909.407-3 Procedures.

(b) *Decisionmaking process.*

(1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 909.406-3(b)

(1) and 909.406-3(b)(3).

(2) For actions not based on an indictment, the procedures in 909.406-3(b)(2) and 48 CFR 9.407-3(b)(2) apply.

(3) Coordination with Department of Justice. Whenever a meeting or fact-finding conference is requested, the Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall—

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including any submission made by the respondent.

(e) *Notice of suspending official's decision.* In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)

(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in 48 CFR 9.407-1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that the respondent's name and address will be added to the SAM exclusion; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s)

or individual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

Parent topic: Subpart 909.4—Debarment, Suspension, and Ineligibility