1409.406-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406-2. becomes known to a DOI employee, the matter shall be referred by the case representative to the Debarring Official, in consultation, as appropriate, with the HCA involved, the SOL, and OIG. The case representative will review the matter and, as warranted, prepare and submit to the Debarring Official for consideration an Action Referral Memorandum (ARM) with supporting documentation.

(b) *Notice of Proposed Debarment.* Based upon review of the ARM, as appropriate, the Debarring Official shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOI's process for contesting the action.

(c) *Decision-making process.*

(1) For debarment actions based upon a conviction, civil judgment, or in which there is no genuine dispute over material facts, consistent with FAR 9.406-3(d)(1), the Debarring Official shall make a decision on the basis of the information in the administrative record, including any contractor submissions. Where the proceeding includes an oral presentation of matters in opposition (PMIO) to the Debarring Official, the PMIO will be conducted in an informal business meeting format and tape recorded for the administrative record.

(2) For actions listed under FAR 9.406-3(b)(2), upon concluding from a contractor's information in response to the action notice that facts material to the existence of cause for debarment are genuinely in dispute, the Debarring Official may refer the disputed material facts to another official for fact-finding. The hearing shall be conducted in accordance with Debarment Program fact-finding procedures.

(i) The fact-finding proceeding will be transcribed. The fact-finding official will file the original copy of the transcript with the case record. The reporter's fees and other direct costs associated with the hearing shall be borne by the bureau or office initiating the debarment action, except in the case of actions initiated by the OIG. For actions initiated by the OIG, the costs will be borne by the bureau(s) and/or office(s) out of which the matter arose. A transcript of the proceedings shall be made available to the contractor as provided under FAR 9.406-3(b)(2)(ii).

(ii) Subject to the provisions of 43 CFR part 1, the contractor, and any specifically named affiliate, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings shall be made available to the contractor under the condition in FAR 9.406-3(b)(2)(ii).

(iii) The fact-finding official will prepare findings of fact, certify the entire hearing record and provide said findings and record to the Debarring Official. The fact-finding official shall not make any recommendations unless the Debarring Official has expressly requested such recommendations in writing. Following receipt of the findings of fact, the Debarring Official shall complete debarment proceedings and issue a written debarment decision.

(d) *Administrative Agreements.* Matters may be resolved through administrative agreement at any stage of proceedings of a debarment action where a contractor agrees to appropriate terms. The specific effect of administrative agreements that incorporate terms regarding eligibility for DOI

contracting will vary with the terms of the agreements. In general, such agreements resolve debarment concerns and thereby terminate any imposed or pending award ineligibility. In the event of an agreement, PAM will notify COs of the agreement and its terms.

(e) *Administrative Appeal.* Administrative review of the Debarring Official's decision under FAR 9.406-3(e) may be sought as follows:

(1) The contractor may within thirty (30) days of receipt of the decision, request the Debarring Official to reconsider the decision for clear material errors of fact or law which would change the outcome of the matter.

(2) The Debarring Official may exercise his/her discretion and stay the debarment pending reconsideration review. The Debarring Official will notify the contractor in writing of the decision on reconsideration.

(3) A review request under this section must be in writing, clearly state the specific findings believed to be in error and include the reasons or legal bases for the position.

Parent topic: Subpart 1409.4 - Debarment, Suspension, and Ineligibility