

§ 601.111 Interest on claim amounts.

Interest on the amount found due on the supplier's claim must be paid from the date the contracting officer received the claim (properly certified, if required) or from the date payment would otherwise be due, if that date is later, until the date of payment. Simple interest will be paid at the rate established by the Secretary of the Treasury for each 6-month period in which the claim is pending. Information on the rate at which interest is payable is announced periodically in the *Postal Bulletin*.

§ 601.112 Review of adverse decisions.

Any party may seek review of an adverse decision of the Board of Contract Appeals in the Court of Appeals for the Federal Circuit or in any other appropriate forum.

§ 601.113 Debarment, suspension, and ineligibility.

(a) *General*. Except as provided otherwise in this part, contracting officers may not solicit proposals from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible suppliers.

(b) *Definitions*—(1) *Affiliate*. A business, organization, person, or individual connected by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. Factors such as common ownership, common management, and contractual relationships may be considered. Franchise agreements are not conclusive evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.

(2) *Debarment*. An exclusion from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

(3) *General Counsel*. This includes the General Counsel's authorized representative.

(4) *Indictment*. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

(5) *Ineligible*. An exclusion from contracting and subcontracting by an entity other than the Postal Service under statutes, executive orders, or regulations, such as the Davis Bacon Act, the Service Contract Act, the Equal Employment Opportunity Acts, the Walsh-Healy Public Contracts Act, or the Environmental Protection Acts and related regulations or executive orders, to which the Postal Service is subject or has adopted as a matter of policy.

(6) *Judicial Officer*. This includes the acting Judicial Officer.

(7) *Suspension*. An exclusion from contracting and subcontracting for a reasonable period of time due to specified reasons or the pendency of a debarment proceeding.

(8) *Supplier*. For the purposes of this part, a supplier is any individual, person, or other legal entity that:

(i) Directly or indirectly (*e.g.*, through an affiliate) submits offers for, is awarded, or reasonably may be expected to submit offers for or be awarded, a Postal Service contract, including a contract for carriage under Postal Service or commercial bills of lading, or a subcontract under a Postal Service contract; or

(ii) Conducts business or reasonably may be expected to conduct business with the Postal Service as a subcontractor, an agent, or as a representative of another supplier.

(c) *Establishment and Maintenance of Lists*. (1) The vice president of Supply Management will establish, maintain, and distribute to purchasing offices a list of suppliers debarred or suspended by the Postal Service.

(2) The General Services Administration (GSA) compiles and maintains a consolidated list of all persons and entities debarred, suspended, proposed for debarment, or declared ineligible by Federal agencies or the Government Accountability Office. GSA posts the list on the Internet and publishes a hardcopy of the list.

(3) The vice president of Supply Management will notify the GSA of any Postal Service debarment, suspension, and change in the status of suppliers, including any of their affiliates, on the Postal Service list.

(d) *Treatment of Suppliers on Postal Service or GSA Lists.* (1) Contracting officers will review the Postal Service and GSA lists before making a contract award.

(2) Suppliers on the Postal Service list are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president of Supply Management, or his or her designee, after consultation with the General Counsel, has approved such action. Suppliers on the Postal Service list may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service and such other persons or entities are obligated to obtain and review the Postal Service list in order to exclude debarred or suspended suppliers from performing any part of a Postal Service contract.

(3) Suppliers on the GSA list are assigned a code by GSA which is related to the basis of ineligibility. The vice president of Supply Management maintains a table describing the Postal Service treatment assigned to each code. Suppliers on the GSA list who are coded as ineligible are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when the contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president of Supply Management, or designee, after consultation with the General Counsel, has approved such action. Suppliers on the GSA list may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service and such other persons or entities are obligated to obtain and review the GSA list in order to exclude debarred or suspended suppliers from performing any part of a Postal Service contract.

(4) Suppliers on the GSA list are assigned codes for which the table provides other Postal Service guidance, and are considered according to that guidance. When so indicated on the table, contracting officers must obtain

additional information from the entity responsible for establishing the supplier's ineligibility, if such information is available.

(5) The debarment, suspension, or ineligibility of a supplier does not, of itself, affect the rights and obligations of the parties to any valid, pre-existing contract. The Postal Service may terminate for default a contract with a supplier that is debarred, suspended, or determined to be ineligible. Except for service changes under mail transportation contracts, contracting officers may not add new work to the contract by supplemental agreement, by exercise of an option, or otherwise, except with the approval of the vice president of Supply Management or designee.

(e) *Causes for Debarment.* (1) The vice president of Supply Management, with the concurrence of the General Counsel, may debar a supplier, including its affiliates, for cause such as the following:

(i) Conviction of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.

(ii) Conviction under a Federal anti-trust statute arising out of the submission of bids or proposals.

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

(iv) Violation of a Postal Service contract so serious as to justify debarment, such as willful failure to perform a Postal Service contract in accordance with the specifications or within the time limit(s) provided in the contract; a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar (except that failure to perform or unsatisfactory performance caused by acts beyond the control of the supplier may not be considered a basis for debarment); violation of a contractual provision against contingent fees; or acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.

(v) Any other offense indicating a lack of business integrity or business honesty.

(vi) Any other cause of a serious and compelling nature that debarment is warranted.

(2) The existence of a conviction in paragraph (e)(1)(i) or (ii) of this section can be established by proof of a conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment may be removed upon the request of the supplier, unless another cause or another basis for debarment exists.

(3) The existence of any of the other causes in paragraphs (e)(1)(iii), (iv), (v), or (vi) of this section can be established by a preponderance of the evidence, either direct or indirect, in the judgment of the debarring official.

(4) The criminal, fraudulent, or improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when an impropriety was committed. Likewise, when a firm is involved in criminal, fraudulent, or other improper conduct, any person who participated in, knew of, or had reason to know of the impropriety may be debarred.

(5) The fraudulent, criminal, or other improper conduct of one supplier participating in a joint venture or similar arrangement may be imputed to other participating suppliers if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the supplier. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

(f) *Mitigating Factors.* (1) The existence of any cause for debarment does not necessarily require that a supplier be debarred. The decision to debar is within the discretion of the vice president of Supply Management, with the concurrence of the General Counsel, and must be made in the best interest of the Postal Service. The following factors may be assessed in determining the seriousness of the offense, failure, or inadequacy of performance, and may be taken into account in deciding whether debarment is warranted:

(i) Whether the supplier had established written standards of conduct and had published internal control systems at the time of the activity that constitutes cause for debarment or had adopted such procedures prior to any Postal Service investigation of the activity cited as a cause for debarment.

(ii) Whether the supplier brought the activity cited as a cause for debarment to the attention of the Postal Service in a prompt, timely manner.

(iii) Whether the supplier promptly and fully investigated the circumstances involving debarment and, if so, made the full results of the investigation available to appropriate officials of the Postal Service.

(iv) Whether the supplier cooperated fully with the Postal Service during its investigation into the matter.

(v) Whether the supplier paid or agreed to pay all criminal, civil, and administrative liability and other costs arising out of the improper activity, including any investigative or administrative costs incurred by the Postal Service, and made or agreed to make full restitution.

(vi) Whether the supplier took appropriate disciplinary action against the individual(s) responsible for the activity that could cause debarment.

(vii) Whether the supplier implemented and/or agreed to implement remedial measures, including those identified by the Postal Service.

(viii) Whether the supplier instituted and/or agreed to institute new and/or revised review and control procedures and ethics programs.

(ix) Whether the supplier had adequate time to eliminate circumstances within the supplier's organization that could lead to debarment.

(x) Whether the supplier's senior officers and mid-level management recognize and understand the seriousness of the misconduct giving rise to debarment.

(2) The existence or nonexistence of mitigating factors or remedial measures such as those above is not determinative whether or not a supplier should be debarred. If a cause for debarment exists, the supplier has the burden of demonstrating, to the satisfaction of the vice president of Supply

Management that debarment is not warranted or necessary.

(g) *Period of Debarment.* (1) When an applicable statute, executive order, or controlling regulation of other agencies provides a specific period of debarment, that period applies. In other cases, debarment by the Postal Service should be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment should not exceed 3 years. When debarment for an additional period is deemed necessary, notice of the proposed additional period of debarment must be furnished to the supplier as in the case of original debarment.

(2) Except as precluded by an applicable statute, executive order, or controlling regulation of another agency, debarment may be removed or the period may be reduced by the vice president of Supply Management when requested by the debarred supplier and when the request is supported by a reasonable justification, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The vice president of Supply Management may, at his or her discretion, deny any request or refer it to the Judicial Officer for a hearing and for findings of fact, which the vice president of Supply Management will consider when deciding the matter. When a debarment is removed or the debarment period is reduced, the vice president of Supply Management must state in writing the reason(s) for the removal of the debarment or the reduction of the period of debarment.

(h) *Procedural Requirements for Debarment.* (1) After securing the concurrence of the General Counsel, the vice president of Supply Management will initiate a debarment proceeding by sending the supplier a written notice of proposed debarment. The notice will be served by sending it to the last known address of the supplier by Certified Mail, return receipt requested. A copy of the notice will be furnished to the Office of Inspector General. The notice will state that debarment is being considered; the reason(s) for the proposed

debarment; the anticipated period of debarment and the proposed effective date; and, within 30 days of the notice, the supplier may submit, in person or in writing, or through a representative, information and argument in opposition to the proposed debarment. In the event a supplier does not submit information or argument in opposition to the proposed debarment to the vice president of Supply Management within the time allowed, the debarment will become final with no further review or appeal.

(2) If the proposed debarment is based on a conviction or civil judgment, the vice president of Supply Management with the concurrence of the General Counsel, may decide whether debarment is merited based on the conviction or judgment, including any information received from the supplier. If the debarment is based on other circumstances or if there are questions regarding material facts, the vice president of Supply Management may seek additional information from the supplier and/or other persons, and may request the Judicial Officer to hold a fact-finding hearing on such matters. The hearing will be governed by rules of procedure promulgated by the Judicial Officer. The vice president of Supply Management may reject any findings of fact, in whole or in part, when they are clearly erroneous.

(3) When the vice president of Supply Management proposes to debar a supplier already debarred by another government agency for a period concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of evidence, facts, and proceedings before the other agency, upon any additional facts the Postal Service deems relevant, or on the decision of another government agency. In such cases, the findings of facts by another government agency may be considered as established, but, within 30 days of the notice of proposed debarment, the supplier may submit, in person or in writing, or through a representative, any additional facts, information, or argument to the vice president of Supply Management, and to explain why debarment by the Postal Service should not be imposed.

(4) Questions of fact to be resolved by a hearing before the Judicial Office will be based on the preponderance of the evidence.

(5) After consideration of the circumstances and any information and argument submitted by the supplier, the vice president of Supply Management, with the concurrence of the General Counsel, will issue a written decision regarding whether the supplier is debarred, and, if so, for the period of debarment. The decision will be mailed to the supplier by Certified Mail, return receipt requested. A copy of the decision will be furnished to the Office of the Inspector General. The decision will be final and binding, unless:

(i) The decision was procured by fraud or other criminal misconduct or

(ii) The decision was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

(i) *Causes for Suspension.* The vice president of Supply Management may suspend any supplier, including any of its affiliates, if:

(1) The supplier commits, is indicted for, or is convicted of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract, violates a Federal antitrust statute arising out of the submission of bids and proposals, or commits or engages in embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty; or

(2) If the Postal Service has notified a supplier of its proposed debarment under this Part.

(j) *Period of Suspension.* A suspension will not exceed 1 year in duration, except a suspension may be extended for reasonable periods of time beyond 1 year by the vice president of Supply Management. The termination of a suspension will not prejudice the Postal Service's position in any debarment proceeding. A suspension will be superseded by a decision rendered by the vice president of Supply Management, under paragraph (h)(5) of this section.

(k) *Procedural Requirements for Suspension.* (1) The vice president of Supply Management will notify a supplier

of a suspension or an extension of a suspension and the reason(s) for the suspension or extension in writing sent to the supplier by Certified Mail, return receipt requested, within 10 days after the effective date of the suspension or extension. A copy of the notice will be furnished to the Office of the Inspector General.

(2) The notice will state the cause(s) for the suspension or extension.

(3) Within 30 days of notice of suspension or an extension, a supplier may submit to the vice president of Supply Management in writing, any information or reason(s) the supplier believes makes a suspension or an extension inappropriate, and the vice president of Supply Management in consultation with the General Counsel, will consider the supplier's submission, and, in their discretion, may revoke a suspension or an extension of a suspension. If a suspension or extension is revoked, the revocation will be in writing and a copy of the revocation will be sent to the supplier by Certified Mail, return receipt requested. A copy of the revocation will be furnished to the Office of the Inspector General.

PART 602—INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

Sec.

602.1 General principles.

602.2 Office of Licensing, Philatelic and Retail Services Department.

602.3 Requests for use.

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SOURCE: 43 FR 42250, Sept. 20, 1978, unless otherwise noted.

§ 602.1 General principles.

It is the policy of the Postal Service to secure full ownership rights for its intellectual properties other than patents (hereinafter, intellectual properties) having significant economic or other business value, except when to do so would be contrary to the best interest of the Postal Service. Intellectual property rights shall be acquired and managed so as to:

(a) Promote the economic, operational, and competitive well-being of the Postal Service;

(b) Limit restrictions on the use of Postal Service intellectual property to