Subpart 609.4—Debarment, Suspension, and Ineligibility

Parent topic: PART 609—CONTRACTOR QUALIFICATIONS

609.402 Policy.

The Procurement Executive is the agency head's designee to be the debarring official and the suspending official.

609.403 Definitions.

609.403-70 DOSAR definitions.

Fact-finding official means the individual designated by the debarring official to conduct additional proceedings as necessary concerning disputed material facts.

609.404 System for Award Management Exclusions.

A/OPE shall accomplish the agency responsibilities prescribed in FAR 9.404(c)(1) through (6). The authority to establish procedures prescribed in FAR 9.404(c)(7) is delegated, without power of redelegation, to the head of the contracting activity.

609.404-70 Specially Designated Nationals List.

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at *http://www.treas.gov/ofac/*. Contracting officers shall consult this list prior to award for any dollar amount. This list is included in searches conducted on the System for Award Management (SAM) Web site at *https://www.sam.gov*.

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(a).

(d)(3) The Procurement Executive is the agency head's designee for the purposes of FAR 9.405(d)(3).

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 649.101–70.

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.405–2.

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.406–1(c).

609.406-3 Procedures.

(a) *Investigation and referral.*

(1) DOS employees aware of any cause that might serve as the basis for debarment shall refer those cases through the contracting officer to the debarring official. The debarring official shall refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include, as appropriate and available—

(i) The cause for debarment (see FAR 9.406–2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the

impact of a debarment on DOS programs.

(3) As deemed appropriate, the debarring official may conduct investigations to supplement the information provided in the referral, or may request investigations by the Office of the Inspector General or other Department office.

(b) *Decisionmaking process.*

(1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official, or a designee, shall chair such a meeting. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406–3(b)(2), the contractor may request a fact-finding proceeding.

(4) The debarring official shall designate a fact-finding official and shall provide the fact-finding official with a copy of all documentary evidence considered in proposing debarment. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406–3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding official and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding proceeding shall be conducted in accordance with procedures determined by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406–3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding official agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.*

(1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c).

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and (e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision.

609.407 Suspension.

609.407-1 General.

The Procurement Executive is the agency head's designee for the purposes of FAR 9.407–1(d).

609.407-3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406–3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407–2).

(b) *Decisionmaking process.*

(1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407–3(b) follow those established for a debarment action (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding official only if permitted under FAR 9.407–3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406–3(a), except that the suspending official shall process the notice in accordance with FAR 9.407–3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407–3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision.