Part 5209 - CONTRACTOR QUALIFICATIONS

The official NMCARS regulation resides at
https://www.secnav.navy.mil/rda/DASN-P/Pages/NMCARS.aspx

Subpart 5209.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.104 Standards.

5209.104-1 General standards.

5209.104-5 Representation and certifications regarding responsibility matters.

5209.104-6 Federal Awardee Performance and Integrity Information System.

Subpart 5209.4 - DEBARMENT, SUSPENSION AND INELIGIBILITY

5209.402 Policy.

5209.404 System for Award Management Exclusions (SAM).

5209.405 Effect of listing.

5209.405-2 Restrictions on subcontracting.

5209.406 Debarment.

5209.406-3 Procedures.

5209.407 Suspension.

5209.407-3 Procedures.

Subpart 5209.5 - ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

5209.503 Waiver.

5209.570 Limitations on contractors acting as lead system integrators.

5209.570-2 Policy.

Subpart 5209.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

5209.104 Standards.

5209.104-1 General standards.

(g)(ii) *Ownership or control by a foreign government when access to proscribed information is required.*

(C) Submit waiver requests for Undersecretary of Defense for Intelligence approval via DASN(P) by email at RDAJ&As.fct @navy.mil with the subject "[Activity Name] DFARS 209.104-1(g)(ii) - Waiver Request/National Security Interest Determination."

(D) Submit waiver requests for Secretary of Defense approval via DASN(P) by email at address RDAJ&As.fct @navy.mil with the subject "[Activity Name] DFARS 209.104-1(g)(ii)(A) - SECDEF Waiver Request."

5209.104-5 Representation and certifications regarding responsibility matters.

(a)(1) When provided an affirmative response from The Boeing Company (TBC) in paragraph (a)(1) of the provision at 52.209-5, Certification Regarding Responsibility Matters, or paragraph (h) of the provision at 52.212-3 Offeror Representations and Certification—Commercial Items, the contracting officer shall request such additional information from TBC to determine if their affirmative response is solely related to the Deferred Prosecution Agreement between TBC and the United States District Court for the Northern District of Texas, Fort Worth Division, dated January 7, 2021.

(2) If it is determined that the affirmative response from TBC in (a)(1) is solely related to the Deferred Prosecution Agreement between TBC and the United States District Court for the Northern District of Texas, Fort Worth Division, dated January 7, 2021, notwithstanding FAR 9.104-5(a)(2), contracting officers are not required to provide the notification to the Department of the Navy's Acquisition Integrity Office.

5209.104-6 Federal Awardee Performance and Integrity Information System.

(c)(2) After completing the Federal Awardee Performance and Integrity Information System (FAPIIS) review required in FAR 9.104-6 prior to contract award and determining the potential awardee was removed from the debarred or suspended list within the last two years, the contracting officer, if choosing to continue with contract award, shall notify the HCA and the AGC(AI)). The AGC (AI) may provide additional available relevant information regarding the prospective awardee to assist the HCA in making and supporting the decision to award. The HCA shall approve the contract award.

Subpart 5209.4 - DEBARMENT, SUSPENSION AND INELIGIBILITY

5209.402 Policy.

(d) The AGC(AI) is the Department of the Navy's Suspending and Debarring Official (SDO).

Attorneys in the Acquisition Integrity Office have the responsibility for processing and recommending suspension or debarment action to the SDO.

5209.404 System for Award Management Exclusions (SAM).

(b)(8) The Acquisition Integrity Office has the responsibility for entering data, updating, and performing all other administrative functions regarding the SAM exclusions for the DON.

5209.405 Effect of listing.

(a) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consent action by email at RDAJ&As.fct @navy.mil with the subject "[Activity Name] DFARS 209.405 – Compelling Reason Review and Approval." DASN(P) shall provide written notification of the determination to the General Services Administration.

(b)(ii) Submit requests for an agency head exception via DASN(P) with justification that award to Code "H" ineligible contractor is in the paramount interest of the United States by email at RDAJ&As.fct @navy.mil with the subject "[Activity Name] DFARS 209.405 – Code H Ineligible Facility Review and Approval."

(e)(2) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consideration of the bid by email at RDAJ&As.fct@navy.mil with subject "[Activity Name] FAR 9.405(e)(2) – Compelling Reason Review and Approval." DASN(P) shall provide written notification of the determination to the General Services Administration.

(3) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consideration of the bid by email at RDAJ&As.fct@navy.mil with subject "[Activity Name] FAR 9.405(e)(3) – Compelling Reason Review and Approval." DASN(P) shall provide written notification of the determination to the General Services Administration.

5209.405-2 Restrictions on subcontracting.

(a) ASN(RDA) shall make the required determination that there is a compelling reason. Submit requests for an ASN(RDA) determination to DASN(P) with justification for the proposed consent action by email at RDAJ&As.fct@navy.mil with the subject "[Activity Name] DFARS 209.405-2(a) – Compelling Reason Review and Approval." DASN(P) shall provide written notification of the determination to the General Services Administration.

5209.406 Debarment.

5209.406-3 Procedures.

(i) Refer all matters to AGC(AI) in accordance with PGI 209.406-3.

(ii)(G) If Government employees are implicated in the underlying conduct that led to the referral, the names and current addresses of the employees, disciplinary action taken and the current employment status of each individual.

(H) If no disciplinary action was taken against Government employees involved in the wrongdoing, and the contractor or contractor personnel are recommended for debarment or suspension, a statement explaining why no disciplinary action was taken against the Government employee(s), and why debarment or suspension is appropriate under the circumstances.

(iv)(S-90) Contracting officers shall report when the contractor receives a rating of “Unsatisfactory” in any evaluation area of Past Performance under a DON contract to the DON AIO. When the contracting officer issues a show cause or cure notice, the cognizant contracting officer shall submit a copy of the issuance to the DON Acquisition Integrity Office AIO within five days by email at aio@navy.mil with the subject “PGI 209.406-3 - Poor Performance Referral."

5209.407 Suspension.

5209.407-3 Procedures.

Refer all matters to AGC(AI). Prepare and process reports in accordance with 5209.406-3.

Subpart 5209.5 - ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

5209.503 Waiver.

The HCA is the agency head’s designee, without power of redelegation, for making the determinations required by FAR 9.503.

5209.570 Limitations on contractors acting as lead system integrators.

5209.570-2 Policy.

(c)(2**)** Submit the required written determination for approval with a copy of the approved AS, STRAP, or MOPAS-S by the SECDEF/USD(AT&L) via DASN(P) by email at RDAJ&As.fct @navy.mil

with the subject “[Activity Name] DFARS 209.570-2 - D&F to Use a Contractor to Perform Lead System Integrator Functions.”