SUBPART 9.4 – DEBARMENT, SUSPENSION, AND INELIGIBILITY

(Revised August 7, 2019 through PROCLTR 2019-16)

Parent topic: PART 9 – CONTRACTOR QUALIFICATIONS

9.404 System for Award Management Exclusions.

The records required by FAR 9.404(b) are maintained by the Special Assistant for Contracting Integrity (SACI).

9.405 Effect of listing.

(a) In order to take one of the contract actions identified in FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406(c), or 9.407-1(d), the procuring organization CCO shall forward a written request, including supporting rationale, following legal review by the procuring organization's Office of Counsel and approval to proceed by the HCA, to the Office of General Counsel via the procuring organization's Office of Counsel. The Office of General Counsel, following legal review, shall forward the request to the DLA Acquisition Operations Division, which will route it to the DLA Acquisition Director for coordination and then staff the action to the Agency Director for approval. Following approval, the DLA Acquisition Operations Division shall provide the written notice to GSA as required by DFARS 209.405(a) and provide notice to the procuring organization. The procuring organization shall not take action until it receives notice that the Agency Director has approved the determination.

(S-90) Upon notification, the DLA Acquisition Operations Division shall review current or past contractual relationships with the contractor or its affiliates, in coordination with General Counsel and contracting officers. The DLA Acquisition Operations Division shall coordinate with the contracting officers if there is a basis for recovery of damages from, or other claims against, the contractor. If there may be a basis for claims against the contractor, information stating the factual basis shall be forwarded to General Counsel. The information shall include a plan to recover damages in the event the contractor does not voluntarily provide restitution to the Government.

(S-91) To preclude contractors that are debarred, suspended, or proposed for debarment from receiving awards, the DCRL monitors shall be immediately notified to ensure the information is added to the System for Award Management (SAM) Exclusions and the DCRL.

9.405-1 Continuation of current contracts.

(S-90) Authorization for novation of a contract or change of name agreement held by a contractor debarred or suspended by any Federal executive agency or proposed for debarment by any DoD component shall be coordinated with the SACI through Office of Counsel prior to such authorization.

9.406 Debarment.

9.406-3 Procedures.

(a) Office of Counsel shall submit the report based upon an indictment, judgment or criminal information to the General Counsel within 2 weeks of the date of notification and include a copy of the indictment (signed, with docket number and date), judgment, conviction order, or other supporting documentation.

(S-90)(a) Office of Counsel shall notify contracting personnel of proposed debarment or suspension. The contracting officer will review the proposed debarment or suspension report and any other supporting data when the contractor is in line for an award. Coordination with the Office of Counsel for proposed award, option, subcontractor agreement or novation is required prior to action.

9.406-90 Procedures for debarments based on poor performance.

(a) Policy. Where poor performance is to be relied upon as a basis for debarment, the responsibility for ensuring that action is taken to initiate debarment proceedings lies primarily with the contracting officer.

(b) Referral. In accordance with the procedures contained in subparagraph (c) below, the contracting officer will refer to Office of Counsel those instances of contractor nonperformance that are so serious as to justify consideration of possible debarment action.

(c) Decision-making process.

(1) Before referring a contractor to the Office of Counsel for possible preparation of a debarment report, the contracting officer must be able to document the poor performance which will form the basis for a debarment recommendation. The contracting officer must also be able to demonstrate why debarment is appropriate under the circumstances, including any mitigating information known to the contracting officer. Referrals to the Office of Counsel should include all current information necessary to support the business decision that is to be recommended to the SACI. The contracting officer should be prepared to update the information provided once the debarment process is underway and to participate with Office of Counsel in presenting the case to the SACI.

(2) When recommending a contractor to Office of Counsel for consideration of a possible debarment recommendation on the basis of poor performance, provide:

(i) A clear identification of the contractor, including divisions, subsidiaries, and affiliates, and contractor employees, officers, and directors, specifically identifying the contractor personnel who have participated in the Government contracting process.

(ii) A detailed account of the contractor’s current active contracts, recent, relevant performance history, and history of performance problems prompting the referral. While this detailed accounting of contracting performance will necessarily focus on contracts awarded by DLA, performance on

other Government contracts must also be addressed. In this connection, the assigned contract administration office should be asked to provide information, as well as comments, on the action being considered.

(iii) The reasons identified for the contractor’s poor performance and the action taken by the Government to protect its business interests.

(iv) A discussion of whether a debarment action directed toward a specific division, organizational element, or commodity would adequately protect the Government’s interests.

(v) A discussion of the period of debarment to be recommended to the SACI, supported by rationale that addresses the likelihood that the contractor will be able to take corrective actions necessary to successfully perform in the future.

(vi) When a report recommending debarment is forwarded to General Counsel, provide notice of this action to contracting personnel at the recommending procuring organization assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other procuring organizations.