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PART 609 - CONTRACTOR QUALIFICATIONS

Subpart 609.2 - Qualifications Requirements

609.202 Policy.

The authority prescribed in [FAR 9.202](#)(a)(1) is delegated, without power of redelegation, to the head of the contracting activity

609.206 Acquisitions subject to qualification requirements.

609.206-1 General.

(b) The authority prescribed in [FAR 9.206-1](#)(b) is delegated, without power of redelegation, to the head of the contracting activity.

Subpart 609.4 Debarment, Suspension, and Ineligibility

609.402 Policy.

The Procurement Executive is the agency head's designee to be the debarring official and the suspending official.

609.403 Definitions.

609.403-70 DOSAR definitions.

"Fact-finding official" means the individual designated by the debarring official to conduct additional proceedings as necessary concerning disputed material facts.

609.404 System for Award Management Exclusions.

A/OPE shall accomplish the agency responsibilities prescribed in [FAR 9.404\(c\)\(1\)](#) through (6). The authority to establish procedures prescribed in [FAR 9.404\(c\)\(7\)](#) is delegated, without power of redelegation, to the head of the contracting activity.

609.404-70 Specially Designated Nationals List.

Contracting officers shall not award to any of the entities listed on the Specially Designated Nationals (SDN) List, available on the Department of Treasury's Office of Foreign Assets Control Web site at <http://www.treas.gov/ofac/>. Contracting officers shall consult this list prior to award for any dollar amount. This list is included in searches conducted on the System for Award Management (SAM) Web site at <https://www.sam.gov>.

609.405 Effect of listing.

(a) The Procurement Executive is the agency head's designee for the purposes of [FAR 9.405\(a\)](#).

(d)(3) The Procurement Executive is the agency head's designee for the purposes of [FAR 9.405\(d\)\(3\)](#).

609.405-1 Continuation of current contracts.

The Procurement Executive is the agency head's designee for the purposes of [FAR 9.405-1](#). The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in [649.101-70](#).

609.405-2 Restrictions on subcontracting.

The Procurement Executive is the agency head's designee for the purposes of [FAR 9.405-2](#).

609.405-70 Termination action decision.

(a) Prior to making a decision to terminate, based on the considerations listed below, the contracting officer shall have the proposed action reviewed and approved by:

- (1) the Office of the Legal Adviser;
- (2) an individual one level above the Contracting Officer; and,
- (3) for overseas posts, A/OPE.

(b) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(c) *Termination for convenience or cancellation.* Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the --

- (1) Seriousness of the cause for debarment or suspension;
- (2) Extent of contract performance;
- (3) Potential costs to the Government;
- (4) Urgency of the requirement and the impact of the delay; and/or
- (5) Availability of other safeguards to protect the Government's interests.

609.406 Debarment.

609.406-1 General.

The Procurement Executive is the agency head's designee for the purposes of [FAR 9.406-1\(c\)](#).

609.406-3 Procedures.

(a) *Investigation and referral.* (1) DOS employees aware of any cause that might serve as the basis for debarment shall refer those cases through the contracting officer to the debarring official. The debarring official shall refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include, as appropriate and available--

(i) The cause for debarment (see [FAR 9.406-2](#));

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list of all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(3) As deemed appropriate, the debarring official may conduct investigations to supplement the information provided in the referral, or may request investigations by the Office of the Inspector General or other Department office.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official, or a designee, shall chair such a meeting. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to [FAR 9.406-3\(b\)\(2\)](#), the contractor may request a fact-finding proceeding.

(4) The debarring official shall designate a fact-finding official and shall provide the fact-finding official with a copy of all documentary evidence considered in proposing debarment. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in [FAR 9.406-3\(b\)\(2\)](#), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding official and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding proceeding shall be conducted in accordance with procedures determined by the fact-finding official. The rules shall be as informal as is practicable, consistent with [FAR 9.406-3\(b\)](#). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding official agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the transcribed record, if made, to the debarring official. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with [FAR 9.406-3\(c\)](#).

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with [FAR 9.406-3\(d\)](#) and [FAR 9.406-3\(e\)](#), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision.

609.407 Suspension.

609.407-1 General.

The Procurement Executive is the agency head's designee for the purposes of [FAR 9.407-1\(d\)](#).

609.407-3 Procedures.

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in [609.406-3](#) (a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see [FAR 9.407-2](#)).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to [FAR 9.407-3](#)(b) follow those established for a debarment action (see [609.406](#)(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding official only if permitted under [FAR 9.407-3](#)(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in [609.406-3](#)(a), except that the suspending official shall process the notice in accordance with [FAR 9.407-3](#)(c).

(d) *Suspending official's decision.* In addition to complying with [FAR 9.407-3](#)(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision.

Subpart 609.5 - Organizational and Consultant Conflicts Of Interest

609.503 Waiver.

The Procurement Executive is the agency head's designee for the purposes of [FAR 9.503](#).