

their determination of contractor responsibility on a review of the company's "Summary or Financial Report" from Dun & Bradstreet (available on the Internet for a fee at <http://www.dnb.com/>).

### **Subpart 2909.4—Debarment, Suspension, and Ineligibility**

#### **2909.402 Policy.**

(a) This subpart prescribes DOL policies and procedures governing the debarment and suspension of contractors, the listing of debarred and suspended contractors, contractors declared ineligible (see FAR 9.403) and distribution of the list. This subpart does not apply to Department of Labor debarments or suspensions issued for Davis-Bacon Act and Davis-Bacon Related Act violations, Service Contract Act violations, Affirmative Action/Equal Employment Opportunity violations, or violations under other statutes administered by the Department of Labor.

(b) *Contracting activity officials shall have the following responsibilities.* (1) Heads of contracting activity (HCA) shall:

(i) Provide an effective system to ensure that contracting staffs consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" at <http://epls.arnet.gov/> before soliciting offers, awarding or extending contracts, or consenting to sub-contract.

(ii) Consider debarment or suspension of a contractor when cause, as defined under FAR 9.406-2 for debarment and FAR 9.407-2 for suspension, is shown. Contracting officers should consult with their appropriate legal counsel before making a decision to initiate debarment or suspension proceedings. If a determination is made that available facts do not justify beginning debarment or suspension proceedings, the file should be documented accordingly. This determination is subject to reconsideration if warranted by new information.

(iii) When the decision is made to initiate debarment and/or suspension of a contractor, the Senior Procurement Executive must prepare a notice in accordance with FAR 9.406-3(c) or FAR 9.407-3(c). The draft notice, along with

the administrative file containing all relevant facts and analysis, must be forwarded to the Senior Procurement Executive, as the debarring and suspending official, following review by the activity's legal counsel.

(2) The Senior Procurement Executive shall:

(i) Review the notice and administrative file for sufficiency and provide for review by other DOL officials as considered appropriate;

(ii) In accordance with FAR 9.406-3(c) or FAR 9.407-3(c), if it is determined that action is warranted, give the contractor prompt notice of the proposed debarment or suspension;

(iii) Direct additional fact-finding as necessary when material facts are in dispute;

(iv) Notify the contractor and any affiliates involved of the final decision to debar or suspend, including a decision not to debar or suspend, in accordance with FAR 9.406-3(c) and FAR 9.407-3(c);

(v) Be responsible for accomplishing the actions required in FAR 9.404(c) within five working days after debarring or suspending a contractor or modifying or rescinding such an action;

(vi) Maintain Department-wide records of debarred or suspended contractors in accordance with FAR 9.404.

#### **2909.405 Effect of listing.**

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies must not solicit offers from, award contracts to, or consent to subcontract with these organizations, unless the HCA determines in writing that there is a compelling reason for such action and the Assistant Secretary for Administration and Management approves such determinations.

(b) Bids received from any listed contractor in response to an invitation for bids must be entered on the abstract of bids, and rejected unless the HCA determines in writing that there is a compelling reason to consider the bid and the Assistant Secretary for Administration and Management approves such action.

(c) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor

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shall discussions be conducted with a listed offeror during a period of ineligibility, unless the HCA determines in writing that there is a compelling reason to do so and the Assistant Secretary for Administration and Management approves such action.

### **2909.405-1 Continuation of current contracts.**

(a) At the time an option is being exercised, contracting officers must review the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. If a contractor or significant subcontractor is identified in the listing, the contracting officer must make a written determination either to proceed or to terminate the contract, and must explain the rationale for the decision. In accordance with FAR 9.405-1, contracting officers may continue contracts or subcontracts in existence at the time a contractor is suspended or debarred, unless it is determined that termination of the contract is in the best interest of the Government. The contracting officer must make such determination in writing, after consulting with the contracting officer's technical representative and legal counsel. The determination must be approved by the HCA.

(b) Contracting activities must not renew or otherwise extend the duration of current contracts, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment, unless the HCA states, in writing, the compelling reasons for renewal or extension and the Assistant Secretary for Administration and Management approves such action.

### **2909.406 Debarment.**

#### **2909.406-1 General.**

(a) The Senior Procurement Executive is the debarring official for DOL and is authorized to debar a contractor for any of the causes in FAR 9.406-2, using the procedures in 2909.406-3.

(b) The Senior Procurement Executive is authorized to make an exception regarding debarment by another agency debarring official in accordance with the conditions in FAR 9.406-1(c).

#### **2909.406-3 Procedures.**

(a) *Investigation and referral.* Whenever a DOL employee knows a cause for debarment, as listed in FAR 9.406-2, the appropriate HCA affected must be notified. The contracting officer must consult with the Office of the Solicitor and the Office of the Inspector General, as appropriate, and submit a formal recommendation documenting the cause for debarment to the Senior Procurement Executive.

(b) *Notice of proposal to debar.* Based upon review of the recommendation to debar and consultation with the Office of the Solicitor and Office of the Inspector General, as appropriate, the Senior Procurement Executive must initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOL's rules under 2909.4.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406-3(b)(2), the Senior Procurement Executive must afford the contractor the opportunity to appear at an informal fact-finding proceeding as required by FAR 9.406-3(b)(2)(i). The proceeding must be conducted by the Office of Administrative Law Judges and must be held at a date and location reasonably convenient to the parties concerned. Subject to the provisions of 29 CFR part 18, entitled "Rules Of Practice And Procedure For Administrative Hearings Before The Office Of Administrative Law Judges", the contractor and any specifically named affiliates, may be represented by counsel or any duly authorized representative. Either party may call witnesses. The proceedings must be conducted expeditiously and in such a manner that each party will have a full opportunity to present all information considered pertinent to the proposed debarment. A transcript of the proceedings must be made available to the contractor under the conditions in FAR 9.406-3(b)(2)(ii).

(d) *Decision and notice.* The Senior Procurement Executive shall make a decision on imposing debarment in accordance with the procedures in FAR 9.406-3(d), findings of fact of the Administrative Law Judge, and the conditions in FAR 9.406-4 and 9.406-5. Notice of the decision must be provided to the contractor and any affiliates involved