as the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require first article approval and that the Government be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate II.

Subpart 9.4—Debarment, Suspension, and Ineligibility

9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in 9.406-2 and 9.407-2;

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of ineligible in 9.403); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors (9.404) and the effect of this listing (9.405(b)), it does not prescribe policies and procedures governing declarations of ineligibility.


9.401 Applicability.

In accordance with Public Law 103-355, Section 2455 (31 U.S.C. 6101, note), and Executive Order 12689, any debarment, suspension, or other Government-wide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Government-wide exclusion initiated on or after August 25, 1995 under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule.

[60 FR 30065, June 26, 1995]

9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) When more than one agency has an interest in the debarment or suspension of a contractor, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.


9.403 Definitions.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliates. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control
both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contract or that was debarred, suspended, or proposed for debarment.

Agency, as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

Civil judgment means a judgment or finding of a civil offense by any court of competent jurisdiction.

Contractor, as used in this subpart, means any individual or other legal entity that—

(a) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

Debarment, as used in this subpart, means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor so excluded is debarred.

Debarring official means (a) an agency head or (b) a designee authorized by the agency head to impose debarment.

Indictment means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible, as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

Legal proceedings means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

Nonprocurement Common Rule means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Suspended official means (a) an agency head or (b) a designee authorized by the agency head to impose suspension.
Suspension, as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor so disqualified is suspended.

Unfair trade practices, as used in this subpart, means the commission of any of the following acts by a contractor:

2. A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the “Coordination Committee” for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, et seq.) or any similar bilateral or multilateral export control agreement.
3. A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.


9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(a) The General Services Administration (GSA) shall—

1. Compile and maintain a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office.
2. Periodically revise and distribute the list and issue supplements, if necessary, to all agencies and the General Accounting Office; and
3. Include in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs shall indicate—

1. The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;
2. The name of the agency or other authority taking the action;
3. The cause for the action (see 9.406-2 and 9.407-2 for causes authorized under this subpart) or other statutory or regulatory authority;
4. The effect of the action;
5. The termination date for each listing;
6. The DUNS No.; and
7. The name and telephone number of the point of contact for the action.

(c) Each agency shall—

1. Notify GSA of the information required by paragraph (b) above within 5 working days after the action becomes effective;
2. Notify GSA within 5 working days after modifying or rescinding an action;
3. Notify GSA of the names and addresses of agency organizations that are to receive the list and the number of copies to be furnished to each;
4. In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;
5. Establish procedures to provide for the effective use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, except as otherwise provided in this subpart; and
6. Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(d) Information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:

1. The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.
   i. Federal agencies may subscribe to the list through their organization’s printing and distribution office.
   ii. The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office,
Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.

(2) The electronic version is updated daily and provides access to the names of firms and individuals on the list by using an asynchronous ASCII terminal (e.g., a word processor or microcomputer). Users can access the system 24 hours a day, 7 days a week using FTS 2000, or commercial telephone lines and the equipment described in the user's manual. Aside from the normal costs of local or long-distance telephone calls, access is free of charge to the user. To obtain a copy of the user’s manual for accessing the system, contact GSA at (202) 501-4740.

(3) A telephone inquiry service to answer general questions about entries on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs is also available by calling GSA at (202) 501-4873 or 501-4740. The inquiry will be answered within one working day.


9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see part 28).

(d)(1) After the opening of bids or receipt of proposals, the contracting officer shall review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the agency head or a designee determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head or a designee determines, in writing, that there is a compelling reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review the List to ensure that no award is made to a listed contractor.


9.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head or a designee determines that such actions would be contrary to the public interest. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.
(b) Ordering activities may continue to place orders against existing contracts, including indefinite delivery contracts, in the absence of a termination.

(c) Agencies shall not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the agency head or a designee authorized representative states, in writing, the compelling reasons for renewal or extension.


9.405-2 Restrictions on subcontracting.

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see subpart 44.2), contracting officers shall not consent to subcontracts with such contractors unless the agency head or a designee states in writing the compelling reasons for this approval action. (See 9.405(b) concerning declarations of ineligibility affecting subcontracting.)

(b) The Government suspends or debars contractors to protect the Government's interests. By operation of the clause at 52.209-6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, contractors shall not enter into any subcontract in excess of $25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment as evidenced by the party's inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see 9.404), a corporate officer or designee of the contractor is required by operation of the clause at 52.209-6, Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before entering into such subcontract. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs; and

(4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(c) The contractor's compliance with the requirements of 52.209-6 will be reviewed during Contractor Purchasing System Reviews (see subpart 44.3).


9.406 Debarment.


(a) It is the debarment official's responsibility to determine whether debarment is in the Government's interest. The debarment official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures 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 or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarment official should consider factors such as the following:

(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 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 and, if so, made the result of the investigation available to the debarring official.

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

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

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

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) 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 debarring official, its present responsibility and that debarment is not necessary.

(b) 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 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)).

(c) 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 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d) (1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, 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 FPMR citations shall be included.


(a) The debarring official may debar a contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false
Federal Acquisition Regulation

9.406-3

statements, tax evasion, or receiving stolen property;

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b)(1) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100-690), as indicated by—

(A) The offeror's submission of a false certification;

(B) The contractor's failure to comply with its certification; or

(C) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Public Law 102-558)).—

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 202 of the Defense Production Act (Public Law 102-558)).

(2) The debarring official may debar a contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12999). The Attorney General's determination is not reviewable in the debarment proceedings.

(c) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.


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

(b) Decisionmaking process. (1) Agencies shall establish procedures governing the debarment decisionmaking 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 to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, 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 proposal to debar. A notice of proposed debarment shall be issued by the debarring official advising the contractor and any specifically named affiliates, by certified mail, return receipt requested—
(1) That debarment is being considered;
(2) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
(3) Of the cause(s) relied upon under 9.406-2 for proposing debarment;
(4) 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 proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
(5) Of the agency’s procedures governing debarment decisionmaking;
(6) Of the effect of the issuance of the notice of proposed debarment; and
(7) Of the potential effect of an actual debarment.

(d) Debarring official’s decision. (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the decision shall be made within 30 working days after receipt of any information and argument submitted by the contractor, unless the debarring official extends this period for good cause.
(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The 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 debarring official may refer matters involving disputed material facts to another official for findings of fact. The 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 debarring official’s decision shall be made after the conclusion of the proceedings with respect to disputed facts.
(3) In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(e) Notice of debarring official’s decision. (1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by certified mail, return receipt requested—
(i) Referring to the notice of proposed debarment;
(ii) Specifying the reasons for debarment;
(iii) Stating the period of debarment, including effective dates; and
(iv) Advising that the debarment is effective throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by 9.406-1(c).
(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.


(a)(1) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—
(i) Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years; and
(ii) Debarments under 9.406-2(b)(2) may be for one year unless extended pursuant to paragraph (b) of this subsection.
(2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.
(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government’s interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. Debarments under 9.406-2(b)(2) may be extended for additional periods of one year if the Attorney General or designee determines...
Federal Acquisition Regulation

9.407 Suspension.


(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in 9.407-2, using the procedures in 9.407-3.

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(b)(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in 9.406-1(a). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are (1)

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with (i) obtaining, (ii) attempting to obtain, or (iii) performing a public contract or subcontract;

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; or

(4) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—

(i) The offeror's submission of a false certification;
(ii) The contractor's failure to comply with its certification; or
(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.


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

(b) Decisionmaking process. (1) Agencies shall establish procedures governing the suspension decisionmaking 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.

(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 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, 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 by certified mail, return receipt requested—

(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—and 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 thereafter;

(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; and

(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 Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

d Suspending official’s decision. (1) In 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 Department of Justice advice, the suspending official’s decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending 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 official may refer matters involving disputed material facts to another official for findings of fact. The suspending 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 official’s decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending 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 official’s decision shall be sent
to the contractor and any affiliates involved, by certified mail, return receipt requested.


(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.


The scope of suspension shall be the same as that for debarment (see 9.406-5), except that the procedures of 9.407-3 shall be used in imposing suspension.

9.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a) When an offeror, in compliance with the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall—

(1) Request such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror’s responsibility (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

[54 FR 19816, May 8, 1989]

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government’s Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds $25,000.

[60 FR 34748, July 3, 1995]

Subpart 9.5—Organizational and Consultant Conflicts of Interest

9.500 Scope of subpart.

This subpart:

(a) Prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest;

(b) Provides examples to assist contracting officers in applying these rules and procedures to individual contracting situations; and

(c) Implements section 8141 of the 1989 Department of Defense Appropriations Act, Pub. L. 100-463, 102 Stat. 2270-