

Department of the Interior

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PART 1409—CONTRACTOR QUALIFICATIONS

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AUTHORITY: Sec. 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 301.

SOURCE: 75 FR 19829, Apr. 15, 2010, unless otherwise noted.

Subpart 1409.2—Qualifications Requirements

1409.202 Policy.

(a) The HCA is the official responsible for establishing the qualification requirement in FAR 9.202(a)(1). This authority is not redelegable.

(b) The HCA is the approval official referenced in FAR 9.202(e).

1409.206 Acquisitions subject to qualification requirements.

1409.206-1 General.

The HCA is the approval official referenced in FAR 9.206-1(b).

Subpart 1409.4—Debarment, Suspension, and Ineligibility

1409.403 Definitions.

As used in this subpart:

Case Representative refers to the individual who prepares and forwards the action referral memorandum to the Debarment and Suspending Official and provides additional assistance in the course of action resolution. Debarment and Suspension actions may be referred to the Debarment and Suspending Official for consideration from different sources, as appropriate. The HCA, or designee, may refer matters. The Office of Inspector General (OIG) may also refer actions.

Conviction, for the purposes of this subpart, means:

(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of *nolo contendere*; or,

(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

Debarment Official refers to the Director, PAM. The Debarment Official is the official authorized to impose debarment or suspension. The Debarment Official also may settle a debarment or

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suspension action at any time if it is in the best interest of the Government.

Suspending Official refers to the Director, PAM.

1409.404 Excluded Parties List System (EPLS).

(a) PAM is responsible for accomplishing the actions required in FAR 9.404(c).

(b) COs should access the EPLS online at <http://www.epls.gov>.

1409.405 Effect of listing.

When a CO finds that a compelling reason exists to conduct business with a contractor listed on the EPLS, the HCA shall submit the determination and findings to the Director, PAM, for approval.

1409.405-1 Continuation of current contracts.

The HCA, without authority to redelegate, is authorized to take the actions listed in FAR 9.405-1.

1409.406 Debarment.

1409.406-1 General.

The Director, PAM, is authorized to make the statement regarding debarment by another agency's debarring official under the conditions in FAR 9.406-1(c).

1409.406-3 Procedures.

(a) *Investigation and referral.* Whenever a cause for debarment, as listed in FAR 9.406-2, becomes known to a DOI employee, the matter shall be referred by the case representative to the Debarring Official, in consultation, as appropriate, with the HCA involved, the SOL, and OIG. The case representative will review the matter and, as warranted, prepare and submit to the Debarring Official for consideration an Action Referral Memorandum (ARM) with supporting documentation.

(b) *Notice of Proposed Debarment.* Based upon review of the ARM, as appropriate, the Debarring Official shall initiate proposed debarment by taking the actions listed in FAR 9.406-3(c) and advising the contractor of DOI's process for contesting the action.

(c) *Decision-making process.* (1) For debarment actions based upon a conviction,

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civil judgment, or in which there is no genuine dispute over material facts, consistent with FAR 9.406-3(d)(1), the Debarring Official shall make a decision on the basis of the information in the administrative record, including any contractor submissions. Where the proceeding includes an oral presentation of matters in opposition (PMIO) to the Debarring Official, the PMIO will be conducted in an informal business meeting format and tape recorded for the administrative record.

(2) For actions listed under FAR 9.406-3(b)(2), upon concluding from a contractor's information in response to the action notice that facts material to the existence of cause for debarment are genuinely in dispute, the Debarring Official may refer the disputed material facts to another official for fact-finding. The hearing shall be conducted in accordance with Debarment Program fact-finding procedures.

(i) The fact-finding proceeding will be transcribed. The fact-finding official will file the original copy of the transcript with the case record. The reporter's fees and other direct costs associated with the hearing shall be borne by the bureau or office initiating the debarment action, except in the case of actions initiated by the OIG. For actions initiated by the OIG, the costs will be borne by the bureau(s) and/or office(s) out of which the matter arose. A transcript of the proceedings shall be made available to the contractor as provided under FAR 9.406-3(b)(2)(ii).

(ii) Subject to the provisions of 43 CFR part 1, the contractor, and any specifically named affiliate, may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall 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 shall be made available to the contractor under the condition in FAR 9.406-3(b)(2)(ii).

(iii) The fact-finding official will prepare findings of fact, certify the entire hearing record and provide said findings and record to the Debarring Official. The fact-finding official shall not make any recommendations unless the