

the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the debarring official may refer matters involving disputed material facts to another official for findings of fact, the debarring official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the debarring official will make a decision.

(3) When the proposed debarment is not based upon a conviction or civil judgment, the reason for debarment must be based on a preponderance of the evidence.

(e) *Notice of debarring official's decision.* FAR 9.406-3(e)(1) establishes the notification procedures when a debarment has been imposed, while FAR 9.406-3(e)(2) establishes the procedure when a debarment is not imposed.

(f) Procurement counsel shall assist and advise the debarring official at each stage of the decision-making process.

1309.407 Suspension.

1309.407-1 General.

Suspensions shall be effective throughout the executive branch of the Government, unless the designee set forth in CAM 1301.70 states in writing compelling reasons for continuing to do business with a suspended contractor.

1309.407-3 Procedures.

(a) *Investigation and referral.* DOC employees shall immediately refer any cause that might serve as the basis for suspension through the contracting officer to the suspending official.

(b) *Decision-making process.* (1) Procedures shall afford the contractor, and any named affiliates, an opportunity to submit information and argument in opposition to the proposed suspension. This may be done in person, in writing or through a representative.

(2) In actions not based upon an indictment, where the contractor's submission raises a genuine dispute over facts material to the proposed suspen-

sion 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, the following procedures will be followed:

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

(ii) A transcribed record of the proceeding will be made, unless the agency and contractor mutually agree to waive the requirement for a transcript. This transcribed record is available to the contractor at cost.

(c) *Notice of suspension.* A notice of suspension shall be issued by the suspending official in accordance with FAR 9.407-3(c)(1) through (6).

(d) *Suspending official's decision.* (1) For actions based upon an indictment, when there is no authentic dispute over material facts, 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 of the information in the administrative record plus any contractor-submitted data.

(2)(i) When necessary, written findings of fact shall be prepared as to the disputed material facts. The suspending official will utilize the information in the written findings of fact, the data submitted by the contractor plus any other information in the administrative record to develop the decision.

(ii) While the suspending official may refer matters involving disputed material facts to another official for findings of fact, the suspending official can disregard any such findings in whole or in part upon a determination that they are clearly erroneous.

(iii) After the conclusion of proceedings with respect to disputed facts, the suspending official will make a decision.

(3) The suspension may be modified or terminated by the suspending official. However such a decision shall be without prejudice to the subsequent imposition of: