PART 1309 - CONTRACTOR QUALIFICATIONS

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Parent topic: SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING

Subpart 1309.2 - Qualifications Requirements

1309.202 Policy.

(a) The designee authorized to establish qualification requirements is set forth in CAM 1301.70.

(b) The designee authorized to waive the requirements of FAR 9.202 (a)(1)(ii) through (4) for up to 2 years with respect to the item subject to the qualification requirement is set forth in CAM 1301.70. This waiver authority does not apply to the qualification requirements contained in a qualified product list, qualified manufacturer list, or qualification bidders list.

(c) The designee authorized to approve proceeding with a procurement, rather than delay the award in order to provide a potential offeror an opportunity to demonstrate its ability to meet the standards specified in the qualifications, is set forth in CAM 1301.70.

1309.206 Acquisitions subject to qualification requirements.

1309.206-1 General.

When the designee authorized in CAM 1301.70 determines that an emergency exists, or elects before or after award not to enforce a qualification requirement it had established, the qualification requirement may not be thereafter enforced unless the agency complies with FAR 9.202(a).

Subpart 1309.4 - Debarment, Suspension, and Ineligibility

1309.403 Definitions.

The designees authorized as the Debarring and Suspending Officials are set forth in CAM 1301.70.

1309.405 Effect of listing.

(a) Contracting officers shall review the Excluded Parties List System (EPLS) listing for contractors after the opening of bids or receipt of proposals and, again, immediately prior to award.

(b) The designee authorized to determine that a compelling reason exists to do business with a debarred/suspended contractor is set forth in CAM 1301.70. This designation does not apply to FAR 23.506(e).

1309.405-1 Continuation of current contracts.

(a) The designee authorized to direct the discontinuance of a contract or subcontract because of a debarment, suspension or proposed debarment is set forth in CAM 1301.70.

(b) A written determination must be issued by the designee authorized in CAM 1301.70 before the following actions can be taken with a contractor that is debarred, suspended or proposed for debarment:

(1) Place any orders exceeding the maximum on an indefinite delivery contract;

(2) Place orders under Federal supply schedule contracts, blanket purchase orders or basic ordering agreements; or

(3) Add new work or exercise options that extend the duration of a current contract or order.

1309.405-2 Restrictions on subcontracting.

The designee authorized to provide, in writing, compelling reasons for allowing Government consent to subcontracts with a contractor who is debarred, suspended or proposed for debarment is set forth in CAM 1301.70.

1309.406 Debarment.

1309.406-1 General.

Debarments and proposed debarments shall be effective throughout the Executive branch of the Government unless the designee authorized in CAM 1301.70 states in writing compelling reasons justifying DOC doing business with the contractor.

1309.406-3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for debarment through the contracting officer to the debarring official.

(b) *Decision-making process.*

(1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed debarment. This may be done in person, in writing or through a representative.

(2) In actions not based upon a conviction or civil judgment, where the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring

official in accordance with FAR 9.406-3(c)

(1) through (7).

(d) *Debarring official's decision.*

(1) For actions based upon a conviction or civil judgment, or when there is no authentic dispute over material facts, the debarring official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data. If there is no suspension in effect, the decision shall be rendered within 30 working days after receipt of any information and argument submitted by the contractor. The debarring official can extend this timeframe for good cause.

(2)

(i) When necessary, written findings of fact shall be prepared as to disputed material facts. The debarring official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the debarring official may refer matters involving disputed material facts to another official for findings of fact, the debarring official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the debarring official will make a decision.

(3) When the proposed debarment is not based upon a conviction or civil judgment, the reason for debarment must be based on a preponderance of the evidence.

(e) *Notice of debarring official's decision.* FAR 9.406-3(e)

(1) establishes the notification procedures when a debarment has been imposed, while FAR 9.406-3(e)(2) establishes the procedure when a debarment is not imposed.

(f) Procurement counsel shall assist and advise the debarring official at each stage of the decision-making process.

1309.407 Suspension.

1309.407-1 General.

Suspensions shall be effective throughout the executive branch of the Government, unless the designee set forth in CAM 1301.70 states in writing compelling reasons for continuing to do business with a suspended contractor.

1309.407-3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for suspension through the contracting officer to the suspending official.

(b) *Decision-making process.*

(1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed suspension. This may be done in person, in writing or through a representative.

(2) In actions not based upon an indictment, where the contractor's submission raises a genuine dispute over facts material to the proposed suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the following procedures will be followed:

(i) Provide the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses and confront any person the agency presents;

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of suspension.* A notice of suspension shall be issued by the suspending official in accordance with FAR 9.407-3(c)

(1) through (6).

(d) *Suspending official's decision.*

(1) For actions based upon an indictment, when there is no authentic dispute over material facts, in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all of the information in the administrative record plus any contractor-submitted data.

(2)

(i) When necessary, written findings of fact shall be prepared as to the disputed material facts. The suspending official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the suspending official may refer matters involving disputed material facts to another official for findings of fact, the suspending official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the suspending official will make a decision.

(3) The suspension may be modified or terminated by the suspending official. However such a decision shall be without prejudice to the subsequent imposition of:

(i) Suspension by any other agency; or

(ii) Debarment by any agency.

(4) The suspending official's decision shall be sent to the contractor and any affiliates involved, in writing, by certified mail, return receipt requested.

(e) Procurement counsel shall assist and advise the suspending official at each stage of the decision-

making process.

Subpart 1309.5 - Organizational and Consultant Conflicts of Interest

1309.503 Waiver.

1309.503-70 Waiver.

(a) The need for a waiver of an organizational conflict of interest (OCI) may be identified by the contracting officer or by a written request submitted by an offeror or contractor. The contracting officer shall review all of the relevant facts and shall refer the matter to the Senior Bureau Procurement Official, who shall make a written recommendation to the Head of Contracting Activity whether a waiver should be granted to allow for a contract award or for continuation of an existing contract.

(b) Criteria for Waiver of OCIs. Issuance of a waiver shall be limited to those situations in which:

(1) The work to be performed under contract is vital to the agency;

(2) There is no party other than the conflicted party that can perform the contract at issue; and

(3) Contractual and/or technical review and supervision methods cannot be employed to mitigate the conflict.

1309.506 Procedures.

The contracting officer shall resolve an actual or potential OCI in a manner consistent with the approval or direction of the designee authorized in CAM 1301.70. If the responsible contracting officer is also the authorized designee in CAM 1301.70, the contracting officer must obtain approval from the Senior Bureau Procurement Official.

1309.507 Solicitation provisions and contract clauses.

1309.507-1 Solicitation provisions.

(a) Insert provision 1352.209-70, *Potential Organizational Conflict of Interest,* substantially as written, in solicitations when the contracting officer determines there is a potential organizational conflict of interest.

(b) Insert the clause with its Alternate I when the contracting officer determines the basic clause should not be modified.

1309.507-2 Contract clauses.

(a) In accordance with FAR 9.507-2, insert clause 1352.209-71, *Limitation of Future Contracting,* substantially as written, when the contractor's eligibility for future prime contract or subcontract awards shall be restricted because of services being provided as stated in FAR 9.505-1 through 9.505-4.

(1) Insert the basic clause when the contractor will be providing systems engineering and/or technical direction. (*See* FAR 9.505-1)

(2) Insert the clause with its Alternate I when the contractor will be preparing specifications or work statements. (*See* FAR 9.505-2)

(3) Insert the clause with its Alternate II when the contractor will be providing technical evaluation or advisory and assistance services. (*See* FAR 9.505-3)

(4) Insert the clause with its Alternate III when the contractor will be obtaining access to proprietary information. (*See* FAR 9.505-4)

(5) Insert the clause with its Alternate IV when the contract is a task order contract. The contracting officer may modify Alternate IV to include a list of systems for which task orders may be issued and indicate which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(6) Insert the clause with its Alternate V when the contract provides for delivery orders. The contracting officer shall indicate in each delivery order which organizational conflict of interest provision in paragraph (a)(2) of this clause shall apply.

(7) Insert the language in Alternate VI when it is necessary to have the restrictions of this clause included in all or some subcontracts, teaming arrangements, and other agreements calling for performance of work related to the contract.

(b) Insert clause 1352.209-72, *Restrictions against Disclosure,* in service contracts, including architect-engineer contracts, and supply and construction contracts requiring a restriction on the release of information developed or obtained in connection with performance of the contract.

(c) Insert the clause 1352.209-73, *Compliance with the Laws,* in all solicitations and contracts.

(d) Insert the clause 1352.209-74, *Organizational Conflict of Interest,* in all solicitations and contracts.

(e) Insert clause 1352.209-75, *Title 13 and Non-Disclosure Requirements,* in all solicitations and contracts for services where the contractor will have access to Title 13 data.