PART 3409—CONTRACTOR QUALIFICATIONS

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Parent topic: SUBCHAPTER B—ACQUISITION PLANNING

Subpart 3409.4—Debarment, Suspension, and Ineligibility

3409.400 Scope of subpart.

This subpart implements FAR subpart 9.4 by detailing policies and procedures governing the debarment and suspension of organizations and individuals from participating in ED contracts and subcontracts.

3409.401 Applicability.

This subpart applies to all procurement debarment and suspension actions initiated by ED. This subpart does not apply to nonprocurement debarment and suspension.

3409.403 Definitions.

The SPE is designated as the *debarring official* and *suspending official* as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.406 and 9.407.

3409.406 Debarment.

3409.406-3 Procedures.

(b) *Decisionmaking process.*

(1) Contractors proposed for debarment may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. The contractor must submit additional information within 30 days of receipt of the notice of proposal to debar, as described in FAR 9.406–3(c).

(2) In actions not based upon a conviction or civil judgment, if the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, the contractor may request a fact-finding conference. If the Debarring Official determines that there is a genuine dispute of material fact, the Debarring Official will conduct fact-finding and base the decision in accordance with FAR 9.406–3(b)(2) and (d) through (f).

3409.407 Suspension.

3409.407-3 Procedures.

(b) *Decisionmaking process.*

(1) Contractors suspended in accordance with FAR 9.407 may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. The contractor must submit this information and argument within 30 days of receipt of the notice of suspension, as described in FAR 9.407–3(c).

(2) In actions not based upon an indictment, if the contractor's submission in opposition raises a genuine dispute over facts material to the 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 contractor may request a fact-finding conference. The Suspending Official will conduct fact-finding and base the decision in accordance with FAR 9.407–3(b)(2) and (d) and (e).

Subpart 3409.5—Organizational and Consultant Conflicts of Interest

3409.502 Applicability.

This subpart applies to all ED contracts except contracts with other Federal agencies. However, this subpart applies to contracts with the Small Business Administration (SBA) under the 8(a) program.

3409.503 Waiver.

The HCA is designated as the official who may waive any general rule or procedure of FAR subpart 9.5 or of this subpart.

3409.506 Procedures.

(a) If the effects of a potential or actual conflict of interest cannot be avoided, neutralized, or mitigated before award, the prospective contractor is not eligible for that award. If a potential or actual conflict of interest is identified after award and the effects cannot be avoided, neutralized, or mitigated, ED will terminate the contract unless the HCA deems continued performance to be in the best interest of the Federal Government.

(b) The HCA is designated as the official to conduct reviews and make final decisions under FAR 9.506(b) and (c).

3409.507 Solicitation provision and contract clause.

3409.507-1 Solicitation provision.

The contracting officer must insert the provision in 3452.209–70 (Conflict of interest certification) in all solicitations for services above the simplified acquisition threshold.

3409.507-2 Contract clause.

The contracting officer must insert the clause at 3452.209–71 (Conflict of interest) in all contracts for services above the simplified acquisition threshold.