



Federal Register

**Friday,
June 18, 2004**

Part III

General Services Administration

48 CFR Part 509

**General Services Acquisition Regulation;
Debarment, Suspension, and Ineligibility;
Proposed Rule**

GENERAL SERVICES ADMINISTRATION

48 CFR Part 509

GSAR 2004–G502

RIN 3090–AH97

General Services Acquisition Regulation; Debarment, Suspension, and Ineligibility

AGENCY: Office of Acquisition Policy,
General Services Administration (GSA).

ACTION: Proposed rule with request for
comments.

SUMMARY: The General Services
Administration (GSA) is proposing to
amend the General Services Acquisition
Regulation (GSAR) to add an additional
procedure to the decision-making
process for the debarment and
suspension of parties.

DATES: Interested parties should submit
comments in writing on or before
August 17, 2004 to be considered in the
formulation of a final rule.

ADDRESSES: Submit printed comments
to General Services Administration,
Regulatory Secretariat (MVA), 1800 F
Street, NW, Room 4035, ATTN: Laurie
Duarte, Washington, DC 20405. Submit
electronic comments via the Internet to
the U.S. Government's rulemaking
website at <http://www.regulations.gov>,
or to GSA's e-mailbox at gsarcase.2004-G502@gsa.gov.

Please submit comments only and cite
GSAR case 2004–G502 in all
correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The
Regulatory Secretariat, Room 4035, GS
Building, Washington, DC 20405, (202)
501–4755, for information pertaining to
status or publication schedules. For
clarification of content, contact Mr.
Ernest Woodson, Procurement Analyst,
at (202) 501–3775, or by e-mail at
ernest.woodson@gsa.gov. Please cite
GSAR case 2004–G502.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 509.406–3(d) and 509.407–3
provide the decision-making processes
for determining whether parties should
be suspended or proposed for
debarment, including contractors,
principles, and affiliates. The
procedures supplement Federal
Acquisition Regulation (FAR) Subpart
9.4, Debarment, Suspension, and
Ineligibility, that prescribes policies and
procedures governing the suspension
and debarment of contractors who are
determined not to be responsible by
Federal agencies. It is the Government's
policy to solicit offers from, award

contracts to, award task or delivery
orders against existing contracts, and
consent to subcontracts with
responsible contractors only. The
serious nature of suspension or
debarment requires that agencies
impose the sanctions only in the public
interest for the Government's protection.
Suspension or debarment is not to be
imposed as punishment for prior bad
acts.

The proposed rule would provide
parties who are being considered for
suspension or debarment with a Show
Cause Notice. Currently, there is no
requirement to notify a contractor that
GSA is considering a suspension or
debarment action. In some recent cases,
contractors obtained information
through leaked information to the press
about recommendations to suspend or
debar them, giving them the advantage
of being able to come in and talk to the
GSA Suspension/Debarment Official,
while others found out that they were
being considered for suspension/
debarment when they received either
the suspension or the proposed
debarment by mail or fax. It is important
to note that GSA encourages any of its
private sector partners to come in and
discuss with the Suspension/Debarment
Official instances they have discovered
where their responsibility may be
placed in question and what steps they
have taken to remedy the situation. We
encourage a proactive approach by our
industry partners in dealing with
matters that put their responsibility in
question.

The Show Cause Notice would be sent
before issuance of a Notice of
Suspension or a Notice of Proposed
Debarment except in those cases where
the government would be harmed by
waiting any period of time to suspend
or propose the debarment of the
contractor. The additional period of
time will not impact a party's right to
respond to a Notice of Suspension or a
Notice of Proposed Debarment within
30 calendar days after its receipt; these
two notices trigger placement of a party
on the List of Parties Excluded from
Federal Procurement and
Nonprocurement Programs, but the
Show Cause Notice would not.

By providing the additional time
period, GSA intends to give parties who
are being considered for possible
suspension or debarment, the ability to
informally respond to allegations that
affect the responsibility of the
contractor.

This is not a significant regulatory
action and, therefore, was not subject to
review under Section 6(b) of Executive
Order 12866, Regulatory Planning and
Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C.
804.

B. Regulatory Flexibility Act

The General Services Administration
does not expect this proposed rule to
have a significant economic impact on
a substantial number of small entities
within the meaning of the Regulatory
Flexibility Act, 5 U.S.C. 601, *et seq.*,
because the proposed rule primarily
supplements existing GSAR procedures
that provide the decision-making
process for determining the suspension
or debarment of parties. One hundred
and thirteen contractors were
suspended or debarred by GSA in 2003,
and this included both large and small
businesses. GSA will consider
comments from small entities
concerning the affected GSAR Subpart
509.4 in accordance with 5 U.S.C. 610.
Interested parties must submit such
comments separately and should cite
GSAR case 2004–G502, in
correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does
not apply because the proposed changes
to the GSAR do not impose information
collection requirements that require the
approval of the Office of Management
and Budget under 44 U.S.C. 3501, *et
seq.*

List of Subjects in 48 CFR Part 509

Government procurement.

Dated: June 10, 2004.

David A. Drabkin,

*Deputy Associate Administrator, Office of
Acquisition Policy.*

Therefore, GSA proposes changes to
48 CFR part 509 as set forth below:

PART 509—DEBARMENT, SUSPENSION, AND ELIGIBILITY

1. The authority citation for 48 CFR
part 509 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Amend section 509.406–3 by
redesignating paragraphs (d)(2) and
(d)(3) as (d)(3) and (d)(4), by adding a
new paragraph (d)(2), and in newly
designated (d)(3) by redesignating
(d)(3)(i) through (iv) as (d)(3)(ii) through
(v), and adding a new (d)(3)(i) to read
as follows:

509.406–3 Procedures.

* * * * *

(d) *Decision-making process.* * * *

(2) The debarring official must

provide a Show Cause Notice to each
party being considered for debarment,
before issuing a Notice of Proposed
Debarment. However, a Show Cause
Notice need not be provided if—

(i) The debarring official, in her/his sole discretion, has determined that any delay in issuing the Notice of Proposed Debarment would cause imminent harm to the Government; or,

(ii) A suspension is already in effect.

(3) * * *

(i) May informally respond to a Show Cause Notice, but has no obligation to do so.

* * * * *

509.407-3 [Amended]

3. Amend 509.407-3(b)(2)(ii) by removing the reference "509.406-3(d)(3)" and adding "509.406-3(d)(4)" in its place.

[FR Doc. 04-13762 Filed 6-17-04; 8:45 am]

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