1209.406-3 Procedures.

Contracting officers and contracting activities shall comply with DOT Order 4200.5G, Suspension and Debarment, and Ineligibility Policies, and this subpart to include the following procedures—

(a) *Investigation and referral.* Any individual may submit a referral to debar an individual or contractor to the cognizant SDO (the debarring official) (*see* 1209.403). The referral for debarment shall be supported with evidence of a cause for debarment listed in FAR 9.406–2 and this subpart. The contracting officer shall promptly report a proposed debarment action directly to the SDO. Upon review by the SDO, if the matter involves possible criminal or fraudulent activities, the SDO shall also refer the matter to the DOT Office of Inspector General to ensure coordination of appropriate activity. The report shall contain the following information:

(1) The DOT official OA code to identify the OA taking action is as follows: DOT (general) (DOT–OST); Federal Aviation Administration (DOT–FAA); Federal Highway Administration (DOT–FHWA); Federal Motor Carrier Safety Administration (DOT–FMCSA); Federal Railroad Administration (DOT–FRA); Federal Transit Administration (DOT–FTA); Maritime Administration (DOT–MARAD); National Highway Traffic Safety Administration (DOT–NHTSA); Pipeline and Hazardous Materials Safety Administration (DOT–PHMSA); Office of the Assistant Secretary for Research and Technology (OST–R); and Great Lakes St. Lawrence Development Corporation (GLS).

(2) Name, address, and telephone number for the point of contact for the activity making the report.

(3) Name and address of the contractor.

(4) Names and addresses of the members of the board, principal officers, partners, owners, and managers.

(5) Names and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship.

(6) For each contract affected by the conduct being reported—

(i) The contract number;

(ii) Description of supplies or services;

(iii) The amount;

(iv) The percentage of completion;

(v) The amount paid to the contractor;

(vi) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(vii) The amount due to the contractor.

(7) For any other contracts outstanding with the contractor or any of its affiliates—

(i) The contract number(s);

(ii) The amount(s);

(iii) The amounts paid to the contractor;

(iv) Whether the contract(s) is assigned under the Assignment of Claims Act and, if so, to whom; and

(v) The amount(s) due the contractor.

(8) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.

(9) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).

(10) The comments and recommendations of the contracting officer and each higher-level contracting review authority regarding—

(i) Whether to suspend or debar the contractor;

(ii) Whether to apply limitations to the suspension or debarment;

(iii) The period of any recommended debarment; and

(iv) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contract is not included).

(11) When appropriate, as an enclosure to the report—

(i) A copy or extracts of each pertinent contract;

(ii) Witness statements or affidavits;

(iii) Copies of investigative reports;

(iv) Certified copies of indictments, judgments, and sentencing actions; and

(v) Any other appropriate exhibits or documents.

(b) *Decisionmaking process.* When the SDO finds preponderance of the evidence for a cause for debarment, as listed in FAR 9.406–2 or this subpart, the contracting officer in conjunction with the SDC shall prepare a recommendation and draft notice of proposed debarment for the SDO's consideration. The contractor (and any specifically named affiliates) are provided an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment as set forth in paragraph (d) of this section.

(c) *Notice of proposal to debar.* DOT shall send the notice of proposed debarment to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery to include by mail, to the last known street address, to the last known facsimile numbers, or to the last known email address. In the case of a contractor, DOT may send the notice of proposed debarment to the contractor, any partner, principal, officer, director, owner or co-owner, or joint venture; to the contractor's identified counsel for purposes of administrative proceedings; or to the contractor's agent for the service of process. If sent by email, it shall be sent to the last known email addresses for all three, if known. Additionally, for each specifically named affiliate, the notice shall be sent to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agency for service of process. If sent by email, it shall be sent to the

last known email addresses for all three, if known. The SDO shall also ensure that the appropriate parties are listed as excluded in the System for Award Management (SAM) in accordance with FAR 9.404.

(d) *Debarring official's decision.*

(1) If DOT does not receive a reply from the contractor within 30 calendar days after sending the notice of proposed debarment, the SDC shall prepare a recommendation in conjunction with the cognizant contracting officer, and refer the case to the SDO for a decision on whether to debar based on the information available. If DOT receives a reply from the contractor within 30 calendar days after sending the notice of proposed debarment, the SDC in conjunction with the cognizant contracting officer shall consider the information in the reply before the SDC makes their recommendation to the SDO.

(2) The SDO reviews submittals and case documents, and acts in accordance with DOT Order 4200.5G and the General DOT Guidelines for Suspension and Debarment, paragraph 12c.

(i) The SDO, upon the request of the contractor proposed for debarment, shall, as soon as practicable, allow the contractor an opportunity to appear before the SDO to present information or argument, in person or through a representative. The contractor may supplement the oral presentation with written information and argument. This information submitted by a contractor proposed for debarment is known as a Presentation of Matters in Opposition as set forth in DOT Order 4200.5G. DOT shall conduct the proceeding in an informal manner and without requirement for a transcript. The SDO may use flexible procedures to allow a contractor to present matters in opposition via telephone or internet. If so, the debarring official should change the notice in paragraph (c) of this section to include those flexible procedures.

(ii) If the SDO finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the SDC shall submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO shall conduct a fact-finding proceeding or shall refer the dispute to a designee for resolution pursuant to 1209.470. The SDC shall provide the contractor or individual the disputed material fact(s).

(iii) If the proposed debarment action is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 1209.470, the SDO shall make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written arguments presented or submitted to the SDC by the contractor.

(e) *Notice of debarring official's decision.* In actions processed under FAR 9.406 where no suspension is in place and where a fact-finding proceeding is not required, DOT shall make the final decision on the proposed debarment within 30 business days after receipt of any information and argument submitted by the contractor by the means of delivery set forth in paragraph (c) of this section, unless the SDO extends this period for good cause.

Parent topic: Subpart 1209.4—Debarment, Suspension, and Ineligibility