9.406-1 General.

(a) It is the *suspending and debarring official*'s responsibility to determine whether *debarment* is in the Government's interest. The *suspending and debarring official may*, in the public interest, debar a contractor for any of the causes in 9.406-3. The existence of a cause for *debarment*, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures, mitigating factors, or aggravating factors *should* be considered in making any *debarment* decision. Before arriving at any *debarment* decision, the *suspending and debarring official should* consider factors such as the following (some of the factors below could apply to individuals such as contractors that are individuals, and are so marked):

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for *debarment* or had adopted such procedures prior to any Government investigation of the activity cited as a cause for *debarment*.

(2) Whether the contractor (including an individual) brought the activity cited as a cause for *debarment* to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for *debarment* (or the individual cooperated with the investigation) and, if so, made the result of the investigation available to the *suspending and debarring official*.

(4) Whether the contractor (including an individual) cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor (including an individual) has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for *debarment*.

(7) Whether the contractor (including an individual) has implemented or agreed to implement remedial measures, including any identified by the Government.

(8)

(i) Whether the contractor has instituted or agreed to institute new or revised review and control procedures, ethics training, or other relevant training programs.

(ii) For an individual, whether the individual has attended relevant remediation training.

(9) Whether the contractor (including an individual) has had adequate time to eliminate the circumstances that led to the cause for *debarment*.

(10)

(i) Whether the contractor's management recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for *debarment* and has implemented programs to prevent

recurrence.

(ii) For an individual, whether the individual recognizes, accepts, and understands the seriousness of the misconduct giving rise to the cause for *debarment* and has adopted practices to prevent recurrence.

(11) Whether the contractor (including an individual) has a pattern or prior history of wrongdoing, the frequency of incidents and/or duration of the wrongdoing, and the actual or potential harm or impact that results, or *may* result, from the wrongdoing.

(12) Whether and to what extent the contractor (including an individual) planned, initiated, or carried out the wrongdoing, and the kind of positions within the contractor's organization held by the individual involved in the wrongdoing.

(13) Whether the wrongdoing was pervasive within the contractor's organization.

(14) Whether the individual or the contractor's principals tolerated the offense.

(15) Whether the contractor (including an individual) is or has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for *debarment* specified in this subpart.

(16) Whether the contractor (including an individual) has entered into an administrative agreement with a *Federal agency* or a similar agreement with a State or local government that is not Governmentwide but is based on conduct similar to one or more of the causes for *debarment* specified in this subpart.

(17) Whether there are any other factors to consider for the contractor (including an individual) appropriate to the circumstances of a particular case.

(b) The existence or nonexistence of any aggravating or mitigating factors or remedial measures such as set forth in paragraph (a) of this section is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for *debarment* exists, the contractor has the burden of demonstrating, to the satisfaction of the *suspending and debarring official*, its present responsibility and that *debarment* is not necessary.

(c) *Debarment* constitutes *debarment* of all divisions or other organizational elements of the contractor, unless the *debarment* decision is limited by its terms to specific divisions, organizational elements, or commodities. The *suspending and debarring official may* extend the *debarment* decision to include any *affiliates* of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed *debarment* and an opportunity to respond (see 9.406-3(c)).

(d) A contractor's *debarment*, or proposed *debarment*, *shall* be effective throughout the executive branch of the Government, unless the *agency head* or a designee (except see 26.505(e)) states *in writing* the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)

(1) When the *suspending and debarring official* has authority to debar contractors from both contracts pursuant to the Federal *Acquisition* Regulation in this chapter and contracts for the purchase of Federal *personal property* pursuant to the Federal Management Regulation (FMR) in 41 CFR part 102-38, that official *shall* consider simultaneously debarring the contractor from the award of *acquisition* contracts and from the purchase of Federal *personal property*.

(2) When debarring a contractor from the award of *acquisition* contracts and from the purchase of Federal *personal property*, the *debarment* notice *shall* so indicate and the appropriate FAR and FMR citations *shall* be included.

Parent topic: 9.406 Debarment.