

## 9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the *suspending and debarring official* of matters appropriate for that official's consideration.

(b) *Decision-making process.*

(1) Agencies shall establish procedures governing the *suspension* decision-making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named *affiliates*) an opportunity, following the imposition of *suspension*, to submit, in person, *in writing*, or through a representative, information and argument in opposition to the *suspension*. If the *suspending and debarring official* extends the opportunity for the contractor to submit material in opposition, then the official should also give a deadline for submission of materials. The *suspending and debarring official* may use the flexible procedures in 9.406-3(b)(1); if so, the *suspending and debarring official* should change the notice in paragraph (c)(5) of this section to include those flexible procedures.

(2) In actions not based on an indictment, if it is found that 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 advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the *suspension* would be prejudiced, agencies shall also-

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named *affiliates* are suspended, they shall be immediately advised using the procedures in 9.406-3(c)(1) and (2)—

(1) That they have been suspended and that the *suspension* is based on an indictment or other *adequate evidence* that the contractor has committed irregularities-

(i) Of a serious nature in business dealings with the Government; or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the *suspension* is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under 9.407-2 for imposing *suspension*;

(4) Of the effect of the *suspension*;

(5) That, within 30 days after receipt of the notice, the contractor *may* submit, in person, *in writing*, or through a representative, information and argument in opposition to the *suspension*, including any additional specific information that raises a genuine dispute over the material facts;

(6) That additional proceedings to determine disputed material facts will be conducted unless-

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of advice by the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the *suspension* would be prejudiced;

(7) That, in addition to any information and argument in opposition to a *suspension*, the contractor *must* identify-

(i) Specific facts that contradict the statements contained in the notice of *suspension*. Include any information about any of the factors listed in 9.406-1(a). A general denial is insufficient to raise a genuine dispute over facts material to the *suspension*;

(ii) All existing, proposed, or prior exclusions and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;

(iii) All criminal and civil proceedings not included in the notice of *suspension* that grew out of facts relevant to the cause(s) stated in the notice; and

(iv) All of the contractor's *affiliates*; and

(8) That if the contractor fails to disclose the information in paragraph (c)(7) of this section or provides false information, the agency taking the action *may* seek further criminal, civil, or administrative action against the contractor, as appropriate.

(d) *Suspending and debarring official's decision.*

(1) The *suspending and debarring official's* decision *shall* be based on all the information in the administrative record, including any submission made by the contractor, for actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of advice from the Department of Justice, a U.S. Attorney's office, State attorney general's office, or a State or local prosecutor's office.

(2)

(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact *shall* be prepared. The *suspending and debarring official shall* base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending and debarring official *may* refer matters involving disputed material facts to another official for findings of fact. The *suspending and debarring official may* reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The *suspending and debarring official's* decision *shall* be made after the conclusion of the proceedings with respect to disputed facts.

(3) The *suspending and debarring official may* modify or terminate the *suspension* or leave it in force (for example, see 9.406-4(c) for the reasons for reducing the period or extent of *debarment*). However, a decision to modify or terminate the *suspension shall* be without prejudice to the subsequent imposition of—

(i) *Suspension* by any other agency; or

(ii) *Debarment* by any agency.

(4) Prompt written notice of the *suspending and debarring official's* decision *shall* be sent to the contractor and any *affiliates* involved, using the procedures in 9.406-3(c)(1) and (2).

(e) *Administrative agreement.*

(1) If the contractor enters into an administrative agreement with the Government in order to resolve a *suspension* or potential *suspension* proceeding, the *suspending and debarring official shall* access the website (available at <https://www.cpars.gov>, then select FAPIIS), enter the requested information, and upload documentation reflecting the administrative agreement.

(2) The *suspending and debarring official* is responsible for the timely and accurate submission of documentation reflecting the administrative agreement. The submission *should* be made within 3 working days.

(3) With regard to information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the *suspending and debarring official shall* follow the procedures at 9.105-2(b)(2)(iv).

(f) *Voluntary exclusion.*

(1) If the contractor enters into a voluntary exclusion with the Government in order to resolve a *suspension* or potential *suspension* proceeding, the *suspending and debarring official shall* access the website (available at <https://www.sam.gov>) and enter the requested information into the exclusions section of SAM (see 9.404(c)(3)).

(2) The *suspending and debarring official* is responsible for the timely and accurate submission of documentation reflecting the voluntary exclusion. The submission *should* be made within 3 working days.

(3) Regarding information that *may* be covered by a disclosure exemption under the Freedom of Information Act, the *suspending and debarring official shall* follow the procedures at 9.105-2(b)(2)(iv).

(g) *Pre-notice letter.* Prior to initiating a *suspension*, a pre-notice letter *may* be issued at the

discretion of the agency *suspending and debarring official*. A pre-notice letter is not required to initiate *suspension* under this subpart. (See 9.403.)

**Parent topic:** 9.407 Suspension.