

ATTACHMENT

FAR DEVIATION TEXT

* * * * *

Subpart 9.4 - Debarment, Suspension, and Ineligibility

* * * * *

9.406 Debarment.

* * *

9.406-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decision making process.*

(1) Agencies shall establish procedures governing the debarment decision making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment. The debarring official may use flexible procedures to allow a contractor to present matters in opposition via telephone or internet. If so, the debarring official should change the notice in paragraph (c)(3)(iv) of this section to include those flexible procedures.

(2) In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed debarment, agencies shall also—

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

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of proposal to debar.* A notice of proposed debarment shall be issued by the debarring official to the contractor and any specifically named affiliates.

(1) The notice shall be sent by—

- (i) Certified mail, return receipt requested; or
- (ii) Written notice by a means reasonably calculated to reach the recipient at the last known street address, facsimile number, or e-mail address (with a request for a read receipt).

(2) The notice shall be sent—

- (i) To the contractor, the contractor's identified counsel, and (if known) the contractor's agent for service of process; and
- (ii) For each specifically named affiliate, to the affiliate itself, the affiliate's identified counsel, and (if known) the affiliate's agent for service if process.

(3) The notice shall state--

- (i) That debarment is being considered;
- (ii) Of the reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
- (iii) Of the cause(s) relied upon under 9.406-2 for proposing debarment;
- (iv) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (v) Of the agency's procedures governing debarment decision making;
- (vi) Of the effect of the issuance of the notice of proposed debarment; and

* * *

(e) *Notice of debarring official's decision.*

(1) If the debarring official decides to impose debarment, the contractor and any affiliates involved shall be given prompt notice by means of delivery set forth in 9.406-3(c) —

- (i) Referring to the notice of proposed debarment;
- (ii) Specifying the reasons for debarment;
- (iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective throughout the executive branch of the Government unless the head of an agency or a designee makes the statement called for by 9.406-1 (c).

(2) If debarment is not imposed, the debarring official shall promptly notify the contractor and any affiliates involved, by means of delivery set forth in 9.406-3(c).

* * *

9.407 Suspension.

* * *

9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decision making process.*

(1) Agencies shall establish procedures governing the suspension decision making process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension. The suspending official may use the flexible procedures in 9.406-3(b)(1). If so, the suspending official should change the notice in paragraph (c)(5) of this section to include those flexible procedures.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension 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, agencies shall also—

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

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by means of delivery set forth in 9.406-3(c) —

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

(i) Of a serious nature in business dealings with the Government or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under 9.407-2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending official's decision.*

* * *

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by means of delivery set forth in 9.406-3(c).

* * *

* * * * *