

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051

<http://oversight.house.gov>

January 31, 2017

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Commissioner Koskinen:

The Committee is examining the federal government's ability to prevent tax delinquent contractors from obtaining federal awards. Each year the federal government awards more than \$1 trillion worth of taxpayer funds in grants and contracts.¹ It is not clear, however, that federal contracts and grants are awarded strictly to tax-compliant businesses and individuals. A series of Treasury Inspector General for Tax Administration (TIGTA) audit reports since 2010 have found a need for improvements in the Internal Revenue Service's process for identifying tax delinquent contractors.

The most recent report released by TIGTA, in July 2016, found the IRS tax check process is ineffective for identifying tax delinquent contractors.² In its report, TIGTA reviewed a sample of 73 contract awards from a population of 336 contracts awarded during the period September 2012 through August 2014, of which 21 did not have evidence that the required tax check was performed on the winning bidders. Further, when tax checks were performed the results were inadequate to determine the status of the winning bidder's unpaid federal taxes.³ Despite the multiple reports highlighting the need for a robust IRS tax check process, IRS contracting officers—in the cases where they perform a tax check—do not have access to quality data. Without this information, IRS contracting officers are unable to perform the required responsibility determinations, and are at risk for awarding contracts to contractors with outstanding federal taxes.

Performing tax checks is necessary to ensure federal contracts are properly awarded. Under the Federal Acquisition Regulation (FAR), when submitting an offer for contracts valued above the simplified acquisition threshold, contractors must declare, amongst other things, if

¹ USASPENDING (Nov. 10, 2016).

² TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, SIGNIFICANT IMPROVEMENTS ARE NEEDED IN THE CONTRACTOR TAX CHECK PROCESS 4 (2016), *available at* <https://www.treasury.gov/Tigta/auditreports/2016reports/201610049fr.pdf> [hereinafter 2016 TIGTA report].

³ *Id.* at 5.

they have been notified within the last three years of any unsatisfied delinquent federal taxes greater than \$3,500.⁴ In 2015, TIGTA found the IRS made 57 contract awards valued at \$18.8 million to 17 corporations with federal tax debt.⁵ Of those seventeen corporations, eight failed to self-certify their delinquent federal tax status.⁶ This finding underscores the importance of performing tax checks to prevent tax delinquent contractors from obtaining federal contracts. Self-certifications provided by contractors are not sufficiently reliable to determine tax compliance.

To ensure the IRS is making progress towards an effective tax check system, it is imperative that TIGTA recommendations are taken seriously and implemented in a timely manner. The recommendations made by TIGTA are designed specifically to improve IRS tax check processes, and ensure that taxpayer funds are being used efficiently and effectively. The Committee expects the IRS to fully implement recommendations to ensure an effective tax check process for federal contractors. As part of the recommendation process the IRS has indicated it is developing and implementing a database that automatically identifies tax indebtedness status for contracting officers to use in performing required responsibility determinations. This is a positive development.

So the Committee can better understand IRS's management and plans to implement a more effective tax check process, please produce the following information as soon as possible, but no later than February 14, 2017:

1. The updated tax check policy and procedures memo (P&P 9.1) and the updated complementary document providing Procedures, Guidance, and Information, referenced in the 2016 TIGTA report;⁷
2. Documents referring or relating to whether recommendations from the 2015 TIGTA report have been implemented, and/or a timeline for implementation of such recommendations;⁸ and
3. In regards to the automatic tax check database the IRS is developing provide:
 - a. A development and implementation schedule for the database;
 - b. Guidance provided to contracting officers on how the database will be used; and

⁴ FAR § 52.209-5.

⁵ TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, EXISTING PROCUREMENT PRACTICES ALLOWED CORPORATIONS WITH FEDERAL TAX DEBT TO OBTAIN CONTRACT AWARDS, 6 (2015), *available at* <https://www.treasury.gov/tigta/auditreports/2015reports/201510011fr.pdf>.

⁶ *Id.*

⁷ 2016 TIGTA report at 14.

⁸ *Id.* at 6.

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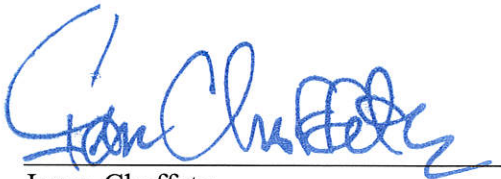
- c. Documents referring or relating to how the information within the database is compiled and verified.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter contains additional instructions for responding to the Committee's request.

If you have any questions about this request, please contact Drew Baney of the majority Committee staff at (202) 225-5074 or William Cunningham of the minority Committee staff at (202) 225-5051. Thank you for your attention to this matter

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member

Enclosure

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.