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Federal Procurement and Nonprocurement Programs identifies contractors that are declared ineligible for award of a contract or subcontract because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of 40 CFR 32.215(b), the agency head may grant an exception permitting award to a Code "H" ineligible contractor if it is in the paramount interest of the United States.

(A) The agency head may delegate this exception authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exception must provide written notice to the Environmental Protection Agency debarring official.

[65 FR 52955, Aug. 31, 2000]

209.405-1 Continuation of current contracts.

(b) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(c) This includes exercise of options.

[60 FR 29497, June 5, 1995, as amended at 60 FR 61593, Nov. 30, 1995]

209.405-2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.

[63 FR 14837, Mar. 27, 1998]

209.406 Debarment.

209.406-1 General.

(a)(i) When the debarring official decides that debarment is not necessary,

the official may require the contractor to enter into a written agreement which includes—

(A) A requirement for the contractor to establish, if not already established, and to maintain the standards of conduct and internal control systems prescribed by subpart 203.70; and

(B) Other requirements the debarring official considers appropriate.

(ii) Before the debarring official decides not to suspend or debar in the case of an indictment or conviction for a felony, the debarring official must determine that the contractor has addressed adequately the circumstances that gave rise to the misconduct, and that appropriate standards of ethics and integrity are in place and are working.

[57 FR 14992, Apr. 23, 1992]

209.406-2 Causes for debarment.

(a) Any person shall be considered for debarment if criminally convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that was not made in America (10 U.S.C. 2410f).

(i) The debarring official will make a determination concerning debarment not later than 90 days after determining that a person has been so convicted.

(ii) In cases where the debarring official decides not to debar, the debarring official will report that decision to the Director of Defense Procurement who will notify Congress within 30 days after the decision is made.

[58 FR 28464, May 13, 1993]

209.406-3 Procedures.

(a) *Investigation and referral.*

(i) Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official.

(ii) Use the following format when referring a matter to the agency debarring and suspending official for consideration. To the extent practicable, provide all specified information.

(A) Name, address, and telephone number of the point of contact for the activity making the report.

(B) Name, contractor and Government entity (CAGE) code, and address of the contractor.

(C) Name and addresses of the members of the board, principal officers, partners, owners, and managers.

(D) Name and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship.

(E) For each contract affected by the conduct being reported—

(1) The contract number;

(2) All office identifying numbers or symbols;

(3) Description of supplies or services;

(4) The amount;

(5) The percentage of completion;

(6) The amount paid the contractor;

(7) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(8) The amount due the contractor.

(F) For any other contracts outstanding with the contractor or any of its affiliates—

(1) The contract number;

(2) The amount;

(3) The amounts paid the contractor;

(4) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(5) The amount due the contractor.

(G) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.

(H) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).

(I) If a contracting office initiates the report, the comments and recommendations of the contracting officer and of each higher-level contracting review authority regarding—

(1) Whether to suspend or debar the contractor;

(2) Whether to apply limitations to the suspension or debarment;

(3) The period of any recommended debarment; and

(4) Whether to continue any current contracts with the contractor (or explain why a recommendation regarding current contracts is not included).

(J) When appropriate, as an enclosure to the report—

(1) A copy or pertinent extracts of each pertinent contract;

(2) Witness statements or affidavits;

(3) Copies of investigative reports when authorized by the investigative agency;

(4) Certified copies of indictments, judgments, and sentencing actions;

(5) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1); and

(6) Any other appropriate exhibits or documentation.

(iii) Send three copies of each report, including enclosures, to the appropriate debarring and suspending official.

(iv) If a referral lacks sufficient evidence of a cause for debarment, the debarring and suspending official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) *Decisionmaking process.*

(i) The agency debarring and suspending official may initiate the debarment process by issuing a notice of proposed debarment in accordance with FAR 9.406-3(c) when the debarring and suspending official finds that the administrative record contains sufficient evidence of one or more of the causes for debarment stated in FAR 9.406-2 or 209.406-2.

(A) The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format in paragraph (a)(ii) of this subsection, will not preclude the debarring and suspending official from making such a finding.

(B) The signature of the debarring and suspending official on the notice of proposed debarment is sufficient evidence that the debarring and suspending official has made such a finding.

(ii) The agency debarring and suspending official must use the decision-making process stated in FAR 9.406-3(b), DFARS Appendix H, and any agency-specific procedures that were

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provided to the contractor in advance of the decision.

(d) *Debarring official's decision.* The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format in paragraph (a)(ii) of this subsection, will not preclude the debarring and suspending official from making a decision.

[64 FR 62985, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000]

209.407 Suspension.

209.407-3 Procedures.

(a) *Investigation and referral.*

(i) Refer all matters appropriate for consideration by an agency debarring and suspending official as soon as practicable to the appropriate debarring and suspending official identified in 209.403. Any person may refer a matter to the debarring and suspending official.

(ii) Use the format at 209.406-3(a)(ii) when referring a matter to the agency debarring and suspending official for consideration. To the extent practicable, provide all information specified in the format.

(iii) If a referral lacks sufficient evidence of a cause for suspension, the debarring and suspending official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(b) *Decisionmaking process.*

(i) The agency debarring and suspending official may initiate the suspension process by issuing a notice of suspension in accordance with FAR 9.407-3(c) when the debarring and suspending official finds that the administrative record contains sufficient evidence of one or more of the causes for suspension stated in FAR 9.407-2.

(A) The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format at 209.406-3(a)(ii), will not preclude the debarring and suspending official from making such a finding.

(B) The signature of the debarring and suspending official on the notice of suspension is sufficient evidence that the debarring and suspending official has made such a finding.

(ii) In deciding whether to terminate a suspension following a submission of matters in opposition, the agency debarring and suspending official must use the decisionmaking process stated in FAR 9.407-3(b), DFARS Appendix H, and any agency-specific procedures that were provided to the contractor in advance of the decision.

(d) *Suspending official's decision.* The absence of a referral in accordance with paragraph (a)(i) of this subsection, or the absence of any information specified in the report format at 209.406-3(a)(ii), will not preclude the debarring and suspending official from making a decision.

[64 FR 62985, Nov. 18, 1999; 65 FR 4864, Feb. 1, 2000]

209.409 Solicitation provision and contract clause.

Use the clause at 252.209-7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of \$100,000 or more.

[63 FR 14837, Mar. 27, 1998]

209.470 Reserve Officer Training Corps and military recruiting on campus.

209.470-1 Definition.

Institution of higher education, as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

[65 FR 2056, Jan. 13, 2000]

209.470-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits DoD from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents—