to the contractors that reported qualifying federal tax debt under FAR 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reasons(s) controls to identify and notify the SDO of these contractors before contract award did not operate effectively; and (2) design or modify controls to help ensure compliance with applicable regulations.

**DoD RESPONSE:** Concur. Within 30 days after GAO has provided the Department with the listings of the contracts identified and the personnel interviewed, DoD will review the contracts and 1) determine whether, in each case, there was, or was not, noncompliance with FAR 52.209-11 and FAR 52.209-05; 2) if there are systemic noncompliance issues, the DoD will then determine, within an additional 60 days, what additional efforts or added controls are required to ensure that DoD contracting officers fully comply with the requirements of FAR 9.104-5(b); and 3) DPC will then initiate any necessary corrective actions or added controls within 180 days of receipt of the GAO listings of DoD contracts and DoD POCs.

**GAO RECOMMENDATION 8:** The Senior Procurement Executive for the Department of the Navy should review the contracts we identified as being awarded to the contractors that reported qualifying federal tax debt under FAR 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reason(s) controls to identify and notify the SDO of these contractors before contract award did not operate effectively; and (2) design or modify controls to help ensure compliance with applicable regulations.

**DoD RESPONSE:** Concur. Within 30 days after GAO has provided the DoD with the listings of the DoD contracts identified and the DoD personnel interviewed, the DoD will review the contracts and 1) determine whether, in each case, there was, or was not, noncompliance with FAR 52.209-11 and FAR 52.209-05. 2) If the DoD determines that there was noncompliance, the DoD will then determine, within an additional 60 days, what additional efforts or added controls are required to ensure that DoN contracting officers fully comply with the requirements of FAR 9.104-5(b). DPC will initiate any necessary corrective actions or added controls within 180 days of receipt of the GAO listings of DoD contracts and DoD POCs.

# Appendix III: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

MAR 13 2019

Gloria Proa  
Director, Forensic Audits and Investigative Service  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Ms. Gloria:

Attached are comments on the U.S. Government Accountability Office's (GAO) report entitled, "*Federal Contracting: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections*" (GAO-19-243).

The Department appreciates the opportunity to review this report prior to publication.

Sincerely,

A handwritten signature in cursive script that reads "Matthew D. Bassett".

Matthew D. Bassett  
Assistant Secretary for Legislation

Attachment



**GENERAL COMMENTS FROM THE DEPARTMENT OF HEALTH & HUMAN SERVICES ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT REPORT ENTITLED – FEDERAL CONTRACTING: OPPORTUNITIES TO IMPROVE COMPLIANCE WITH REGULATIONS AND ENHANCE TAX COLLECTIONS (GAO-19-243)**

The U.S. Department of Health & Human Services (HHS) appreciates the opportunity from the Government Accountability Office (GAO) to review and comment on this draft report. As a steward of federal funding, HHS is committed to protecting taxpayer resources. As described below, HHS will review the identified contract files and take appropriate actions based on the results of that review.

**Recommendation 2**

The Senior Procurement Executive for HHS should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt and, if so, (2) determine the reason(s) controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations.

**HHS Response**

HHS concurs with GAO's recommendation. HHS will review identified contract files to assess whether internal control improvements are required and if so, take appropriate action.

**Recommendation 7**

The Senior Procurement Executive for HHS should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reason(s) controls to identify and notify the SDO of these contractors before contract award did not operate effectively; and (2) design or modify controls to help ensure compliance with applicable regulations.

**HHS Response**

HHS concurs with GAO's recommendation. HHS will review identified contract files to assess whether additional internal control improvements are required and if so, take appropriate action.

# Appendix IV: Comments from the Department of Veterans Affairs



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

March 4, 2019

Ms. Rebecca Shea  
Director  
Forensic Audits and Investigative Service  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Shea:

The Department of Veterans Affairs (VA) has reviewed the Government Accountability Office (GAO) draft report: ***"FEDERAL CONTRACTING: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections"*** (GAO-19-243).

The enclosure sets forth the actions to be taken to address the draft report recommendations.

VA appreciates the opportunity to comment on your draft report.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Wilkie".

Robert L. Wilkie

Enclosure

Enclosure

Department of Veterans Affairs (VA) Comments to  
Government Accountability Office (GAO) Draft Report  
***"FEDERAL CONTRACTING: Opportunities to Improve Compliance with  
Regulations and Enhance Tax Collections"***  
(GAO-19-243)

**Recommendation 4:** The Senior Procurement Executive for VA should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-11 and (1) determine whether the contracting officer was required to consider the contractor's reported tax debt and, if so, (2) determine the reason(s) controls to identify and refer these contractors to the SDO before contract award did not operate effectively; and (3) design or modify controls to help ensure compliance with applicable regulations.

**VA Response:** Concur. The Office of Acquisition Logistics and Construction (OALC) will provide an action plan to this recommendation in the Department's 60-day letter required after the final report is issued.

**Recommendation 9:** The Senior Procurement Executive for VA should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reason(s) controls to identify and notify the SDO of these contractors before contract award did not operate effectively; and (2) design or modify controls to help ensure compliance with applicable regulations.

**VA Response:** Concur. OALC will provide an action plan to this recommendation in the Department's 60-day letter required after the final report is issued.

# Appendix V: Comments from the Department of Energy



## Department of Energy

Washington, DC 20585

March 14, 2019

Rebecca Shea  
Director, Forensic Audits and Investigative Service  
U. S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Shea:

This letter provides the U. S. Department of Energy's (DOE) comments to the Government Accountability Office (GAO) draft report entitled *Federal Contracting: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections (GAO-19-243)*. DOE appreciates GAO's perspective on the contracting program and recommendations for improvement.

The draft report contained a total of 12 recommendations, of which GAO directed one recommendation towards DOE. DOE concurred with GAO's recommendation and will request that each office perform independent reviews of the files GAO reviewed during the audit. If necessary, DOE will design or modify controls for compliance with applicable regulations. The attached enclosure contains DOE's response to GAO's draft report recommendation.

GAO should direct questions regarding the contents of the enclosure to Kevin M. Smith at [Kevin.M.Smith@hq.doe.gov](mailto:Kevin.M.Smith@hq.doe.gov) or at (202) 287-1614.

Enclosure

Sincerely,

A handwritten signature in black ink, appearing to read "Ingrid Kolb".

Ingrid Kolb  
Director  
Office of Management



Enclosure

**MANAGEMENT RESPONSE**

**GAO-19-243 Report, “Federal Contracting: Opportunities to Improve Compliance  
with Regulations and Enhance Tax Collections”**

**Draft Report Issued February 13, 2019**

**Recommendation 1:**

*The Senior Procurement Executive for DOE should review the contracts we identified as being awarded to contractors that reported qualifying federal tax debt under FAR § 52.209-5. Specifically, the Senior Procurement Executive should determine whether each contract value was expected to exceed the simplified acquisition threshold when the solicitation was issued and, if so, (1) determine the reason(s) controls to identify and notify the SDO of these contractors before contract award did not operate effectively; and (2) design or modify controls to help ensure compliance with applicable regulations.*

**Management Response: Concur**

In response to Recommendation 1, the Senior Procurement Executives for DOE and the National Nuclear Security Administration (NNSA) will request that each office that had files reviewed by GAO perform independent reviews of the files to address GAO’s findings. If necessary, DOE will design or modify controls for compliance with applicable regulations.

**Estimated Completion Date:** DOE estimates completion of this action by June 30, 2019.

# Appendix VI: Comments from the General Services Administration



The Administrator

March 12, 2019

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Dodaro:

Thank you for the opportunity to comment on the draft report titled *FEDERAL CONTRACTING: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections* (GAO-19-243), dated February 12, 2019, in which the U.S. Government Accountability Office (GAO) recommended the following:

The Administrator of GSA [U.S. General Services Administration] should coordinate with the appropriate SAM [System for Award Management] users, such as agency procurement officials, to identify potential updates to facilitate contracting officers identification of contractors that report qualifying federal tax debt under the § 52.209-11 representation and § 52.209-5 certification.

GSA concurs with the recommendation and will work with the procurement community, through established governance channels, to identify a list of potential approaches to draw contracting officers' attention to qualifying Federal tax debt information already reported by contractors in the System for Award Management under the § 52.209-5 certification and § 52.209-11 representation.

If you have any questions, please contact me at (202) 969-7277 or Jeffrey A. Post, Associate Administrator, Office of Congressional and Intergovernmental Affairs, at (202) 501-0563.

Sincerely,

A handwritten signature in blue ink that reads "Emily W. Murphy".

Emily W. Murphy  
Administrator

cc: Ms. Rebecca Shea, Director, Forensic Audits and Investigative Service, GAO

1800 F Street, NW  
Washington, DC 20405-0002

[www.gsa.gov](http://www.gsa.gov)

# Appendix VII: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

March 12, 2019

James R. McTigue, Jr.  
Director, Tax Policy and Administration  
Strategic Issues Team  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, DC 20548

Dear Mr. McTigue:

Thank you for the opportunity to review the draft report of the Government Accountability Office entitled "*Federal Contracting: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections*" (GAO-19-243) (Job Code 101695). We agree that "IRS enforcement of tax laws is vital to promote compliance by giving taxpayers confidence that others are paying their fair share." Providing the IRS the tools, staff and other resources necessary to carry out the laws required to execute enforcement actions is critical to maintaining taxpayer confidence in the IRS's fairness.

The draft report contains two recommendations for the IRS. Specifically, Recommendation 11 suggests modifying Form 8596, Information Return for Federal Contracts, to require federal agencies to include information as to whether contractor payments are expected to be processed by the Bureau of the Fiscal Service (BFS). It notes that the IRS should use this additional information to help identify which payments may be available for levy and to help expand the number of agencies participating in the Federal Payment Levy Program (FPLP).

The IRS is committed to obtaining accurate information on potential levy sources in a manner that is efficient and effective but not unnecessarily burdensome on taxpayers and third parties. We will review the benefits of expanding the information included on the Form 8596 as well as other alternatives, to determine their feasibility, effectiveness and relative burdens.

Recommendation 12 advises the IRS to evaluate options to obtain comprehensive contract payment data below the existing reporting threshold of \$25,000, including a potential reduction of the current threshold for contracts that agencies are required to report to the IRS through Form 8596 from \$25,000 to \$10,000. While reducing the threshold would increase the number of federal contractors identified in IRS systems and may increase the number of delinquent tax accounts settled, it may increase

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taxpayer and third-party burden, as well as costs to the IRS, taxpayers and third parties. The IRS believes that further evaluation of this recommendation is needed. We will review the potential benefits and costs that would result from implementing this recommendation and will submit our findings to the Office of IRS Chief Counsel for consideration of adding this to the Priority Guidance Plan.

We appreciate Congress' and GAO's interest in the important topic of federal contractors' tax compliance. If you have questions, please contact me, or a member of your staff may contact Margaret A. Von Lienen, Director, Exempt Organizations, at 513-975-6562.

Sincerely,



for

Kirsten B. Wielobob  
Deputy Commissioner for  
Services and Enforcement

Enclosure



Enclosure

**Recommendation 11:**

The Commissioner of Internal Revenue should evaluate options to identify which contract payments federal agencies expect to be processed by the Fiscal Service, including amending the reporting requirements for Form 8596 to require federal agencies to include information about whether contractor payments are expected to be processed by the Fiscal Service. If the IRS amends Form 8596 reporting requirements, the IRS should 1) systematically note this information on taxpayer accounts to help the IRS identify which payment may be available for levy through the FPLP and which payments may be available for other (i.e., manual) levies, and 2) analyze these data to help identify agencies that do not participate in the FPLP and inform its efforts to expand the number of agencies participating in the FPLP.

**Comment:**

The IRS is committed to obtaining accurate information on potential levy sources in a manner that is efficient and effective but not unnecessarily burdensome on taxpayers and third parties. We will review the benefits of expanding the information included on the Form 8596 as well as other alternatives, to determine their feasibility, effectiveness and relative burdens.

**Recommendation 12:**

The Commissioner of Internal Revenue should evaluate options to obtain comprehensive contract payment data above the existing FPDS-NG reporting threshold of \$10,000, including assessing the costs and benefits of changing the current threshold for contracts that agencies are required to report to the IRS through Form 8596 information returns to be consistent with the existing reporting threshold for FPDS-NG, determine whether regulatory revisions are necessary, and change the reporting threshold, if appropriate.

**Comment:**

The IRS believes that further evaluation of this recommendation is needed. We will review the potential benefits and costs that would result from implementing this recommendation and will submit our findings to the Office of IRS Chief Counsel for consideration of adding this to the Priority Guidance Plan.

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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Shea, (202) 512-6722 or [shear@gao.gov](mailto:shear@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Jonathon Oldmixon (Assistant Director), Gloria Proa (Analyst-in-Charge), Jennifer Felder, and Albert Sim made significant contributions to this report. Also contributing to this report were Scott Hiromoto, Barbara Lewis, Heather Miller, James Murphy, and Elizabeth Wood.

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