

# AGAR PART 409

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## **PART 409**

### **CONTRACTOR QUALIFICATIONS**

#### **SUBPART 409.4--DEBARMENT, SUSPENSION AND INELIGIBILITY**

##### **409.403 Definitions.**

"Debarring official." Pursuant to the Secretary's delegations of authority in 7 CFR 2.24, the Senior Procurement Executive (SPE) is designated as the debarring official (Department Debarring Officer) with the following exceptions:

(a) for commodity contracts awarded on behalf of the Commodity Credit Corporation (CCC), the Executive Vice President, CCC, or his designee is designated as the debarring official pursuant to 7 CFR part 1407.

(b) for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c), the Department Debarring Officer has delegated debarring authority to the Agricultural Marketing Service (AMS).

##### **409.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.**

The Department Debarring Officer is USDA's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring official for AMS shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide list.

##### **409.405 Effect of listing.**

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The SPE is authorized to make the determinations under [FAR 9.405](#). Requests for such determinations shall be submitted through the head of the contracting activity (HCA) to the SPE.

#### **409.405-1 Continuation of current contracts.**

The HCA is authorized to make the determinations under [FAR 9.405-1](#).

#### **409.405-2 Restrictions on subcontracting.**

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under [FAR 9.405-2](#).

#### **409.406 Debarment.**

##### **409.406-3 Procedures.**

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with [FAR 9.406-3](#)(c) and notify the HCA of the action taken.

(c) Fact-finding proceeding. For actions listed under [FAR 9.406-3](#)(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. 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 an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in [FAR 9.406-3](#)(b)(2)(ii).

#### **409.407 Suspension.**

##### **409.407-3 Procedures.**

(a) Investigation and referral.

When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter

shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring it to the debarring official.

(b) Decision-making process.

If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with [FAR 9.407-3\(c\)](#) and notify the HCA of the action taken.

(c) Fact-finding proceedings.

For actions listed under [FAR 9.407-3\(b\)\(2\)](#), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in [FAR 9.406-3\(c\)](#).

**409.470 Appeals.**

A debarred or suspended contractor may appeal the debarring official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, D.C. 20250. A copy of the notice of appeal shall be furnished to the debarring officer from whose decision the appeal is taken. Appeals under Subpart [409.4](#) shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR, Part 24.

**SUBPART 409.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST**

**409.503 Waiver.**

(a) The HCA, on a non-delegable basis, is authorized to waive any general rule or procedure in [FAR 9.5](#) when in the Government's interest.

(b) Each request for waiver shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under [FAR 9.504\(b\)](#).