

# NASA FAR Sup 1809

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PART 1809

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*(Revised April 8, 2016)*

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### **PART 1809**

#### **CONTRACTOR QUALIFICATIONS**

##### **Subpart 1809.1--Responsible Prospective Contractors**

##### **1809.104-4 Subcontractor responsibility.**

Generally, the Canadian Commercial Corporation's (CCC) proposal of a firm as its subcontractor is sufficient basis for an affirmative determination of responsibility. However, when the CCC determination of responsibility is not consistent with other information available to the contracting office, the contracting officer shall request from the CCC and any other sources whatever information is necessary to make the responsibility determination.

Upon request, CCC shall be furnished the rationale for any subsequent determination of

nonresponsibility.

### **1809.105-2 Determinations and documentation.**

(a) The contracting officer shall provide written notification to a prospective contractor determined not responsible, which includes the basis for the determination. Notification provides the prospective contractor with the opportunity to take corrective action prior to future solicitations.

### **1809.106 Preadward surveys.**

#### **1809.106-1 Conditions for preaward surveys.**

(a) The procurement officer shall approve all preaward survey requests.

#### **1809.106-2 Requests for preaward surveys.**

(a) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed for a determination on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block 20.H. of Section III.

#### **1809.106-3 Interagency preaward surveys.**

If the survey will be performed for NASA by a DOD contract administration office, the SF 1403 request is to be sent to the appropriate office shown in the Federal Directory of Contract Administration Services Components, 2.0, Attn: Preadward Survey Manager. The DOD contract administration offices normally allow 30 working days in which to conduct a full survey and submit the report to the requesting agency. Allow more time for—

- (i) Complex items;
- (ii) New or inexperienced contractors; and
- (iii) Surveys with time-consuming requirements, e.g., secondary survey, accounting system review, financial capability analysis, or purchasing office participation.

Only request those factors essential to the determination of responsibility. See [FAR 53.209-1](#) and [DFARS 253.209-1\(a\)](#) for detailed explanation of the factors in Section III, Blocks 19 and 20 of the SF 1403.

#### **1809.106-70 Preadward surveys performed by NASA personnel.**

In discussions with representatives of the company being surveyed, NASA preaward survey team members shall not refer to or comment on the possibility of award to the prospective contractor. This does not preclude discussion with a prospective contractor of questionable areas that require clarification. Information obtained during the survey will be treated in strict confidence and divulged only to those Government representatives having a need to know.

## **Subpart 1809.2--Qualifications Requirements**

### **1809.202 Policy.**

(a) Authority regarding agency head actions under [FAR 9.202\(a\)](#) is delegated to the cognizant technical activity, with approval by the installation's competition advocate.

(e) The approval authority of FAR 9.202(e) is delegated to the installation's competition advocate. Requests to proceed with the procurement shall be prepared by the cognizant requirements office and submitted via the procurement officer.

### **1809.203 QPL's, QML's and QBL's.**

### **1809.203-70 Waiver of qualification requirements.**

When acquiring a product under a specification that includes qualification requirements either for the end item or for components of the end item, the NASA installation conducting the acquisition can waive the qualification requirements. Directing a waiver of the end item qualification requirement constitutes adequate authorization for waiver of product qualification requirements. When a waiver has been granted, the solicitation shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any synopsis of the acquisition (see [FAR Subpart 5.2](#)).

### **1809.206 Acquisitions subject to qualification requirements.**

#### **1809.206-1 General.**

(b)(i) The authority to determine that an emergency exists is delegated to the installation's competition advocate. Requests for determination shall be prepared by the cognizant requirements office and submitted through the procurement officer.

(ii) Requests not to enforce a qualification requirement in a nonemergency situation shall be prepared by the cognizant requirements office and approved by the Headquarters Office of Safety and Mission Assurance.

(c) If an offeror seeks to demonstrate its capability, both the product and the producer must meet the established standards.

## **Subpart 1809.4--Debarment, Suspension, and Ineligibility**

See [PIC 15-04](#) for additional guidance.

### **1809.403 Definitions.**

For purposes of FAR subpart 9.4 and this subpart, the Deputy General Counsel is the "debarment official," the "suspending official," and the agency head's "designee."

### **1809.404 Excluded Parties List Systems.**

(c) The Director, Headquarters Acquisition Integrity Program (AIP Director) is responsible for taking the actions listed in FAR 9.404(c).

### **1809.405 Effect of listing.**

(a) The NASA Chief Acquisition Officer (CAO) is the NASA official responsible for determining that a compelling reason exists for NASA to conduct business with a contractor that is debarred, suspended, or proposed for debarment. If it is believed that a new contract or subcontract must be awarded to a firm included in the Excluded Parties List System (EPLS), the procurement officer shall prepare a request for a determination, including the rationale for why the action should be taken, together with all necessary supporting information and forward it to the Office of Procurement (Program Operations Division), and provide a copy to the AIP Director.

(b) The Program Operations Division is responsible for evaluating the request and coordinating with Procurement, OGC (both AIP and Contracts Procurement Practice Group (CPPG)), to jointly determine whether the facts support a recommendation for the CAO to approve award to a party on the EPLS. Procurement Operations Division is also responsible for preparing the headquarters documentation and providing it to the CAO for approval.

### **1809.405-1 Continuation of current contracts.**

The responsibilities of the Agency head under [FAR 9.405-1](#) are delegated to the CAO. Approvals shall be requested in accordance with the procedures in [1809.405](#).

### **1809.405-2 Restrictions on subcontracting.**

(a) The responsibilities of the Agency head under [FAR 9.405-2\(a\)](#) are delegated to the CAO. Approval of consent to subcontract shall be requested in accordance with the procedures in 1809.405.

### **1809.406 Debarment.**

#### **1809.406-1 General.**

#### **1809.406-3 Procedures.**

(a) Any person may refer a matter to the Suspending and Debarring official (SDO) when there is information indicating that a contractor may lack business integrity or business honesty. The information should be referred promptly to the SDO, through the AIP Director, for consideration. The referral should contain the information which supports a lack of business integrity or business honesty.

(1) Use the following format when referring a matter to the SDO for consideration. To the extent practicable, provide all specified information.

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

(B) Name, contractor and Government entity (CAGE) code, DUNS number, and address of the contractor.

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers.

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

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

(i) The contract number;

(ii) All office identifying numbers or symbols;

(iii) Description of supplies or services;

(iv) The amount;

(v) The percentage of completion;

(vi) The amount paid the contractor and any amounts due

(vii) Status of invoices or vouchers;

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

(ix) The contract fund citations involved, to expedite accurate return of funds to open accounts and commands, as appropriate.

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

(i) The contract number;

(ii) The amount;

(iii) The amounts paid the contractor;

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

(v) The amount due the contractor.

(G) A complete summary of the facts, including all pertinent evidence and the status of any legal proceedings involving the contractor.

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

(I) If a contracting office initiates the report, the comments and recommendations of the contracting officer and of 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 (or explain why a recommendation regarding current contracts is not included).
- (J) When appropriate, as an enclosure to the report—
- (i) A copy or pertinent extracts of each pertinent contract;
  - (ii) Witness statements or affidavits;
  - (iii) Copies of investigative reports when authorized by the investigative agency;
  - (iv) Certified copies of indictments, judgments, and sentencing actions;
  - (v) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1);
  - (vi) A copy of the information from the Federal Awardee Performance and Integrity Information System (FAPIIS) data base; and
  - (vii) Any other appropriate exhibits or documentation.
- (K) To the extent that information is available through FPDS-NG, provide a list of other agencies that hold current contracts with the subjects.
- (L) The Contracting Officer is responsible for gathering the information required and preparing the report.
- (M) The AIP Center Attorney (AIP-C) is responsible for assisting the CO in preparing the report and performing a legal sufficiency review. The AIP-C shall sign the report indicating that the review has been performed.
- (N) The report shall be signed by the Contracting Officer and submitted by the Procurement Officer. Procurement Officers are encouraged to advise the Center Director, as appropriate, of debarment recommendations provided to the SDO.
- (O) Address the recommendation to the SDO, indicating OGC (AIP) on the 'Attention' line, and send 2 copies of the complete report, including enclosures to OGC (AIP). One copy of the recommendation, without enclosures, should be provided to the HQ Office of Procurement, Contract and Grant Policy Division.
- (P) If a referral lacks sufficient evidence of a cause for debarment, the SDO may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) Decision-making process.

- (1) The agency SDO may initiate the debarment process by issuing a notice of proposed debarment in accordance with [FAR 9.406-3\(c\)](#) when the SDO finds that the administrative record contains sufficient evidence of one or more of the causes for debarment stated in [FAR 9.406-2](#).
- (i) The absence of a referral in accordance with 1809.406-3(a), or the absence of any information specified in the report format at 1809.406-3(a)(1), will not preclude the SDO from making such a finding.
  - (ii) The signature of the SDO on the notice of proposed debarment is sufficient evidence that the SDO has made such a finding.
- (2) The SDO must use the decision-making process stated in [FAR 9.406-3\(b\)](#), and any agency-specific procedures that were provided to the contractor in advance of the decision.
- (3) Nature of proceeding. There are two distinct proceedings which may be involved in the suspension or debarment process. The first is the presentation of matters in opposition to the suspension or proposed debarment by the contractor. The second is fact-finding which occurs only in cases in which the contractor's presentation of matters in opposition raises a genuine dispute over one or more material facts. In a suspension action based upon an indictment or in a proposed debarment action based upon a conviction or civil judgment, there will be no fact-finding proceeding concerning the matters alleged in the indictment, or the facts underlying the convictions or civil judgment. However, to the extent that the proposed action stems from the contractor's affiliation

with an individual or firm indicted or convicted, or the subject of a civil judgment, fact-finding is permitted if a genuine dispute of fact is raised as to the question of affiliation as defined in [FAR 9.403](#).

(4) Presentation of matters in opposition. In accordance with [FAR 9.406-3\(c\)](#) and [9.407-3\(c\)](#), matters in opposition may be presented in person, in writing, or through a representative. Matters in opposition may be presented through any combination of the foregoing methods, but if a contractor desires to present matters in person or through a representative, any written material should be delivered at least 5 working days in advance of the presentation. Usually, all matters in opposition are presented in a single proceeding. A contractor who becomes aware of a pending indictment or allegations of wrongdoing that the contractor believes may lead to suspension or debarment action may contact the SDO or designee to provide information as to the contractor's present responsibility.

(i) An in-person presentation is an informal meeting, nonadversarial in nature. The SDO and/or other Agency representatives may ask questions of the contractor or its representative making the presentation. The contractor may select the individuals who will attend the meeting on the SDO and contractor's behalf; individual respondents or principals of a business firm respondent may attend and speak for themselves.

(ii) In accordance with [FAR 9.406-3\(c\)](#) and [9.407-3\(c\)](#), the contractor may submit matters in opposition within 30 days from receipt of the notice of suspension or proposed debarment.

(iii) The opportunity to present matters in opposition to debarment includes the opportunity to present matters concerning the duration of the debarment.

(5) Fact-finding.

(i) The SDO will determine whether the contractor's presentation has raised a genuine dispute of material fact(s). If the SDO has decided against continued suspension or debarment, or the provisions of [FAR 9.4](#) preclude fact-finding, no fact-finding will be conducted. If the SDO has determined a genuine dispute of material fact(s) exists, a designated fact-finder will conduct the fact-finding proceeding. The proceeding before the fact-finder will be limited to a finding of the facts in dispute as determined by the SDO.

(ii) The designated fact-finder will establish the date for a fact-finding proceeding, normally to be held within 45 working days of the contractor's presentation of matters in opposition. An official record will be made of the fact-finding proceeding.

(iii) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative in the fact-finding proceeding.

(iv) Neither the Federal Rules of Evidence nor the Federal Rules of Civil Procedure govern fact-finding. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(v) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceeding and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination.

(6) Timing requirements. All timing requirements set forth in these procedures may be extended by the SDO for good cause.

(c) Notice of Proposal to Debar.

(1) Notification. Contractors will be notified of the proposed suspension or debarment in accordance with [FAR 9.406-3](#) or [9.407-3](#). A copy of the record which formed the basis for the decision by the SDO will be made available to the contractor. If there is a reason to withhold from the contractor any portion of the record, the contractor will be informed of what is withheld and the reasons for such withholding.

(2) Written findings of fact will be prepared by the fact-finder as mandated by [FAR 9.406-3\(d\)\(2\)\(i\)](#) and [9.407-3\(d\)\(2\)\(i\)](#).

(3) The fact-finder will determine the disputed fact(s) by a preponderance of the evidence. A copy of

the findings of fact will be provided to the SDO, the Government's representative, and the contractor.

(4) The SDO will determine whether to continue the suspension or to debar the contractor based upon the entire administrative record, including the findings of fact.

(5) Prompt written notice of the SDO's decision will be sent to the contractor and any affiliates involved, in compliance with FAR 9.406-3(e) and 9.407-3(d)(4).

### **1809.407 Suspension.**

#### **1809.407-1 General**

#### **1809.407-3 Procedures.**

(a) Any person may refer a matter to the SDO. Refer all matters appropriate for consideration by the SDO as soon as practicable. Use the format and procedures at 1809.406-3(a)(1) when referring a matter to the agency SDO for consideration. To the extent practicable, provide all information specified.

(i) If a referral lacks sufficient evidence of a cause for suspension, the SDO may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) Decision-making process.

(1) The agency SDO may initiate the suspension process by issuing a notice of suspension in accordance with FAR 9.407-3(c) when the SDO finds that the administrative record contains sufficient evidence of one or more of the causes for suspension stated in FAR 9.407-2. The SDO should coordinate with appropriate agency offices to assess the impact of suspension or debarment on agency mission.

(i) The absence of a referral in accordance with 1809.407-3(a), or the absence of any information specified in the report format at 1809.406-3(a)(1), will not preclude the SDO from making such a finding.

(ii) The signature of the SDO on the notice of suspension is sufficient evidence that the SDO has made such a finding.

(2) In deciding whether to terminate a suspension following a submission of matters in opposition, the agency SDO must use the decision-making process stated in [FAR 9.407-3\(b\)](#), and any agency-specific procedures that were provided to the contractor in advance of the decision.

(3) The SDO shall follow the procedures in 1809.406-3(b) and 1809.406-3(c).

### **1809.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.**

(a)(2)(A) If the offeror indicates that it currently is or has been indicted, charged, convicted, or had a civil judgment rendered against it, or has been suspended, proposed for debarment, or has entered into an administrative agreement to resolve a suspension or debarment proceeding, or when information in FAPIIS indicates cause for concern, the contracting officer shall immediately notify the Director, Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement (Program Operations Division), providing details as known. Information provided should include:

(i) copy of the offeror's certification;

(ii) Specific company name or division;

(iii) Purpose of the pending acquisition;

(iv) Description of services; and

(v) Extent of competition on the pending procurement.

The CO shall await a response before awarding the contract. The Program Operations Division is



responsible for working with the CO to ensure that the package is complete.

(B) If the offeror discloses information that indicates a need for a debarment or suspension determination, the contracting officer shall report the facts to the Director, Headquarters Acquisition Integrity Program, with a copy to the Office of Procurement (Program Operations Division), in accordance with [1809.406-3](#) and [1809.407-3](#).

**1809.470-2 Contents of reports.**

Each report shall be coordinated with local counsel and shall include substantially the following information, if available:

- (a) Name and address of the contractor.
- (b) Names of the principal officers, partners, owners, or managers.
- (c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.
- (d) A description of the contract or contracts concerned, including the contract number and office identifying numbers or symbols, the amount of each contract, the amounts paid the contractor and still due, and the percentage of work completed and to be completed.
- (e) The status of vouchers.
- (f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and, if so, the name and address of the assignee and a copy of the assignment.
- (g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, their amount, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on them.
- (h) A complete summary of all pertinent evidence. If a request for debarment or suspension is based on an indictment or a conviction, provide the evidence upon which the indictment or conviction is based.
- (i) An estimate of any damages, sustained by the Government as a result of the contractor's action, including an explanation of the method used in making the estimate.
- (j) Recommendation as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, (3) whether current contracts should be terminated, and (4) the period of any debarment.
- (k) As an enclosure, a copy of the contract(s) or pertinent excerpts, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

**Subpart 1809.5--Organizational and Consultant Conflicts of Interest**

**1809.500 Scope of subpart.**

(a) The Assistant Administrator for Procurement has authorized the procurement officer to take those actions reserved in [FAR Subpart 9.5](#) for the head of the contracting activity. However, see [1809.503](#) regarding waivers.

(b) The NASA Organizational Conflict of Interest (OCI) Guide provides agency-wide guidance to individuals relative to identifying as well as resolving OCIs and is available at [http://prod.nais.nasa.gov/portals/pl/documents/OCI\\_Guide.pdf](http://prod.nais.nasa.gov/portals/pl/documents/OCI_Guide.pdf) .

### **1809.503 Waiver.**

The Administrator has designated the Assistant Administrator for Procurement as the approval authority for waivers under [FAR 9.503](#). The procurement officer shall forward requests for waivers under [FAR 9.503](#) to the Assistant Administrator for Procurement for action.

### **1809.505-4 Obtaining access to sensitive information.**

(b) In accordance with [FAR 9.503](#), the Assistant Administrator for Procurement has determined that it would not be in the Government's interests for NASA to comply strictly with [FAR 9.505-4\(b\)](#) when acquiring services to support management activities and administrative functions. The Assistant Administrator for Procurement has, therefore, waived the requirement that before gaining access to other companies' proprietary or sensitive (see [1837.203-70](#)) information contractors must enter specific agreements with each of those other companies to protect their information from unauthorized use or disclosure. Accordingly, NASA will not require contractors and subcontractors and their employees in procurements that support management activities and administrative functions to enter into separate, interrelated third party agreements to protect sensitive information from unauthorized use or disclosure. As an alternative to numerous, separate third party agreements, [1837.203-70](#) prescribes detailed policy and procedures to protect contractors from unauthorized use or disclosure of their sensitive information. Nothing in this section waives the requirements of [FAR 37.204](#) and [1837.204](#).

### **1809.506 Procedures.**

(b) The approving official is the procurement officer when the installation has source selection authority and the Assistant Administrator for Procurement when NASA Headquarters has that authority.

### **1809.507 Solicitation provisions and contract clause.**

#### **1809.507-2 Contract clause.**

The contracting officer may insert a clause substantially the same as the clause at [1852.209-71](#), Limitation of Future Contracting, in solicitations and contracts.