

**BY ORDER OF THE COMMANDER
SPACE SYSTEMS COMMAND**

**SPACE SYSTEMS COMMAND
INSTRUCTION 64-101**

8 MARCH 2022

Contracting

**SPACE CONTRACTOR
RESPONSIBILITY WATCH LIST
(CRWL)**



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This publication implements Air Force Policy Directive 64-1, *The Contracting System*, and Public Law 115-91, Section 1612, *National Defense Authorization Act for Fiscal Year 2018*, *Air Force Space Contractor Responsibility Watch List*. This instruction establishes the procedures and roles and responsibilities for maintaining a watch list of contractors with a history of poor performance on space procurement contracts or research, development, test, and evaluation space program contracts. This instruction applies to Department of the Air Force – the US Air Force and the US Space Force – military and civilian personnel assigned to the Space Systems Command (SSC) and to space procurement and research, development, test, and evaluation programs under the Program Executive Officers (PEO) assigned to SSC. This instruction does not apply to Air Force Reserve Command and Air National Guard units. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using AF Form 847, *Recommendation for Change of Publication*. Route the AF Form 847 from the field through the appropriate functional chain of command. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with (IAW) Department of the Air Force Instruction 33-322, *Records Management and Information Governance Program*, and disposed of IAW the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. The authorities to waive delta/wing/unit level requirements in this publication are identified with a Tier (T-0) number. See DAFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. SSC/AC PK is the waiver authority for non-tiered compliance items. Submit requests for waivers through the chain of command to the Publication OPR for consideration. This publication may not be

supplemented or further implemented/extended. [Attachment 1](#) contains a glossary of references and is not mandatory for compliance.

SUMMARY OF CHANGES

This revision includes organizational and administrative changes to reflect the redesignation of the Air Force Space and Missile Systems Center to the Space Force Space Systems Command and adds procedures for providing a contractor notice of proposed action and an opportunity to respond ([paragraph 3.1.5](#)).

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1. Purpose, Authority, and Applicability.

1.1. **Purpose.** The critical nature of SSC space programs drives contracting officers to apply rigorous standards when determining the responsibility of prospective contractors. To support these responsibility determinations, the CRWL identifies those contractors whose ability to successfully perform is uncertain due to poor performance or award fee scores below 50 percent, financial concerns, felony convictions or civil judgements, or security or foreign ownership and control issues. Federal Acquisition Regulation (FAR) Subpart 9.1, Responsible Prospective Contractors, section 9.103, Policy, paragraph (b), states that contracting officers shall presume that they lack information clearly indicating that prospective contractors are responsible unless the contracting officer makes an affirmative determination of responsibility. The procedures set forth in this instruction provide that for contractors listed on the CRWL, SSC/CC approval of the FAR required determination is needed before proceeding with the contract action. This instruction is best utilized in conjunction with the FAR, the Defense Federal Acquisition Regulation Supplement (DFARS), and SSC acquisition guidance on contractor responsibility matters. Additionally, implementing procedures in SSC acquisition guidance have been developed for SSC contracting personnel.

1.2. **Authority.** This instruction is established under the authority of the FY 2018 NDAA (P.L. 115-91), Section 1612, Air Force Space Contractor Responsibility Watch List. IAW Section 1612, nothing in this instruction shall be construed as preventing the suspension or debarment of a contractor. Inclusion on the CRWL shall not be construed as a punitive measure or de facto suspension or debarment of a contractor.

1.3. **Applicability.** This instruction applies to SSC space procurement contracts and SSC research, development, test, and evaluation space program contracts, hereinafter collectively referred to as “space program contracts.” This instruction does not apply to operation and maintenance contracts, professional services contracts for Government support (e.g., Federally Funded Research and Development Centers, Advisory and Assistance Services), or Other Transactions.

2. Roles and Responsibilities.

2.1. Commander, SSC. SSC/CC may:

2.1.1. Place a contractor on the CRWL after determining that the ability of the contractor to perform a space program contract is uncertain iaw the procedures in [paragraph 3.1](#).

2.1.2. Approve requests to remove a contractor from the CRWL iaw the procedures in [paragraph 3.3](#).

2.1.3. Approve requests to solicit sole source offers from, award competitive or sole source contracts to, execute engineering change proposals with, or exercise options on any space program contract with a contractor included on the CRWL iaw the procedures in [paragraph 3.2.1](#) See [paragraph 3.2.2](#) for procedures on competitive solicitations.

2.1.4. Approve requests from space program contract prime contractors to enter into subcontracts valued in excess of \$3,000,000 or 5 percent of the prime contract value, whichever is lesser, with contractors included on the CRWL iaw the procedures in [paragraph 3.2.3](#).

2.2. SSC Director of Contracting (SSC/AC PK). SSC/AC PK will:

2.2.1. Develop implementing procedures in the SSC acquisition guidance to:

2.2.1.1. Ensure SSC contracting officers do not solicit sole source offers from, award competitive or sole source contracts to, execute engineering change proposals with, or exercise options on any space program contract with a contractor included on the CRWL without prior approval of SSC/CC. **(T-0)**

2.2.1.2. Ensure space program contract prime contractors do not enter into a subcontract valued in excess of \$3,000,000 or five percent of the prime contract value, whichever is lesser, with a contractor included on the CRWL without the prior approval of SSC/CC. **(T-0)**

2.2.1.3. Allow a contractor to submit a written request to be removed from the CRWL. **(T-0)**

2.2.2. Serve as the primary advisor to SSC/CC regarding execution of the CRWL procedures by coordinating on any requests to place a contractor on the CRWL, remove a contractor from the CRWL, or approve execution of contract actions or subcontracts with a contractor on the CRWL.

2.2.3. Maintain the CRWL.

2.2.4. Review this instruction annually, propose changes as needed, and coordinate the proposed changes for approval IAW DAFI 33-360, *Publications and Forms Management*.

2.2.5. Develop and conduct training on CRWL procedures for SSC personnel.

2.3. SSC Staff Judge Advocate (SSC/JA). SSC/JA will:

2.3.1. Serve as an advisor to SSC/CC regarding execution of the CRWL procedures by coordinating on any requests to place a contractor on the CRWL, remove a contractor from the CRWL, or approve execution of contract actions or subcontracts with a contractor on the CRWL.

2.3.2. Coordinate on proposed changes to this instruction.

2.4. **SSC PEOs.** In consultation with the contracting officer and the Chief of the Contracting Office (COCO), SSC PEOs will:

2.4.1. Request placement of a contractor on the CRWL if any of the conditions in [paragraph 3.1.2](#) apply. **(T-0)**

2.4.2. Request the approval of SSC/CC for the contracting officer to solicit sole source offers from, award competitive or sole source contracts to, execute engineering change proposals with, or exercise options on any space program contract with a contractor included on the CRWL. **(T-0)**

2.4.3. Coordinate on requests from space program contract prime contractors to enter into subcontracts with contractors on the CRWL.

2.4.4. Coordinate on requests from contractors to be removed from the CRWL if the request is related to space program contracts that fall under their area of responsibility.

2.5. **SSC Contracting Officers.** In consultation with the COCO, SSC contracting officers will:

2.5.1. Assist SSC PEOs in developing requests to place contractors on the CRWL if the conditions in [paragraph 3.1.2](#) apply.

2.5.2. Make contracting officer determinations iaw FAR system regulations and applicable procedures, and this instruction. **(T-0)**

2.5.3. Upon making determinations, assist SSC PEOs in developing requests for SSC/CC approval to solicit sole source offers from, award competitive or sole source contracts to, execute engineering change proposals with, or exercise options on any space program contract with a contractor included on the CRWL.

2.5.4. Upon making determinations, assist SSC PEOs in developing requests for SSC/CC approval for space program contract prime contractors to enter into subcontracts with contractors on the CRWL.

2.5.5. Coordinate on contractors' requests to be removed from the CRWL if the request is related to space program contracts that fall under the contracting officer's area of responsibility.

2.5.6. Include CRWL-related solicitation provisions and contract terms and conditions in space program solicitations and contracts iaw applicable SSC acquisition guidance.

3. CRWL Procedures.

3.1. Placing a Contractor on the CRWL.

3.1.1. SSC/CC determines which contractors to place on the CRWL and whether to list an entire contractor or specific division thereof. If a specific division is listed, the CRWL restrictions described in [paragraph 3.2](#) will apply only to that division and to all of the subordinate business units comprising that division.

3.1.2. SSC/CC may place a contractor on the CRWL after determining that its ability to perform a space program contract is uncertain because of any of the following:

- 3.1.2.1. Poor performance or award fee scores below 50 percent (see [paragraph 3.1.3](#));
 - 3.1.2.2. Financial concerns;
 - 3.1.2.3. Felony convictions or civil judgments; or
 - 3.1.2.4. Security or foreign ownership and control issues.
- 3.1.3. Whenever a space program contract prime contractor earns an overall award fee score less than 50 percent for a period, the SSC PEOs will notify SSC/CC in writing, describe the reasons for the score, and recommend whether the contractor should be placed on, or if already listed, remain on the CRWL. **(T-0)**
- 3.1.4. Contracting officers or program managers who become aware of responsibility issues that could affect the ability of a contractor to effectively perform a space program contract or subcontract should promptly report that information to their COCO and SSC PEO. If the COCO or the SSC PEO concur that a condition exists that makes a contractor's ability to perform a space program contract uncertain for the reasons identified in [paragraph 3.1.2](#), the contracting officer will develop a package for the SSC PEO to request SSC/CC place the contractor on the CRWL. Procedures for developing and coordinating this package are provided in the SSC acquisition guidance.
- 3.1.5. SSC/CC will provide the contractor a notice of proposed listing and an opportunity to respond after receipt of a package recommending placement on the CRWL iaw the following procedures.
- 3.1.5.1. Notification and opportunity to respond. Except as provided in [3.1.5.1.7](#) and [3.1.5.1.8](#), SSC/CC will notify any contractor being considered for placement on the CRWL in writing of the contents described in paragraphs [3.1.5.1.1](#) through [3.1.5.1.6](#) prior to a final decision being made.
 - 3.1.5.1.1. A statement that placement on the CRWL is being considered.
 - 3.1.5.1.2. The reasons for the proposed placement in terms sufficient to put the contractor on notice of the conduct or events upon which it is based.
 - 3.1.5.1.3. The cause(s) relied upon under [3.1.2](#) for proposing placement.
 - 3.1.5.1.4. A statement that, within 30 days after receipt of the notice or other timeframe specified by SSC/CC, the contractor may submit, in writing, information and argument in opposition to the proposed placement.
 - 3.1.5.1.5. A statement that the procedures governing CRWL decision-making are described in SSCI 64-101.
 - 3.1.5.1.6. A discussion of the effects of placement on the CRWL as described in [3.2](#).
 - 3.1.5.1.7. In consultation with SSC/AC PK and SSC/JA, and in consultation with any other advisors at the discretion of SSC/CC, SSC/CC may determine that sufficient notice and opportunity to respond have previously occurred through Government actions other than the specific written procedures described in [paragraph 3.1.5.1](#), including, but not limited to, actions such as Award Fee

reviews and Program Management reviews. In such cases, SSC/CC need not adhere to the procedures described in [paragraph 3.1.5.1](#).

3.1.5.1.8. In consultation with SSC/AC PK and SSC/JA, and in consultation with any other advisors at the discretion of SSC/CC, in exceptional circumstances SSC/CC may determine that immediate placement of a contractor on the CRWL is necessary and may take action to place a contractor on the CRWL without adhering to the notification and opportunity to respond procedures described in [paragraph 3.1.5.1](#). This authority exists despite a lack of any previous actions constituting notice and an opportunity to respond as outlined in [paragraph 3.1.5.1](#). Exceptional circumstances include, but are not limited to, situations involving national security, or preservation of health or property. In such cases, SSC/CC will provide the contractor with notice and an opportunity to respond after placement on the CRWL.

3.1.5.2. Analysis of information and argument presented in opposition to CRWL placement. The cognizant contracting officer, program manager, COCO, and SSC PEO, as well as advisory staff including but not limited to SSC/JAQ and SSC/AC PKV, will analyze the written information and argument (if any) presented by the contractor in opposition to its placement on the CRWL. The contracting officer will then prepare a supplemental package for SSC/CC containing the contractor's written submission and the Government's evaluation thereof. After receipt of this supplemental package, SSC/CC will determine whether the contractor's submission in opposition raises a genuine dispute over facts material to the determination of whether the contractor should be placed on the CRWL.

3.1.5.3. Fact-finding.

3.1.5.3.1. In CRWL placement decisions based upon a felony conviction or civil judgment (see [3.1.2.3](#)), or if SSC/CC has determined no genuine dispute over material facts exists, no additional fact-finding proceedings will take place. However, to the extent that the proposed placement stems from the contractor's affiliation with an individual or firm indicted or convicted, or the subject of a civil judgment, fact-finding may take place if a genuine dispute of fact is raised as to the question of affiliation.

3.1.5.3.2. If SSC/CC has determined a genuine dispute over material facts exists, additional fact-finding proceedings may be held.

3.1.5.3.2.1. If held, fact-finding proceedings will be limited in scope to the facts in dispute.

3.1.5.3.2.2. At the discretion of SSC/CC, such additional proceedings may take the form of supplemental written arguments or an in-person hearing. The terms, to include page limitations for supplemental written arguments as well as duration and attendance limitations for in-person hearings, will be at the discretion of SSC/CC and will be communicated both to the affected contractor and to the Government personnel involved.

3.1.5.3.2.3. SSC/CC will conduct any fact-finding proceedings held and will serve as the fact-finder.

3.1.5.3.2.4. If fact-finding proceedings are held, written findings of fact will be prepared and will be retained for the record, with a copy provided to the contractor.

3.1.5.4. Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern any procedure concerning CRWL placement decisions. Hearsay evidence may be presented and considered.

3.1.5.5. Decision. SSC/CC will base the decision whether to place a contractor on the CRWL on information in the package submitted recommending placement on the CRWL, any information and argument submitted by the contractor in opposition to placement on the CRWL, and any facts as found at the conclusion of any fact-finding proceeding.

3.1.5.5.1. Prompt written notice of the decision made will be sent to the contractor. If the decision is made to place the contractor on the CRWL, the written notice will specify the reasons for the placement and will refer the contractor to SSCI 64-101 [paragraph 3.3](#), Removing a Contractor from the CRWL.

3.1.6. Prime contractors are encouraged to inform the contracting officer of any subcontractor responsibility issues that may jeopardize successful contract performance.

3.2. Effect of Listing on the CRWL.

3.2.1. Contracting officers must obtain SSC/CC approval before soliciting a sole source offer from, awarding a competitive or sole source contract to, executing an engineering change proposal with, or exercising an option on any space program contract with a contractor listed on the CRWL. **(T-0)** Requests for SSC/CC approval must be submitted in writing and will only be approved with compelling justification in the contracting officer's determination as to why the conditions that caused the contractor to be listed on the CRWL will not affect the proposed contract action. Request packages must be staffed through SSC/AC PK, SSC/JA, and, if the contractor is a small business, through SSC/SB.

3.2.2. All competitive solicitations shall include a requirement for each prospective contractor or subcontractor proposed for an applicable subcontract that is listed on the CRWL to submit documentation with their proposal to the Government describing how they have addressed the conditions that resulted in their inclusion on the CRWL and why those conditions will not impact performance on a resultant space program contract. The contracting officer will consider this information in making a determination whether to request SSC/CC approval to proceed iaw [paragraph 3.2.1](#) or [paragraph 3.2.3](#). The determinations made iaw [paragraph 3.2.1](#) must be made before entering into discussions (or equivalent activity) or before making the award decision, whichever comes first. **(T-0)**

3.2.3. Subcontractors proposed for applicable SSC space program subcontracts must disclose to the prime contractor whether or not they are listed on the CRWL. The contracting officer's consent to subcontract with a contractor listed on the CRWL is required before the prime contractor awards any subcontract valued in excess of \$3,000,000 or five percent of the prime contract value, whichever is lesser. Requests for consent to subcontract must include the prime contractor's determination of subcontractor responsibility and supporting evidence developed iaw FAR 9.104-4, Subcontractor responsibility. The contracting officer will consider this information in making a

determination whether to request SSC/CC approval to grant consent to subcontract. Requests for SSC/CC approval must be submitted in writing and will only be approved with compelling justification in the determination as to why the conditions that caused the contractor to be listed on the CRWL will not affect the proposed contract action. **(T-0)**

3.3. Removing a Contractor from the CRWL.

3.3.1. Contractors may seek removal from the CRWL at any time by submitting a written request to SSC/CC. The request shall provide evidence that the contractor has addressed the conditions that caused it to be listed. **(T-0)**

3.3.2. SSC/CC will forward the request to SSC/AC PK for action. SSC/AC PK will coordinate with SSC/JA, the applicable SSC PEO and contracting officer and make a recommendation to SSC/CC whether to grant the contractor's request for removal.

3.3.3. SSC/CC will respond to the contractor's request in writing within 90 calendar days of the request.

Michael A. Guetlein
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Commander

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFI 33-322, *Records Management and Information Governance Program*, 23 Mar 2020

AFPD 64-1, *The Contracting System*, 6 Nov 2018

DAFI 33-360, *Publications and Forms Management*, 1 Dec 2015

DFARS Subpart 9.1, *Responsible Prospective Contractors*

FAR Subpart 9.1, *Responsible Prospective Contractors*

Public Law 115-91, Section 1612, *National Defense Authorization Act for Fiscal Year 2018, Air Force Space Contractor Responsibility Watch List*, 12 Dec 2017

SSC Acquisition Guidance, CRWL

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

COCO—Chief of the Contracting Office

CRWL—Space Contractor Responsibility Watch List

DFARS—Defense FAR Supplement

FAR—Federal Acquisition Regulation

IAW—in accordance with

OPR—Office of Primary Responsibility

PEO—Program Executive Officer

SSC—Space Systems Command