

Department of Energy

909.403

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909.507-1 Solicitation provisions.

909.507-2 Contract clause.

AUTHORITY: 42 U.S.C. 7101 et seq. and 50 U.S.C. 2401 et seq.

SOURCE: 49 FR 11949, Mar. 28, 1984, unless otherwise noted.

Subpart 909.1—Responsible Prospective Contractors

909.104 Standards.

909.104-1 General standards.

(h) For solicitations for contract work subject to the provisions of 10 CFR part 707, Workplace Substance Abuse Programs at DOE sites, the prospective contractor must agree, in accordance with 970.5223-3., Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, to provide the contracting officer with its written workplace substance abuse program in order to be determined responsible and, thus, eligible to receive the contract award.

[57 FR 32675, July 22, 1992, as amended at 62 FR 42074, Aug. 5, 1997; 65 FR 81006, Dec. 22, 2000; 74 FR 36362, July 22, 2009]

909.104-3 Application of standards.

(e) *Guaranteeing corporate entities.* The Department of Energy (DOE) may select an entity which was newly created to perform the prospective contract, including, but not limited to, a joint venture or other similarly binding corporate partnership. In such instances when making the determination of responsibility pursuant to 48 CFR 9.103, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply

the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

[64 FR 16651, Apr. 6, 1999, as amended at 74 FR 36362, July 22, 2009]

Subpart 909.4—Debarment, Suspension, and Ineligibility

SOURCE: 61 FR 39857, July 31, 1996, unless otherwise noted.

909.400 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures governing the debarment and suspension of organizations and individuals from participating in Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracts, procurement sales contracts, and real property purchase agreements, and from participating in DOE and, NNSA approved subcontracts and sub-agreements;

(b) Sets forth the causes, procedures, and requirements for determining the scope, duration, and effect of DOE and NNSA debarment and suspension actions; and

(c) Implements and supplements 48 CFR subpart 9.4 with respect to the exclusion of organizations and individuals from procurement contracting and Government approved subcontracting.

[61 FR 39857, July 31, 1996, as amended at 74 FR 36362, July 22, 2009; 76 FR 7691, 7692, Feb. 11, 2011]

909.401 Applicability.

The provisions of this subpart apply to all procurement debarment and suspension actions initiated by DOE and NNSA on or after the effective date of this subpart. Nonprocurement debarment and suspension rules are codified in 2 CFR part 901.

[61 FR 39857, July 31, 1996, as amended at 76 FR 7691, Feb. 11, 2011]

909.403 Definitions.

In addition to the definitions set forth at 48 CFR 9.403, the following definitions apply to this subpart:

909.405

Debarring and suspending official, for the DOE, the designees are:

(1) *Debarring Official* means the Debarring Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Debarring Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

(2) *Suspending Official* means the Suspending Official for DOE contracts is the Director, Office of Procurement and Assistance Management, DOE, or designee. The Suspending Official for NNSA contracts is the Director, Office of Acquisition and Supply Management, NNSA, or designee.

[69 FR 75003, Dec. 15, 2004, as amended at 74 FR 36362, July 22, 2009; 76 FR 7692, Feb. 11, 2011]

909.405 Effect of listing.

(e) The Department of Energy may not solicit offers from, award contracts to or consent to subcontracts with contractors debarred, suspended, or proposed for debarment unless the Senior Procurement Executive makes a written determination justifying that there is a compelling reason for such action in accordance with 48 CFR 9.405(a). For NNSA, the Head of the Contracting Activity (HCA) makes the written determination justifying the compelling reason.

(f) DOE or NNSA may disapprove or not consent to the selection (by a contractor) of an individual to serve as a principal investigator, as a project manager, in a position of responsibility for the administration of Federal funds, or in another key personnel position, if the individual is listed in the Excluded Parties List System (EPLS).

(g) DOE or NNSA shall not conduct business with an agent or representative of a contractor if the agent's or representative's name is listed in the EPLS.

(h) DOE or NNSA shall review the EPLS before conducting a pre-award survey or soliciting proposals, awarding contracts, renewing or otherwise extending the duration of existing contracts, or approving or consenting to

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the award, extension, or renewal of subcontracts.

[76 FR 7691, Feb. 11, 2011]

909.406 Debarment.

909.406–2 Causes for debarment.

(c) The DOE and NNSA Debarring Official may debar a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor. Such cause may include but is not limited to:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a private contract or subcontract.

(2) Inexcusable, prolonged, or repeated failure to pay a debt (including disallowed costs and overpayments) owed to DOE, provided the contractor has been notified of the determination of indebtedness, and further provided that the time for initiating any administrative or legal action to oppose or appeal the determination of indebtedness has expired or that such action, if initiated, has been concluded.

(d) The Debarring Official may debar a contractor:

(1) On the basis that an individual or organization is an affiliate of a debarred contractor, subject to the requirements of 48 CFR 9.406–1(b) and 9.406–3(c).

(2) For failure to observe the material provisions of a voluntary exclusion (see 10 CFR 1036.315 for discussion of voluntary exclusion).

[61 FR 39857, July 31, 1996, as amended at 74 FR 36362, July 22, 2009; 76 FR 7691, Feb. 11, 2011]

909.406–3 Procedures.

(a) *Investigation and referral.* (1) Offices responsible for the award and administration of contracts are responsible for reporting to the appropriate Senior Procurement Executive and the DOE Inspector General information about possible fraud, waste, abuse, or other wrongdoing which may constitute or contribute to a cause(s) for debarment under this subpart. Circumstances that involve possible criminal or fraudulent activities must be reported to the Office of the Inspector General in accordance with 10 CFR