



## DEPARTMENT OF THE INTERIOR

### DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION (DIAR)

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#### PART 1409 -- CONTRACTOR QUALIFICATIONS

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#### SUBPART 1409.2 -- QUALIFICATIONS REQUIREMENTS

##### **1409.202 Policy**

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

(e) The HCA is the approval official referenced in [FAR9.202\(e\)](#).

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#### SUBPART 1409.4 -- DEBARMENT, SUSPENSION, AND INELIGIBILITY

##### **1409.404 Parties Excluded from Procurement Programs**

(c) PAM is responsible for accomplishing the actions required in [FAR9.404\(c\)](#).

(5) Each contracting activity shall be responsible for dissemination of the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs to its contracting offices.

#### **1409.405 Effect of listing**

(a) When a bureau determines that a compelling reason exists to conduct business with a contractor that is included on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs, a request for determination shall be submitted by the HCA 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**

(a) The Director, PAM is the debarring official for the Department and is authorized to debar a contractor for any of the causes in [FAR9.406-2](#), using the procedures in 1409.406-3.

(c) The Director, PAM is authorized to make the statement regarding debarment by another agency debarring official under the conditions in [FAR9.406-1\(c\)](#).

##### **1409.406-3 Procedures**

(a) Investigation and referral. Whenever a cause for debarment, as listed in [FAR9.406-2](#), becomes known to a Department employee, the matter shall be referred to the HCA involved. The HCA shall consult with the SOL and the OIG, as appropriate, and submit a formal recommendation which documents the cause for debarment to the debarring official.

(b) Decision making process. For actions listed under [FAR9.406-3\(b\)\(2\)](#), the Director, OHA shall allow the contractor an opportunity to appear at a hearing as required by [FAR9.406-3\(b\)\(2\)\(i\)](#). The hearing shall be conducted by Administrative Law Judges appointed by the Director, OHA, or designee, and shall be conducted in accordance with procedures to be developed by the Director, OHA.

1. 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 debarring official has expressly requested such recommendations in writing.
2. The OHA will employ a reporter to record the evidentiary proceedings. The fact-finding official will file the original copy of the transcript with the case record. The reporter's fees shall be borne by the bureau or office initiating the debarment action. Each party shall pay for any copies of the transcript obtained by said party.
    - i. 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\(b\)\(2\)\(ii\)](#).
    - ii. All direct costs associated with the fact-finding hearing will be charged back to the bureau or office initiating the debarment action.

(c) Notice of proposal to debar. Based upon review of the recommendation to debar and consultation with the SOL and OIG, as appropriate, the debarring official shall initiate proposed debarment by taking the actions listed in [FAR9.406-3\(c\)](#) and advising the contractor of the Department's rules under this Subpart 1409.4.

#### **1409.407 Suspension**

##### **1409.407-1 General**

(a) The Director, PAM is the suspending official for the Department and is authorized to suspend a contractor for any of the causes in [FAR9.407-2](#), using the procedures in [1409.407-3](#).

(d) The Director, PAM is authorized to make the determination in [FAR 9.407-1\(d\)](#).

##### **1409.407-3 Procedures**

(a) Investigation and referral. Whenever a cause for suspension, as listed in [FAR 9.407-2](#), becomes known to a Department employee, the matter shall be referred to the HCA involved. The HCA shall consult with the SOL and the OIG, as appropriate, and submit a formal recommendation which documents the cause for suspension to the suspending official.

(b) Decisionmaking process. For actions listed under [FAR9.407-3\(b\)\(2\)](#), the Director, OHA shall afford the contractor the opportunity to appear at a hearing as required by [FAR9.407-3\(b\)\(2\)\(i\)](#). The hearing shall be conducted by Administrative Law Judges appointed by the Director, OHA, or designee, and shall be conducted in accordance with procedures to be developed by the Director, OHA.

1. The fact-finding official will prepare findings of fact, certify the entire hearing record and provide said findings and record to the suspending official. The fact-finding official shall not make any recommendations unless the suspending official has expressly requested such recommendations in writing.
  2. The OHA will employ a reporter to record the evidentiary proceedings. The fact-finding official will file the original copy of the transcript with the case record. The reporter's fees shall be borne by the bureau or office initiating the suspension action. Each party shall pay for any copies of the transcript obtained by said party.
    - i. Subject to the provisions of 43 CFR Part 1, the contractor and any specifically named affiliates, 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 9.407-3\(b\)\(2\)\(ii\)](#).
    - ii. All direct costs associated with the fact-finding hearing will be charged back to the bureau or office initiating the debarment or suspension action.
- (c) Notice of suspension. Based upon review of the recommendation to suspend and consultation with the SOL and the OIG, as appropriate, the suspending official shall initiate suspension by taking the actions listed in [FAR 9.407-3\(c\)](#) and advising the contractor of the Department's rules under this Subpart 1409.4.

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## **SUBPART 1409.5 -- ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST**

### **1409.503 Waiver**

- (a) The Director, PAM, is authorized to waive any general rule or procedure in [FAR Subpart 9.5](#) when such action is in the Government's interest.
- (b) Request for waivers shall be made by the HCA, through the appropriate SOL, to the Director, PAM. Each request shall include-
1. An analysis of the facts involving the potential or actual conflict, including benefits and detriments to the Government and prospective contractor(s);
  2. A discussion of the factors which preclude avoiding, neutralizing, or mitigating the conflict; and
  3. Identification of the provision(s) in [FAR Subpart 9.5](#) to be waived.

### **1409.506 Procedures**

(b) Approval to proceed despite a potential organizational conflict of interest shall be made by the HCA, without power of redelegation. Referrals to the HCA shall be initiated by the CO and reviewed by the SOL. Documentation must include both the CO's decision and the position of the prospective contractor.

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